

18-801 PETER V. NANTKWEST, INC.

DECISION BELOW: 898 F.3d 1177

LOWER COURT CASE NUMBER: 2016-1794

QUESTION PRESENTED:

When the United States Patent and Trademark Office (USPTO) denies a patent application, the Patent Act gives the unsuccessful applicant two avenues for seeking judicial review of the agency's decision. The applicant may appeal directly to the Federal Circuit, 35 U.S.C. 141, which "shall review the decision from which an appeal is taken on the record before the [USPTO]," 35 U.S.C. 144. Alternatively, the applicant may bring a civil action against the Director of the USPTO in district court, where the applicant may present additional evidence. 35 U.S.C. 145. If the applicant elects to bring such an action, "[a]ll the expenses of the proceedings shall be paid by the applicant." *Ibid.* The question presented is as follows:

Whether the phrase "[a]ll the expenses of the proceedings" in 35 U.S.C. 145 encompasses the personnel expenses the USPTO incurs when its employees, including attorneys, defend the agency in Section 145 litigation.

CERT. GRANTED 3/4/2019