

No. 23-1184

In the
Supreme Court of the United States

EOLAS TECHNOLOGIES INCORPORATED,
Petitioner,

v.

AMAZON.COM, INC., *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

**BRIEF OF RESPONDENTS
IN OPPOSITION**

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QUESTION PRESENTED

This Court has long held that “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable under Section 101 of the Patent Act, 35 U.S.C. § 101. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (citation omitted); *see also O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 112-20 (1854). In *Alice*, the Court reaffirmed that “the ‘abstract ideas’ category embodies the longstanding rule that “[a]n idea of itself””—*any* idea of itself—“is not patentable.” *Id.* at 218 (alteration in original) (citation omitted). The concern undergirding the rule is one of preemption—namely, granting to private interests monopolies over vast swaths of future innovation based on patent claims that recite ideas or results untethered to any innovative way of achieving them. *Morse*, 56 U.S. at 112-13; *see Alice*, 573 U.S. at 216, 225-27. Thus, a patent claim must be limited by an “‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (citation omitted). In the computing arts, where a claim to an idea or result is limited by only “generic” computers performing their generic “functions,” *id.* at 226, the claim is tantamount to a claim to the idea or result itself, and is therefore ineligible for patenting.

The question presented is whether the Federal Circuit properly applied *Alice* when it concluded that petitioner’s patent claims are ineligible under Section 101 because they claim the abstract idea of “interacting with data objects on the World Wide Web,” Pet. App. 15a, using only conventional and generic computers performing conventional and generic computing functions, *id.* at 18a-19a.

CORPORATE DISCLOSURE STATEMENTS

Pursuant to Supreme Court Rule 29.6, respondent Amazon.com, Inc. (“Amazon”) states that it has no parent corporation and that no publicly held company owns ten percent or more of its stock.

Respondent Google LLC (“Google”) states that Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., a publicly traded company. No publicly held company owns ten percent or more of Alphabet Inc.’s stock.

Respondent Walmart, Inc. (“Walmart”) states that it has no parent corporation and that no publicly held company owns ten percent or more of its stock.

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INTRODUCTION

For more than 150 years, this Court has repeatedly held that ideas or results—no matter how purportedly novel—are ineligible for patenting. The reason for the rule is plain: When a patent claims a result untethered to any specific, much less inventive, way of achieving it, the patent risks owning *all* ways of doing so, including future ways not yet invented. *Le Roy v. Tatham*, 55 U.S. (14 How.) 156, 175-76 (1853); *O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 113-21 (1854). As this Court explained in its most recent decision on patent-eligibility, “the concern that drives this exclusionary principle [is] one of pre-emption.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

The rule is no less important in today’s computer age than it was in the day of Samuel Morse’s telegraph. Just as the use of generic wires and circuits, however arranged, did not, without more, confer patent eligibility on the result of telegraphy, so too the recitation of generic computing components performing their generic functions, without more, does not confer patentability on the abstract idea of an interactive World Wide Web. In both instances, there must be something more, something that meaningfully limits the idea or result, to ensure that a patent does not remove from the public store of knowledge what is, in effect, the idea or result itself.

For more than 30 years, Eolas has asserted—including in multiple litigations against scores of Internet companies—that in 1994 it invented “interacting with data objects on the World Wide Web,” Pet. App. 15a, an assertion that threatened to preempt an inconceivably vast swath of American

technology and commerce. At the same time, its patents recited only generic computers performing generic functions to achieve this purportedly novel computing result. Judges and jurors around the nation rejected Eolas's patents multiple times and on multiple grounds.

The present petition should be no exception. The petition arises from a unanimous, unpublished Federal Circuit decision affirming the district court's determination that Eolas's claims are ineligible for patenting under 35 U.S.C. § 101. Applying the standard prescribed in *Alice*, the Federal Circuit concluded that Eolas's claims recite only aspirational results without any specific technological solution for achieving them, and thus risk preempting all ways, including future ways, of interacting with objects on the World Wide Web. The court's decision was an unremarkable application of *Alice* that broke no new legal ground.

Eolas contends that the Federal Circuit's decision somehow conflicts with *Alice*. Not so. The decision below reflects careful adherence to *Alice*'s teachings, and the outcome is commanded by *Alice*'s reasoning. And even if the Federal Circuit had misapplied *Alice* or misunderstood the record in this one case (though it did neither), that alone would not warrant this Court's review.

Eolas also contends that this Court should grant certiorari to reduce alleged "confusion" regarding *Alice*'s proper application. Pet. 26. But this Court has repeatedly rejected similar requests, and the premise of those requests is unfounded in any event. Data show that *Alice* is one of the most predictably applied precedents in all of patent law. And even if the Court were seeking an opportunity to revisit *Alice*, the present petition is a singularly unsuitable vehicle for

doing so. This case concerns a unanimous, nonprecedential opinion rejecting a patent that presents a high risk of preemption. Eolas does not and cannot propose any interpretation of *Alice* under which its patent claims—as understood by the Federal Circuit—would be patent-eligible. Rather, Eolas argues that the Federal Circuit misunderstood the patent claims—an argument that largely ignores the Federal Circuit’s reasoning. Regardless, this case-specific dispute over the correct understanding of the claims presents no basis for certiorari.

The petition should be denied.

STATEMENT OF THE CASE

A. Section 101 And *Alice*

1. Section 101 of the Patent Act provides that “[w]hoever 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 therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101.

This Court has consistently recognized “an important implicit exception” to this provision. *Mayo Collaborative Servs. v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 70 (2012). “[L]aws of nature, natural phenomena, and abstract ideas’ are not patentable.” *Id.* (alteration in original) (quoting *Diamond v. Diehr*, 450 U.S. 175, 185 (1981)). It follows that “[a] patent is not good for an *effect*, or the *result* of a certain process, as that would prohibit all other persons from making the same thing by any means whatsoever. This, by creating monopolies, would discourage arts and manufactures, against the avowed policy of the patent laws.” *Le Roy*, 55 U.S. at 175 (emphasis added); *see also Rubber-Tip Pencil Co. v. Howard*, 87

U.S. (20 Wall.) 498, 507 (1874) (explaining that an “idea of itself is not patentable, but a new device by which it may be made practically useful is”); *Alice*, 573 U.S. at 223 (“This conclusion accords with the preemption concern that undergirds our §101 jurisprudence.”).

