Software patent *post* Alice world - Section 101 Patent Eligible Subject Matter – *Enfish v. Microsoft*, Fed. Cir. No. 2015-1244 (May 12, 2016).

On May 12, 2016, the Federal Circuit decided Enfish, LLC v. Microsoft, et al. In 2012, Enfish filed suit against Microsoft in the district court of California, alleging that Microsoft's ADO.NET product infringes several patents related to Enfish patented "self-referential" database. ADO.NET provides an interface by which software applications can store, retrieve, and otherwise manipulate data stored in a database. Enfish received U.S. Patent 6,151,604 ('604) and U.S. Patent 6,163,775 ('775) in late 2000. Enfish alleges that ADO.NET creates and manipulates self-referential tables as part of its operation. The district court entered summary judgment in favor of Microsoft holding that all claims are invalid under 35 U.S.C. § 101 as directed to an abstract idea; claims 31 and 32 of both patents invalid under 35 U.S.C. § 102(b) as anticipated by the prior public sale and use of Microsoft's Excel 5.0 product and claim 17 not infringed by ADO.NET. Enfish appeals to the U.S. Court of Appeals for the Federal Circuit. The court found: (1) the claims are not directed to an abstract idea, thus the summary judgment based on § 101 was reversed; (2) the "pivot table" feature of the prior art Excel product does not contain the "self-referential" feature of the claims, thus the summary judgment based on § 102 was vacated; and (3) no error in the district court's determination on non-infringement, thus the summary judgment of non-infringement was affirmed.

We only focus on the Section 101 issue as it relates to software. In articulating its decision, the court explained that not "all claims directed to improvements in computer-related technology, including those directed to software, are abstract and necessarily analyzed at the second step of *Alice,* nor do we believe that *Alice* so directs. Therefore, we find it relevant to ask whether the claims are directed to an improvement to computer functionality versus being directed to an abstract idea, even at the first step of the *Alice* analysis. In this case, however, the plain focus of the claims is on an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity." The court proceeded to conclude: "Moreover, we are not persuaded that the invention's ability to run on a general-purpose computer dooms the claims. Unlike the claims at issue in *Alice* or, more recently in *Versata Development Group v. SAP America, Inc.,* 793 F.3d 1306 (Fed. Cir. 2015), which Microsoft alleges to be especially similar to the present case, the claims here are directed to an improvement in the functioning of a computer. In contrast, the claims at issue in *Alice* and *Versata* can readily be understood as simply adding conventional computer components to well-known business practices. Accordingly, we find that the claims at issue in this appeal are not directed to an abstract idea within the meaning of *Alice.* Rather, they are directed to a specific improvement to the way computers operate, embodied in the self-referential table."
The court steered clear of: (1) the bright-line machine-or-transformation test for deciding whether or not an invention is a patent-eligible process; and (2) creating a categorical ban on software patents. The only bright-line direction from this case is there is NO bright-line test in software patent eligibility in a post Alice world. For now, we are on a case-by-case basis.

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