

No. 21-1281

In The
Supreme Court of the United States

INTERACTIVE WEARABLES, LLC,
Petitioner,

v.

POLAR ELECTRO OY AND
POLAR ELECTRO INC.,
Respondents.

*On Petition for Writ of Certiorari to
The United States Court of Appeals
For the Federal Circuit*

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the District Court for the Eastern District of New York correctly concluded that the claims of U.S. Patent Nos. 9,668,016 (“016 Patent”) and 10,264,311 (“311 Patent”) (collectively, the “Asserted Patents”) are directed to a patent-ineligible abstract idea and fail to recite inventive concepts, as summarily affirmed by the Court of Appeals for the Federal Circuit.

**PARTIES TO THE PROCEEDING AND
CORPORATE DISCLOSURE STATEMENT**

The Respondents are Polar Electro Oy and Polar Electro, Inc. (collectively, “Polar”). Polar Electro, Inc. is a wholly-owned subsidiary of Polar Electro Oy. Polar Electro Oy has no parent corporation and no publicly held company owns 10 percent or more of its stock.

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INTRODUCTION

Respondents, Polar Electro Oy and Polar Electro, Inc. (collectively, “Polar”), file this Brief in Opposition to the Petition for Writ of Certiorari (“Petition”) filed by Interactive Wearables, LLC (“Petitioner”). At issue is a forgettable Section 101 case regarding patents appropriately likened to a TV Guide. There is no reason for this Court to exercise its discretionary jurisdiction in this matter, let alone a compelling reason.

The Petition is an improper attempt to re-litigate the merits of Polar’s granted motion to dismiss. The Petition itself makes this apparent. Petitioner argues that both “this Court and the Federal Circuit have made clear that the proper analysis of what a claim is directed to at step one must remain focused on the claim language itself.”¹ While there admittedly is a “clear” analysis to be performed, Petitioner complains that the district court misapplied this clear guidance.

The Petition seeks nothing more than for this Court to reassess an alleged misapplication of a properly stated rule of law. This is not a proper ground for certiorari.²

Petitioner also attempts to associate itself with the pending *American Axle & Manufacturing Inc. v. Neapco Holdings LLC* petition in the hopes that this Court will hold its Petition. Despite mimicking the

¹ Petition at p. 4.

² Sup. Ct. R. 10.

American Axle questions presented, the instant Petition differs both in kind and in posture.

American Axle relates to a patent supposedly directed to a natural law; the instant Petition relates to patents directed to an abstract idea—namely obtaining information about content while viewing that content. (Think of looking at a TV Guide to learn more about the show on television). The Federal Circuit consistently—and without fanfare—holds claims directed to obtaining or transmitting information to be unpatentable abstract ideas. These types of claims are out of the realm of *American Axle*, which relates to a method of manufacturing that incorporates a natural law.

More striking, however, is the posture of the two cases. Here, the Federal Circuit summarily and unanimously affirmed the district court's decision without an opinion. Petitioner moved for a panel rehearing and a rehearing *en banc*. The Federal Circuit summarily rejected both requests, again without a written opinion.

The Federal Circuit, on the other hand, has been divided on *American Axle* since its outset. The initial Federal Circuit split decision included a passionate dissent. While the rehearing *en banc* was denied, the decision was evenly divided six-to-six with another dissent and requests for this Court to review *American Axle*. In total, ten judges joined five opinions either concurring in or dissenting from the *en banc* denial. The panel issued a modified divided decision.

The Federal Circuit has spent countless hours and pages debating *American Axle*; the Federal Circuit summarily dispelled the instant case, including Petitioner's rehearing requests. This case and *American Axle* are beyond dissimilar. Any suggestion that they are alike ignores reality.

The Petition should be denied.

POLAR'S OBJECTIONS TO PETITIONER'S STATEMENT OF THE CASE

Polar objects to the Statement of the Case on pages 7 through 15 of the Petition as being overly argumentative and misrepresenting both the Asserted Patents and the district court opinion.

Polar addresses these issues in short order because they generally relate to the district court's purported misapplication of law, and Polar understands that petitions with such a focus are rarely granted. While likely inconsequential, Polar makes the following objections to avoid waiver.