Thus, when Samuel Morse—having invented the telegraph—claimed a broad, exclusive right to “the use of the motive power of the electric or galvanic current, which [he] call[ed] electro-magnetism, however developed for marking or printing intelligible characters ... at any distances,” this Court rejected that claim as unpatentable. *Morse*, 56 U.S. at 112. As this Court explained, Morse sought exclusive ownership of a “result” without any regard to the “process or machinery” by which “the result is accomplished.” *Id.* at 113. The problem, the Court noted, was that “[f]or aught that we now know some future inventor, in the onward march of science, may discover a mode of writing or printing at a distance by means of the electric or galvanic current, without using any part of the process or combination” disclosed by Morse. *Id.* “[Y]et if it is covered by this patent the inventor could not use it, nor the public have the benefit of it without [Morse’s] permission.” *Id.* The Court recognized that permitting Morse’s claim would “shut[] the door against [the] inventions of other persons.” *Id.*

2. More recently, this Court applied these principles in considering computer-related patents. In *Gottschalk v. Benson*, the Court considered whether Section 101 permitted the patenting of “a method for converting binary-coded decimal (BCD) numerals into pure binary numerals.” 409 U.S. 63, 64 (1972). The patent claims “were not limited to any particular art or technology, to any particular apparatus or

machinery, or to any particular end use,” and they “purported to cover any use of the claimed method in a general-purpose digital computer of any type.” *Id.* Indeed, the “method sought to be patented ... [could] be carried out in existing computers long in use, no new machinery being necessary.” *Id.* at 67. The Court unanimously held that the claim was not patent-eligible because the “practical effect” of the claim was to “patent an idea”—a mathematical formula—and “wholly pre-empt” that idea. *Id.* at 71-72.

A few years later, in *Parker v. Flook*, the Court revisited the same issue in the context of a patent claiming a “formula for updating the value of an alarm limit on any process variable involved in a process comprising the catalytic chemical conversion of hydrocarbons.” 437 U.S. 584, 586 (1978). There, the “only difference between the conventional methods of changing alarm limits” and the method described in the claims was found “in the second step [of the claimed process]—the mathematical algorithm or formula.” *Id.* at 585-86. The Court held the claims patent-ineligible. The Court reaffirmed that an abstract concept, being one of the “basic tools of scientific and technological work,” could not be patented even if it was “new and useful.” *Id.* at 591 (citation omitted). And while the Court recognized that a claimed process is not unpatentable simply because it contains an abstract concept, it also rejected the notion that a patentee could “transform an unpatentable principle into a patentable process” simply by adding “post-solution activity, no matter how conventional or obvious in itself.” *Id.* at 590. Where the rest of the process disclosed in the claims—excluding the unpatentable principle—is “well known,” the addition of a novel but

abstract concept does not amount to a “patentable invention.” *Id.* at 594.

Most recently, the Court reaffirmed these principles in *Alice*, a case concerning claims “relat[ing] to a computerized scheme for mitigating ‘settlement risk’—*i.e.*, the risk that only one party to an agreed-upon financial exchange will satisfy its obligation.” 573 U.S. at 213. Building on precedent, *Alice* treated the Section 101 inquiry as a two-step test. *Id.* at 217-18. At *Alice* step one, the Court determines “whether the claims at issue are directed to ... patent-ineligible concepts”—that is, “laws of nature, natural phenomena, [or] abstract ideas.” *Id.* at 217. If so, the Court then proceeds to *Alice* step two, in which it considers any additional claim elements “both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 78-79). This second step asks whether the patent claims an “inventive concept” that makes the “patent in practice ... significantly more than a patent upon the [ineligible concept] itself.” *Id.* at 217-18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72-73). *Alice* reaffirmed that the presence of “conventional [process] steps, specified at a high level of generality,” is “not ‘enough’ to supply an ‘inventive concept.’” *Id.* at 222 (alteration in original) (emphasis and citation omitted).

In applying the first step, *Alice* determined that the patent claims at issue were “directed to a patent-ineligible concept” because they were “drawn to the abstract idea of intermediated settlement.” *Id.* at 218. As the Court explained, that concept is a “fundamental economic practice” and a “building block of the modern economy.” *Id.* at 219-20 (citation omitted).

Thus, it falls “within the realm of ‘abstract ideas.’” *Id.* at 221. And at step two, the Court concluded that the patent claims’ implementation steps “merely require[d] generic computer implementation,” and therefore “fail[ed] to transform that abstract idea into a patent-eligible invention.” *Id.*

4. Notably, this Court has recently fielded numerous petitions asking it to revisit *Alice*. See, e.g., *CareDx Inc. v. Natera, Inc.*, 144 S. Ct. 248 (2023); *Tropp v. Travel Sentry, Inc.*, 143 S. Ct. 2483 (2023); *Interactive Wearables, LLC v. Polar Electro Oy*, 143 S. Ct. 2482 (2023); *Universal Secure Registry LLC v. Apple Inc.*, 142 S. Ct. 2707 (2022); *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 142 S. Ct. 2902 (2022); *Trading Techs. Int’l, Inc. v. IBG LLC*, 140 S. Ct. 954 (2020); *HP Inc. v. Berkheimer*, 140 S. Ct. 911 (2020); *TS Patents LLC v. Yahoo! Inc.*, 139 S. Ct. 1569 (2019). Just two Terms ago, the Solicitor General called on the Court to grant two such petitions. See U.S. Amicus Br. 23, *Interactive Wearables, LLC v. Polar Electro Oy*, 143 S. Ct. 2482 (2023) (Nos. 21-1281, 22-22); U.S. Amicus Br. 22-25, *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 142 S. Ct. 2902 (2022) (No. 20-891).

All of those petitions were denied.

B. Eolas’s Patent Claims

For three decades, Eolas has claimed ownership of all “interactive” webpages. For nearly as long, commentators decried those claims even as courts and juries rejected them. The patent claims at issue in this case are Eolas’s latest and last effort in its decades-long campaign to claim ownership of interactivity on the World Wide Web.

