

No. _____

In The
Supreme Court of the United States

AUDIO EVOLUTION DIAGNOSTICS, INC.,

Applicant

v.

UNITED STATES OF AMERICA & GLOBALMEDIA GROUP, LLC,

Respondents

On Application for Extension of Time to File Certiorari Petition

**APPLICATION FOR AN EXTENSION OF TIME TO FILE PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

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PARTIES TO THE PROCEEDING & RELATED PROCEEDINGS

The parties to the proceedings below are:

Applicant is Audio Evolution Diagnostics, Inc., who was the plaintiff in the U.S. Court of Federal Claims (“CFC”) and the Appellant in the U.S. Court of Appeals for the Federal Circuit (“CAFC”).

Respondents are the United States and GlobalMedia Group, LLC, who were the defendants in the CFC and the appellees in the CAFC.

The related proceedings, opinions, and orders below are:

1. *Audio Evolution Diagnostics, Inc. v. United States & GlobalMedia Group, LLC*, No. 2023-1096 (Fed. Cir. Aug. 28, 2024) – order denying petition for panel rehearing and rehearing en banc (*see* Exhibit A);

2. *Audio Evolution Diagnostics, Inc. v. United States & GlobalMedia Group, LLC*, No. 2023-1096 (Fed. Cir. May 14, 2024) – judgment affirming CFC (*see* Exhibit B);

3. *Audio Evolution Diagnostics, Inc. v. United States & GlobalMedia Group, LLC*, No. 1:20-cv-01384-PEC (Ct. Cl. Sept. 21, 2022) – order denying motion to vacate judgment and alter or amend judgment (*see* Exhibit C); and

4. *Audio Evolution Diagnostics, Inc. v. United States & GlobalMedia Group, LLC*, No. 1:20-cv-01384-PEC (Ct. Cl. July 1, 2022) – order granting motion to dismiss (*see* Exhibit D).

CORPORATE DISCLOSURE STATEMENT

Audio Evolution Diagnostics, Inc. has no parent company or publicly-held company with a 10% or greater ownership interest in it.

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

Applicant Audio Evolution Diagnostics, Inc., seeks a 60-day extension to file its certiorari petition, moving the deadline from November 26, 2024, to January 27, 2025.

1. Applicant will ask this Court to review the Federal Circuit’s decisions in *Audio Evolution Diagnostics, Inc. v. United States & GlobalMedia Group, LLC*, No. 2023-1096 (Fed. Cir. Aug. 28, 2024), denying petition for panel rehearing and rehearing en banc, and *Audio Evolution Diagnostics, Inc. v. United States & GlobalMedia Group, LLC*, No. 2023-1096 (Fed. Cir. May 14, 2024), affirming the CFC’s denial of Applicant’s motion to vacate judgment and alter or amend judgment and order granting motion to dismiss. The relevant decisions are attached as Exhibits A to D.

2. This Court has certiorari jurisdiction over the Federal Circuit’s decisions under 28 U.S.C. §1254(1).

3. Good cause exists for a 60-day extension for three reasons.

4. First, this case presents nationally important questions of patent law. Since this Court’s rulings in *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208 (2014), and *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012), the Federal Circuit’s “rulings on patent eligibility have become so diverse and unpredictable as to have a serious effect on the innovation incentive in all fields of technology.” *Am. Axle & Mfg. v. Neapco Holdings LLC*, 966 F.3d 1347, 1357 (Fed. Cir. 2020) (Newman, J. dissenting) (Moore, O’Malley, Reyna, Stoll, JJ., joining). “The

victim is not only this inventor . . . ; the victims are the national interest in an innovative industrial economy, and the public interest in the fruits of technological advance.” *Id.* “In the current state of Section 101 jurisprudence, inconsistency and unpredictability of adjudication have destabilized technologic development in important fields of commerce.” *Yanbin Yu v. Apple Inc.*, 1 F.4th 1040, 1049 (Fed. Cir. 2021) (Newman, J., dissenting). “Although today’s Section 101 uncertainties have arisen primarily in the biological and computer-implemented technologies, all fields are affected.” *Id.* “The case before us enlarges this instability in all fields, for the court holds that the question of whether the components of a new device are well-known and conventional affects Section 101 eligibility, without reaching the patentability criteria of novelty and nonobviousness.” *Id.* Uniformity with how the Federal Circuit applies this Court’s decisions in *Alice* and *Mayo* would bring long and desperately-needed stability and predictability to the public, the patent bar, the courts, the USPTO, and the government.

5. The government’s position in the CFC and the CAFC directly conflicts with the position of the Solicitor General’s Office (“SG”) and at least one Justice of this Court. *See, e.g.*, CVSG in *Tropp v. Travel Sentry, Inc.*, No. 22-22 (Apr. 5, 2023) (urging certiorari because “the Federal Circuit has repeatedly divided in recent years over the content of the abstract-idea exception”); CVSG in *Interactive Wearables, LLC v. Polar Electro Oy*, No. 21-1491 (Apr. 5, 2023) (same); CVSG in *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, No. 20-891 (May 24, 2022) (urging certiorari because the “[o]ngoing uncertainty has induced every judge on the Federal Circuit to request

Supreme Court clarification”); *Tropp*, 143 S. Ct. 2483 (“Justice Kavanaugh would grant the petition”); *Interactive Wearables*, 143 S. Ct. 2482 (same).

6. Second, while Applicant’s counsel has been working with Applicant since the CFC, Applicant only recently decided that it wanted to pursue a certiorari petition in this case. As a result, Applicant’s counsel needs more time to review the record, research the latest caselaw, and prepare a competent petition.

7. Third, Applicant’s counsel has other pending matters that conflict with the existing schedule. Among other obligations, counsel must:

- a. file an amended motion for preliminary injunction and findings of fact and conclusions of law by November 25, 2024, in *Max Minds, LLC v. Triangle Experience Group, Inc.*, in the Southern District of Indiana, Case No. 1:24-cv-00779;
- b. conduct a trial scheduled on January 30, 2025, in *Comet v. United States of America*, Case No. 1:23-cv-00639, in the Court of Federal Claims, and numerous pretrial deadlines before the trial date; and
- c. travel for business out of the country from December 8 to December 16, 2024.

An extension of time will ensure that counsels’ other matters do not hinder Applicant’s ability to file an effective petition in this case.

8. For all these reasons, Applicant requests an extension of time, up to and including January 27, 2025, to file its certiorari petition.

Dated: November 14, 2024

Respectfully submitted,

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