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Supreme Court: Federal Agencies Cannot Seek Review of Issued Patents Under AIA

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The US Supreme Court's decision in *Return Mail, Inc. v. U.S. Postal Service* removes the ability of federal agencies to seek post-issuance review of a US patent under the *inter partes*, covered business method or post-grant review procedures established by the Leahy-Smith America Invents Act of 2011 (the AIA). The Court's June 10 opinion found that a federal agency is not a "person" under the AIA who may petition for post-issuance review.

Return Mail owns a patent that claims a method of processing undeliverable mail and sued the US Postal Service for infringement of that patent. The Postal Service subsequently petitioned the Patent Trial and Appeal Board (PTAB) at the Patent Office for review of the patent under the covered business method procedures of the AIA. The PTAB subsequently found the claims ineligible for patentably. On appeal, the US Court of Appeals for the Federal Circuit affirmed, finding that the Postal Service was a "person" under the AIA and therefore able to seek review under the AIA. The Supreme Court reversed. The Supreme Court reasoned that in the absence of an express definition or "settled" meaning of the term "person" in the patent statutes, the "longstanding interpretive presumption that 'person' does not include the sovereign" should be applied. Thus, the Postal Service is not eligible to seek review under the AIA.

Justice Sonia Sotomayor delivered the 6-3 opinion for the court, with justices Stephen Breyer, Ruth Bader Ginsburg and Elena Kagan dissenting. The majority found that although a federal agency just like a "person" (e.g., an individual, corporation, partnership, or similar entity) may obtain a patent and benefit from its rights, a federal agency cannot petition for post-issuance review under the AIA. While the majority and dissent's analysis of the Dictionary Act and interpretation of the patent statues' language regarding a "federal agency" and a "person" may be of use to future appellate arguments, the practical takeaway is that patent owners have gained an advantage when asserting patents against the federal government.

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