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## SUPREME COURT TO EVALUATE PATENT STATUTES IN VIEW OF EVOLVING TECHNOLOGIES

By Lauren M. Frye, Patent Attorney

### *Alice Corporation Pty. Ltd. v. CLS Bank International*, U.S. No. 13-298

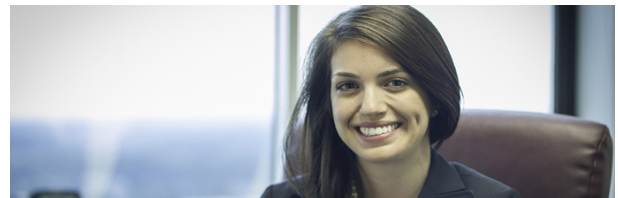
On March 31, 2014, the Supreme Court will consider the issue as to whether claims to computer-implemented inventions – including claims to systems, machines, processes, and items of manufacture – are directed to patent-eligible subject matter within the meaning of 35 U.S.C. § 101. This case comes to the Supreme Court from a divided Federal Circuit unable to come to a majority opinion as to the proper standard for determining patent eligibility under 35 U.S.C. § 101. At issue are patent claims relating to a computerized trading platform used for conducting financial transactions in which a third party settles obligations between a first and a second party so as to eliminate "counterparty" or "settlement" risk. Based on how the Supreme Court has historically decided patent eligibility in previous litigation, it is speculated that the Supreme Court will embrace a flexible, pragmatic approach to applying 35 U.S.C. § 101 that can adapt and account for unanticipated technological advances.

### *Nautilus Inc. v. Biosig Instruments, Inc.*, U.S. No. 13-369

In late April, the Supreme Court is slated to hear oral arguments with regard to a patent case centering on the proper standard for indefiniteness under 35 U.S.C. § 112(b) (pre-AIA 35 U.S.C. § 112, second paragraph). The questions presented are: (1) whether the Federal Circuit's acceptance of ambiguous patent claims with multiple reasonable interpretations – so long as the ambiguity is not "insoluble" by a court – defeats the statutory requirement of particular and distinct patent claiming; and (2) whether the presumption of validity dilutes the requirement of particular and distinct patent claiming. Nautilus petitioned the Supreme Court for a *writ of certiorari* after the Federal Circuit held that the claims in the patent-in-suit, directed to a heart rate monitor associated with an exercise apparatus and/or exercise procedures, provided inherent parameters sufficient for a skilled artisan to understand the bounds of the claim language. This case has the potential of determining a precedential standard for indefiniteness.

*Limelight Networks, Inc. v. Akamai Technologies, Inc.*, U.S., No. 12-786

After a request to the Solicitor General to file a brief expressing the views of the United States resulted in the Solicitor General urging the Supreme Court to review the case at hand, the Supreme Court has granted *certiorari* to hear the question as to whether the Federal Circuit erred in holding that a defendant may be held liable for inducing patent infringement under 35 U.S.C. § 271(b) even though no one had committed direct infringement under 35 U.S.C. § 271(a). Historically, a finding of induced patent infringement under § 271(b) has required an initial determination that the induced entity was liable for direct infringement under § 271(a). However, the Federal Circuit's ruling has undermined this prerequisite in favor of a less stringent standard for determining induced patent infringement under § 271(b). This case may result in a landmark decision in view of the fact that many patented technologies are distributed to multiple potentially infringing entities across vast landscapes, whether geographic or cyber. The patent claims at issue concern such a technology, including a method for structuring web sites and their servers to handle Internet traffic more efficiently.



*About the author:*

*Lauren Frye received her B.S. in mechanical engineering from the University of Maryland. She graduated from the University Of New Hampshire School Of Law where she received a merit scholarship. She is a member of the North Carolina State Bar and is registered to practice before the U.S. Patent and Trademark Office.*

*While attending law school, Ms. Frye received a Patent Searching Certification, and served as secretary on the Patent Law Forum. She also served as a mentor for the GoodBridges Mentoring Program which focuses on assisting young women with criminal backgrounds to find work and transition back into the community. Prior to completing law school, Ms. Frye worked with several intellectual property law firms performing research and assisting with patent prosecution. She also worked one semester as an extern at a patent law firm in Washington, D.C. Ms. Frye is a member of the North Carolina Bar Association.*