

No. __

IN THE SUPREME COURT OF THE UNITED STATES

POWER ANALYTICS CORPORATION,

Petitioner,

v.

OPERATION TECHNOLOGY, INC., ET AL.,

Respondents.

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

Pursuant to Supreme Court Rules 13.5, 22, and 30, Power Analytics Corporation respectfully requests a 60-day extension of time, up to and including August 19, 2019 to file a petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Federal Circuit dated January 15, 2019 and its March 21, 2019 denial of Power Analytics Petitioner for Panel Rehearing or Rehearing En Banc (attached as Exhibits A and B respectively). The jurisdiction of this court is based on 28 U.S.C. § 1254(1).

1. Unless an extension is granted, the deadline for filing the petition for certiorari will be Wednesday, June 19, 2019.

2. This case involves important questions that go to the heart of the United States Patent laws: 1) whether the Federal Circuit's routine issuance of wholly inconsistent opinions regarding patent eligibility under 35 U.S.C. § 101 has departed from this Court's guidance in *Alice Corp. v. CLS Bank International*, 573 U.S. 208, (2014) in such a way that patentees, judges, and litigants have been deprived of any guidance regarding what constitutes patent eligible subject matter; and 2) whether the Federal Circuit's failure to properly construe claims when conducting § 101 analyses is inconsistent with this Court's *U.S. v. Adams*, 383 U.S. 39, 48-49 (1966) in which the Court held that "[w]hile the claims of a patent limit the invention, and specifications cannot be utilized to expand the patent monopoly, it is fundamental that claims are to be construed in the light of the specifications and both are to be read with a view to ascertaining the invention."

3. The patents at issue in this case are directed to systems and methods used in the operation of complex power systems. Prior to the inventions recited by the asserted patents, this real-time information was not available to power system operators, leading to inefficiencies in the operation of these systems.

4. At the district court, the defendants moved for summary judgment that the asserted claims were unpatentable pursuant to 35 U.S.C. § 101 in view of this Court's opinion in *Alice Corp. v. CLS Bank International*, 573 U.S. 208, (2014). The district court granted defendants' motion in a manner entirely inconsistent with this Court's opinions in at least *Alice* and *Diamond v. Diehr*, 450 U.S. 175, 187 (1981). Whether the district should have granted judgment at that stage of the

proceedings is, in fact, the major question in the petition for certiorari in *HP v. Berkheimer*, 18-415, now being considered by this Court. The Federal Circuit summarily affirmed the district court's order pursuant to Fed. Cir. R. 36 ignoring legal deficiencies in the district court's analysis.

5. The district court's somewhat confusing analysis is a symptom of a broader problem that has developed due to the Federal Circuit's unwillingness to provide consistent guidance regarding the fundamental question of the U.S. patent system: what is patentable? The Federal Circuit's issuance of inconsistent guidance in view of this Court's *Alice* opinion, and frequent summary affirmance pursuant to Fed. Cir. R. 36 of district court orders that deviate from established precedent have created an impossible environment for inventors, practitioners, and judges alike who must grapple with these issues.

6. Congress is now considering this issue in the form of a proposed bipartisan bicameral bill to amend 35 U.S.C. § 101. *See Sens. Tillis and Coons and Reps. Collins, Johnson, and Stivers Release Draft Bill Text to Reform Section 101 of the Patent Act* (available at: <https://www.tillis.senate.gov/2019/5/sens-tillis-and-coons-and-reps-collins-johnson-and-stivers-release-draft-bill-text-to-reform-section-101-of-the-patent-act>) (accessed on June 14, 2019). The Senate Judiciary Committee's Subcommittee on Intellectual Property has conducted three hearings regarding the State of Patent Eligibility in America with the most recent hearing occurring three days ago on June 11, 2019. *See The State of Patent Eligibility in America: Part III Subcommittee Hearing* (available at:

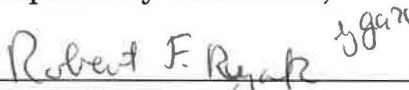
<https://www.judiciary.senate.gov/meetings/the-state-of-patent-eligibility-in-america-part-iii>) (accessed on June 14, 2019). Congressional action to clarify what has become the most contentious and uncertain area of the patent laws appears imminent.

7. Given the current legislative activity, including the June 11 hearing days ago, and this Court's recent invitation to the Solicitor General to file a brief expressing the views of the United States in *HP*, much-needed fundamental changes in this area of the law that are directly relevant to petitioner's appeal are likely to occur.

Accordingly, the petitioner respectfully requests that an extension of time to and including Monday, August 19, 2019 be granted within which applicant may file a petition for a writ of certiorari.

Dated: June 14, 2019

Respectfully Submitted,



Robert F. Ruyak
Counsel of Record
Amadou K. Diaw
RuyakCherian LLP
1700 K Street NW
Suite 810
Washington, DC 20006
(202) 838-1560
robertr@ruyakcherian.com