(1) Petitioner misstates the inventions disclosed in the Asserted Patents. For instance, Petitioner states that the Asserted Patents are directed to "improved devices" with components that allow wirelessly-coupling a remote control so that users can receive information instantaneously.³

The Asserted Patents, however, are not directed to improved devices or new components.

³ Petition at pp. 8-10.

They are, instead, directed to providing information in conjunction with media content.⁴

Petitioner also argued that the Asserted Patents were directed to some sort of improved wireless coupling—along with other technical improvements—but the Asserted Patents belie these arguments. As the district court correctly noted, “simply dubbing these components as ‘wirelessly coupled’ . . . makes them no more patentable than any similarly empty designation, such as suggesting they be made submersible, heat resistant, or bulletproof.”⁵

If the Asserted Patents were directed to the technological improvements claimed by the

⁴ *See e.g.*, App. 18 (“the Asserted Patents specifically identify the problem as being the failure of the prior art to ‘provide . . . broadcasts along with information regarding the content of the respective broadcast,’ which the claimed invention overcomes by setting out ‘an apparatus and method for providing information in conjunction with media content.’”) (citing the ’016 Patent, col. 2 ll. 37-55). As the district court noted, the Asserted Patents were directed to merely this *idea* of providing information because no specific inventive components or combination of components were even mentioned. *see* App. 19-20 at fn. 6 (district court quoting the Asserted Patents and noting that the Asserted Patents go “to great lengths to avoid any specifics in describing the components”); *see also* App. 19-20 (“ In short, the specification here ‘never suggests that the [content player] itself is improved from a technical perspective, or that it would operate differently than it otherwise could. Nor does the specification suggest that the invention involved overcoming some sort of technical difficulty in adding [simultaneous information provision] capability to the [content players].”)

⁵ App. 26.

Petitioner, presumably the Asserted Patents would at least discuss said improvements.⁶ They do not.⁷

(2) Petitioner misstates the district court's analysis. For example, Petitioner states that the district court disregarded (a) the Asserted Patents' recited components and (b) the complaint's allegations. This is wrong.

The district court thoroughly addressed both of these subjects.⁸ Petitioner's grievance is not that the district court failed to adequately assess the Asserted Patents or apply the applicable law; Petitioner's grievance is that the district court (and the Federal Circuit) applied that law in a manner with which Petitioner disagrees.⁹

⁶ App. 26. It is both commonsensical and in line with this Court's and the Federal Circuit's clear guidance for a district court to examine the language of a patent to determine what an invention is "directed to" under Step 1 of this Court's two-step Section 101 framework. Polar discusses this later in this response.

⁷ *See e.g.*, App. 19-29.

⁸ *See e.g.*, App. 34 ("Plaintiff's allegations of inventiveness are 'mere conclusory statements' which may properly be disregarded."); App. 34-36 ("Turning to the components recited in the claims . . .").

⁹ Polar further objects to Petitioner's Questions Presented because they are either not addressed in the Petition, undercut throughout the Petition, or otherwise not implicated by this case. To avoid duplication, Polar addresses the Questions Presented in the body of its response.

STATEMENT OF THE CASE

I. This Court has long identified abstract ideas as not being eligible for patent protection

Section 101 of the Patent Act states: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent thereof, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. This Court has consistently held that abstract ideas, along with laws of nature and natural phenomena, are not patentable because they are “the basic tools of scientific and technological work.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (collecting cases).

This Court explained in its *Alice* decision that implementing an abstract idea on a physical machine or on a computer does not necessarily render an otherwise ineligible patent claim eligible for patentability under Section 101. *Alice*, 573 U.S. at 222-23. As this Court noted, a focus on merely the physical or tangible aspects of a claimed invention “would make the determination of patent eligibility ‘depend simply on the draftsman’s art,’ thereby eviscerating the rule that ‘laws of nature, natural phenomena, and abstract ideas are not patentable.’” *Alice*, 573 U.S. at 224 (citing *Parker v. Flook*, 437 U.S. 584, 593 (1978); *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 590 (2013)).

Years earlier, in *Bilski*, this Court explained that *Flook* stood for the proposition that the prohibition against patenting abstract ideas cannot

be avoided by limiting the ineligible concept “to a particular technological environment or adding insignificant postsolution activity.” *Bilski v. Kappos*, 561 U.S. 593, 610 (2010).

