
Certiorari Denied in Eligibility Cases

January 13, 2020 Patent Dennis Crouch

The Supreme Court has denied certiorari in the three leading patent eligibility petitions:

- *HP Inc. v. Berkheimer* (18-415)
- *Hikma Pharmas v. Vanda Pharmas* (18-817)
- *Athena Diagnostics, Inc. v. Mayo Collaborative* (19-430)

Although there are several other pending eligibility petitions, I gave these three the highest potential for certiorari. The result here is that the Supreme Court is now highly unlikely to take up eligibility anew this term. The one exception is the copyright case of *Google v. Oracle* where the court will likely discuss a dividing line between patentable and copyrightable subject matter.

Additional cases denied certiorari on Jan 13, 2020:

- *Power Analytics Corporation v. Operation Technology, Inc., et al.*, No. 19-43 (eligibility)
- *Regents of the University of Minnesota v. LSI Corporation, et al.*, No. 19-337 (sovereign immunity)
- *Garmin USA, Inc., et al. v. Cellspin Soft, Inc.*, No. 19-400 (eligibility)
- *Medtronic, Inc. v. Barry*, No. 19-414 (meaning “ready for patenting” for on sale bar)
- *Chestnut Hill Sound Inc. v. Apple Inc., et al.*, No. 19-591 (due process and R.36 affirmances)
- *Nuvo Pharmaceuticals, et al. v. Dr. Reddy’s Laboratories, et al.*, No. 19-584 (written description need for experimental data proving claimed effectiveness)
- *Mushkin, Inc. v. Anza Technology, Inc.*, No. 19-610 (relation back to the original complaint)

There are several petitions that remain viable for this term:

- *ChargePoint, Inc. v. SemaConnect, Inc.*, No. 19-521 (eligibility)
- *Trading Technologies International, Inc. v. IBG LLC, et al.*, No. 19-522; *Trading Technologies International, Inc. v. IBG LLC, et al.*, No. 19-353 (eligibility)
- *Apple Inc. v. VirnetX Inc., et al.*, No. 19-832 (apportionment and preclusion)
- *Maxell, Ltd. v. Fandango Media, LLC*, No. 19-852 (eligibility)
- *Collabo Innovations, Inc. v. Sony Corporation*, No. 19-601 (due process and takings for IPR proceedings against Pre-AIA patents)
- *Cisco Systems, Inc. v. SRI International, Inc.*, No. 19-619 (eligibility)
- *Chrimar Systems, Inc. v. Juniper Networks, Inc., et al.*, No. 19-829 (role of evidence beyond that raised in the IPR petition)
- *Morris Reese v. Sprint Nextel Corporation, et al.*, No. 19-597 (eligibility)

Although several of these petitions raise important points, none of them have received the attention or support of the ones denied today.