

Kathi Vidal Discusses Winston & Strawn Amicus Brief Filed in *Ollnova v. Ecobee* With Managing IP



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Winston & Strawn partner Kathi Vidal spoke with Managing IP to discuss the amicus brief filed by the firm on behalf of SAP America, Inc., HP, Inc., Forescout Technologies, Inc., and High Tech Inventors Alliance (HTIA) in *Ollnova v. Ecobee*. The brief argued that the jury instruction and verdict form contradicted existing case law related to Section 101 because they didn't properly take into account that advances that lie entirely in the "realm of abstract ideas" are ineligible for patenting. According to the brief, these instructions allow a jury to find that a claim patent eligible even when the only inventive features are based on an abstract idea.

"Other venues are using the Eastern District of Texas jury instructions as the model on Section 101. I looked at it and realized it was legally incorrect," Kathi said, explaining why she got involved. She added that the issues in the case lined up with her approach to leading the USPTO while she served as director. "I was focused on ensuring that we were protecting U.S. innovation and not allowing folks to lock up innovation," she said.

"The Supreme Court and Federal Circuit struck the right balance when it came to Section 101 and ensuring claims would not be allowed if the inventive concept existed in the abstract realm, and that's what we're asking the court to uphold," Kathi stated.

She noted that this amicus brief is not an attempt to make Section 101 more plaintiff or defendant-friendly. "I have very strong views that Section 101 needs to protect additional innovation like diagnostics. But where it shouldn't get to is the stage where you're allowing parties to claim and lock up abstract ideas," she said.

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