1. The ancestry of the claims at issue in this case traces back to Eolas’s 1994 application for what would

become U.S. Patent No. 5,838,906 (“the ’906 patent”). Eolas described the purported invention disclosed in that patent as having made “possible the interactive web” by enabling web users to “interact with objects displayed in browser-controlled windows.” Plaintiffs-Appellants Br. 2, 4, *Eolas Techs. Inc. v. Amazon.com Inc.*, 521 F. App’x 928 (Fed. Cir. 2013) (No. 12-1632), 2012 WL 6100517. Soon after the Patent and Trademark Office (PTO) issued the ’906 patent, Eolas sued Microsoft, alleging infringement by Microsoft’s Internet Explorer web browser. *See Eolas Techs., Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1328 (Fed. Cir. 2005). Eolas won a jury trial, but the Federal Circuit vacated the judgment on appeal. *Id.* at 1335.

During the pendency of the Microsoft litigation, the World Wide Web’s inventor, Sir Tim Berners-Lee, wrote to the PTO, urging it to “consider the impact” of the ’906 patent on “World Wide Web users, software developers, and the many commercial and non-commercial organizations that depend on the Web every day.” Ltr. from Tim Berners-Lee to James E. Rogan, Director of the U.S. Patent and Trademark Office (Oct. 28, 2003), <https://perma.cc/B4JK-GF97>. He warned that the ’906 patent threatened “substantial economic and technical damage to the operation of the World Wide Web” because the “barriers imposed” by the ’906 patent would “cause fragmentation in the basic standards that weave the Web together.” *Id.*

Notwithstanding these concerns, Eolas received a continuation patent, U.S. Patent No. 7,599,985 (“the ’985 patent”), claiming priority to Eolas’s initial 1994 application and claiming effectively the same purported invention. In 2009, shortly after the issuance of that continuation patent, Eolas filed suit in the Eastern District of Texas against a diverse group of

23 defendants for infringement of the '906 and '985 patents. *See Eolas Techs. Inc. v. Adobe Sys., Inc.*, No. 09-cv-446, 2012 WL 12896524, at *1 & n.1 (E.D. Tex. July 19, 2012). The only common thread linking these disparate defendants—ranging from Amazon, Apple, and Google to J.C. Penney, Office Depot, and Playboy—was their maintenance of interactive webpages. *Id.* The case went to trial, where the defendants presented a prior-art defense supported by the testimony of Berners-Lee and a host of other early Web pioneers. *Id.* at *6. The Texas jury found both patents invalid, *id.* at *1, and the Federal Circuit affirmed, *see Eolas Techs. Inc. v. Amazon.com, Inc.*, 521 F. App'x 928, 928 (Fed. Cir. 2013) (per curiam).

2. But Eolas was not done. In 2011, while the Texas suit was pending, Eolas hedged against the risk that the '906 and '985 patents would be invalidated by filing another continuation application—again claiming priority to the same 1994 application and again claiming the same basic invention—for what would become U.S. Patent No. 9,195,507 (“the '507 patent”). That is the patent at issue in this case.

The '507 patent, like its predecessors in the Eolas patent family—with which it shares the same specification—describes its invention as allowing “a user at a client computer connected to a network to locate, retrieve and manipulate objects in an interactive way.” Pet. App. 29a (quoting '507 Patent 6:57-59). According to the specification, the Internet provides an “open distributed hypermedia system” that allows users to display and retrieve objects located at remote computers by clicking on links. *Id.* (quoting '507 Patent 2:4-16). When the user’s computer retrieves the object, it is displayed to that user. *Id.* According to the specification, a shortcoming of “the present open

distributed hypermedia system on the Internet” is that, while it “allows users to locate and retrieve data objects,” it “allows users very little, if any, interaction with these data objects.” *Id.* (quoting ’507 Patent 6:25-34). Thus, according to the specification, the claimed invention provides systems and methods for enabling users to “locate, retrieve and manipulate objects in an interactive way.” *Id.* at 30a (quoting ’507 Patent 6:45-59).

Eolas has asserted numerous claims from the ’507 patent. The parties agree that claim 32 is representative. *Id.* at 6a. That claim recites a “method, performed by a server computer connected to the World Wide Web distributed hypermedia network on the Internet, for disseminating interactive content via the World Wide Web” using two basic steps: (A) the server “receiv[es] ... a request for information”; and (B) the server “transfer[s] ... the information onto the World Wide Web.” *Id.* (quoting ’507 Patent cl. 32). The claim further states that a “World Wide Web browser on a client computer” (i) is “configured with a plurality of different interactive-content applications”¹ that “enable a user to interact” with objects displayed in a webpage; (ii) “detect[s] at least part of an object to be displayed in a World Wide Web page” and “display[s]” the page to the user; and (iii) “select[s]” and “invoke[s]” an interactive-content application enabling the user to “interact within the World Wide Web page with at least part of the object” using

¹ Eolas has consistently pressed and obtained broad, functional constructions of the various claim terms of the ’507 patent. For instance, Eolas understands “interactive-content application” to mean any application that “enable[s] a user to interact with content.” C.A. Fed. Cir. Appx. 6521.

“distributed application computers.” *Id.* at 6a-8a (quoting ’507 Patent cl. 32). Eolas has also independently relied on claim 45, which recites a method to “enable dissemination of interactive content to a client computer” using “separate computers connected to the World Wide Web” that “work[] together to perform viewing transformations to enable ... interaction with at least part of [an] object.” *Id.* at 8a-9a (quoting ’507 Patent cl. 45).