II. Patents similar to the Asserted Patents are consistently held to be ineligible using this Court’s well-established two-step approach

This Court has confirmed its two-step test for determining whether patents are eligible under Section 101. *See Alice*, 573 U.S. at 217 (citing *Mayo Collaborative Servs. v. Prometheus Lab’ys, Inc.*, 566 U.S. 66, 72-73 (2012)). The court first determines whether the patent claims at issue are directed to a patent-ineligible concept, like an abstract idea. *Alice*, 573 U.S. at 217-18. If the answer is yes, the court decides whether the patent claims contain an inventive concept that is sufficient to transform the nature of the claim into a patent-eligible application. *Id.*

The Federal Circuit has diligently applied the two-step approach to invalidate a multitude of patents like the Asserted Patents—those patents which are directed to analyzing, transmitting, or displaying information—because they are abstract ideas. *See e.g., Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (collecting cases). This is not a new development—or even a development since *Alice*. *See e.g., CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011) (holding patent claims directed to obtaining information about credit card transactions utilizing the Internet to be invalid).

Patents that are directed to transmitting information—whether it is credit card information or information related to the television show being watched—have been consistently found to be ineligible abstract ideas.

III. A brief synopsis of this case’s procedural history

Petitioner filed its district court action against Polar on May 23, 2019, alleging infringement of the Asserted Patents.¹⁰ Polar moved to dismiss the complaint pursuant to Rule 12(b)(6) and argued that the Asserted Patents are directed to patent ineligible subject matter under Section 101 of the Patent Act. Polar argued, in part, that the “Asserted Claims recite the abstract idea of providing information related to certain media . . . using a content player that includes generic components used for their common purpose.”¹¹ Petitioner countered arguing, again in part, that the asserted claims are “directed to a physical device having a specific combination of non-generic hardware components with specific features . . .”¹²

The district court laid out the legal standards for patent eligibility under Section 101, ruling on Polar’s motion at the pleadings stage, and ruling on claims collectively.¹³ Notably, the district court identified that step one of the *Alice* inquiry is “not concerned with ‘whether the claims *involve* a patent-

¹⁰ App. 3-4.

¹¹ App. 16-17.

¹² *Id.*

¹³ App. 7-14.

ineligible concept’; rather, it ‘applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject matter.’”¹⁴ The district court noted that step one is “concerned with the ‘risk that a claim will pre-empt others from using an abstract idea’ regardless of its implementation.”¹⁵

The district court acknowledged that the district court “must be careful to avoid oversimplifying the claims’ [sic] by looking at them generally and failing to account for the specific requirements of the claims.”¹⁶

The district court, after walking through the legal standards it had previously explained, granted Polar’s motion to dismiss and determined that the asserted claims were directed to “providing information in conjunction with media content.”¹⁷

Petitioner appealed from the district court’s dismissal order and judgment. After briefing and oral argument, the Federal Circuit affirmed the district court’s ruling without an opinion pursuant to Federal Circuit Rule 36, which states that the court “may enter a judgment of affirmance without opinion . . . when it determines that any of [certain] conditions exist and an opinion would have no precedential value.”

¹⁴ App. 7-8.

¹⁵ App. 8.

¹⁶ App. 11 (citations omitted).

¹⁷ App. 22.

Petitioner petitioned the Federal Circuit for rehearing *en banc* and panel rehearing. The Federal Circuit denied both without opinion.¹⁸

IV. The Asserted Patents are directed to providing information in conjunction with media content

The district court dismissed the case based on the Asserted Patents' own admissions about the claimed invention. The Federal Circuit dispatched the Asserted Patents as quickly and as painlessly as possible: it summarily affirmed the district court's decision without an opinion and then denied Petitioner's two rehearing requests, again without seeing the need for written opinion.

