

Supreme Court Justices Asked If Fact Dispute Bars 101 Patent Eligibility Rulings

By [Nadia Dreid](#) · [Listen to article](#)

Law360 (February 5, 2025, 9:26 PM EST) -- The Federal Circuit has made a habit of taking fact disputes into its own hands in patent cases instead of leaving those questions to a jury, and a company that recently lost its patent suit against Amazon is hoping the U.S. Supreme Court will take up its case.

[Broadband iTV asked the justices](#) for a writ of certiorari Tuesday in a filing that laid out the basics of its dispute with the Federal Circuit, which it said has "consistently affirmed or ordered summary judgment of patent ineligibility despite the presence of genuine disputes over that question — effectively resolving such disputes itself, rather than allowing juries to do so."

"There is no patent-law exception to the Federal Rules," the company said. "This court should clarify that — contrary to the Federal Circuit's entrenched practice — there is no patent-specific exception to Rule 56 that permits summary judgment despite genuine factual disputes over whether claim elements or combinations of claim elements are 'well-understood, routine, [or] conventional' at Alice Step 2."

The Alice test is a two-step process that courts use to decide whether something — in the case for which it was developed, software — was eligible for a patent. The first step requires the court to look at whether the patent deals with an abstract concept and if so, it moves on to the second step, which is to determine if it also adds an inventive concept to the abstract idea. If it doesn't, it's not eligible to be patented.

Austin based patent licensing company Broadband iTV was left with the Supreme Court as its only recourse after the Federal Circuit sided with Amazon in September, saying the patents related to video on demand it was trying to assert rights to actually cover abstract

ideas.

That decision came almost two years to the day after U.S. District Judge Alan Albright found that the patents Broadband iTV was suing over were very similar to those that had been nixed by the Supreme Court's landmark Alice decision.

Broadband iTV had recently relocated to Austin just before filing a slew of patent lawsuits in Judge Albright's district against [AT&T](#), [DirecTV](#) and other companies, over five different patents. Judge Albright, a jurist in Texas federal court's Western District, oversees the majority of the patent litigation in the United States.

The patent licensing company has asked that the justices hold off on dealing with its appeal until it has answered the questions posed by another case, Island IP v. Ameritrade, calling the questions it asks "substantially similar" to one of Broadband iTV's own.

But the Island IP case is being held until the justices can come to a decision in yet another case, which is important to that case but is not related to Broadband iTV's appeal.

Broadband iTV is represented by Jeffrey A. Lamken, Rayiner Hashem and Walter H. Hawes IV of [MoloLamken LLP](#).

Counsel information for Amazon was not immediately available.

The case is Broadband iTV Inc. v. [Amazon.com Inc.](#) et al., case number [24-827](#), before the [Supreme Court of the United States](#).

--Editing by Rich Mills.