

Realtime Data Can't Get US Supreme Court Justices - To Revise '101/Alice

By [Dani Kass](#) · [Listen to article](#)

Law360 (January 8, 2024, 10:42 AM EST) -- The U.S. Supreme Court on Monday continued its pattern of rejecting petitions asking to clarify patent eligibility law, this time keeping in place a Federal Circuit holding that Realtime Data LLC's data compression patents are invalid.

Realtime's petition, filed last Halloween, argues that Supreme Court precedent setting out tests for patent eligibility under Section 101 has led to "inconsistent rulings," which is why the patent world needs more guidance from the judges who wrote that precedent. The justices have been asked to take up this issue dozens of times in the last decade and have always [declined](#).

The dispute largely centers on 2014's [Alice Corp. v. CLS Bank](#) , in which the Supreme Court said abstract ideas cannot be eligible for patenting without an added inventive concept.

The Federal Circuit in August held that the claims of Realtime's patents are abstract, featuring "data manipulation claims that are 'recited at a high "level of result-oriented generality" and that lack 'sufficient recitation of how the purported invention[s]' accomplish the results."

Realtime told the justices that its "case crystalizes the amorphous nature" of determining when something is invalid as abstract, given that its claims feature technical innovations in multiple areas, and that the Federal Circuit made different rulings the two times the case came up.

The case has multiple respondents, none of which filed a brief in the case.

Realtime did, however, receive support from attorneys at [Irell & Manella LLP](#), who argued in

an [amicus brief](#) that the Federal Circuit majority focused on the wrong part of patent law.

The majority's decision is "emblematic of how existing jurisprudence has led to confusion and improper conflation of the patent-eligible subject matter and enablement requirements in lower courts," the attorneys said. Their position mirrors a [dissent](#) from Circuit Judge Pauline Newman.

Counsel for Realtime didn't immediately respond to a request for comment Monday.

The patents-in-suit are U.S. Patent Nos. 9,054,728; 8,933,825; 8,717,203; 9,116,908; 7,415,530; 10,019,458; and 9,667,751.

Realtime is represented by Brian D. Ledahl of [Russ August & Kabat](#).

The case is Realtime Data LLC, dba IXO v. [Fortinet Inc.](#) et al., case number [23-498](#), in the [Supreme Court of the United States](#).

--Editing by Alyssa Miller.