Even a cursory review of the Asserted Patents shows that such curt treatment is warranted. The Asserted Patents each contain thirty-two claims, including method, system, and apparatus claims—and each of the claims is directed to the same idea: providing information in conjunction with media content. Claim 32 of the '016 Patent recites a number of common components (*e.g.*, receiver, display, memory, content player, processor) purportedly intended to achieve the claimed goal: “to provide to the user at least a portion of the information associated with the content.”¹⁹

This claimed goal of the invention—to provide information about media content—is corroborated by the Asserted Patents' specifications. They explain the purpose of the invention is to provide TV Guide type

¹⁸ App. 48-49.

¹⁹ *See* Petition at p. 11 (claim 32).

information to “an individual [who] may also wish to know, without having to resort to a printed TV Guide, which may not be at hand, or having to switch channels to an online TV Guide, when the TV program, show or movie started and when it will finish or how much of it has been missed, in order to be able to decide whether or not to watch this TV program, show or movie.”²⁰

The Asserted Patents expressly state this purpose as “providing information in conjunction with media content, which overcomes the shortfalls of the prior art.”²¹ As the district court identified, “the Asserted Patents specifically identify the problem as being the failure of the prior art to ‘provide broadcasts along with information regarding the content of the respective broadcast,’ which the claimed invention overcomes by setting out ‘an apparatus and method for providing information in conjunction with media content.’ Nothing else is described in the specification as the invention.”²²

So that is the invention: providing information in conjunction with media content. It is not a special way to provide this information, a special way to transmit this information, or a special way to display this information (*e.g.*, an inventive networking protocol).²³ This is all confirmed by the Asserted Patents’ claims and specifications.

²⁰ App. 4-5 (quoting the ’016 Patent).

²¹ App. 5 (quoting the ’016 Patent).

²² App. 18 (quoting the ’016 Patent); *see also* fn. 4, above.

²³ App. 29 (concluding that that “the components and their arrangement fail to present ‘a particular way of performing’ the abstract idea of providing information in conjunction with media content”).

REASONS FOR DENYING THE PETITION

I. **There is no compelling reason to grant this Petition**

This case is not appropriate for this Court. It does not involve a conflict among the circuit courts of appeals, and there is clearly no conflict at the Federal Circuit. The Federal Circuit summarily disposed of Petitioner's case three times without ever even seeing the need for a written opinion. Sometimes Section 101 determinations are easy; this is one of those cases.

Petitioner, for some reason, believes this Court is the appropriate next step. It is not. "A petition for a writ of certiorari will be granted only for compelling reasons. . . . A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."²⁴ This Court employs a "high degree of selectivity" in exercising its certiorari jurisdiction.²⁵ Such a high degree of selectivity is employed because the "decision to grant certiorari represents a commitment of scarce judicial resources . . ." ²⁶

Petitioner does not—and cannot—point to an improperly stated rule of law from either the district

²⁴ Sup. Ct. R. 10 (emphasis added).

²⁵ *Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting).

²⁶ *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985).

court or the Federal Circuit.²⁷ Petitioner’s arguments amount to unfounded grievances with the district court’s application of the clearly stated law and Petitioner’s *assumption* of how the Federal Circuit analyzed this case. Reconsideration of the district court’s application of the correct law to the facts of this case is not a compelling issue that warrants a grant of Certiorari.

II. Petitioner’s Questions Presented are not implicated by the Petition

Petitioner presents three questions, the first two of which are parroted from *American Axle* and are not implicated by this case. The first question—the appropriate standard for determining whether a patent claim is “directed to” a patent-ineligible concept—is undercut by the Petition. Petitioner admits that “both this Court and the Federal Circuit have made clear that the proper analysis of what a claim is directed to at step one must remain focused on the claim language itself . . .”²⁸ Petitioner’s characterization is an oversimplification but, by Petitioner’s own admission, this Court and the Federal Circuit have “made clear” how to assess the “directed to” inquiry. Petitioner’s true grievance is the district court’s case-specific application of the clear law.

²⁷ The district court itself stated accurately the very legal principles that Petitioner now complains of. *See e.g.*, App. 18 (“[w]hile ‘[t]he § 101 inquiry must focus on the language of the Asserted Claims themselves,’ the specification may nonetheless be useful in illuminating whether the claims are ‘directed to’ the identified abstract idea.”).

²⁸ Petition at p. 4.

