

# Solicitor General Urges Justices To Take Up American Axle

By [Dani Kass](#) · [Listen to article](#)

Law360 (May 24, 2022, 6:44 PM EDT) -- The solicitor general on Tuesday urged the U.S. Supreme Court to take up American Axle v. Neapco, a patent eligibility case that has deeply divided the patent world.

The justices on [May 3, 2021](#), asked the government for its opinion on whether they should hear the case, in which American Axle's driveshaft patent was invalidated under Section 101 of the Patent Act for claiming a law of nature. If they pick up the case, the justices will consider whether the invalidation was the proper application of the Supreme Court's patent eligibility jurisprudence, or whether the invalidation was a step too far.

The solicitor general in 2019 [urged](#) the Supreme Court to review a different patent eligibility case, but the justices still [rejected](#) that petition, meaning the government's blessing is not necessarily decisive.

In October 2019, a [Federal Circuit panel](#) found several of American Axle's patent claims ineligible under Section 101. That precedential 2-1 decision concluded the claims cover only a 17th-century equation known as Hooke's law, which describes the relationship among an object's mass, its stiffness and the frequency at which it vibrates.

The court denied [en banc rehearing](#) in a 6-6 split that highlighted just how deep the divide on interpreting the Supreme Court's Alice and Mayo patent eligibility decisions has become. The original panel also withdrew its opinion and issued a new one, still 2-1. But rather than invalidate all the claims at issue, the new opinion remanded the case for further proceedings on some of them.

The circuit court judges issued more than 100 pages of opinions when fighting over whether to rehear the case, a division that made those wishing for clarity on patent eligibility optimistic that the case would be appealing to the justices.

American Axle's December 2020 [petition](#) to the Supreme Court said "the entire patent system is desperate" for clarity from the Supreme Court, while [amici](#) added that "the Federal Circuit is crying out for this court's guidance."

Neapco Holdings, which had challenged the patent, had [shot back](#) that just because the case evoked passionate responses did not mean it was incorrectly decided.

But as it had many times before, the court [refused](#) to step in on patent eligibility, despite calls from judges, attorneys, inventors and politicians [begging](#) for clarity.

The patent-in-suit is U.S. Patent No. 7,774,911.

American Axle is represented by James Nuttall, John Abramic, Katherine Johnson, Robert Kappers and Christopher A. Suarez of Steptoe & Johnson LLP.

Neapco is represented by J. Michael Huget of Honigman LLP.

The case is American Axle & Manufacturing Inc. v. Neapco Holdings LLC, case number [20-891](#), in the U.S. Supreme Court.

--Additional reporting by Ryan Davis. Editing by Peter Rozovsky.