Foster Garvey

News

Foster Pepper Files Cert Petition to Clarify Patent Eligibility for Computer-Implemented Inventions

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- On March 8, 2019, Foster Pepper filed a petition for writ of certiorari with the U.S. Supreme Court to clarify the patent-eligibility test for computer-implemented inventions and to help promote digital innovation across the country. (Case number 18-1199)
- For the past five years, inventors have found it increasingly difficult to obtain patents for inventions that predominantly involve use of a computer. Even inventors granted patents for these kinds of inventions later had their patents invalidated by lower courts due to a shift in what courts regard as necessary for an invention to be patentable. Foster Pepper is seeking Supreme Court review to clarify that inventions that use computers can be patented.
- Foster Pepper's client InvestPic, invented a groundbreaking software tool for assessing the health of investment portfolios. Dr. Varma received a patent and the investment industry, especially after the 2008 recession, started using his invention, even though it was implemented by a working software product. The 2001 Nobel Laureate economist Michael Spence described the system as a brilliant and very significant advance in data science technology. Unfortunately, in 2017 a federal trial court invalidated the patent on the grounds that the invention was too "abstract." On appeal, the Court of Appeals for the Federal Circuit, created a test requiring inventions to occur in the "physical realm" to be patentable. The Federal Circuit held that inventions performed on computers are not in the "physical realm" and not patentable. The widespread adoption of this test would prevent inventors from being able to receive patents for advancements in fields such as software, data science, artificial intelligence and machine learning.
- Foster Pepper's petition asks the Supreme Court to clarify the standard for patentability for computer-implemented inventions, and reject the "physical realm" test for abstract ideas applied by the Federal Circuit, which presents a barrier to obtaining patents for innovations that otherwise qualify for patent protection.
- Foster Pepper seeks amici to support this important case. If you have any questions, please contact William Abrams or Richard Black.

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