

ORIGINAL

No 21-364

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In the Supreme Court of the United  
States

Supreme Court, U.S.  
FILED

AUG 31 2021

OFFICE OF THE CLERK

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SARADA MOHAPATRA, PETITIONER

v.

DIRECTOR, US PATENT AND TRADEMARK  
OFFICE - RESPONDENT

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT*

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PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

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Whether computer-based process improvement patent applications for inventions by Citizen Inventors – characterized by narrow and well-defined practical solutions to clearly identified actual/existing problems which do not preempt any future inventions - be deemed abstract in *Alice / Mayo* analysis for patent eligibility.

## PARTIES TO THE PROCEEDINGS

Sarada Mohapatra is Petitioner and Plaintiff-Appellant. Director, US Patent and Trademark Office is Respondent and Defendant-Appellee.

## RELATED PROCEEDINGS

United States Patent and Trademark Office (Patent Trial and Appeal Board):

*Ex parte* Sarada Mohapatra, No. 2018-008151(Feb 18, 2020)

*Ex parte* Sarada Mohapatra, No. 2018-008151, Decision on Request for Rehearing (Apr. 3, 2020)

United States Court of Appeals (Federal Circuit):

*In re:* Sarada Mohapatra, No. 20-1935 (Feb. 5, 2021)

*In re:* Sarada Mohapatra, No. 20-1935, Order Denying Petition for Rehearing (Apr. 22, 2021)

## TABLE OF CONTENTS

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	Page
Opinions below.....	1
Jurisdiction.....	2
Statement.....	2
Reasons for granting the petition.....	5
Conclusion.....	7
Appendix A - Court of Appeals Opinion (Feb 5, 2021).....	1a
Appendix B - Court of Appeals Order on Petition for Rehearing (Apr 22, 2021).....	16a
Appendix C - Patent and Trial Appeals Board Decision (Feb 18, 2020).....	18a
Appendix D - Patent and Trial Appeals Board Decision on Request for Rehearing (Apr 3, 2020).....	32a

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Petitioner respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

**OPINIONS BELOW**

Unpublished judgment of the United States Court of Appeals for Federal Circuit is reproduced in Appendix A, *infra*, 1a-15a. The Court of Appeals order on petition for rehearing is reproduced in Appendix B, *infra*, 16a-17a. Patent Trial and Appeal Board decision is reproduced in Appendix C, *infra*, 18a-31a. Patent Trial and Appeal Board

decision on request for rehearing is reproduced in  
Appendix D, *infra*, 32a-39a.

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### **JURISDICTION**

A timely petition for rehearing was denied by the United States Court of Appeals on April 22, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

The Court's COVID-19 orders of March 19, 2020 (extended deadline to 150 days) and April 15, 2020 (authorized filing a single copy on 8½ x 11 inch paper prior to September 1, 2021), though rescinded on July 19, 2021, are applicable to this petition.

### **STATEMENT**

In April 2011, I was notified by Sony PlayStation Network that my credit card information with them was likely compromised by a data breach. Several months later, there were multiple fraudulent charges to the card. The incident was the impetus for my first and only patent application (number 14/270,644). Titled 'Cardholder Changeable CVV2'; it provides a low cost (works with existing credit cards and authorization infrastructure) and easy-to-adopt

means of mitigating credit card fraud risks from compromised data.

Below is status of rejections of application's claims by the Examiner in Final Office Action:

35 U.S.C. § 101, Eligibility – Affirmed by PTAB, Affirmed by the Court of Appeals.

35 U.S.C. § 112(b), Indefiniteness – the Director will withdraw if Eligibility rejection is reversed/remanded to the Board (Appellee Response 2.1.)

35 U.S.C. § 103, Obviousness – Reversed by PTAB.

**Computer Based Process improvement by Citizen Inventor**

Above argument in the Reply Brief at 4 was overlooked in the Opinion by the Appeals Court. Reproduced below.

Most activities and transactions we do today are computerized. Citizens may come upon ideas for improvement to such computer based processes in course of their life experiences – during a personal crisis, an unforeseen incident or simply from an 'Aha' moment. A patient with chronic illness may invent a process for better electronic health record management, a person unemployed due to Covid may think of a way to make the benefit claim process faster or as in

this applicant's case, fraudulent credit card charges after one of the early data breaches leading to currently pending claims of a method to prevent them.

Falling into USPTO Patent Eligibility Guide grouping called human activity in the form of fundamental economic practice, they will be for improvement to technology that is unlikely to be computer or other foundational technologies and thus will have to meet Prong 2 test that the claim "integrates [the] judicial exception into a practical application [that] will apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception."

Following characteristics of current claims – likely true for most citizen inventor claims – meet the prong-2 requirement above.

- Practical Application: Claims can be implemented. Examples at Appx024-Appx026. Are beneficial to the society.
- Imposes meaningful limit: Due to solution-focused idea as the origin of invention, the claims are specific and narrow.
- More than a drafting effort designed to monopolize the judicial exception: In other words, not be designed for exploitation by Patent Trolls. Specific and narrow claims preclude this.



## REASONS FOR GRANTING THE PETITION

### 1. Side effect of Alice/Mayo in analysis

Alice/Mayo framework has been effective in preventing overly broad outcome focused process patents/applications that restrict future innovation. However, a side effect has been rejection of most patent applications when the invention is for computer-based process that is evolutionary and not computer technology related (do not pass Alice/Mayo 1st test). The board indicated:

We agree that Appellant has expressed noble intentions and there might be some public benefit from Appellant's invention. However, we are constrained to determine whether the invention, as defined by the claim language is eligible or ineligible based on the Supreme Court's exceptions to eligible subject matter.

App. 28a

As Alice/Mayo and subsequent precedents are interpreted and applied in patent examination and prosecution, 35 U.S.C. § 101 eligibility rejections are high, likely an overcorrection for broad process patents issued in the past. As a result, a citizen inventor is likely to be issued a patent for an idea for a novel kitchen gadget, but not for an idea for a novel

improvement to a process. If we think of our patent system as mechanism to recognize ingenuity of all citizens who come up with ideas/inventions that may benefit the society at large based on their life events, experiences, knowledge and expertise, then the effect of determining most process improvement ideas as patent ineligible is analogous to a corporate employee suggestion program which accepts new product suggestions from engineers but not process improvement suggestions which may reduce scrap or improve machine setup time from factory workers. I request the Court to review my application incorporating a practical solution for an existing problem to provide guidance to restore balance.

**2. If claims do not monopolize and are narrow, market may be efficient in determining 'significantly more'**

If a claim as a whole does not monopolize or impose restrictions on future innovation, is practical and imposes meaningful limit, the market may be an efficient judge of 'significantly more' after a patent is granted for it. I always considered the possibility that my invention may join numerous others with no

buyers, as indicated by my note to the Examiner during prosecution:

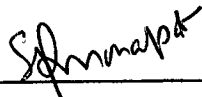
It is currently not possible to change Card Security Code or CVV2 on existing cards. I had called two of the largest issuers in the USA prior to filing provisional application [2013]. If my patent application is allowed and I am able to persuade issuing companies to adopt it; it will reduce the financial gains of criminals – often outside of the USA - from credit card fraud based on data breach; save cardholders the stress and inconvenience of resolving the fraudulent charges on their card statements and reduce cost to issuers who finally bear the cost of fraud.

Appx048 in Appendix for the Court of Appeals.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Sarada Mohapatra

Date: August 31, 2021