Petitioner fails to even truly address the second question presented—whether the patent eligibility determination is a question of law or fact. In addition, the district court acknowledged that “subsidiary fact questions” may inform “the ultimate determination of eligibility under § 101,” explained that patent eligibility should be determined at the Rule 12(b)(6) stage “only when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law,” and recognized that “plausible factual allegations may preclude dismissing a case under § 101 where, for example, nothing on the record . . . refutes those allegations as a matter of law or justifies dismissal under Rule 12(b)(6).”²⁹ Petitioner does not take issue with any of those principles. Rather, Petitioner asserts (incorrectly) that the district court erred in applying those principles to the facts of this case.³⁰

The third question presented asks whether it is proper to apply 35 U.S.C. § 112 considerations to determine whether a patent claims eligible subject matter under 35 U.S.C. § 101. This question is not implicated by this case. No one—neither Petitioner nor Polar, not the district court or the Federal Circuit—contends that Section 112 considerations should inform the Section 101 inquiry.

Petitioner acknowledges that this Court has explained multiple times that “patent eligibility

²⁹ App. 12-13 (quotation marks, citations, and alteration omitted).

³⁰ *See* Pet. 13 (arguing that the district court “did not credit the complaint’s factually supported allegations”); *id.* at 16 (asserting that the district court improperly “made factual determinations about the adequacy of the specification’s disclosure”).

under Section 101 is separate from . . . the enablement inquiry of Section 112.”³¹ No one disagrees, and there is no legal dispute for this Court to resolve.

Petitioner uses its questions presented to suggest some similarity with the pending American Axle petition where there is none. As noted, not one of the questions presented by Petitioner is implicated by the Petition. Instead, review of the entire Petition reveals that Petitioner asks this Court to make a case-specific determination that the district court misapplied well-established law, and seeks reconsideration of the Federal Circuit’s summary affirmance. That is not a reason to grant the Petition.³²

III. The district court properly applied the well-established “directed to” inquiry

The essence of Petitioner’s grievance is that the district court purportedly misapplied step one—the “directed to” inquiry—of this Court’s two-step approach in assessing patent eligibility.³³ Petitioner

³¹ Petition at p. 18.

³² Sup. Ct. R. 10.

³³ *See e.g.*, Petition at Questions Presented (“As a justification for disregarding each recited structural component from its characterization of what the claims are ‘directed to,’ the court resorted to a factual, enablement-style analysis”); p. 4 (“the district court improperly disregarded every recited claim component from its determination of what the claimed contentplayer/remote-control combination is ‘directed to’ at step one of the Alice patent eligibility test . . .”); p. 13 (“In determining what the claims are ‘directed to’ the district court disregarded every concretely-recited component of the claimed device by finding that the specification failed to describe their operation in sufficient detail or failed to expressly characterize such components as inventive”).

argues that this Court and the Federal Circuit “have made clear” that the “directed to” analysis should focus on the claim language, but the district court inappropriately looked at the Asserted Patents’ specifications to better understand the claimed invention.³⁴

This is not an appropriate issue for this Court because, by Petitioner’s own admission, this is a well-established rule of law. But even if this were appropriate for this Court, Petitioner is wrong on both the law and the district court’s application of it.

- a. The district court appropriately looked to the specification

This Court has long encouraged courts to look at the patent specification to understand an invention, and the district court was right to do so in the instant case. For instance, the district court notes that the “directed to” inquiry may involve looking to the specification to understand “the problem facing the inventor” and “ultimately, what the patent describes as the invention.”³⁵

The district court cites *ChargePoint* for this point of law. *ChargePoint*, in turn, cites two separate opinions from this Court: *Parker v. Flook*, 437 U.S. 584, 586, 98 S.Ct. 2522, 57 L.Ed.2d 451 (1978) (noting that the patent application provided nothing more than a formula for computing an alarm limit); *cf.*

³⁴ The Asserted Parents share a common specification, as noted by Petitioner. Petition at p. 9, fn. 1.

³⁵ App. 18 (*citing ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 767 (Fed. Cir. 2019)).

United States v. Adams, 383 U.S. 39, 49, 86 S.Ct. 708, 15 L.Ed.2d 572 (1966) (“[I]t is fundamental that claims are to be construed in the light of the specifications and both are to be read with a view to ascertaining the invention.”) This Court has also looked to the patent specification in *Alice* to fully understand the claimed invention. *See Alice*, 773, U.S. at 212-13.

