

No.

IN THE
Supreme Court of the United States

GEORGE M. WANG,
Petitioner,

v.

ANDREI IANCU, DIRECTOR, UNITED STATES
PATENT AND TRADEMARK OFFICE,
Respondent.

*On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented is:

Whether the claims of the very useful invention contain "additional features" embodying an inventive concept that makes the invention patent-eligible.

PARTIES TO THE PROCEEDINGS

The petitioner is George M. Wang.

The respondent is Andrei Iancu, the Director of the
United States Patent and Trademark Office.

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OPINIONS BELOW

The opinion of the court of appeals appears at Appx.1a. The opinion of the Patent Trial and Appeal Board appears at Appx. 8a.

JURISDICTION

The judgement of the court of appeals was entered on June 20, 2018. Appx. 1a. This petition was filed on September 18, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8, Clause 8, Patent and Copyright Clause of the Constitution provides: [The Congress shall have power] “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

35 U.S.C. § 101 provides: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.”

STATEMENT OF THE CASE

1. Overview of the Invention

The invention in U.S. Patent Application No. 13/219,680 (“680 Application”) (Appx. 17a-46a) is on phonetic symbol system. One of the typical uses of a phonetic symbol system is denoting the pronunciations of words in dictionaries.

If we do not know the pronunciation of an English word, we can look up a dictionary to find how it pronounces. But the phonetic symbol systems used in current dictionaries are not easy to use and confusing.

Two popular phonetic symbol systems are International Phonetic Alphabet (IPA) and Webster Pronunciation Symbols. These phonetic symbol systems use diacritic marks or symbols that are different from letters of English alphabet. These marks and symbols are not only hard to learn but also hard to type using computer keyboards because most computer keyboards have been designed with English alphabet on the keys for conveniently inputting English alphabet.

Some phonetic symbol systems are using English alphabet. Simplified Respelling is one of such phonetic symbol systems used in some dictionaries. However, the Simplified Respelling systems used in these dictionaries use uppercase letters to represent sounds that are different from the sounds represented by the lower case letters, or they use italic style letters to

represent sounds that are different from the sounds represented by the regular style letters. For example, they use *th* to represent the sound of “th” in English word *thin* and use *TH* or *th* to represent the sound of “th” in English word *this*. Simplified Respelling also has other defects. It mixes vowel symbols with consonant symbol to represent vowels. It uses *ah* to represent the vowel sound of *a* in word *father*, *ay* to represent the vowel sound of *a* in word *date*, *oh* to represent the vowel sound of *o* in word *no*, etc. It uses *uh* to represent both the vowel sound of *a* and the vowel sound *o* in word *above* while these two sounds are different.

With the invention in '680 Application, a vowel, except the vowel equivalent to the sound of “ir” in English word *bird*, is represented by *a*, *e*, *i*, *o*, *u*, or a series of letters each of which is *a*, *e*, *i*, *o*, or *u*. The phonetic symbol system defines the vowel phonetic symbols and consonant phonetic symbols systematically and logically. The Specification (Appx. 18a) gives the detailed definitions of the phonetic symbols. Table 1 and Table 2 show the examples of words using common vowel phonetic symbols and consonant phonetic symbols.

Table 1 Examples of Words Using Common Vowel Phonetic Symbols

Vowel Phonetic Symbols	Phonetic Word Examples	Corresponding English Words
a	about, zeebra	about, zebra
e	bed, hed	bed, head
i	dig, it	dig, it
o	hot, od	hot, odd
u	duk, up	duck, up
aa	kaam, paam	calm, palm
ae	aed, dae	aid, day
ai	aipl, hait	apple, hat
ao	aol, laost	all, lost
ee	dileet, eec	delete, each
ie	dinie, hied	deny, hide
oe	goe, roed	go, road
oi	boil, toi	boil, toy
oo	good, poot	good, put
ou	out, loud	out, loud
ue	fued, myuezik	food, music
ur	burd, urj	bird, urge

Table 2 Examples of Words Using Consonant Phonetic Symbols

Consonant Phonetic Symbols	Phonetic Word Examples	Corresponding English Words
b	boi, baebi	boy, baby
c	cek, woc	check, watch
d	dig, red	dig, red
dh	breedh, dhis	breathe, this
f	free, tuf	free, tough
g	good, graet	good, great
h	ahed, hot	ahead, hot
j	aej, just	age, just
k	cek, kyuet	check, cute
l	lief, list	life, list
m	maek, tiem	make, time
n	injoiabl, snoe	enjoyable,
ng	long, sing	long, sing
p	keep, poot	keep, put
r	run, veri	run, very
s	faesiz, promis	faces, promise
sh	poosh, shop	push, shop
t	its, tops	its, tops
th	maith, throe	math, through
v	stoev, voet	stove, vote
w	awae, wontid	away, wanted
x	baex, telivixan	beige,
y	unyan, yes	onion, yes
z	buz, eezi	buzz, easy