C. Procedural History

1. On November 24, 2015—the day the ’507 patent issued, more than 21 years after its initial patent application—Eolas launched a new round of infringement lawsuits in the Eastern District of Texas against respondents Amazon, Google, and Walmart. *Id.* at 27a. Eolas claimed that respondents infringed the ’507 patent by offering “web pages and content to be interactively presented in browsers.” *E.g.*, Compl. ¶ 15, *Eolas Techs. Inc. v. Amazon.com, Inc.*, No. 15-cv-1038 (E.D. Tex. Nov. 24, 2015).²

² The attempted reach of Eolas’s claims under the ’507 patent is well illustrated by the range of products that have been alleged to infringe. In the proceedings below, Eolas accused Google products as diverse as Google Docs, AdWords, Google Search, Gmail, Google Maps, and YouTube, as well as Amazon Cart, Amazon Search, Amazon Product Viewer, Amazon Video, Walmart Search, Walmart Cart, and Walmart Product Viewer (among others) of infringing the ’507 patent. C.A. Fed. Cir. Appx. 15328. And that attempted preemptive sweep was likewise reflected in Eolas’s predecessor patents, which Eolas asserted against everything from Internet Explorer and Java, *see* Defendant-Appellant Br. 15-17, *Eolas Techs. Inc. v. Microsoft Corp.*, 399 F.3d 1325 (Fed. Cir. 2005) (No. 04-1234), 2004 WL 3960364, to the webpages maintained by Citigroup and Frito-Lay, *see* Pls.’ Corrected Third Am. Compl. ¶¶ 24-25, *Eolas Techs.*

Eolas's suits were consolidated in 2016 and transferred to the Northern District of California in 2017 following fact discovery. Pet. App. 27a. Respondents moved for summary judgment on several grounds arising from the similarities between the '507 patent and the previously invalidated '906 and '985 patents. *Id.* at 28a. In particular, respondents argued that the '507 patent claims are not patentably distinct from the claims that Eolas had presented in its previous patents and were therefore invalid under the doctrine of obviousness-type double patenting (OTDP) or barred under various preclusion doctrines. *See* Mot. Summ. J., *Eolas Techs. Inc. v. Amazon.com, Inc.*, No. 17-cv-3022 (N.D. Cal. Mar. 25, 2020), Dkt. 592. The district court denied the motion after concluding that respondents had not supported their motion with sufficient "evidence of prior art" to establish that the '507 patent claims are so indistinct from the previously litigated patent claims that they could be invalidated on OTDP or preclusion grounds. *See* Order Denying Mot. Summ. J. 11, 14-16, *Eolas Techs. Inc. v. Amazon.com, Inc.*, No. 17-cv-3022 (N.D. Cal. Apr. 27, 2021), Dkt. 655; Pet. App. 28a. Importantly, the district court never found that Eolas's claims used any unconventional computing equipment or any unconventional combination of otherwise conventional computing equipment.

2. Following expert discovery, respondents moved for summary judgment of patent-ineligibility under Section 101. The district court granted the motion. *See* Pet. App. 26a-82a. In doing so, it recited the two-part *Alice* test and explained that patent claims

Inc. v. Adobe Sys. Inc., No. 09-cv-446 (E.D. Tex. Oct. 28, 2011), Dkt. 1075.

“directed to an abstract idea” are unpatentable if they do not contain “an inventive concept sufficient to transform the claimed abstract idea into a patent-eligible application.” *Id.* at 36a (quoting *Alice*, 573 U.S. at 219, 221).

At *Alice* step one, the district court undertook a particularized analysis of the asserted ’507 patent claims, concluding that they are directed to nothing more than the purely functional, “abstract idea of enabling interactivity with remote objects on a client computer browser using distributed computing.” *Id.* at 39a; *see id.* at 37a-71a (analyzing each of the ’507 patent claims at *Alice* step one). As the court explained, Eolas’s claims “require[] only *results* ... without specifying *how* to achieve them.” *Id.* at 43a. And the court rejected Eolas’s arguments that various claim limitations are “directed to improvements in computer technology,” including overcoming “limited computing power in client computers” and providing “security.” *Id.* at 51a-52a (citation omitted). The court noted that the ’507 patent either “does not claim any particular way” of achieving these purported improvements, *id.* at 53a, or otherwise fails to describe such improvements, *id.* at 56a-63a; *see also, e.g., id.* at 66a (rejecting the notion that Eolas’s claims “are directed to solutions to scalability and resource management problems”); *id.* at 71a (addressing claim limitations that do not “solve the problems discussed in the specification”). Consequently, the court concluded that “all of the asserted claims are directed to an abstract idea.” *Id.* at 72a.

At *Alice* step two, the district court concluded that the claims’ additional limitations added nothing inventive. It is “undisputed that they require the use of components ... and basic functions ... that are generic

and basic.” *Id.* at 75a. The court also rejected Eolas’s argument that the court’s prior “analysis and findings in the context of OTDP bear on the question of patent-eligibility under § 101.” *Id.* at 77a-78a. As the court noted, its “OTDP analysis” turned on the conclusion that respondents “failed to proffer sufficient evidence showing that the ’507 asserted claims were not ‘patentably distinct’ from the claims in earlier patents that share the same specification.” *Id.* at 76a-77a (citation omitted). That analysis did not ask, much less answer, the question whether the technological “solution discussed in the specification” was “captured in the asserted claims in a non-abstract way.” *Id.* at 80a. And the court answered that question in the negative: the “asserted claims merely demand that interactivity on [a] client computer browser be enabled via distributed computing, without specifying a particular way of doing so that would circumvent the problems discussed in the specification.” *Id.* Accordingly, the court granted summary judgment of patent-ineligibility with respect to all of the asserted ’507 patent claims. *Id.* at 81a.

D. The Federal Circuit’s Decision

A unanimous Federal Circuit panel affirmed in a nonprecedential opinion authored by Judge Stoll. *Id.* at 1a-22a. The Federal Circuit correctly stated the applicable standard: At *Alice* “step one,” the court must “assess whether the claims at issue are directed to a patent-ineligible concept, namely a law of nature, natural phenomenon, or abstract idea.” *Id.* at 13a (citing *Alice*, 573 U.S. at 217). Then, if “the answer is yes,” the court must proceed to step two to determine whether the claims contain an “‘inventive concept’ sufficient to ‘transform the nature of the claim into a

patent-eligible application.” *Id.* (quoting *Alice*, 573 U.S. at 217-18).

