

No. 20-

IN THE
Supreme Court of the United States

CONSUMER 2.0, INC. D/B/A RENTLY,

Petitioner,

v.

TENANT TURNER, INC.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Alice Corp. v. CLS Bank International*, 573 U.S. 208 (2014), this Court laid out the standards for analyzing patent eligibility under 35 U.S.C. § 101, and explained the main concern undergirding the analysis was one of preemption. This Court did not lay out the exact boundaries of the test, but rather had previously instructed the Federal Circuit may expand on the test so long as it was consistent with the statute. The Federal Circuit however routinely skips the preemption analysis, and has imported a quasi-section 103 analysis into Step Two of the test for determining whether the claims recite only “conventional” features or amount to “something more” than a claim on the abstract idea itself.

The questions presented here are:

- 1) Whether preemption is a threshold and defining consideration that the lower courts must consider in determining whether a claimed invention is directed to patent eligible subject matter under Section 101, and
- 2) Whether the courts below have erred in conflating the Step Two conventionality analysis of *Alice* with the factual prior art *patentability* analysis of Section 103, without the evidentiary opportunities and protections against hindsight bias afforded by Section 103 and in conflict with this Court’s precedent in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

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

The parties to the proceedings include those listed on the cover. Petitioner states that the party, Consumer 2.0, Inc. d/b/a Rently (“Rently”) does not have any parent corporations and no publicly held companies own 10% of more of the stock of the party.

RELATED CASES

Consumer 2.0, Inc. v. Tenant Turner, Inc., No. 2:18-cv-00355-RGD-DEM, U. S. District Court for the Eastern District of Virginia. Judgment entered November 1, 2018.

Consumer 2.0, Inc. v. Tenant Turner, Inc., No. 19-01846, U.S. Court of Appeals for the Federal Circuit. Judgment entered March 9, 2020.

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