

10-1219 KAPPOS V. HYATT

DECISION BELOW: 625 F.3d 1320

LOWER COURT CASE NUMBER: 2007-1066

QUESTION PRESENTED:

When the United States Patent and Trademark Office (PTO) denies an application for a patent, the applicant may seek judicial review of the agency's final action through either of two avenues. The applicant may obtain direct review of the agency's determination in the Federal Circuit under 35 U.S.C. 141. Alternatively, the applicant may commence a civil action against the Director of the PTO in federal district court under 35 U.S.C. 145. In a Section 145 action, the applicant may in certain circumstances introduce evidence of patentability that was not presented to the agency. The questions presented are as follows:

1. Whether the plaintiff in a Section 145 action may introduce new evidence that could have been presented to the agency in the first instance.
2. Whether, when new evidence is introduced under Section 145, the district court may decide de novo the factual questions to which the evidence pertains, without giving deference to the prior decision of the PTO.

CERT. GRANTED 6/27/2011