

**QUANTITY OVER QUALITY?:  
LIFE TECHNOLOGIES GET NEW LIFE IN ITS PATENT LAWSUIT:**

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Yesterday, the Supreme Court breathed new life into Life Technologies, Inc., by reversing the Federal Circuit, which had improperly construed §271(f)(1). Section 271(f)(1) prohibits the supply from the U.S. of “all or a substantial portion” of the components of a patented invention for combination abroad. At issue was whether the words ‘all or a substantial portion’ refers to a quantitative or a qualitative measurement. Analyzed through basic principles of statutory interpretation that could only point to a quantitative interpretation, the Supreme Court unanimously<sup>1</sup> held that multiple components must be shipped outside of the United States in order to trigger §271(f)(1) liability. Even had the statute provided a basis to hold that a qualitative measurement should be part of any analysis, Justice Sotomayor jettisoned such an *ad hoc* approach that would compound ambiguity and sow confusion among the district courts and market participants alike.

Thus, in a case that resided at the “intersection of international business and federal patent law,” i.e., the intersection of litigation, business, and intellectual property, the justices unsurprisingly found that the shipment of just one component of a multi-component invention can never translate into patent infringement. As Justice Alito noted in his concurrence, the Supreme Court has now established that the supply of more than one component is necessary to constitute a substantial portion of an invention’s components for §271(f)(1) purposes. However, the opinion does not address how many more.<sup>2</sup>

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<sup>1</sup> Chief Justice Roberts did not take part in the decision even though he was present for oral argument.

<sup>2</sup> This practitioner would not be surprised if Congress, especially in the current political climate, were to amend §271(f)(1) to address the holding in yesterday’s opinion, which can be found [here](#), that limited the reach of overseas patent infringement.