At *Alice* step one, the Federal Circuit affirmed the district court’s conclusion that the ’507 patent claims “are directed to an abstract idea.” *Id.* at 15a. The panel settled on a “slightly modified view” of what that abstract idea is. *Id.* As the panel explained, “Eolas’s claims are not directed to computers, networks, or interacting with content generally; rather, they recite interacting with content on the World Wide Web.” *Id.* at 14a. The panel also determined that “implementation details” set forth in the claims—“*i.e.*, using distributed computing”—might be “best left for consideration under *Alice* step two” in order to preserve the “opportunity” to consider whether distributed computing transforms the invention into eligible subject matter. *Id.* at 15a. Thus, the panel concluded that the ’507 claims are directed to “interacting with data objects on the World Wide Web.” *Id.* And, as the panel concluded, that concept is “an abstraction.” *Id.*

The panel then evaluated and rejected Eolas’s assertion that the ’507 patent claims are non-abstract because they “capture ‘specific technological solutions to [several] specific technological problems.’” *Id.* at 16a (citation omitted). As the panel explained, the claims do not embody any inventive solutions to particular technological problems. *Id.* at 17a-18a.

First, the panel analyzed Eolas’s contention that the ’507 patent claims “relocat[ed] ... [an] interactive content application from outside to inside the World Wide Web browser itself,” and that this was “an important new structural change that improved interactivity with the World Wide Web.” *Id.* at 18a. The panel identified two basic problems with that argument: (i) it was “waived” because “Eolas did not

present this alleged inventive concept” in the district court; and, more importantly, (ii) the ’507 patent claims “do ... not recite,” and thus their breadth is not limited by, “locating the interactive content applications within the browser.” *Id.*; *see also id.* at 11a & n.3 (district court’s unchallenged construction of claim terms does “not require that the interactive content applications be internal” to browser). Thus, “[r]elocation of the interactive content application within the web browser is ... not an inventive concept that renders the claims eligible under *Alice* step 2.” *Id.* at 18a.

Second, the panel considered Eolas’s argument that the “claims recite the inventive concept of distributed processing between the application in the browser and applications on remote distributed computers.” *Id.* Once again, the panel identified two problems with that argument: (i) it is “undisputed that, at the time of the invention, distributed processing was well-understood, routine, conventional activity,” *id.*; and (ii) the “claims merely describe a desired function”—the idea of “distributed processing”—“without providing *details* of the claimed distributed processing,” *id.* at 19a (emphasis added). In other words, the claims do not “specify how the processing is distributed among the distributed application computers,” and thus fail to limit the claims to anything “different than generic distributed processing.” *Id.*

Third, the panel addressed Eolas’s argument that “its claims alleviate certain security concerns” by “limiting the invoked interactive content applications to those configured to operate within the Web browser.” *Id.* at 19a-20a. But, again, that “alleged inventive concept is not within the scope (and thus cannot limit the breadth) of the claims because, as

noted above, the claims do not actually require that the interactive content applications be located within the browser.” *Id.* at 20a.

Finally, the panel addressed Eolas’s assertion that claim 45 requires “remote computers to generate and send computer commands to perform ‘viewing transformations’” and thereby “improves a computer network system’s specific technical features or operations.” *Id.* The panel noted that the district court had given a “broad construction” to the term “viewing transformations” to mean “operations performed on data for visual display to a user.” *Id.* at 20a-21a. That construction—“unchallenged on appeal”—“encompasses visual display generally, something well-known in the art at the time of the invention.” *Id.* Furthermore, nothing else “in the claim or the specification show[s] how the recited viewing transformation differs from conventional visual display.” *Id.* at 21a. Accordingly, the “viewing transformations” term does not meaningfully limit the claims, and thus “fails to transform the abstract idea into an eligible technical solution.” *Id.*

Eolas declined to seek rehearing *en banc*.

REASONS FOR DENYING THE PETITION

I. The Federal Circuit’s Application Of *Alice* Does Not Warrant Review

A. The Federal Circuit Correctly Stated And Applied *Alice* In This Case

This is an unremarkable instance of a court of appeals stating the correct legal standard and applying it to the facts of the case. The Federal Circuit’s analysis does not warrant this Court’s review.

1. *Alice* set forth a two-step analysis for assessing patent eligibility under Section 101. First, a court should “determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea or result. *Alice*, 573 U.S. at 218. Such an “abstract idea” need not be a “preexisting, fundamental truth,” *id.* at 220. Rather, it can be a “building block of the modern economy,” *id.*, or some other generic, functional abstraction that—if patented—would “impede innovation” by “improperly tying up” the “basic tools of scientific and technological work,” *id.* at 216 (citations omitted); *see also Morse*, 56 U.S. at 112-13 (warning that abstract claims reciting a “purpose” or “result,” without respect to the “process or machinery [by which] the result is accomplished,” would effectively “shut[] the door against [the] inventions of other persons”).

If a patent claim *is* directed to an abstract idea or other ineligible subject matter, the second step is to determine whether the elements of the claim, considered “individually and ‘as an ordered combination,’” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 79), contain “an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application,” *id.* at 221 (quoting *Mayo*, 566 U.S. at 72,

79). Such a concept must reflect “more than a drafting effort designed to monopolize the [abstract idea].” *Id.* (alteration in original) (quoting *Mayo*, 566 U.S. at 77).

2. The Federal Circuit correctly articulated the two-step *Alice* analysis. Pet. App. 13a-14a. It faithfully applied that analysis in concluding that the ’507 patent claims subject matter that is ineligible for patenting under Section 101. *Id.* at 14a-22a. That case-specific decision does not warrant certiorari.

At step one, the Federal Circuit considered whether the asserted claims of the ’507 patent are directed to an abstract idea. *Id.* at 14a-15a. The court acknowledged that Eolas’s claims “recite[] certain configuration requirements of a World Wide Web browser, World Wide Web pages, and the World Wide Web distributed hypermedia network.” *Id.* at 14a. It also noted that the specification “describes problems specific to the World Wide Web.” *Id.* at 14a-15a. On the basis of that analysis, the Federal Circuit “slightly modified” the district court’s characterization of the claims by concluding that the claims are not directed to “the abstract concept of enabling interactivity with remote objects on a client computer browser” generally, but are directed to the concept of “interacting with data objects *on the World Wide Web*.” *Id.* (emphasis added). With this modification, the Federal Circuit held that the claims are directed to an “abstract idea” within the meaning of *Alice*. *Id.* at 15a.

