

No. 15-1182

In the Supreme Court of the United States

SEQUENOM, INC.,

Petitioner,

v.

ARIOSIA DIAGNOSTICS, INC., ET AL,

Respondents

On Petition for Certiorari
To The United States Court Of Appeals
For The Federal Circuit

**BRIEF FOR AMICI CURIAE
ELI LILLY AND COMPANY, EISAI INC.,
UPSHER-SMITH LABORATORIES, INC.,
PFIZER INC., AND ETIOMETRY, INC.
IN SUPPORT OF PETITIONER**

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April 1, 2016

QUESTION PRESENTED

The Patent Act contains a set of statutory patentability requirements. In addition to these statutory requirements, the Court has imposed a non-statutory “implicit exception” to patentability. This implicit exception was judicially imposed in part to assure that patents cannot be granted for concepts—or afford exclusive rights that may dominate or otherwise preempt access to concepts. *Concepts*, in this sense, refer to *laws* of nature, natural *phenomena*, or *ideas*, including abstract ideas. The implicit exception similarly bars patents directed or relating to *natural products* and entirely *mental processes*.

The Court has applied the implicit exception as part of a “threshold test” for patentability that operates before other patentability requirements may be considered. The exception, however, does no more than duplicate the statute’s effects when statutory provisions would also invalidate the same patent.

As a threshold test, it has not taken account of the manner in which today’s statutory requirements have evolved to fully address any policy justification for maintaining the exception. When other patent-limiting laws fully vindicate the policies that underlie the implicit exception, judicial restraint might demand outright abrogation of the exception.

Given the current explicit statutory limitations on patenting in the Patent Act—and the proper interpretation of those limitations—should the Court’s judicially imposed implicit exception to subject matter considered to be eligible for patenting be abrogated, such that patentability and patent validity are to be determined solely under such explicit statutory provisions?

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