

**ALERT**

## **Federal Circuit Patent Bulletin: *Triton Tech of Texas, LLC v. Nintendo of Am., Inc.***

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June 17, 2014

*"[For purposes of assessing a means-plus-function claim term under 35 U.S.C. § 112 ¶ 6,] merely using the term 'numerical integration' does not disclose an algorithm—i.e., a step-by-step procedure—for performing the claimed function."*

On June 13, 2014, in *Triton Tech of Texas, LLC v. Nintendo of Am., Inc.*, the U.S. Court of Appeals for the Federal Circuit (Moore,\* Reyna, Hughes) affirmed the district court's judgment that U.S. Patent No. 5,181,181, which related to a computer input device capable of providing position, attitude, and motion data, was invalid for indefiniteness under 35 U.S.C. §112. The Federal Circuit stated:

Section 112 ¶ 6 allows a patentee to express an element of a claim as a means for performing a specified function. In exchange for using this form of claiming, the patent specification must disclose with sufficient particularity the corresponding structure for performing the claimed function and clearly link that structure to the function. If the function is performed by a general purpose computer or microprocessor, then the specification must also disclose the algorithm that the computer performs to accomplish that function. Failure to disclose the corresponding algorithm for a computer-implemented means-plus-function term renders the claim indefinite.

Triton concedes that the structure corresponding to "integrator means" is a conventional microprocessor, and contends that the '181 patent discloses an algorithm for performing the integrating function with enough specificity to render the claims discernible to a person of ordinary skill. First, Triton argues that merely using the phrase "numerical integration" is sufficient disclosure of an algorithm because numerical integration was well known to those skilled in the art. Second, Triton argues that the '181 patent discloses a two-step algorithm for accomplishing the integrating function: (1) sampling measured values over time and (2) accumulating by continuously summing areas defined by the sampled values. Triton asserts that the '181 patent discloses the sampling step as acquiring instantaneous values from the different sensors, formatting them to digital values, and then storing them for further processing. Triton contends that the '181 patent discloses the accumulating

step as “clearing all numeric integration accumulators” and continually performing numerical integration to compute the position and attitude values.

We affirm the district court’s determination that the asserted claims of the ’181 patent are indefinite because the specification does not disclose an algorithm for performing the claimed integrating function of the “integrator means.” It is certainly true that an algorithm can be expressed in many forms, including flow charts, a series of specific steps, mathematical formula, prose, and so on. However, merely using the term “numerical integration” does not disclose an algorithm—i.e., a step-by-step procedure—for performing the claimed function. As the district court correctly determined, numerical integration is not an algorithm but is instead an entire class of different possible algorithms used to perform integration. Disclosing the broad class of “numerical integration” does not limit the scope of the claim to the “corresponding structure, material, or acts” that perform the function, as required by section 112. Indeed, it is hardly more than a restatement of the integrating function itself. Disclosure of a class of algorithms “that places no limitations on how values are calculated, combined, or weighted is insufficient to make the bounds of the claims understandable.”

The fact that various numerical integration algorithms may have been known to one of ordinary skill in the art does not rescue the claims. “[A] bare statement that known techniques or methods can be used does not disclose structure.” The district court correctly recognized that “[a]lthough a person of skill in the art might be able to choose an appropriate numerical integration algorithm and program it onto a microprocessor, the [p]atent discloses no algorithm at all.” We thus conclude that the district court correctly found that the ’181 patent’s disclosure of “numerical integration” does not satisfy the disclosure requirement of section 112 ¶ 6; “numerical integration” is not an algorithm. . . . In exchange for expressing “integrator means” as a means-plus-function term, Triton was required to disclose an algorithm for performing the claimed integrating function. Because it did not do so, the asserted claims are indefinite.