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By [Andrew Karpan](#) · [Listen to article](#)

Law360 (September 28, 2022, 7:20 PM EDT) -- The Federal Circuit's top judge penned a precedential ruling on Wednesday that found a California federal judge was wrong to rule that a software patent covering a type of peer-to-peer network flunked the Supreme Court's Alice test.

The [reversal](#) was a win for a small North Carolina patent licensing company called Cooperative Entertainment, which had sued Oregon software developer Kollektive Technology two years ago. Cooperative claims that Kollektive sells network programming packages aimed at businesses, and when those packages are used in conjunction with [Microsoft Teams](#), they allegedly infringe Collective's patent. Joosy Inc., a defunct startup that had tried to market something called the JoosyCloud in the early 2010s, used to own the patent.

"There are at least two alleged inventive concepts in Claim 1," Chief U.S. Circuit Judge Kimberly Moore wrote for the three-judge panel in Wednesday's opinion, which took issue with a ruling last year from California's U.S. District Judge Edward Davila.

Judge Davila ruled that claims in the patent were not inventive, writing that the language in the Joosy patent only covered "the transmission of segmented portions of information between peers," which he had likened to "students providing each other with photocopied chapters of a textbook instead of each student obtaining the textbook from the bookstore."

But the panel disagreed. Paperwork produced by lawyers for Cooperative, which had taken over the patent in 2018, shortly before beginning a patent litigation campaign against various tech companies, "plausibly tout this as an improvement to content distribution systems," it wrote.

At the center of the ruling was the longstanding disagreement over how courts are meant to read the high court's legal test for patent eligibility, set up in its 2014 Alice decision. The two-part test centers on whether the language of patents are considered to be "inventive," even if they stake claims on ways to program computers to automate certain functions.

Earlier this month, Randall Rader, one of Judge Moore's predecessors at the helm of the Federal Circuit, [attacked](#) his former colleagues on exactly this issue at a conference, accusing them of not looking at earlier inventions but instead attempting to divine if a new invention adds "significantly more" than an abstract idea.

In this case, the panel gave credence to arguments Cooperative's lawyers had made that compared their client's patent to language in patents that covered earlier inventions.

As an example, the judges were convinced by their claim that language in older patents "failed to disclose ... the multiplicity of peer nodes of the dynamic peer-to-peer network consum[ing] the same content within a predetermined time."

This meant that the patent purported to cover "a specific technical solution," namely a way of distributing content "outside controlled networks," the opinion said.

It was too early in the lawsuit, it noted, to doubt the claims that Cooperative had made about its patent.

"The amended complaint plausibly alleges these inventive concepts, and this should have defeated Kollektive's [dismissal] motion in this case," the opinion added.

A lawyer for Cooperative, Meredith Addy of [AddyHart PC](#), told Law360 in a statement Wednesday that the reversal from the Federal Circuit was "refreshing."

"Our client's claims involve software, but the panel agreed that the pleadings and the patent describe a technical improvement over prior art ways of arranging networks for distributing video content," she wrote, adding that she felt like the ruling "should encourage those arguing patentability cases under Section 101" — the section of patent law that deals with whether or not an invention is inventive enough to receive a patent.

Addy said she thinks the ruling will allow for improvised jurisprudence surrounding the Alice ruling for patent owners and their lawyers.

"Since the Supreme Court's decision in Alice ... patentees have been under siege in our courts, which have been hard-hearted in judging what is innovative with respect to prior art, and too willing to dismiss valid claims," she said.

Lawyers for Kollektive did not return a request for comment.

Since 2019, Cooperative has sued tech companies like [Ripple Labs Inc.](#), [Akamai Technologies Inc.](#) and Peer5, the latter recently bought by Microsoft. All of those cases, however, were dropped shortly after they were filed. According to the filings, before moving into the licensing business, Joosy had tried to market a kind of cloud technology that "lowered the cost of online video delivery and improved the end-user experience."

The lawsuit against Kollektive targets a "software-based network" that it sells to companies to help them leverage "existing network infrastructure" to handle high volumes of traffic from their employees, according to its website.

The patent-in-suit is U.S. Patent No. [9,432,452](#).

U.S. Circuit Judges Kimberly A. Moore, Alan Lourie and Leonard Stark sat on the panel for the Federal Circuit.

Cooperative is represented by Meredith Addy of AddyHart PC.

Kollektive is represented by Michael S. Dowler of Vaughan Fleming & Dowler LLP.

The case is Cooperative Entertainment Inc. v. Kollektive Technology Inc., case number [21-2167](#), in the [U.S. Court of Appeals for the Federal Circuit](#).

--Additional reporting by Ryan Davis. Editing by Adam LoBelia.