

No. _____

In The
Supreme Court of the United States

NEOLOGY, INC.,
Petitioner,

v.

INTERNATIONAL TRADE
COMMISSION, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Christopher D. Banys
Counsel of Record
BANYS, PC
1030 Duane Avenue
Santa Clara, California 95054
(650) 308-8505
cdb@banyspc.com

Vinay V. Joshi
Andrew T. Oliver
AMIN, TUROCY & WATSON, LLP
160 W. Santa Clara St.
Suite 975
San Jose, California 95113
(650) 618-6481
vjoshi@atwiplaw.com
aoliver@atwiplaw.com

Counsel for Petitioner

Dated: October 1, 2019

THE LEX GROUP^{PC} ♦ 1050 Connecticut Avenue, N.W. ♦ Suite 500, #5190 ♦ Washington, D.C. 20036
(202) 955-0001 ♦ (800) 856-4419 ♦ www.thelexgroup.com

QUESTION PRESENTED FOR REVIEW

A patent claim is presumed to be valid. However, the patent claim's validity can be challenged on the grounds that it lacks adequate written description in the patent application from which the claim issued ("the relevant patent application"). Separately, the same patent claim's effective filing date can be challenged (without challenging the claim's validity) for lack of adequate written description in an earlier filed "parent" patent application. The parent and the relevant patent applications have different written descriptions because their respective initially filed claims, which conclude the specification, are different. In the proceedings below, only the effective filing date was challenged, not validity. Yet, the Federal Circuit held that because both the filing date and the validity challenges relate to written description, Petitioner was put on notice and waived the argument that the initially filed claims of the relevant patent application provide verbatim written description support for the asserted claims.

In view of this, the Question Presented is:

Whether, as a matter of law and procedural due process, a patent can be invalidated without notifying the patent owner about the specific invalidity challenge posed by the validity challenger and giving the patent owner an opportunity to be heard.

**PARTIES TO THE PROCEEDINGS
AND RULE 29.6 STATEMENT**

Petitioner in this Court (appellant below) is Neology, Inc.

Respondents in this Court (appellee and intervenors below) are the United States International Trade Commission, Kapsch TrafficCom USA, Inc., Kapsch TrafficCom Holding Corp., Kapsch TrafficCom Canada Inc., Star Systems International Ltd., and Star RFID Co., Ltd.

Pursuant to Rule 29.6, One Equity Partners VI L.P. owns 10% or more of the stock of Neology, Inc. There is no parent corporation of Neology, Inc.

STATEMENT OF RELATED PROCEEDINGS

This case is directly related to:

- *Neology, Inc. v. Kapsch TrafficCom IVHS Inc., et al*, case no. 1:13-cv-2052 (LPS), pending in the United States District Court for the District of Delaware; no judgment has issued; the case is currently stayed pending the outcome of International Trade Commission proceedings.

This case is not directly related to the following case under the definition in Rule 14(b)(iii), but the same patents were at issue, in:

- *Neology, Inc. v. Kapsch TrafficCom IVHS Inc., et al*, case no. 2017-1228, United States Court of Appeals for the Federal Circuit, judgment entered June 6, 2018; and
- *Neology, Inc. v. Kapsch TrafficCom IVHS Inc., et al*, case no. 2017-1229, United States Court of Appeals for the Federal Circuit; judgment entered June 6, 2018.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT	ii
STATEMENT OF RELATED PROCEEDINGS	iii
TABLE OF AUTHORITIES	vii
PETITION FOR A WRIT OF CERTIORARI	1
CITATIONS OF OPINIONS BELOW	1
BASIS FOR JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	7
REASONS FOR GRANTING THE PETITION	14
I. The Federal Circuit’s Waiver Ruling Directly Conflicts With This Court’s Precedent Regarding Procedural Due Process And The Requirement That Parties Be Provided Notice And An Opportunity To Be Heard Before Being Deprived Of A Property Interest.	15

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.