



Is the Government a ‘Person’? NYIPLA tells SCOTUS it depends

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On Monday, December 17, 2018, the New York Intellectual Property Association (“NYIPLA”) filed an [amicus brief](#) in support of neither party in *Return Mail, Inc. v. United States Postal Service*, No. 17-1594 (U.S.).

In the proceedings below, the Patent Trial and Appeal Board (“PTAB”) issued a final written decision in a Covered Business Method patent review (“CBM”) proceeding instituted based on a petition by the U.S. Postal Service (“USPS”), invalidating certain claims of a patent owned (and asserted in the U.S. Court of Federal Claims) by Return Mail, Inc. USPS is a “government entity” as recognized in *United States Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540 U.S. 736, 748 (2004). The U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) affirmed the PTAB’s holding that USPS has standing to file a petition to institute a CBM proceeding.

The U.S. Supreme Court granted Return Mail’s petition for a writ of certiorari on the question of whether the government is a “person” who may petition to institute review proceedings under the AIA.

While the NYIPLA took no position as to the ultimate merits of Petitioner Return Mail’s underlying position, i.e., whether the government is a “person” who may petition to institute a CBM proceeding under AIA § 18(a)(1)(B), the NYIPLA argued that it strongly believes that the Court should carefully consider the potential implications of interpreting “person” in Title 35 of the U.S. Code (“Patent Act”) and the AIA as including or excluding the government generally, and then issue only a narrow holding on the scope of “person” under AIA § 18(a)(1)(B) and, if at all, under 35 U.S.C. §§ 311(a) and 321(a).

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