App. No. ___

In the Supreme Court of the United States

Two-Way Media Ltd,

Petitioner,

v.

Comcast Cable Communications, LLC; Comcast Interactive Media LLC;
Verizon Services Corp.; Verizon Online LLC,

Respondents.

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

To the Honorable Chief Justice Roberts, as Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, petitioner Two-Way Media Ltd respectfully requests that the time to file a Petition for a Writ of Certiorari in this case be extended for fifty days to and including July 27, 2018. The court of appeals issued its opinion on November 1, 2017. *See* App. A, *infra*. The court denied a timely petition for rehearing and rehearing en banc on March 9, 2018. *See* App. B, *infra*. Absent an extension of time, the petition therefore would be due on June 7, 2018. Petitioner is filing this application at least ten days before that date. *See* Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review this case.

Background

This case involves the standard for determining whether a patent is directed to ineligible subject matter under 35 U.S.C. § 101 because it is directed to an abstract idea. The Federal Circuit's decisions are wildly inconsistent, and this case exemplifies the lack of consistency and coherency that underlies current Section 101 analysis.

1. The patents at issue in this case were issued in the 1990s and are directed to a particular method of live-streaming audio and visual content over a packet-switched network like the Internet. Petitioner's inventions addressed the problems that existed in live-streaming over the Internet by creating an innovative scalable architecture for delivering real-time audio/visual streams to multiple users over the Internet. The patents describe a specific technical and structural solution to problems with streaming such as network congestion, delayed streams, and out-of-order packet delivery. The innovative architecture disclosed in the specification solves those problems by directing streams to users through selected intermediate computers in order to avoid both (a) initial congestion by controlling a portion of the stream routing path and (b) later congestion as user load increases by facilitating expansion and scalability. The patents have survived nine reexaminations.

2. In August 2014, petitioner filed two patent-infringement actions against respondents. Respondents filed a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c), arguing that the patents are invalid under Section 101. After holding a hearing, the district court granted the motion. *See* App. A at 7. The court held that the patents are directed to an abstract idea—and are therefore ineligible under Section 101—because they "are directed to the abstract idea of (1) sending information, (2) directing the sent information, (3) monitoring receipt of the sent information, and (4) accumulating records about receipt of the sent information."

Id. at 8 (citation omitted). The court therefore concluded that the claims "are thus directed to methods of sending and monitoring the delivery of audio/visual information." *Ibid.* (citation omitted). The court further concluded that the claims cannot be saved under the Section 101 analysis set out in *Alice Corp. v. CLS Bank International*, 134 S. Ct. 2347 (2014), because they do not recite a saving inventive concept. App. A at 8. The court rejected petitioner's argument that the patents are directed to computer architecture that solves technical problems of load, bottlenecking, and inadequate records because the court did not find that architecture recited in the examined claims. *Ibid.*

3. Petitioner appealed, and the Federal Circuit affirmed. App. A. Although the court of appeals (like the district court before it) acknowledged that the patents "describe[] a system architecture as a technological innovation," it held that that architectural innovation could not be considered because the description was not repeated in the representative claim. *Id.* at 13; *see id.* at 16-17. The court further held that the district court correctly excluded petitioner's proffered evidence related to the patents' technological innovations, *id.* at 14-15, and concluded based on an evidence-free record that the patents did not recite an innovative solution to an existing technological problem, *id.* at 13-14, 17.

Petitioner filed a petition for rehearing en banc. The court of appeals denied the petition. App. B.

Reasons For Granting An Extension Of Time

The time to file a Petition for a Writ of Certiorari should be extended for fifty days to and including July 27, 2018, for several reasons:

1. The forthcoming petition will present important questions about the scope of patent-eligible subject matter under 35 U.S.C. § 101. The lower courts' application of this Court's

Section 101 decisions has led to extensive confusion, inconsistency, and criticism. *See* Megan Thobe, *A Call to Action: Fixing the Judicially-Murkied Waters of 35 U.S.C. § 101*, 50 Ind. L. Rev. 1023, 1031-1033 (2017). This case exemplifies the ways in which the Federal Circuit has applied entirely inconsistent outcome-determinative rules in different cases involving Section 101 challenges. If the appeal in this case had been assigned to a different randomly selected panel of judges, it may well have come out with the opposite result. That sort of inconsistency in the application of bedrock patent principles stifles innovation, abrogates important property rights, and undermines the patent system established by Congress. This Court's intervention to restore Section 101 jurisprudence to a correct and consistent path is sorely needed.

2. Good cause exists for this application. Undersigned counsel Sarah E. Harrington of Goldstein & Russell, P.C., has had significant professional commitments in recent weeks and has such commitments in upcoming weeks. Those commitments—which include filing several certiorari petitions and certiorari-stage replies in this Court, as well as filing substantial briefs in the courts of appeals—would make it extremely difficult to complete the petition without an extension.

3. No prejudice would arise from the extension. Whether the extension is granted or not, the petition will not be considered until after the Court's summer recess—and will be considered in time to be resolved next Term if the petition is granted.

Conclusion

For the foregoing reasons, the time to file a Petition for a Writ of Certiorari in this matter should be extended for fifty days to and including July 27, 2018.

Respectfully submitted,

Sarah E. Harrington
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Ave.
Suite 850
Bethesda, MD 20814
(202) 362-0636
sharrington@goldsteinrussell.com

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