

No. 18-A-____

In the Supreme Court of the United States

AATRIX SOFTWARE, INC.,
Applicant

v.

GREEN SHADES SOFTWARE, INC.,
Respondent.

**APPLICATION TO THE HONORABLE JOHN G. ROBERTS, JR.,
CHIEF JUSTICE, FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

JOHN B. LUNSETH II
Counsel of Record
SCOTT G. KNUDSON
SCOTT M. FLAHERTY
Briggs and Morgan, P.A.
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
(612) 977-8484
jlunseth@briggs.com
sflaherty@briggs.com

Counsel for Applicant

RULE 29.6 STATEMENT

No publicly held corporation owns 10% or more of the stock of Aatrix Software, Inc.

**TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE FEDERAL CIRCUIT:**

Pursuant to Supreme Court Rules 13.5, 22, and 30, Applicant respectfully requests a 44-day extension of time, up to and including Friday October 13, 2018, to file a petition for a writ of certiorari to the United States Court of Appeals for the Federal Circuit to review that court's decision in *Aatrix Software, Inc. v. Green Shades Software, Inc.* 882 F.3d 1121 (Fed. Cir. 2018) (attached as Exhibit A). A petition for rehearing *en banc* was denied on May 31, 2018, 890 F.3d 1354 (attached as Exhibit B). The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1), and the time to file a petition for a writ of certiorari will expire without an extension on August 29, 2018. This application is timely because it has been filed more than ten days before the date on which the time for filing the petition is to expire.

1. This case presents substantial and important questions involving Section 101 of the Patent Act. As this Court has held, Section 101 “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Assn for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)). This Court has created a two-part test to determine patent eligibility: The first step is whether the claims (as a whole) are directed to a patent-ineligible concept under Section 101,

such as an abstract idea or a law of nature. If they are, then the second step instructs courts to ask whether the limitations add significantly more to “transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2358; *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77 (2012) (same for laws of nature). The inquiry’s second step requires courts to “examine the elements of the claim” to determine whether it contains an “‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 134 S. Ct. at 2357. The inquiry must focus on “the steps in the claimed processes” “apart from the [patent-ineligible concept].” *Mayo*, 566 U.S. at 73.

After this Court’s decisions in *Alice* and *Mayo*, district courts and the Federal Circuit routinely decided issues of patent eligibility raised in motions to dismiss stage and motions for summary judgment. As Judge Reyna, dissenting from the denial of rehearing *en banc* in this case, explained: “Perhaps the single most consistent factor in this court’s § 101 law has been our precedent that the § 101 inquiry is a question of law.” 890 F.3d at 1632 (Reyna, J. dissenting). In this case, for the first time, the Federal Circuit held that disputed issues of material fact precluded pleadings-based determination of patent ineligibility. This precedential panel decision and precedential denial of rehearing *en banc* decision has nuanced implications for how this Court’s opinions in *Alice* and *Mayo* are applied in other cases.

Applicant is still in the process of formulating whether to petition for a writ of certiorari, and precisely how its question will be framed.

2. Applicant has recently added additional counsel, a former clerk of this Court, to assist in the preparation of a petition for a writ of certiorari. The extension is needed for the newly added counsel to fully analyze the record, decisions below, and relevant statutes and case law. In addition, Applicant's counsel have several deadlines in other matters, pre-arranged international travel, and a judicial election, that will limit counsels' availability to work on this matter between today and August 29, 2018. Accordingly, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 44 days, up to and including Friday October 13, 2018.

August 15, 2018

Respectfully Submitted,


/s/ Scott M. Flaherty

JOHN B. LUNSETH II
Counsel of Record
SCOTT G. KNUDSON
SCOTT M. FLAHERTY
Briggs and Morgan, P.A.
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
T: (612) 977-8484
F: (612) 977-8650
jlunseth@briggs.com
sflaherty@briggs.com

Counsel for Applicant