

No. \_\_\_\_\_

IN THE  
**Supreme Court of the United States**

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THE CHAMBERLAIN GROUP, INC.,  
*Petitioner,*

*v.*

TECHTRONIC INDUSTRIES CO. LTD., et al.,  
*Respondents.*

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**APPLICATION TO THE 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**

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Pursuant to Rule 13(5), The Chamberlain Group, Inc. moves for an extension of time of 60 days, to and including May 15, 2020, within which to file a petition for a writ of certiorari.

1. The judgment from which review is sought is *The Chamberlain Group, Inc. v. Techtronic Industries Co. Ltd., et al.*, 935 F.3d 1341 (Fed. Cir. 2019). A copy of the decision is attached as Exhibit 1. The decision of the Federal Circuit is dated August 21, 2019. A copy of the Federal Circuit's order denying rehearing is attached as Exhibit 2. The order is dated December 17, 2019. The current deadline for filing a petition for writ of certiorari is March 16, 2020. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

2. This case presents at least the following substantial question of law meriting this Court's attention: whether the Federal Circuit is applying the wrong standard for deciding if a patent claim is eligible for patent protection under 35

U.S.C. § 101 and *Alice Corp. Pty. Ltd. v. CLS Bank International*, 573 U.S. 208 (2014). Several Federal Circuit judges have warned that the circuit’s post-*Alice* precedents not only reflect deep divisions among the judges but also improperly narrow the scope of patent eligibility under § 101. *See, e.g., Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC*, 927 F.3d 1333, 1363 (Fed. Cir. 2019) (Moore, J., dissenting from denial of rehearing en banc) (the “majority of this court” has “definitively” misconstrued § 101, such that patentees’ “only hope lies with the Supreme Court or Congress”); *id.* at 1371 (O’Malley, J., dissenting from denial of rehearing en banc) (noting the Federal Circuit’s “confusion and disagreements over patent eligibility”). In two recent invitation briefs, the Solicitor General has agreed that the issue is worthy of this Court’s attention when presented in the proper vehicle. *See* Br. of U.S. at 8, 14-21, No. 18-817, *Hikma Pharm. USA Inc. v. Vanda Pharm. Inc.* (*Hikma Br.*); Br. of U.S. at 10, 12-14, No. 18-415, *HP Inc. v. Berkheimer* (*Berkheimer Br.*).

3. This case presents an ideal vehicle. Petitioner’s claims recite a specific machine that both the PTO and a jury found to be novel and nonobvious: A “moveable barrier operator” (for example, the electric motor that operates a garage door) that integrates several components used to monitor and control the barrier’s movement. *Chamberlain*, 935 F.3d at 1345. Prior to Chamberlain’s invention, garage door operators could only receive signals telling the operator to open or close the door, or turn on or off an integrated light. Chamberlain redesigned the garage door operator with different physical components to give it the new capability to *receive* signals (such as from a remote control in your car or a switch on the wall

of the garage), *analyze* those signals, and *send* wireless signals describing the position of the door or the status of the light. Using Chamberlain’s operator, you can check to make sure the garage door is closed from your cell phone or other devices. *Id.* Purporting to apply *Alice*, the Federal Circuit invalidated Petitioner’s claims under § 101 after concluding that they were impermissibly “directed to” “the abstract idea of wirelessly communicating status information about a system.” *Id.* at 1348.

In so ruling, the Federal Circuit once again fundamentally misconstrued § 101. *See, e.g., Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012) (reversing on § 101 grounds); *Bilski v. Kappos*, 561 U.S. 593 (2010) (rejecting Federal Circuit’s astatutory “machine or transformation” test). The Federal Circuit has lost sight of the underlying “basic principles” of § 101: The statute is designed to prevent “monopolization of [the basic] tools [of science and technology] through the grant of a patent” that “might tend to impede innovation more than it would tend to promote it.” *Mayo*, 566 U.S. at 71. But § 101 is written in “expansive terms,” because “Congress plainly contemplated that the patent laws would be given wide scope” and ensure that “ingenuity should receive a liberal encouragement.” *Bilski*, 561 U.S. at 601 (internal quotations and citations omitted). As this Court has explained, the abstract idea exception—along with the other “implicit exceptions” to patent eligibility—must be read consistently with the broad language of the statute and Congress’s purpose. *See Mayo*, 566 U.S. at 70-72. That exception is designed to prevent patents that would “pre-empt use of [an abstract idea] in all fields,” “effectively grant[ing] a monopoly over an abstract idea.” *Bilski*, 561 U.S. at 612.