And it makes complete sense to look at a patent’s specification to understand the focus of the claimed invention. This is where the inventor provides the background of the invention, the background of the relevant technology, the problems that necessitate the invention, the detailed description of the invention, and the figures related to the invention. It is illogical to ignore all of this relevant information when trying to understand the claimed invention. *See Alice*, 573 U.S. at 212-13.

Petitioner argues that the district court’s assessment of the patent specification amounted to an “enablement-style analysis,” but this is wrong. The district court identified that the Section 101 inquiry “must focus on the language of the Asserted Claims themselves” but the “specification may nonetheless be useful in illuminating whether the claims are ‘directed to’ the identified abstract idea.”³⁶ That is precisely what the district court did—analyzed the claims and used the specification to illuminate the court’s understanding of the invention. This is the analysis outlined in and applied by this Court in *Alice*. 573 U.S. at 212-13.

³⁶ App. 18.

For example, when Petitioner argued at the district court that its invention was somehow directed to improved wireless coupling, the district court was right to look to the asserted patents to determine the veracity of this argument. The district court found that “simply dubbing these components as ‘wirelessly coupled’ . . . makes them no more patentable than any similarly empty designation, such as suggesting they be made submersible, heat resistant, or bulletproof.”³⁷ The district court did not confuse Section 101 with Section 112, and Petitioner can point to no evidence of it.³⁸

And as mentioned above, no party or relevant court contends that a Section 112 enablement analysis should be incorporated into the Section 101 inquiry. There is no dispute of law. And even if the district court misunderstood the well-established guidance—which it did not—this would be a case-specific issue that is inappropriate for this Court.³⁹

³⁷ App. 26.

³⁸ The Brief for the United States as Amicus Curiae in the *American Axle* case supports the district court’s analysis. *See* p. 15 (“The panel majority was correct that ‘claims that state a goal without a solution are patent-ineligible.’”); *id.* (“Section 101 thus does not permit, for example, a claim for illuminating dark rooms by any efficacious means . . . Such claims identify a goal to be achieved, but do not recite a ‘process’ for achieving it.”).

³⁹ Sup. Ct. R. 10.

- b. This case is a prime example of why this Court has guided lower courts to look at the patent specification to aid in understanding the claimed invention

This Court has written about its concern in allowing the patent eligibility determination to depend on the draftsman's art. *Alice*, 573 U.S. at 224. This case is a good example of why there is such a concern.

Petitioner argues that the Asserted Patents are directed to “improved devices for playing audio and visual content, such as cellphones, radios, and wearable devices.”⁴⁰ To support this argument, Petitioner points to claim 32 of the '016 Patent, which claims “a content player” that comprises various components to perform certain functions (*e.g.*, a processor to process content and information; a display for displaying, a memory for storing, a playing device for playing content, a wireless remote to remotely control the player).⁴¹

In Petitioner's view, the district court ought to have looked at solely the claim language—“a content player comprising . . .”—to determine that the Asserted Patents' claims were directed to a tangible, physical invention. But this would ignore what the inventor states as the invention: “an apparatus and method for providing information in conjunction with media content.”⁴² It would also ignore the Asserted Patents' other claims. For example, claim 11 of the

⁴⁰Petition at p. 8, 10-11.

⁴¹Petition at p. 11.

⁴²App. 18 (quoting the '016 Patent).

'016 Patent claims “a method of providing content,” not a tangible device.

The district court was right to focus on the claims but also look to the patent specification to understand the invention. And when the district court looked at the entire patent, it found that the Asserted Patents were not directed to an improved device but to the abstract idea of providing information in conjunction with content.⁴³

Here, Petition is asking this Court to do one of two things: (1) to disregard its precedents and instruct lower courts to pay no attention to the patent specification during a Section 101 analysis; or (2) to find that the district court focused too much on the patent specification and not enough on the patent claim language.⁴⁴

The first would be entirely new guidance, which is both impractical and in direct conflict with this Court’s precedents going back decades.⁴⁵ The second is a case-specific question where a district

⁴³ App. 18-29.

