

App. No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TS Patents LLC,
Petitioner

v.

Yahoo! Inc.,
Respondent

ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

PETITIONER'S APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI

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December 13, 2018

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To the Honorable John G. Roberts, Jr., as Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Pursuant to Supreme Court Rule 13.5, petitioner TS Patents LLC respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty days to and including February 22, 2019. On September 25, 2018, the Court of Appeals issued its order on petition for rehearing en banc (see App. A, *infra*). Absent an extension of time, the Petition would therefore be due on December 24, 2018. Petitioner is filing this Application at least ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

BACKGROUND

The instant case on appeal in the Court of Appeals for the Federal Circuit originated from a patent infringement case before the U.S. District Court for the Northern District of California. Earlier the district court found that all of petitioner TS Patents LLC's asserted parent claims did not contain patentable subject matters under this Court's *Alice Corp. Pty Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014) precedent, and granted respondent Yahoo! Inc.'s Rule 12(b)(6) motion to dismiss (see App. C, *infra*).

The Federal Circuit summarily affirmed the dismissal without issuing an opinion under its Rule 36 (see App. B, *infra*), and subsequently denied petitioner's en banc review petition (see App. A, *infra*).

Ever since this Court's 2014 *Alice* opinion, district courts across the nation have frequently granted Rule 12(b)(6) motions to dismiss cases involving computer-based inventions for lack of patentable subject matters under *Alice*. And the Federal Circuit have affirmed many of them, often without issuing any opinion. Patentable subject matters involving computer-based inventions, however, remain a complex and difficult question even after *Alice*. In this patent infringement case, like in many others, using Rule 12(b)(6) to dismiss the case in its early pleading phase is questionable when an asserted patent states that its claimed computer-based invention yields technical improvements over existing systems. The Federal Circuit has never adequately reviewed this question.

REASONS FOR GRANTING AN EXTENSION OF TIME

The instant case presents an important issue warranting a carefully prepared Petition because there is an apparent clash between the law on patentable subject matters and the law on civil procedures.

As a very small company with limited resources, petitioner is still working hard to retain a quality counsel for its Certiorari Petition. It is a difficult process, and preparing a Certiorari Petition is no easy job, so petitioner needs more time.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended sixty days to and including February 22, 2019.

Respectfully submitted,



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Appendix A

(9/25/2018 Order on Petition for Rehearing en banc by the Federal Circuit)

Appendix B

(7/17/2018 Order and Judgment Without Opinion by the Federal Circuit)

Appendix C

(9/1/2017 Order by the U.S. District Court for the Northern District of California)

PROOF OF SERVICE

I, Kai Zhu, hereby certify that on December 14, 2018, a copy of the foregoing PETITIONER'S APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI was served via email on all counsel of record at the United States Court of Appeals for the Federal Circuit.

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