

Lights, Camera, Action: GoPro's Section 101 Arguments Head to the Federal Circuit

A photograph of a modern building's curved glass facade, showing multiple stories of windows reflecting the sky. The building is on the right side of the frame, curving away from the viewer.

2 MIN READ

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Tomorrow, the Federal Circuit will hear oral argument in *Contour IP Holding LLC v. GoPro, Inc.*, Case Nos. 2022-1654, -1691, once again stepping into complex questions of patentable subject matter pursuant to 35 U.S.C. § 101 under *Alice*. This case underscores the difficulty that courts face in applying the judicially created exceptions to § 101's patent eligibility criteria.

The patents-in-suit concern "POV cameras," also called "action cameras," which capture a scene from the user's point-of-view rather than from a third-person viewpoint. Despite the claims reciting a mechanical device (a digital video camera), the District Court held at summary judgment that the patents were invalid for covering patent-ineligible subject matter. Both the identification of an abstract idea discussed in *Alice* step one, and the use of prior art technology to transform an abstract idea into eligible subject matter as discussed in *Alice* step two are at issue on appeal.

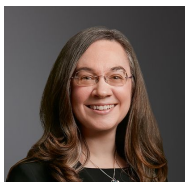
First, the District Court below rejected GoPro's multiple suggested abstract ideas and *sua sponte* created its own abstract idea, finding that although the claims recited a mechanical device, the claims were directed to the abstract idea(s) of generating and streaming video (at two different resolutions) and adjusting the video's setting remotely. This case thus presents interesting questions on what the court can do when finding an abstract idea, and how mechanical devices, despite being directed to physical items, can still recite abstract ideas.

Second, Contour argues on appeal that the District Court’s finding that the claimed combination was well-understood, routine, and conventional was based on findings unsupported by case law. In brief, the processor used in the patented camera was previously known in the art. Even though the District Court had initially found that technology being in the prior art is not itself evidence that the claims are using well-understood, routine, and conventional technology, the District Court ultimately held – in what Contour describes as statements unsupported by law – that the prior art processor was insufficient to save the claims. This case thus presents interesting questions on what types of prior art, beyond just generic computer items, are sufficient to be considered well-understood, routine, and conventional.

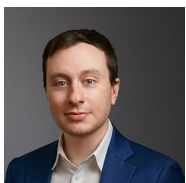
The law for patent-ineligible subject matter has been rapidly changing for the last ten years or so, leaving the contours of what may be patentable unclear and causing many to call for reform. This case presents interesting questions while parties remain in the *Alice/Mayo* framework, at least while Congress continues to assess overhauling patent eligibility law.



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