

[Federal Circuit Clarifies Alice Step Two Analysis in Reversal of District Court's Rule 12 Dismissal \(ipwatchdog.com\)](https://www.ipwatchdog.com/news/analysis/2022/09/28/federal-circuit-clarifies-alice-step-two-analysis-in-reversal-of-district-court-rule-12-dismissal/)

Federal Circuit Clarifies *Alice* Step Two Analysis in Reversal of District Court's Rule 12 Dismissal



September 28, 2022

“Drawing all inferences in favor of Cooperative, as we must on a motion to dismiss, we conclude that claim 1 recites a specific technical solution that is an inventive concept.... This is not an ‘abstract idea implemented on a generic computer....’” – Federal Circuit



The U.S. Court of Appeals for the Federal Circuit (CAFC), with Chief Judge Moore writing, [today reversed](#) and remanded a district court’s dismissal of an amended complaint in a case where the district court found a patent directed to a method of distributing large video files via a peer-to-peer (P2P) network patent ineligible under Section 101. While the CAFC did not rule on whether the claims are patent eligible, it held that “there are plausible factual allegations that the claims include inventive concepts, and that is enough to preclude dismissal” on a [Rule 12\(b\)\(6\)](#) motion.

The patent at issue, [U.S. Patent No. 9,432,452](#), is owned by Cooperative Entertainment, Inc. and covers “systems and methods of structuring a peer-to-peer (P2P) dynamic network for distributing large files, namely videos and video games.” Cooperative sued Kollektive Technology, Inc. for infringement of at least claims 1–3 and 5 of the ’452 patent. Kollektive filed a motion to dismiss under Rule 12(b)(6), arguing all claims were ineligible under 35 U.S.C. § 101, and Cooperative filed an amended complaint in response, but

Kolletive refiled its motion to dismiss, and the district court granted the motion.

Eligibility and Inventive Concept Analysis

The district court, applying the two-step test for patent eligibility set forth in [*Alice Corp. v. CLS Bank Int'l*](#), found that “the focus of the ’452 patent’ is the abstract idea of ‘the preparation and transmission of content to peers through a computer network.’” The CAFC did not address the application of step one because it found that the district court erred in its step two analysis, which defeated Kolletive’s Rule 12 motion. At step two, the district court held that the patent is “merely implement[ing] the abstract idea of preparing and transmitting data over a computer network with generic computer components using conventional technology” and the CAFC agreed with Cooperative that this was in error because Cooperative’s “amended complaint plausibly alleges that the ’452 patent claims recite inventive concepts at *Alice* step two, precluding dismissal.”

The CAFC found at least two alleged inventive concepts in claim 1 that should have defeated the dismissal.

Claim 1 reads, in its entirety:

“1. A system for virtualized computing peer-based content sharing comprising:

at least one content delivery server computer constructed and configured for electrical connection and communication via at least one communications network; and

at least one peer-to-peer (P2P) dynamic network including a multiplicity of peer nodes, wherein the multiplicity of peer nodes consume the same content within a predetermined time, wherein the

multiplicity of peer nodes are constructed and configured for electronic communication over the at least one P2P dynamic network, wherein the at least one P2P dynamic network is based on at least one trace route; wherein the multiplicity of peer nodes is distributed outside controlled networks and/or content distribution networks (CDNs) that are included within the at least one communications network;

wherein the at least one content delivery server computer is operable to store viewer information, check content request, use the trace route to segment requested content, find peers, and return client-block pairs;

wherein distribution of P2P content delivery over the at least one P2P dynamic network is based on content segmentation;

wherein content segmentation is based on CDN address resolution, trace route to CDN and P2P server manager, dynamic feedback from peers reporting traffic rates between individual peer and its neighbors, round-robin and other server side scheduling/resource allocation techniques.”

This Can't Be Resolved at the Rule 12(b)(6) Stage

The CAFC opinion explained that, first, “claim 1 recites the allegedly inventive concept of a particular network structure for sharing content through a dynamic P2P network.” Cooperative plausibly argued this as an improvement to content distribution systems in the written description and in its amended complaint, said the CAFC. The court went on to describe how Cooperative’s specification demonstrates that “claim 1’s dynamic P2P network structure is different from and improves upon the prior art,” citing to passages that describe in detail the specific improvements, such as smoother playback and avoidance of stuttering or buffering problems, time

saving, less redundancy and reduced or eliminated costs for content delivery over the CDN for the peer nodes. The amended complaint further described the ways in which the claims were an improvement over the prior art, said the court. Ultimately, Chief Judge Moore wrote:

“Drawing all inferences in favor of Cooperative, as we must on a motion to dismiss, we conclude that claim 1 recites a specific technical solution that is an inventive concept.... This is not an ‘abstract idea implemented on a generic computer,’ and it is alleged to improve the performance of the content delivery network with reductions in costs and improvements in several aspects of system performance.... Claim 1 recites a specific network structure, the patent’s written description explains how it is arranged, and the written description and amended complaint explain the alleged benefits of sharing content using a P2P network outside the control of a CDN using peer nodes. Determining whether the claimed network is well-understood, routine, or conventional is a question of fact that cannot be resolved at the Rule 12(b)(6) stage, and the district court erred in resolving this factual issue against Cooperative.”

On the second inventive concept Cooperative alleged, “segmenting content using trace routes,” the district court held that Cooperative did not plausibly allege it was inventive. The Federal Circuit disagreed and explained that, while Kollektive claimed “the use of trace routes is not required and thus irrelevant to eligibility,” since the district court did not conduct claim construction, the court must “proceed by adopting the non-moving party’s construction[.]” Furthermore, other aspects of the specification and amended complaint plausibly allege content segmentation is integral to the invention and an improvement over the prior art sufficiently “to preclude dismissal at the Rule 12 stage,” said the court. While supporting evidence for its allegations could have helped Cooperative’s case, said the CAFC in a

footnote, “such evidence is not always necessary to defeat a Rule 12 motion.”

Kollecive’s case boiled down to arguing that “the patent does not claim anything inventive because P2P networks and CDNs are conventional,” but the CAFC explained that “[t]his argument misses the point—useful improvements to computer networks are patentable regardless of whether the network is comprised of standard computing equipment.”