

## Justices Reject 3 More Cases Challenging Alice

By **Dani Kass**

*Law360 (January 27, 2020, 3:12 PM EST)* -- The U.S. Supreme Court on Monday reaffirmed that it's not interested in discussing patent eligibility standards this year, shooting down three petitions just weeks after turning away several others.

The petitions — two from Trading Technologies International Inc. and one from ChargePoint Inc. — each deal with the aftermath of 2014's *Alice Corp. v. CLS Bank* ruling, in which the justices said abstract ideas aren't patent-eligible without an inventive concept. As is customary, the court did not expand on its decision to reject any of the petitions.

The first Trading Technologies petition, from September, urged the justices to either define what exactly is abstract under Section 101 of the Patent Act, or do away with the concept altogether. The company said the status quo is unworkable because courts can't reach a cohesive understanding of what "abstract" entails, leading to a mess of contradicting precedents.

In that case, the Federal Circuit had invalidated three Trading Technologies patents covering graphical user interfaces used in electronic trading, upholding a Patent Trial and Appeal Board ruling that the patents were abstract in a challenge launched by IBG LLC and Interactive Brokers LLC.

The other Trading Technologies petition was filed a month later. While it made the same arguments and featured the same parties, it involved different patents.

In ChargePoint, the Federal Circuit had upheld a lower court's decision invalidating as abstract claims of four patents covering electric vehicle charging station technology. ChargePoint had accused SemaConnect Inc. of infringing those patents.

In its October petition, ChargePoint called Alice "a failed experiment" that needs to end.

"This exception is entirely a judicial creation, having no basis in the text of the statute," ChargePoint wrote. "The court should undertake to implement Section 101's broad and explicit language. Thus, where, as here, the patents claim a 'new or useful machine' or a new and useful improvement to a machine, the inventions should be eligible under Section 101 as Congress plainly intended based on the language of that provision."

Earlier this month, the justices rejected another five patent eligibility cases, including several high-

profile ones. This outright refusal to consider patent eligibility has come as a surprise to many, given that U.S. Solicitor General Noel Francisco has asked the court to resolve "substantial uncertainty," and many judges on the Federal Circuit have said the law should be clarified.

However, Francisco specifically said the Trading Technologies petitions should be rejected, calling each of them "unsuitable" for review because they involve patents that are invalid regardless of the eligibility approach.

An attorney for Trading Technologies declined to comment.

ChargePoint said it's disappointed that a ruling upholding the dismissal of its patent infringement claims has been affirmed.

"We have been consistent in the belief that the patent litigation is about protecting ChargePoint's valid intellectual property against actions that will harm it," spokesperson Darryll Harrison Jr. said in an email.

Counsel for the SemaConnect, IBG and the government didn't immediately respond to requests for comment Monday.

ChargePoint is represented by Carter G. Phillips, Ryan C. Morris and Lucas W.E. Croslow of Sidley Austin LLP.

SemaConnect is represented by Alan L. Whitehurst, Deepa Acharya and Marissa R. Ducca of Quinn Emanuel Urquhart & Sullivan LLP.

Trading Technologies is represented by Andrew M. Grossman and Renee Knudsen of BakerHostetler and in-house by Steven F. Borsand and Adam J. Faier.

IBG is represented by Robert E. Sokohl of Sterne Kessler Goldstein & Fox PLLC.

The government is represented in the Trading Technologies cases by Noel J. Francisco of the Solicitor General's Office, and Joseph H. Hunt, Mark R. Freeman, Scott R. McIntosh and Weili J. Shaw of the U.S. Department of Justice's Civil Division.

The cases are ChargePoint, Inc. v. SemaConnect, Inc., case number 19-521, and Trading Technologies International, Inc. v. IBG LLC, et al., case numbers 19-353 and 19-522, before the Supreme Court of the United States.

--Additional reporting by Ryan Davis and Tiffany Hu. Editing by Alanna Weissman.