But the Court has expressly cautioned that the abstract idea exception must be applied narrowly, “lest it swallow all of patent law.” *Alice*, 573 U.S. at 217. Section 101 requires that specific “applications” of an abstract idea “to a new and useful end”—as opposed to sweeping claims to the idea itself—must “remain eligible for patent protection.” *Id.*

The Federal Circuit’s decision here eviscerated that critical, longstanding boundary on the statutory exceptions. At the outset, rather than ask whether the claims “as a whole” were directed to an abstract idea, *Alice*, 573 U.S. at 218 n.3, the court ignored all claim elements that it believed were known in the “prior art”—virtually every component of the moveable barrier operator. *Chamberlain*, 935 F.3d at 1345-46. The court then considered only whether the remaining claim element it considered novel—the use of a wireless status transmitter—was, in isolation, directed to an abstract idea. *Id.* at 1346-48. And, even within that unduly narrow analysis, the court departed from the statutory text and purpose and this Court’s precedent and imposed unfounded, overly technical restrictions on what counts as patent-eligible subject matter. *Id.* at 1349 (discounting the “integrated controller and wireless transmitter” in Chamberlain’s invention).

This approach to § 101 analysis is now firmly entrenched in the Federal Circuit. But it directly contradicts this Court’s precedents. Decades ago, *Diamond v. Diehr* cautioned that when applying § 101, it would be “inappropriate to dissect the claims into old and new elements and then to ignore the presence of the old elements in the analysis.” 450 U.S. 175, 188 (1981). *Alice* expressly reaffirmed that rule, instructing courts to evaluate whether the claims “as a whole” were directed to

an abstract idea. 573 U.S. at 218 n.3. Yet the Federal Circuit is flatly disregarding it, with perverse results: The decision here invalidated claims that are plainly drawn to a specific, innovative machine, treating them as if they covered nothing but an abstract idea.

The Federal Circuit wrongly held that Petitioner’s unique application of wireless technology to a new and useful end—a better garage door operator—is ineligible for patent protection. That precedent threatens to further divorce the Federal Circuit’s patent eligibility jurisprudence from the language of the statute and this Court’s precedent discussing the limits of patent eligibility. The Federal Circuit’s incorrect test could be used to invalidate *any* improved machine that incorporates wireless technology—or otherwise applies one known technology into a new field—chilling innovation across a wide swath of industries. This Court’s review is necessary to correct the Federal Circuit’s misreading of *Alice* and properly cabin the exceptions to patent eligibility under § 101, including the abstract-idea exception.

4. Although it agreed that this Court should address the Federal Circuit’s misguided approach to § 101, the Solicitor General recommended against review in *Hikma* and *Berkheimer* because they were not suitable vehicles. In doing so, the Solicitor General articulated several criteria for identifying an “appropriate case” for certiorari. *Hikma* Br. at 8; *Berkheimer* Br. at 10. This case satisfies the most important of the criteria. Petitioner will seek review of § 101’s substantive standard for patent eligibility. *See Berkheimer* Br. 9-10. The Federal Circuit’s erroneous interpretation of that substantive standard “cast[s] doubt on the patent-eligibility of

a wide swath” of technologies. *Hikma* Br. 21. And the Federal Circuit’s ultimate holding—that Petitioner’s claims to a novel and nonobvious garage door operator fall within the abstract-idea exception to patent eligibility—is not “correct” under a faithful application of *Alice*. *Id.*

5. An extension of time will help to ensure that these vitally important and complicated issues are presented to the Court clearly and thoroughly. Counsel of record was only recently retained to represent Petitioner and did not represent it on appeal or in the district court. Additional time is necessary and warranted for counsel to become familiar with the record below, relevant legal precedents, and the issues involved in this matter.

6. An extension is further justified by the press of business on numerous other matters. The undersigned was responsible for filing a brief for respondent in this Court in *Google LLC v. Oracle America Inc.*, No. 18-956, on February 12, 2020, and is responsible for filing a reply brief in the Missouri Court of Appeals in *Ingham v. Johnson & Johnson*, No. ED 107476, on March 3, 2020, and a reply brief in this Court in *Torres v. Madrid*, No. 19-292, on March 20, 2020. The undersigned will also be presenting oral argument in the Ninth Circuit in *Arconic Inc. v. APC Investment Co.*, No. 19-55181, on March 3, 2020; in this Court in *Google LLC v. Oracle America Inc.* on March 24, 2020; and in the Federal Circuit in *Bio-Rad Laboratories, Inc. v. 10x Genomics, Inc.*, Nos. 19-2255, -2285, on April 10, 2020.

7. For the foregoing reasons, Petitioner requests that an extension of time be granted, to and including May 15, 2020, within which Petitioner may file a petition for a writ of certiorari.

Respectfully submitted,

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