680' Application has twenty claims (Appx. 33a-46a) and Claims 1, 2, and 19 are independent claims:

Claim 1. A phonetic symbol system comprising:

a plurality of phonetic symbols, wherein each of said phonetic symbols is defined by one or more than one letter of English alphabet, the case or the style of said letter does not affect the sounds of said phonetic symbols, there are vowel phonetic symbols and consonant phonetic symbols of said phonetic symbols, each vowel is distinctively represented by one of said vowel phonetic symbols, and each consonant is distinctively represented by one of said consonant phonetic symbols.

Claim 2. A phonetic symbol system comprising:

a plurality of phonetic symbols, wherein each of said phonetic symbols is defined by one or more than one letter of English alphabet, the case or the style of said letter does not affect the sounds of said phonetic symbols, there are vowel phonetic symbols and consonant phonetic symbols of said phonetic symbols, each English vowel is distinctively represented by one of said vowel phonetic symbols, and each English consonant is distinctively represented by one of said consonant phonetic symbols.

Claim 19. A phonetic symbol system comprising:

a plurality of phonetic symbols, wherein each of

said phonetic symbols is defined by one or more than one letter of twenty five letters from English alphabet, the case or the style of said letter does not affect the sounds of said phonetic symbols, there are vowel phonetic symbols and consonant phonetic symbols of said phonetic symbols, each English vowel is distinctively represented by one of said vowel phonetic symbols, and each English consonant is distinctively represented by one of said consonant phonetic symbols.

Claim 1 is a general claim. Claim 2 is for English language. Claim 19 is for English language and using only twenty five letters for representing vowels and consonants of English language. Claims 3-17 and 21 are dependent claims that depend on Claim 2. Claim 22 is a dependent claim that depends on Claim 19.

2. Facts and Procedural History

U.S. Patent Application No. 13/219,680, the application at issue in this case, was filed on August 28, 2011, entitled Phonetic Symbol System. '680 Application included Claims 1 – 20.

The Examiner issued a first non-final action on November 5, 2013. Petitioner filed Amendment A to the first action on February 4, 2014. Petitioner canceled Claims 18 and 20, and added Claims 21 and 22.

The Examiner issued a Final Rejection on July 2,

2014. In the Final Rejection, the Examiner rejected all the claims. The rejections are under pre-AIA 35 U.S.C. § 112, first paragraph, pre-AIA 35 U.S.C. § 112, second paragraph, 35 U.S.C. § 101, pre-AIA 35 U.S.C. § 102(b), and/or pre-AIA 35 U.S.C. § 103(a).

Petitioner filed a Notice of Appeal to the PTAB on September 29, 2014, an Appeal brief on November 29, 2014, and an amended brief on February 13, 2015. The Examiner filed an Examiner's Answer on August 18, 2015. PTAB issued the Decision on Appeal on January 23, 2017. PTAB did not sustain the rejection under pre-AIA 35 U.S.C. § 112, first paragraph. PTAB sustained the rejections under pre-AIA 35 U.S.C. § 112, second paragraph, 35 U.S.C. § 101, pre-AIA 35 U.S.C. § 102(b), and/or pre-AIA 35 U.S.C. § 103(a). PTAB affirmed the Examiner's rejections of the claims.

Petitioner filed a Notice of Appeal to the United States Court of Appeals for the Federal Circuit on March 22, 2017. The appeal concerned all the Claims in Amendment A, which are Claims 1-17, 19, 21, and 22. In the Brief of Appellant and the Reply Brief of Appellant, petitioner not only explained why the Claims were patent-eligible under 35 U.S.C. § 101 but also explained in detail why they were patent-eligible under pre-AIA 35 U.S.C. § 112, second paragraph, pre-AIA 35 U.S.C. § 102(b), and pre-AIA 35 U.S.C. § 103(a). The Federal Circuit issued the opinion on June 20, 2018. The Federal Circuit affirmed the PTAB's

decision under 35 U.S.C. § 101 and did not reach the rest of the issues.