⁴⁴ Petitioner also appears to argue that the Asserted Patents are patent eligible because certain claims include “tangible, physical” components. *See e.g.*, Petition at 10-12. This directly conflicts with this Court’s guidance. *See Alice*, 573 U.S. at 224.

⁴⁵ If Petitioner is truly asking this Court to revisit *Alice/Mayo* step one, Petitioner waived such an argument. Petitioner never preserved this argument and is arguing that the *Alice/Mayo* standard should be revisited for the first time in this Petition. *See Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 109 (2001).

court supposedly misapplied well-established law. Either way, this Petition should be denied.

IV. This case should not be held pending *American Axle*

The Petition essentially copies the *American Axle* questions presented. Based on that copying, Petitioner compares this case to the pending *American Axle* petition and asks this Court to hold the Petition pending disposition of *American Axle*. Petitioner alleges that (1) the district court improperly employed a quasi-enablement analysis in its *Alice* analysis that may be rejected by *American Axle*; and (2) the district court improperly found facts against Petitioner, which alleged fact finding may also be rejected by *American Axle*. Petitioner is wrong. And even if Petitioner were correct that the district court were erroneous on these issues, these are case-specific issues not appropriate for this Court.

Other than involving Section 101, this case and *American Axle* are dissimilar, both in substance and in posture.

- a. This case and *American Axle* are not alike

The instant case involves patent claims directed to providing content and associated information to a user. As noted above, the Federal Circuit and this Court have consistently held ideas like this to be ineligible.

American Axle, on the other hand, involves manufacturing-related patent claims, the law of

nature exception, and involves issues that are specific to that case. For example, the eligibility of the claims at issue in *American Axle* depended on minor differences in the patent claims—claim 1 found to be not ineligible and claim 22 found to be ineligible. *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 967 F.3d 1285, 1300-01 (Fed. Cir. 2020). In fact, the Federal Circuit *explicitly* did not address the abstract-idea exception—the exception relevant to the instant case—and instead remanded that issue to the district court to be addressed in the first instance. *Id.*

Furthermore, the district court resolved this case on a Rule 12 motion to dismiss, while *American Axle* was decided at summary judgment after claim construction and expert testimony, both of which affected the Federal Circuit’s decision. *See Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 967 F.3d at 1295. Neither claim construction nor expert testimony was necessary for the district court and the Federal Circuit to determine that Petitioner’s Asserted Patents were directed to an ineligible abstract idea.

Additionally, Petitioner not only fails to show that the district court’s decision rests on disputed principles of law that this Court may reject in *American Axle*, Petitioner itself argues that the district court erred by *not* following *American Axle*.⁴⁶

The difference between the two cases is only highlighted by the recent Brief for the United States as Amicus Curiae. Much of that brief focuses on the “law of nature” exception applied in *American Axle*,

⁴⁶ Petition at p. 19-21.

which is not relevant in the instant case. This focus is unsurprising considering the Federal Circuit *explicitly* did not address the abstract-idea exception and instead remanded that issue to the district court to be addressed in the first instance. *Am. Axle & Mfg.*, 967 F.3d at 1300-01.⁴⁷

But the most glaring difference between the two cases is their histories. In this case, the Federal Circuit summarily and unanimously affirmed the district court's decision without an opinion, and then quickly denied Petitioner's motion for a panel rehearing and a rehearing *en banc*, again without the need for a written opinion. There is no difference of opinion in the decisions below.

The Federal Circuit, on the other hand, has long been divided on *American Axle*. There was a split panel decision, and the court was split 6-to-6 on granting an *en banc* rehearing. Unlike this case, there is a clear split in the opinions of the Federal Circuit in *American Axle*.

In short, the similarities between *American Axle* and this case begin and end with the mere fact that both cases touch on Section 101.

⁴⁷ *See e.g.*, Brief for the United States as Amicus Curiae (20-891, May 24, 2022) at p. 12 (“Courts thus should be skeptical of any assertion that a claim for the sort of process that has long been held patent-eligible . . . is unpatentable under the ‘law of nature’ exception”); p. 13 (“has considered whether a claim would ‘tie up too much future use of laws of nature’”); p. 13 (“Like [e]very mechanical invention,” claim 22 ‘requires use and application of the laws of physics.’”).

