

Menu Tech Biz Tries To Latch Onto American Axle Case

By [Andrew Karpan](#) · [Listen to article](#)

Law360 (March 15, 2022, 8:46 PM EDT) -- A small California technology company that lost its patent infringement suit against restaurant software company Olo in Delaware federal court is asking the [U.S. Supreme Court](#) to review the case or at least coordinate it with American Axle's widely watched high court bid over patent eligibility.

The petition, docketed March 10, came in from a familiar party to patent litigants — a company called [Ameranth Inc.](#) It's the project of a man named Keith McNally, who had left his job working as a designer for the defense contractor Litton Industries in the 1990s in order to sell technology related to an idea his petition calls a "new and useful intelligent automated assistant."

His company wants the justices to grant review of its case against Olo Inc., or hold its case pending the resolution of another Supreme Court bid by [American Axle & Manufacturing Inc.](#), which is challenging the high court's 2014 Alice decision.

The decisions in both cases turned on readings of the Alice decision, which found the patents involved covered inventions ineligible for patent protection under Section 101 of the Patent Act. The Alice decision created a two-part legal test for judges to use when making rulings on patent eligibility.

After holding [one of his '101 Days' hearings](#) in 2020, Delaware's Judge Leonard Stark dismissed Ameranth's case against Olo, a New York startup [that debuted](#) on the New York Stock Exchange last year.

"The prolonged assault on patent eligibility has gone on far too long, causing far too much damage to far too many," Ameranth's [petition reads](#), "Whatever the court expected Alice to accomplish, it could not have been this."

These days, Ameranth's technology largely shows up in patent suits. Over the past decade, Ameranth has filed over 40 suits in federal courts around the country against companies like [Domino's Pizza](#), [Pizza Hut Inc.](#), [Papa John's USA](#) and [GrubHub Inc.](#)

The American Axle case [is an appeal](#) from a sharply split ruling from the full Federal Circuit over the eligibility of a driveshaft patent. The high court is notably still waiting for the federal government to offer its take on the American Axle case after the justices [requested it almost a year ago](#). It's the only case from that session that the solicitor general's office has yet to deliver a requested opinion on, and in that time, [numerous companies](#) have pegged their appeals on the case.

"Judge Stark, who wrote the American Axle district court opinion, wrote our opinion too, so obviously he applied the same application of the Alice ruling," McNally said in an interview about the similarity between the two cases. After fielding oral arguments, a trio of Federal Circuit judges rejected Ameranth's appeal in [a page-long ruling](#) last year.

It's not the first time McNally's company has taken its concerns to the high court. In 2020, Ameranth pressed the Supreme Court [to take a look](#) at whether a different patent — covering a kind of online menu and asserted against Domino's Pizza — was correctly invalidated. The court [turned the company down](#) without comment a year later.

Representatives for Olo did not respond to a request for comment.

The patent-in-suit is U.S. Patent No. [9,747,651](#).

Ameranth is represented by Jerrold J. Ganzfried of Ganzfried Law, and Robert F. Ruyak of [RuyakCherian LLP](#).

Representation for Olo at the Supreme Court was not available Monday. On appeal, the company had been represented by Heidi Keefe at [Cooley LLP](#).

The case is Ameranth Inc. v. Olo Inc., case number [21-1228](#), at the U.S. Supreme Court.

— Additional reporting by Elise Hansen and Ryan Davis. Editing by Robert Rudinger.