

Tech Co. Wants SC Justices To Review Nintendo '101 Patent Ruling

By [Hailey Konnath](#)

Law360 (June 18, 2021, 11:02 PM EDT) -- Technology company iLife has asked the U.S. Supreme Court to undo a Federal Circuit ruling striking its \$10 million patent verdict against [Nintendo](#), arguing that the justices need to establish the appropriate standard for determining whether a patent claim is directed to a patent-ineligible concept.

In a petition for writ of certiorari docketed Thursday, iLife Technologies Inc. urged the court to reverse the January ruling, [which upheld](#) a post-trial decision by U.S. District Judge Barbara M.G. Lynn to [throw out the verdict](#) on a motion-sensing innovation that iLife said Nintendo of America Inc. copied in the Wii gaming system, which relies heavily on player movements.

The company argued that the questions in its case — including whether patent eligibility is a question of law for the court or a question of fact for the jury — are the same as in another case already before the Supreme Court. In that case, [American Axle & Manufacturing Inc. v. Neapco Holdings LLC](#), American Axle is trying to undo a Federal Circuit ruling affirming the dismissal of its patent infringement suit over a patent covering a system of reducing vibration noise from the power components and drivelines in cars.

The high court recently [asked the acting solicitor general to weigh in](#), iLife said in its petition.

"The court's disposition of the petition in American Axle will affect the proper disposition of this petition, which presents the same questions," iLife said.

It added that like the patent holder in that case, iLife patented a type of invention falling squarely within the subject matter that the Patent Act "expressly makes patentable." And like in the American Axle case, the Federal Circuit "conditioned patent eligibility on claim specificity, reduced the invention to 'nothing more' than a patent-ineligible concept, and deemed it not 'inventive' — all as a matter of law," iLife said.

"iLife respectfully submits that this petition should be held pending the Court's disposition of the American Axle case, and then disposed of accordingly," iLife said. "Alternatively, this petition should be granted."

The Federal Circuit said in its January decision that under the U.S. Supreme Court's Alice decision, which clarified that abstract ideas implemented by a computer aren't patentable under Section 101 of the Patent Act, the key iLife technology claimed in U.S. Patent No. [6,864,796](#) wasn't patentable.

The patent claim at issue "recites only generic computer components, including a sensor, a processor, and a communication device. The specification's description of these elements confirms they are generic," the appeals court said at the time.

iLife had asked the appeals court to restore the verdict [in May 2020](#), arguing that the patent went to a concrete improvement in motion-sensing technology, rather than an abstract idea.

The patent discloses a novel way of measuring two modes of acceleration, to allow a new distinction between, for example, falling and lying down. Similarities between actions like those had previously confounded motion sensors, iLife said.

Meanwhile, Nintendo argued in the litigation that the Wii uses movement data in new ways: interpreting a wrist flick as a command to flip a car in one game or to serve a tennis ball in another, it said.

The Federal Circuit [called off](#) a scheduled oral argument in the case after a lawyer tested positive for COVID-19 in January, deciding instead to rule on the briefs.

Representatives for Nintendo and counsel for iLife didn't immediately return requests for comment late Thursday.

The patent-in-suit is U.S. Patent No. 6,864,796.

iLife is represented by Michael C. Wilson, William A. Munck, S. Wallace Dunwoody, Shain A. Khoshbin, Jordan C. Strauss and Chase A. Cobern of [Munck Wilson Mandala LLP](#).

In the Federal Circuit case, Nintendo was represented by Stephen Smith, Matthew Brigham, Samuel Whitt and Dena Chen of [Cooley LLP](#). Updated counsel information wasn't immediately available Thursday.

The case is iLife Technologies Inc. v. Nintendo of America Inc., case number [20-1760](#), in the [Supreme Court of the United States](#).

--Additional reporting by Cara Salvatore, Andrew Karpan, Daniel Siegal and Dani Kass.
Editing by Regan Estes.