That conclusion is unassailable: The notion of “interacting with data objects on the World Wide Web” is purely generic and functional—even Eolas does not purport to have invented the World Wide Web, “data objects,” or “interactivity”—and it describes virtually everything that happens on the Web. The “risk of pre-

emption” posed by such a functional claim, *Alice*, 573 U.S. at 217, is immediately evident. *See supra* 11-12 n.2. By claiming ownership of that concept, Eolas sought to monopolize a “building block of the modern economy.” *Alice*, 573 U.S. at 220.

Next, at *Alice* step two, the Federal Circuit considered whether the “implementation details” of Eolas’s claims contain an inventive concept that saves those claims from ineligibility under Section 101. Pet. App. 15a; *see id.* at 18a-22a. As the court explained, two of the four purportedly inventive implementation details touted by Eolas on appeal simply do not appear in the claims. *See id.* at 18a (explaining that the claims nowhere recite the concept of relocating an “interactive content application from outside to inside the World Wide Web browser itself”); *id.* at 19a-20a (rejecting Eolas’s purportedly inventive alleviation of “security concerns” on the same basis). Because those features are not recited in the claims, they cannot limit their preemptive reach, much less serve as “inventive concept[s] that render[] the claims eligible under *Alice* step 2.” *Id.* at 18a.

As for Eolas’s other two supposedly inventive implementation concepts—the “concept of distributed processing” and the concept of “viewing transformations”—the Federal Circuit explained that those concepts, as described in the asserted claims of the ’507 patent, are purely generic and conventional. *Id.* at 18a-21a. It was “undisputed” that “at the time of the invention, distributed processing was well-understood, routine, conventional activity.” *Id.* at 18a. And the distributed processing recitations of the asserted claims do “not specify how the claimed configuration for distributed processing is any different than generic distributed processing.” *Id.* at 19a. The claims

“merely describe a desired function or outcome”—the splitting-up of computing tasks across multiple computers—“without providing details of the claimed distributed processing,” i.e., “*how* the processing is distributed among the distributed application computers.” *Id.* (emphasis added). Likewise, the “viewing transformations” limitation recited in claim 45 of the ’507 patent broadly means “operations performed on data for visual display to a user,” which “encompasses visual display generally, something well-known in the art at the time of the invention.” *Id.* at 20a-21a (citation omitted). And nothing else “in the claim or the specification show[s] how the recited viewing transformation differs from conventional visual display.” *Id.* at 21a. Thus, that purportedly inventive concept “fails to transform the abstract idea into an eligible technical solution.” *Id.*

The Federal Circuit’s reasoning at step two, like its reasoning at step one, was faithful to this Court’s decision in *Alice*. As this Court has explained, where an otherwise abstract patent claim incorporates implementing steps that merely “require a generic computer to perform generic computer functions,” it does not claim an eligible invention. *Alice*, 573 U.S. at 225. The two implementing concepts that Eolas identified on appeal and that are actually claimed in the ’507 patent—distributed processing and viewing transformations—are “purely functional and generic” concepts requiring only generic computers. *Id.* at 226. The Federal Circuit was therefore correct in holding that the “alleged inventive concepts identified by Eolas do not otherwise transform the abstract nature of the claims to render the claims patent-eligible.” Pet. App. 21a.

B. Eolas Fails To Identify Any Error Warranting Certiorari

Eolas’s petition does not deny that the Federal Circuit accurately stated the *Alice* test and sought to apply it to the ’507 patent claims. Most of the arguments presented in the petition pertain to the manner in which the Federal Circuit has resolved *other* Section 101 cases. *See* Pet. 18-21, 24-31. When it comes to the Federal Circuit’s reasoning in *this* case, the petition has little to say. What little it does say fails to establish any error warranting this Court’s review.

1. As to the Federal Circuit’s analysis at *Alice* step one, Eolas posits that “[e]nabling interactivity with data objects on the World Wide Web does *not* fall squarely within the realm of ‘abstract ideas.’” Pet. 34. Eolas offers no support for that argument other than a rhetorical assertion that “interacting with data objects on the World Wide Web is not an abstraction—it is a physical activity that millions of real people do with real browsers on that real computer network every day.” *Id.*

That argument fails. Every abstract idea has concrete applications in the real world. The abstract ideas addressed in *Benson* and *Flook* certainly had real-world applications: the patents in those cases were directed to computing functions that had tangible applications in real-world computers. *See Flook*, 437 U.S. at 586; *Benson*, 409 U.S. at 67. The patentees in those cases emphasized that their claims were patent-eligible precisely because they had real-world applications. *See, e.g.*, Respondent’s Br. 6, *Parker v. Flook*, 437 U.S. 584 (1978), 1978 WL 223450. And in *Alice*, the claims recited specific, “tangible” computer system components with real-world applications, but

this Court explained: “The fact that a computer ‘necessarily exist[s] in the physical, rather than purely conceptual, realm,’ is beside the point.” 573 U.S. at 224 (alteration in original) (citation omitted). Time and again, this Court has rejected Eolas’s appeal to a concrete application.

Thus, the question at *Alice* step one is not whether the concept of “interacting with data objects on the World Wide Web” has practical applications or employs physical components; the question is whether monopolization of that result would preempt other inventors from exploiting the “basic tools of scientific and technological work.” *Id.* at 216 (citation omitted). Eolas’s petition offers no reason why the abstract idea of “interacting with data objects on the World Wide Web” is not a basic tool of technological work.

Indeed, Eolas does not hide from the preemptive effect of its claims; it *boasts* of it. Eolas asserts that “interacting with data objects on the World Wide Web” forms the essential basis for countless “technologies we use every day,” all of which have become “an indelible feature of the U.S. social and economic landscape.” Pet. 34-35; *supra* 11-12 n. 2. But the ubiquitous concept of “interacting with data objects on the World Wide Web” is not patent-eligible unless it is joined to and limited by a specific “inventive concept” that transforms the “claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (citation omitted). And that inquiry takes place at *Alice* step two. *Id.*

2. At *Alice* step two, Eolas’s petition is conspicuously silent on the central point of the Federal Circuit’s analysis. Eolas never rebuts the Federal Circuit’s conclusion that the inventive concepts posited by Eolas are all conventional and generic computer

functions. Eolas acknowledges, for instance, the Federal Circuit’s determination that the “distributed computing” elements of Eolas’s claims are “routine and conventional.” Pet. 33. But it offers no real explanation in its petition for why that determination was wrong. Instead, Eolas offers four scattered critiques that misstate the Federal Circuit’s *Alice* step two analysis.

