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Will 2021 Be the Year the U.S. Supreme Court Again Addresses Section 101 Eligibility?

Holland & Knight Section 101 Blog
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In 2020, the U.S. Supreme Court declined to hear Section 101 patent eligibility cases [again](#), and [again](#), and [again](#). But is 2021 the year that the Supreme Court finally addresses the topic?

Maybe. I'm hesitant to say yes. The Court made it clear that it is not reaching to address Section 101, but the *American Axle* decision could be the appropriate vehicle for the Court to address, as American Axle put it, the U.S. Court of Appeals for the Federal Circuit's "cries for help." (Editor note: more on *American Axle* [here](#).)

Right before the new year, American Axle filed its petition for a *writ of certiorari* with the Supreme Court. The petition highlights the fact that the

Federal Circuit was evenly divided (6-6) on whether to rehear the case *en banc* and that, according to Judge Kimberly Moore, "what we have here is worse than a circuit split – it is a court bitterly divided." If you've read the relevant *American Axle* opinions, you won't be surprised that American Axle's petition cites Judge Moore's dissents extensively.

American Axle argues that Section 101 was "already in a fragile state," and the Federal Circuit has "pushed it past its breaking point." The Federal Circuit "has cried for [the Supreme Court's help]. The Court should heed the calls for guidance."

After walking through the case history, American Axle argues that its case is ideal for the Court to provide guidance on Section 101 for multiple reasons. First, American Axle notes that this is "not your run-of-the-mill Section 101 case," meaning that the patent is not directed to a business or financial method or another internet invention. The relevant patent is instead related to an industrial process. In other words, "Section 101 has reached Detroit." (Editor note: Go Lions! Next year is our year.)

Second, American Axle argues that this case presents an opportunity for the Supreme Court to provide guidance on the appropriate analysis lower courts should apply to patents and whether courts are inappropriately expanding the judicial exceptions to Section 101.

Third, American Axle states that this case would allow the Court to clarify procedural questions that surround Section 101 analysis – namely, are steps 1 and 2 are "questions of law for the court to decide or questions of fact for a jury to decide?"

In addition to these points, American Axle highlights many of Judge Moore's most memorable lines from her dissents and cites current and former directors of the U.S. Patent and Trademark Office (USPTO), other stakeholder organizations and the U.S. Solicitor General.

What're your thoughts? Will the Supreme Court grant *certiorari* on *American Axle*? A different case this year? Or, like 2020, will the Court continue to decline the petitions. Let me know your prediction: anthony.fuga@hklaw.com As for my prediction, I'm sticking with . . . *maybe*.

The case is *American Axle & Manufacturing, Inc. v. Neapco Holdings LLC et al.*