



## **ARE Patent Law Alert: Supreme Court Invites Solicitor General to File Brief on Patent Eligibility Issues in American Axle & Manufacturing, Inc. v. Neapco Holdings LLC**

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On May 3, 2021, the U.S. Supreme Court invited the Acting Solicitor General to file a brief expressing the views of the United States in *American Axle & Manufacturing, Inc. v. Neapco Holdings LLC*, No. 20-891 (U.S. Supreme Court 2021).

In *American Axle*, the petition for writ of certiorari asked the U.S. Supreme Court to address the following questions: (1) what standard determines whether a patent claim is “directed to” a patent-ineligible concept under step 1 of Supreme Court’s two-step framework for determining whether an invention is eligible for patenting under 35 U.S.C. § 101; and (2) whether patent eligibility (at each step of the Supreme Court’s two-step framework) is a question of law for the court based on the scope of the claims or a question of fact for the jury based on the state of art at the time of the patent.

In an amicus brief dated January 25, 2021, the New York Intellectual Property Law Association (NYIPLA), represented by Charles R. Macedo, David P. Goldberg and Chandler Sturm of Amster, Rothstein & Ebenstein, and others, urged the Supreme Court to grant certiorari to clarify the law of patent eligibility, since, despite the plain and clear language of Section 101 of Title 35, there are conflicting interpretations of Supreme Court precedent on patent-eligible subject matter. In particular, the NYIPLA noted that the decision below was contrary to *Diamond v. Diehr*, 450 U.S. 175 (1981).

The fact that the Supreme Court has invited the Solicitor General to file a brief here means that the Court believes this case implicates significant federal interests and that the petition is worthy of further review. Notably, this is the third time in the last three years that the Supreme Court has asked for the Solicitor General’s views on whether it should get involved in the debate over Section 101 of Title 35 of the Patent Act.

We will continue to monitor this issue and report on developments. In the meantime, feel free to contact us to learn more.

About the Authors



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