

Inventor Tells Justices Amgen Ruling Dooms Alice

By [Adam Lidgett](#) · [Listen to article](#)

Law360 (September 19, 2023, 9:42 PM EDT) -- An inventor is again pushing for the [U.S. Supreme Court](#) to overturn its 2014 Alice decision, arguing a separate high court decision in *Amgen v. Sanofi* backs up his case.

Jeffrey A. Killian, a former Ohio state disability office employee, on Wednesday filed a [supplemental brief](#) in his case where he has told the high court that lower courts have rendered the framework for patentability established by [Alice](#) "capricious."

He now says the high court's finding in [Amgen v. Sanofi](#), where the justices held in May that broad patents covering anything that can perform a certain function are not allowed, supports his position.

Killian, whose method of screening social security benefits applications was invalidated under Alice, told the court that the Amgen ruling — which dealt with the requirement that patents enable a skilled person to make and use the invention — shows that requirement is the proper way to address overly broad patents, not established categories of inventions that cannot be patented, as Alice did.

"There is no better authority for recognizing that the various exceptions to patent eligibility created by the courts are improper than this court's recent Amgen decision," Killian said.

The Alice ruling held that abstract ideas, minus an inventive concept, aren't eligible to be patented. The decision laid out a two-part legal test for judges to use when making rulings on patent eligibility. The first part determines if a patent is directed to ineligible subject matter, and the second part looks at whether there's an inventive concept that makes it patent-eligible.

Killian has developed what he characterizes as a method to better screen social security

disability benefit applications. However, his 2014 patent application was denied by a patent examiner and, later, by a trio of Patent Trial and Appeal Board judges. In 2022, the Federal Circuit rejected Killian's appeal and backed the [U.S. Patent and Trademark Office](#)'s reliance on Alice.

In his [petition](#) for writ of certiorari, Killian said there can be no legitimate reliance on words that have no legal meaning, like "invention." The framework established by Alice and Mayo contravenes congressional intent, a comprehensive statutory framework and constitutional principles, he said.

The Mayo case set the current process for determining which inventions are eligible for patents under Section 101 of the Patent Act, and it emphasized that laws of nature, natural phenomena and abstract ideas can't be patented.

The USPTO declined to comment to Law360 on Monday.

Counsel for Mathis did not immediately respond to a request for comment.

Killian is represented by Burman Y. Mathis.

The federal government is represented by Elizabeth B. Prelogar of the [U.S. Department of Justice](#).

The case is Jeffrey A. Killian v. Katherine K. Vidal, case number [22-1220](#), before the U.S. Supreme Court.

--Additional reporting by Andrew Karpan and Hailey Konnath. Editing by Dave Trumbore.