First, Eolas repeatedly asserts that “the Federal Circuit’s own description of the ’507 patent” indicates that its “claims are drawn to useful improvements to computer network technology” merely because the “Federal Circuit confirmed that the patent ‘describes problems specific to the World Wide Web’” and “explains how the invention purports to solve them.” *Id.* at 19 (quoting Pet. App. 14a-15a); *see also id.* at i, 2, 31. This mischaracterizes the Federal Circuit’s reasoning. The Federal Circuit recognized that Eolas’s claims “are not directed to computers, networks, or interacting with content generally,” but more narrowly “recite interacting with content on the World Wide Web.” Pet. App. 14a. But the mere fact that Eolas’s claims recite the “configuration requirements of a World Wide Web browser, World Wide Web pages, and the World Wide Web distributed hypermedia network,” Pet. 19 (quoting Pet. App. 14a), hardly establishes that Eolas’s claims are drawn to “*improv[ing]* an existing technological process,” *id.* (emphasis added) (quoting *Alice*, 573 U.S. at 223). That a set of claims “recite[s] ‘specific hardware’ configured to perform ‘specific computerized functions’” is not enough to support patent eligibility if those limitations are—as here—“purely functional and generic,” *Alice*, 573 U.S. at 226 (citation omitted); *see* Pet. App. 18a-21a. And here Eolas has not actually challenged the

Federal Circuit’s conclusion that Eolas’s claims rely on purely conventional computer functions. *See* Pet. App. 17a-18a.

Second, Eolas contends that the Federal Circuit was somehow foreclosed from determining that Eolas’s claims are conventional at *Alice* step two because, at an earlier stage of the litigation, the district court rejected respondents’ argument that the asserted ’507 patent claims are unpatentable on obviousness-type double patenting (OTDP) grounds.³ *See* Pet. 23-24. Eolas’s contention rests on the premise that the district court, in its OTDP summary-judgment order, made a “finding that the claims as a whole d[o] not recite a ‘routine’ or ‘commonplace’ implementation of the Web.” *Id.* at 24 (citation omitted). That premise is false. In fact, as the district court explained, it denied respondents’ OTDP summary-judgment motion merely because it concluded that they “had not met their burden” of proving “that the ’507 asserted claims were not ‘patentably distinct’ from the claims in earlier patents that share the same specification with the ’507 patent,” Pet. App. 28a, 76a; *see*

³ To determine OTDP, a court analyzes the differences between the respective claims of the two patents and then determines whether those differences render the second set of claims patentably distinct. *See AbbVie Inc. v. Mathilda & Terence Kennedy Inst. of Rheumatology Tr.*, 764 F.3d 1366, 1373 (Fed. Cir. 2014). A claim that is obvious over or anticipated by another claim is not patentably distinct. *Id.* at 1373-74. At summary judgment, respondents argued that because the claims in Eolas’s ’507 patent are directed to the same invention as the claims Eolas presented in its predecessor patents, and because any slight differences in the ’507 claims are, at most, obvious modifications of the claims in Eolas’s predecessor patents, the ’507 claims are invalid. *See* Mot. Summ. J., *Eolas Techs. Inc. v. Amazon.com, Inc.*, No. 17-cv-3022 (N.D. Cal. Mar. 25, 2020), Dkt. 592.

Order Denying Mot. Summ. J. 11, 14-16, *Eolas Techs. Inc. v. Amazon.com, Inc.*, No. 17-cv-3022 (N.D. Cal. Apr. 27, 2021), Dkt. 655. There was no conflict between the district court’s summary-judgment decision on OTDP and the Federal Circuit’s later Section 101 conclusion—based on “undisputed” record evidence—that the concepts recited in the asserted claims of the ’507 patent are “routine” and “conventional.” Pet. App. 18a.

Third, and more broadly, Eolas accuses the Federal Circuit of “import[ing] other statutory sections on patentability into Section 101.” Pet. 21. But the Federal Circuit nowhere did that. Rather, it did exactly what this Court directed in *Alice*. For instance, while Section 112 permits “functional” *words* to be used in claims, Pet. 32, this Court’s patent-eligibility precedents—going back to *Morse*—do not permit functional *claiming* divorced from the way in which that function is achieved. *See Morse*, 56 U.S. at 112-13 (prohibiting functional claiming of a “result” without the “process or machinery” by which “the result is accomplished”). *Alice* thus instructs that where a patent claim directed to an abstract idea recites claim elements that are “purely *functional* and generic,” such elements cannot make the claim patent-eligible. *Alice*, 573 U.S. at 226 (emphasis added).⁴ And *Alice* expressly

⁴ In this regard, too, the reasoning in *Morse* and *Alice* is entirely consistent with the text of Section 101. Abstract ideas, functions, and results are not “process[es]” in the first place, 35 U.S.C. § 101; they are mere aspirations that, if patented, can be used to ensnare the hard work of real invention performed by others in the future. A true patent-eligible “process” is a specific way of doing something, and leaves to the innovating public and future inventors all other ways of achieving the same result. *See*

provides that “computer functions [that] are ‘well-understood, routine, conventional activit[ies]’” cannot be considered inventive at *Alice* step two. *Id.* at 225 (alteration in original) (quoting *Mayo*, 566 U.S. at 73). It would have been error for the Federal Circuit to undertake its *Alice* step two analysis without considering whether the implementing steps of Eolas’s abstract claims rest on “purely functional” and “routine” concepts. *Id.* at 225-26. It is Eolas’s argument—not the Federal Circuit’s analysis—that is “in conflict with *Alice* itself.” Pet. 4.

