

Inventor Group Backs Supreme Court Bid In '101 Patent Eligibility Case

By [Andrew Karpan](#) · [Listen to article](#)

Law360 (July 1, 2024, 8:55 PM EDT) -- A trade group that represents inventors is throwing its hat into the ring to support the latest petition asking the U.S. Supreme Court to weigh in on patent eligibility.

"The Supreme Court is the only entity on Earth resisting clarity," read a [brief](#) filed Thursday penned by Burman Mathis, a Washington, D.C., lawyer, who [personally backed](#) a failed effort in a separate case from an inventor looking to persuade the justices to wade into the issue in November.

This time, Mathis was writing on behalf of [US Inventor](#), which lists among its members the inventors of various products, such as a children's toy called Bunch O Balloons and a kind of "revolutionary" jump rope. The group is now backing a [legal effort](#) coming from patent licensing outfit Eolas, run by a onetime computer lab director at the University of California, San Francisco.

Like the previous case Mathis backed, Eolas was complaining about the way courts have read the 2012 Supreme Court decision [Mayo Collaborative Services v. Prometheus Laboratories Inc.](#), and the 2014 decision [Alice Corp. v. CLS Bank International](#). The ruling in the Mayo case invalidated pharmaceutical patents, emphasizing that laws of nature can't be patented, and the Alice decision made a similar ruling related to ideas in the tech space that were considered abstract. As a pair, those rulings are now used by judges to decide that patents cannot be asserted in court because they cover ideas that are not eligible for patent protection.

"Alice/Mayo has swallowed nearly all of the patent law to the point where technical realities no longer have sway in the courts," US Inventor's brief said. Elsewhere, the brief claimed that "since this court's decision in Mayo, the Federal Circuit has invalidated every diagnostic claim to come before it as ineligible subject matter."

This concern appeared somewhat tangential to the Eolas case itself, which was about

technology used to run websites.

The Eolas patent at issue in the case dated to 1994 and, as Eolas' lawyers put it, had "transformed the user experience" of the then-nascent World Wide Web.

Nevertheless, the patent failed to survive Eolas' nearly decade-old lawsuits against Amazon, [Google](#) and [Walmart](#), after a judge in California found that some of the claims covered ideas that were too abstract to force other companies to pay to use them.

In February, Federal Circuit judges [affirmed this holding](#). U.S. Circuit Judge Kara Farnandez Stoll, writing for the unanimous panel of judges who heard that case, wrote that "simply put, interacting with data objects on the World Wide Web is an abstraction."

Lawyers for Amazon, Google and Walmart did not respond to a request for comment, and all initially passed on the opportunity to comment on the petition, though the justices later requested a response from them by July 31.

In an emailed statement, Mathis pointed to how widely the issue has been ignored by the high court in the decade since the Alice ruling, noting "nearly a hundred separate petitions for certiorari" about the issue since then. He criticized "the Supreme Court's shameful lack of leadership on Alice/Mayo to address the mess they created."

"I say 'shameful' given that the Supreme Court has refused to grant a single petition," Mathis said.

Mathis has [previously told](#) Law360 that he's something of a "zealot" about this issue and generally takes up these cases outside his day job at the firm [Kile Park Reed Houtteman PLLC](#).

The patent-in-suit is U.S. Patent No. 9,195,507.

US Inventor is represented by Burman Y. Mathis.

Eolas is represented by John Bruce Campbell, Joel L. Thollander, Charles Fowler and Kyle Ryman of [McKool Smith](#).

Amazon is represented by Gabriel K. Bell of [Latham & Watkins LLP](#).

Google is represented by Deepa Acharya of [Quinn Emanuel Urquhart & Sullivan LLP](#).

Walmart is represented by Bijal V. Vakil of Allen Overy [Shearman Sterling](#).

The case is Eolas Technologies Inc. v. [Amazon.com Inc.](#) et al., case number [23-1184](#), in the [Supreme Court of the United States](#).