The Supreme Court issued its opinion in Peter v. Nantkwest, Inc. on December 11, 2019. The Court affirmed the Federal Circuit’s en banc decision, concluding that the Patent Office is not entitled to collect its attorney fees in direct appeals of Patent Office decisions in the federal district court under 35 USC 145. While Section 145 provides that “all expenses of the proceedings shall be paid by the applicant,” the term “expenses” does not include the Patent Office’s attorney fees. Rather, the American Rule, which presumes that each litigant pays its own attorney fees unless a statute or contract explicitly provides for payment of attorney fees, applies in these cases.

The Court’s decision and reasoning are consistent with the American Bar Association’s amicus brief in this case, which was drafted by Ted Davis, Matthew Meyer, and Mitch Stockwell of Kilpatrick Townsend & Stockton LLP. Thanks to them and our Section leadership who took the initiative back in 2015-16 to draft the policy that supported this brief and got it approved by the ABA House of Delegates.