

Supreme Court Justices Skip Software Co.'s Patent Eligibility Row

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

Law360 (June 14, 2022, 5:27 PM EDT) -- Justices on Monday have quietly rejected yet another petition that attempted to staple a patent eligibility loss to the widely-watched American Axle case.

The [bad news](#) came for a small software company called Ameranth, notable for filing more than 40 suits in federal courts around the country against companies like [Domino's Pizza](#), [Pizza Hut Inc.](#), [Papa John's USA](#) and [GrubHub Inc.](#) One of the company's latest legal fights was with Olo, a New York restaurant software startup that [debuted](#) on the New York Stock Exchange last year. Ameranth's president, a former designer for a defense contractor, had received a patent covering a "new and useful intelligent automated assistant" that he had designed; his company claimed Olo was ripping him off.

Ameranth's petition had pitched the case to the justices as related to the same issues in patent law that the Supreme Court had been presented in a different patent case called [American Axle & Manufacturing Inc.](#) v. Neapco Holdings LLC, a pending appeal that also turns on how lower courts decide what kind of inventions can be legally protected by patent law.

Like the American Axle case, the lawsuit from Ameranth had not fared well in the courts. Delaware's then-U.S. District Judge Leonard Stark – who has since been appointed to the Federal Circuit – quickly ruled during one of his ["Section 101 Days," in which the judge streamlines hearings for questions arising from Section 101 of the Patent Act](#), hearings that some of the claims at the center of Ameranth's patent were ineligible, citing the Supreme Court's 2014 Alice ruling. The Alice ruling had created the two-part legal test that judges now use when making these kinds of determinations on patent eligibility.

After hearing oral arguments last year, a panel of Federal Circuit judges quickly affirmed Judge Stark's reasoning without comment, as did the Supreme Court on Monday.

Keith McNally, the Ameranth president, had been convinced his company had a shot with the justices following their interest in the American Axle case, as the underlying rulings in both cases were made by the same former federal judge in Delaware.

"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 told Law360 in an interview [back in March](#).

The American Axle case, however, later resulted in a [sharply split ruling](#) from the full Federal Circuit over the eligibility of the driveshaft patent owned by American Axle, a Detroit parts maker that had accused a direct rival of patent infringement. Since [an appeal](#) in the case hit the Supreme Court's docket in late 2020, the justices have largely stayed mum on whether or not they will hear the case. As recently as last month, lawyers in the Biden Administration [joined the chorus of voices](#) asking the justices to use the case to take a new look at the legal question of what can and cannot be eligible for a patent.

McNally told Law360 on Monday that the rejection from the justices will not stop him and his lawyers from avidly following the American Axle case. He wrote in an email that he is now betting the justices will take the American Axle case "at its conference two weeks from today." Then, his company will ask the justices to change their mind.

"Assuming this major event occurs on June 27, Ameranth will promptly file a 'rehearing motion,' which is our right, to the Supreme Court for them to then reconsider and 'hold' our petition pending their upcoming and much needed clarification of 101 law in American Axle," he said.

He predicted that this would buy his company more time as "that 'rehearing request' would then be decided in the next term of court."

Outside of an interest in breathing new life into its lawsuit against Olo, lawyers for Ameranth [had also indicated](#) they planned to use the American Axle case to try to beat a ruling in California federal court that found they owed at least \$2.7 million in attorney fees over the company's failed lawsuit against Domino's Pizza, which had a different collection of patents, some of which were [also found](#) to be ineligible for patent protection.

Over the past year, numerous companies like McNally's Ameranth have pegged their appeals to the American Axle case. Many of them, like McNally, say that because the Axle case does not involve looking at patents that cover ways to use computer technology – like the Supreme Court's initial Alice ruling did – the justices will be interested in picking up some cases that do.

So far, [they have not](#).

"Irrespective of today's denial of cert," McNally said, "Ameranth still has three patents that remain entirely valid and two patents with some valid claims and an additional patent pending."

Representatives for Olo did not return 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](#).

Olo is 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 Jasmin Jackson, Dani Kass, Elise Hansen and Ryan Davis. Editing by Alex Hubbard.