REASONS FOR GRANTING THE PETITION

1. The Court below Erred in Finding That the Application Claims on Appeal Contain no “Additional Features” of Any Kind Embodying an Inventive Concept That Makes the Invention Patent-Eligible

In the opinion of the Federal Circuit, it states:

Finally, where, as here, claims of a patent application recite an abstract idea, the question becomes whether they contain “additional features” that embody an “inventive concept,” so as to nevertheless make them patent-eligible. *Alice Corp. Pty. Ltd v. CLS Bank Int’l*, 134 S. Ct. 2347, 2357 (2014) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294, 1297 (2012)). The application claims on appeal, however, contain no “additional features” of any kind embodying an inventive concept. The claims merely encompass strings of English letters representing sounds. In short, there is no inventive concept that rescues them from patent ineligibility.

Appx. 6a-7a.

The major advantages of the invention in '680 Application include much easier to learn and much

easier to input the symbols using computer keyboards than prior arts. In the '680 Application, it states:

Two popular phonetic symbol systems are International Phonetic Alphabet (IPA) and Webster Pronunciation Symbols. These phonetic symbol systems use diacritic marks or symbols that are different from letters of English alphabet. These marks and symbols are not only hard to learn but also hard to type using computer keyboards because most computer keyboards have been designed with English alphabet on the keys for conveniently inputting English alphabet.

Some phonetic symbol systems are using English alphabet. Simplified Respelling is one of such phonetic symbol systems used in some dictionaries. However, the Simplified Respelling systems used in these dictionaries use uppercase letters to represent sounds that are different from the sounds represented by the lower case letters, or they use italic style letters to represent sounds that are different from the sounds represented by the regular style letters. For example, they use *th* to represent the sound of "th" in English word thin and use TH or *th* to represent the sound of "th" in English word this.

Appx. 19a.

The invention in '680 Application overcomes the problems and many other deficiencies of the prior arts. The phonetic symbol system in '680 Application uses English alphabet and does not use diacritic marks or other symbols. The case or the style of the letter does not affect the sounds of the phonetic symbols. This makes it easy to input them into computer using computer keyboard. Since most computer keyboards are designed for input English alphabet, it is not convenient to input diacritic marks or other symbols in the prior arts. Also, it is not convenient to input them if the sounds of phonetic symbols are affected by the case (uppercase, lower case) as in the prior arts, since the users have to switch cases on keyboard. Also, it is not convenient to input them if the sounds of phonetic symbols are affected by the styles (italic style, etc.) as in the prior arts, since the users have to change the style after inputting with keyboard.

The features in '680 Application not only make it easier to learn but also greatly improved the input of phonetic symbols using computer keyboards. These features make the invention patent-eligible.

These features are also described in the Claims. In Claim 1 and 2, it states "..., wherein each of said phonetic symbols is defined by one or more than one letter of English alphabet, the case or the style of said letter does not affect the sounds of said phonetic symbols, ..." Appx. 34a-35a. In Claim 19, it states "...,

wherein each of said phonetic symbols is defined by one or more than one letter of twenty five letters from English alphabet, the case or the style of said letter does not affect the sounds of said phonetic symbols, ...” Appx. 42a.

These features are the “additional features” embodying an inventive concept that makes the invention patent-eligible. Therefore, the court below erred in finding that the application claims on appeal contain no “additional features” of any kind embodying an inventive concept that makes the invention patent-eligible.

2. This Case is an Ideal Vehicle for Providing the Clarification the Patent Community Requires

There are many discussions on 35 U.S.C. § 101 and Alice in the patent community. People in the patent community want to have a better understanding on 35 U.S.C. § 101 and Alice. The claims in '680 Application contain an inventive concept that makes the invention patent-eligible. The features in the claims significantly improve the phonetic symbol input using computer keyboard. This is an excellent example for demonstrating patent-eligible inventive concept. This case is an ideal vehicle for providing the clarification the patent community requires.

3. Justice from the Case Will Have Inventors' Creative Work Protected and Assure That Useful Inventions Are Motivated Continuously

Article I, Section 8, Clause 8, of the United States Constitution grants Congress the power "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." This Patent and Copyright Clause is the basis of the basis for the U.S. patent law.

This case is a very typical one on 35 U.S.C. § 101 and Alice. Justice from the case will have inventors' creative work protected by the law. The proper protection of the inventors' creative work will assure that useful inventions are motivated continuously. This will result in useful inventions coming out continuously to benefit the society. This will serve the purpose for promoting the progress of science and useful arts.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

George M. Wang

September 18, 2018