

Supreme Court Justices Asked To Review Limit Of Abstract Ideas Under '101 Alice

By [Kelly Lienhard](#) · [Listen to article](#)

Law360 (January 25, 2024, 3:57 PM EST) -- Industrial equipment manufacturer Ficep Corp. has asked the U.S. Supreme Court to revisit its landmark ruling determining patent eligibility, arguing that improving a process through automation should count as an inventive concept.

Ficep is challenging a Federal Circuit decision agreeing with a lower court that a manufacturing component patent allegedly infringed by rival Peddinghaus Corp. covered an abstract idea, making the claims invalid under the Supreme Court's Alice ruling.

In Alice, the justices laid out a two-part legal test for judges to use when ruling on patent eligibility: the first determines if a patent is directed to ineligible subject matter, and the second looks at whether there's an inventive concept that makes it patent-eligible.

Ficep told the Supreme Court in its Tuesday petition that its patent shouldn't be invalidated when it has met "every objective indicium of inventiveness that this court has identified was present in the technological, traditionally patent-eligible, setting of manufacturing lines."

According to Ficep, the improvement covered in the patent is a "vastly more efficient and superior" method to manufacture components, like steel beams, for larger structures, which even Peddinghaus admitted in its own advertising.

However, the Federal Circuit sided with the District of Delaware [in August](#) and denied Ficep's attempt to revive the claims, finding that the patent covered an abstract idea of extracting and transferring data from a file to a machine.

Ficep told the Supreme Court in its petition that the Federal Circuit's precedent for

determining whether a patent claim is ineligible under the abstract idea exception has deviated from the high court's rulings.

In its petition, Ficep said under Supreme Court precedent, all patents that covered patent-eligible processes like manufacturing were valid, whether they improved on the process in question through an abstract idea or not.

According to Ficep, the appeals court is in the practice of looking for "some underlying essence" of an invention — regardless of whether it's meant to solve a tech-related problem in the industry — and tries to distinguish that essence's level of abstraction and then rules on whether that level is too high for patent protection under Alice.

Ficep told the court that this process needs to be examined, as it has created uncertainty for companies due to "seemingly arbitrary" results.

"This cannot be the law," Ficep stated. "The purpose of the Patent Act is to promote science by encouraging disclosure. Consider a manufacturing process that was improved using a concept, equation, algorithm or some other abstract idea, and the result was avoiding hazardous, catastrophic failures at manufacturing plants. The Federal Circuit would rule that ineligible for patent protection, because the improvement to the statutory process could be characterized as an abstract idea."

Ficep urged the high court to take a look at the abstract idea issue, saying that because the court declined to detail the limits of abstract ideas under Alice, securing "useful arts" patents has become a "panel-dependent game of chance."

"It is time for this court to better 'delimit the precise contours of the 'abstract ideas' category,'" Ficep said.

Ficep first filed the underlying lawsuit in Delaware federal court, claiming Peddinghaus infringed the patent at issue, but Peddinghaus argued at the lower court level that the claims weren't valid based on Alice, according to the appellate panel. The lower court gave Peddinghaus a win on that argument, court records show.

Peddinghaus and counsel for Ficep both did not respond to a request for comment Thursday.

The patent in-suit is U.S. Patent 7,974,719.

Ficep is represented by Matthew B. Lowrie and Kevin M. Littman of [Foley & Lardner LLP](#).

Counsel for Peddinghaus was not immediately available.

The case is Ficep Corporation v. Peddinghaus Corporation, case number [23-796](#), in the [Supreme Court of the United States](#).

--Additional reporting by Adam Lidgett. Editing by Alyssa Miller.