

# 'Patent '101 Eligibility Appeals 'Will Not Go Away,' Supreme Court Justices Told

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

*Law360* (February 24, 2025, 9:33 PM EST) -- Another plea to hear a patent eligibility case has been lodged at the U.S. Supreme Court, this time in an amicus brief from the owner of two invalidated patents covering medical machinery that warned "the problem will not go away. The problem will get worse and worse."

Less than a month after *Audio Evolution Diagnostics*, a company litigating over patents issued to Oklahoma doctor Michael Sabatino, [filed a Supreme Court petition](#) in its own case over patents invalidated in the federal courts, *Audio Evolution* said last week that it also was backing a different high court petition [filed last month](#) by Chicago trading software outfit *Trading Technologies*.

"Count this as one more petition deserving of a grant of certiorari by this court," according to *Audio Evolution's* [amicus brief](#) filed Feb. 18 in the *Trading Technologies* case. It was the second such brief lodged in the past month. *Island Intellectual Property* [also filed a supporting brief](#) in the *Trading Technologies* case and [also has its own appeal](#) on the issue in front of the Supreme Court.

Like many, *Audio Evolution* argued that the law on which inventions are eligible for patents under Section 101 of the Patent Act and the high court's *Alice* and *Mayo* decisions — which limited patents for abstract ideas and natural phenomena, respectively — needs to be clarified. The framework laid out in those rulings says a patent covering an abstract idea under the first step can only be patented under Section 101 if there is an added inventive concept at the second step.

"This petitioner, other petitioners, and amici in case after case have implored this court to take up the issue of lower courts' application of *Alice/Mayo* again and again," according to

its brief. "The problem will not go away. The problem will get worse and worse. This court must act."

Representatives for Audio Evolution Diagnostics and the companies involved in the Trading Technologies case did not respond to a request for comment.

In the Trading Technologies case, the Chicago company won a \$6.6 million patent infringement verdict against IBG and its [Interactive Brokers LLC](#) unit, but had hoped to win as much as \$962 million. On appeal, Trading Technologies pinned that lower number on a summary judgment ruling before the trial that axed two patents cited in the case on patent eligibility grounds as well as rulings the court later made regarding testimony tied to foreign damages, among other issues.

The Federal Circuit rejected Trading Technologies' attempt to reverse those holdings in order to potentially increase that verdict [last year](#) and [then turned down](#) an en banc bid shortly after. The brief from Audio Evolution, however, only brought up the patent eligibility arguments from Trading Technologies.

"The Federal Circuit's affirmance [was] just one more in a long list of differing Federal Circuit opinions on [Section] 101," according to Audio Evolution in its brief. "With no en banc in sight, outcomes will continue to vary by three-judge panel.

The patents-in-suit are U.S. Patent Nos. [6,766,304](#); [6,772,132](#); [7,676,411](#); and [7,813,996](#).

Audio Evolution Diagnostics is represented by Peter J. Corcoran III of [Corcoran IP Law PLLC](#) and Joel Rothman of SRipLaw PA.

Trading Technologies is represented by Michael D. Gannon of [BakerHostetler](#).

IBG is represented by Steffen N. Johnson of [Wilson Sonsini Goodrich & Rosati PC](#).

The case is Harris Brumfield, Trustee for Ascent Trust v. IBG LLC et al., case number 24A324, in the [Supreme Court of the United States](#).

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