

No. 19-597

In The
Supreme Court of the United States

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MORRIS REESE,

Petitioner,

v.

SPRINT NEXTEL CORPORATION,
TRACFONE WIRELESS, INC.,
VERIZON WIRELESS SERVICES LLC,
AT&T MOBILITY II LLC, AND
T-MOBILE USA, INC.,

Respondents.

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**On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Federal Circuit**

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SUPPLEMENTAL BRIEF OF PETITIONER

—◆—
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Pursuant to Rule 15.8, Petitioner files this Supplemental Brief in order to call attention to issues raised in the Brief for the United States as *Amicus Curiae* in *Hikma Pharmaceuticals USA Inc., et al. v. Vanda Pharmaceuticals Inc.*, No. 18-817 (Dec. 6, 2019 – “SG Br.”). In response to the Court’s call for the views of the United States (139 S. Ct. 1368), the Solicitor General opined that the court of appeals decision in *Hikma* “implicates important and recurring questions on which the Court’s recent [35 U.S.C.] Section 101 decisions have fostered substantial uncertainty.” SG Br. 8. The Solicitor General recommended denial of *certiorari* in *Hikma*, but cited *Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC, petition for cert. pending*, No. 19-430 (filed Oct. 1, 2019) as a particularly suitable vehicle for clarification of the Court’s Section 101 jurisprudence. SG Br. 1, 22.

Although the “natural phenomenon” exception to patent-eligibility is at issue in both *Hikma Pharmaceuticals* and *Athena Diagnostics*, the Solicitor General opined that it was *Bilski v. Kappos*, 561 U.S. 593 (2010) which “[gave] rise to an array of difficult questions” concerning Section 101. SG Br. 8. *Bilski*, like Petitioner’s case, involved the “abstract idea” exception. 561 U.S. at 609; Pet. 10a.

In light of the strong possibility that the Court will agree with the Solicitor General’s suggestion for a broad reevaluation of *Bilski*, *Mayo Collaborative Servs. v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), and *Alice Corp. Pty Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014), Petitioner respectfully requests that

his petition be held pending potential review and decision in *Athena Diagnostics*. Should the Court significantly clarify or modify the proper standards and procedures for Section 101 patent-eligibility questions, it should grant this petition, vacate the panel judgment below, and remand for further consideration in light of its decision in *Athena Diagnostics*.

Respectfully submitted,

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