

The Supreme Court - December 11, 2019

Today, the Supreme Court of the United States issued the following opinion:

Peter v. NantKwest, Inc., No. 18-801: Under the Patent Act, an adverse decision by the Patent and Trademark Office (“PTO”) can be appealed directly to the Federal Circuit under 35 U.S.C. §141, or alternatively, a new civil action can be filed in federal district court against the PTO Director under 35 U.S.C. §145. The statutory provision governing this latter pathway provides that “[a]ll the expenses of the proceedings shall be paid by the applicant.” Here, after respondent NantKwest failed at summary judgment in its §145 action, the PTO moved for reimbursement of all expenses, including the pro rata salaries of PTO attorneys and a paralegal who worked on the case. The District Court denied the PTO’s motion for reimbursement, and the en banc Federal Circuit affirmed. Today, the Court affirmed, holding that the PTO cannot recover the salaries of attorney and paralegal employees under §145, determining that Congress did not intend to depart from the American Rule presumption that each litigant pays his own attorney’s fees, win or lose.

The Court's opinion is available [here](#).

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