

No. 19-43

In the
Supreme Court of the United States

POWER ANALYTICS CORPORATION,
Petitioner,

v.

OPERATION TECHNOLOGY INC.,
SCHNEIDER ELECTRIC USA, INC.,
Respondents.

**On Petition for Writ of Certiorari to the United
States Court of Appeals for the Federal Circuit**

**SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES. ii
SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI. . . . 1
CONCLUSION. 2

TABLE OF AUTHORITIES

CASE

HP Inc. v. Berkheimer (18-415) 1, 2

STATUTES

35 U.S.C. § 101 1

OTHER AUTHORITIES

Petition for a Writ of Certiorari, *Athena
Diagnostics, Inc. v. Mayo Collaborative Servs.,
LLC* (Oct. 1, 2019) (No. 19-430) 2

U.S. Br., *HP Inc. v. Berkheimer* (18-415) 1

U.S. Br., *Hikma Pharmaceuticals USA Inc. v.
Vanda Pharmaceuticals Inc.* (18-817) 1

**SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

Briefs filed by The United States since the time of petitioner’s last filing show that The United States agrees with petitioner not only that this Court’s recent decisions concerning patent-eligibility under 35 U.S.C. Section 101 have “generated substantial uncertainty in the lower courts concerning the scope of the exceptions [to the statute] and the proper methodology for determining whether a particular patent implicates them,” U.S. Br. at 12–13, *HP Inc. v. Berkheimer* (18-415), but also that this uncertainty is reflected in considerable confusion in the Federal Circuit. For example, a recent order implicating 35 U.S.C. § 101 “was accompanied by multiple separate opinions articulating different understandings of *Mayo* and seeking clarification from this Court.” U.S. Br. at 22, *Hikma Pharmaceuticals USA Inc. v. Vanda Pharmaceuticals Inc.* (18-817).

Petitioner’s case also depends on the correct understanding of Sec. 101 and, specifically, on the question presented in *Berkheimer* (Pet. Reply Br. 8). Given the pendency of cert. petitions in several other cases in which this Court will be considering Section 101 issues that have direct bearing on the correct disposition in this case, the prudent course is to hold this petition so that this Court’s ruling on *Berkheimer*, should the Court choose to hear that case, can be applied.

Petitioner seeks certiorari based on the existing confusion in the lower courts and the petition in this case initially requested that its petition be granted or,

alternatively, that it be held pending resolution of *Berkheimer*. In its recently filed amicus briefs, the United States' position is that if the Court grants the petition for a writ of certiorari in *Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC*, No. 19-430 (filed Oct. 1, 2019) then *Berkheimer* should be held pending the Court's decision in *Athena* and then disposed of as appropriate. Consistent with the United States' suggestion, petitioner requests that, if the Court grants certiorari in *Athena*, its petition should similarly be held pending the Court's decision in *Athena* and then held or disposed of as appropriate in light of this Court's eventual action in *Berkheimer*.

CONCLUSION

The petition for a writ of certiorari should be granted. Alternatively, the Court should consider holding this petition pending its resolution of *Berkheimer*, No. 18-415.

3

Respectfully submitted,

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