- b. Petitioner misunderstands the concerns raised by the dissenting opinions in *American Axle*

Petitioner attempts to lump its case in with *American Axle* because there is no reason for this Court to entertain the Petition on its own. Petitioner points to a purported “recurring issue” with district courts using a “quasi-enablement inquiry” to make their Section 101 determinations, similar to the concerns raised by the dissenting opinions by Judge Moore in *American Axle*.

To support its argument, Petitioner identifies four recently-filed petitions to this Court which, Petitioner argues, have “effectively raised the same issue.”⁴⁸ Petitioner either misunderstands or overstates Judge Moore’s concern because those four cases undercut Petitioner’s argument.

The Federal Circuit affirmed the ineligibility of the patents-at-issue in all four of those cases, and not one included a dissent related to a “quasi-enablement” theory—or any dissent at all. In fact, Judge Moore was on the panel for two of the four cases and wrote one of the opinions affirming the patent’s ineligibility. *See iLife Techs., Inc. v. Nintendo of Am., Inc.*, 839 F. App’x 534, 537 (Fed. Cir.), cert. denied, 142 S. Ct. 109, 211 L. Ed. 2d 32 (2021). And two of the four cases were summarily affirmed without opinion, one of which included Judge Moore on the panel.⁴⁹

⁴⁸ Petition at p. 22.

⁴⁹ This Court denied all four of those petitions.

So while Petitioner points to four recent petitions in an attempt to argue there is a “recurring issue” that amounts to an emergency, neither the Federal Circuit nor Judge Moore agrees, at least based on the four petitions cited. Instead, those four cases show consistency—a number of different Federal Circuit judges agreeing on these issues in the same way that the Federal Circuit denied Petitioner’s *en banc* rehearing request without opinion or dissent.

This case—like the four cases Petitioner cites—is solely its own case and not implicated by *American Axle*.⁵⁰

V. This case is an unsuitable vehicle for resolving Petitioner’s questions presented

Petitioner argues that this case would be a good vehicle for review because the Asserted Patents’ claims involve “relatively straightforward and understandable technology” that are “concretely recited.”⁵¹

It is true that the technology is straightforward: almost everyone understands how a TV Guide works. But, again, Petitioner misunderstands or ignores consistent guidance from this Court.

⁵⁰ Petitioner also states that the district court determined questions of fact regarding the Asserted Patents’ claimed tangible components. As discussed above, Petitioner is wrong and, even if it were correct, this again would be a case-specific error and not appropriate for this Court. *See* Sup. Ct. R. 10.

⁵¹ Petition at pp. 23-24.

The mere fact that patent claims recite tangible components is immaterial when the claims are directed to an abstract idea. This Court made that point clear in *Alice*: “if that were the end of the § 101 inquiry, an applicant could claim any principle of the physical or social sciences . . . [and] such a result would make the determination of patent eligibility ‘depend simply on the draftsman’s art . . .’” 573 U.S. at 224 (citations omitted).

Petitioner cites Judge Newman’s dissenting opinion in *Yu v. Apple Inc.* to claim that before the “recent chaos” it would be “unthinkable to consider such a mechanical and electronic device of defined structure and mechanism” ineligible under Section 101.⁵² But this, again, only undercuts Petitioner. Judge Newman dissented from the *Yu* decision; no judge dissented in the instant case or even felt that a written opinion was necessary. Judge Newman (and Judge Moore) joined the Federal Circuit’s denial for rehearing in this case. So, at least by the evidence available, the Federal Circuit judges who have expressed certain concerns related to Section 101 had no concerns with this case.

Furthermore, this case *cannot* be a good vehicle for the questions presented because, as discussed above, these questions are either not implicated by this case or are undercut by the Petition itself.

Petitioner may believe its case is special, but it is not. This is just another forgettable Section 101 decision that was appropriately decided at the Rule

⁵² *Yu* also petitioned this Court; this Court denied the petition. Case no. 21-811.

12 stage and then summarily—and appropriately—affirmed by the Federal Circuit.

CONCLUSION

Petitioner has not established any compelling reason for this Court to grant the Petition. Polar respectfully requests that the Petition be denied.

Respectfully submitted,

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