Indeed, Eolas’s argument is in conflict with the entire body of this Court’s Section 101 precedents. This Court has recognized that, “in evaluating the significance of additional steps, the § 101 patent-eligibility inquiry ... might sometimes overlap” with the “later sections” of the Patent Act—i.e., Sections 102, 103, and 112. *Mayo*, 566 U.S. at 90-91. And in doing so, Section 101 serves a crucial role in screening out patents that “impede future innovation.” *Id.* In effect, Eolas would leave all of the heavy lifting to the other sections—an argument this Court has rejected. *Id.* at 91 (“declin[ing] the ... invitation to substitute §§ 102, 103, and 112 inquiries for the better established inquiry under § 101”). As this Court explained, “to shift the patent-eligibility inquiry entirely to those later sections risks creating significantly greater legal uncertainty, while assuming that those sections can do work that they are not equipped to do.” *Id.* at 90. For example, “an abstract idea that is new or groundbreaking is not any less abstract.” Pet. App. 16a. And a patent that claims only a novel but abstract concept,

Rubber-Tip Pencil Co. v. Howard, 87 U.S. (20 Wall.) 498, 507 (1874); *Le Roy*, 55 U.S. at 175.

implemented by strictly conventional means, is just as patent-ineligible as one that does not include those implementing steps.

Finally, Eolas asserts that the decision below “expressed confusion about whether the consideration of the arguments about improved computer functionality belonged in step one or step two,” and “hedged its bets” by suggesting that the inventive concepts posited by Eolas “would be rejected [w]hether analyzed as technological improvements under *Alice* step 1 or as inventive concepts under *Alice* step 2.” Pet. 33 (alteration in original) (quoting Pet. App. 17a-18a).

But there was no confusion; the Federal Circuit’s discussion merely tracked the arguments presented by Eolas. As the Federal Circuit explained, Eolas relied on several purported technological improvements to argue that the claims were non-abstract at *Alice* step one, Pet. App. 16a, and also argued “[i]n the alternative” that those same “aspects ... would render the claims eligible under *Alice* step two,” *id.* at 17a. For its part, the Federal Circuit correctly recognized that the “implementation details” of a claim otherwise directed to an abstract idea are “best left for consideration under *Alice* step two.” *Id.* at 15a. And it correctly analyzed at “*Alice* step two” all of the purportedly inventive concepts advanced by Eolas. *Id.* at 18a-21a. That the Federal Circuit also concluded that those same concepts do not qualify as “technological improvements under *Alice* step 1,” *id.* at 17a, is a testament not to the Federal Circuit’s “confusion” but rather the shape-shifting nature of Eolas’s arguments and the ultimate absence of any technological advance in Eolas’s claims.

II. Eolas Has Shown No Reason To Revisit *Alice* In This Case

The Federal Circuit’s case-specific application of *Alice* in a unanimous, nonprecedential opinion does not warrant certiorari. And so Eolas seeks to augment its petition by arguing that Section 101 jurisprudence is in a state of general crisis. *See* Pet. 18. Eolas is wrong. Empirical data show that Section 101 jurisprudence is one of the most predictable areas of patent law, and there is no evidence that *Alice* and its progeny have impaired investment in innovation in the United States.

A. Much of the commentary cited by Eolas does not evidence actual “confusion” about Section 101 case law; rather, it reflects that some commentators simply disagree with *Alice* itself. *See, e.g., id.* at 18, 29 (citing Shahrokh Falati, *To Promote Innovation, Congress Should Abolish the Supreme Court Created Exceptions to 35 U.S. Code § 101*, 28 *Tex. Intell. Prop. L.J.* 1, 38-39 (2019)); Pet. 21 (citing Richard Gruner, *Lost in Patent Wonderland with Alice: Finding the Way Out*, 72 *Syracuse L. Rev.* 1053, 1079 (2022)); Patent Eligibility Restoration Act: Hearings on S. 2140 Before the Subcomm. on Intell. Property, 118th Cong. (Jan. 23, 2024) (statement of Hon. David Kappos at 7)⁵ (arguing that the *Alice* framework “disincentiviz[es] investment and innovation”).

In fact, the Federal Circuit, the federal district courts, and the PTO have had little trouble predictably applying *Alice*. The most recent and comprehensive empirical study of the Federal

⁵ https://www.judiciary.senate.gov/imo/media/doc/2024-01-23_-_testimony_-_kappos.pdf.

Circuit’s jurisprudence shows that, if anything, Section 101 is among the *most* consistent and predictable areas of modern patent law. See Nikola L. Datzov & Jason Rantanen, *Predictable Unpredictability* 43, Univ. of Iowa Legal Studies Research Paper No. 2024-04 (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4380434 (forthcoming Iowa L. Rev.). Specifically, the Federal Circuit affirms district courts in 84.9% of all Section 101 cases; and the PTO’s Section 101 affirmance rate at the Federal Circuit is even higher (95.5%). *Id.* at 41-42. That is “the highest affirmance rate of any patent law issue tracked over a continuous period of time,” and it is a notably higher rate of affirmance than the Federal Circuit’s overall district-court affirmance rate (69%). *Id.* at 43-44. Furthermore, the rate of dissent on Section 101 issues at the Federal Circuit is unusually low. Between 2012 and 2022, only 6.5% of Section 101 cases at the Federal Circuit featured a dissent, whereas 8.1% of all patent cases at the Federal Circuit featured a dissent. *Id.* at 58. This “provides further evidence that patent eligibility ... [i]s actually *more predictable* than other areas of patent law.” *Id.*

To be sure, the judges of the Federal Circuit—especially the members of the panel below—do not hesitate to pen vigorous dissents in cases of disagreement about Section 101. *Id.* at 60 (observing that Judges Bryson and Stoll are among the court’s most frequent dissenters in Section 101 cases); see e.g., *IBM Corp. v. Zillow Grp., Inc.*, No. 22-1861, 2024 WL 89642, at *6 (Fed. Cir. Jan. 9, 2024) (Stoll, J., concurring-in-part, dissenting-in-part). Notably, too, Judge Stoll—who wrote the panel opinion affirming the district court’s judgment below—is more likely than any

other Federal Circuit judge to vote to *reverse* Section 101 ineligibility rulings. *See* Datzov & Rantanen, *supra*, at 43; *see also, e.g., Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1262 (Fed. Cir. 2017). That fact only highlights why this case is a poor vehicle for revisiting *Alice*: The district court and the Federal Circuit panel unanimously agreed that Eolas’s claims are ineligible.

B. Eolas argues also that current Section 101 doctrine “threatens domestic investment and innovation while affording a competitive advantage to countries like China.” Pet. 30-31. That assertion is unsubstantiated. *Alice* merely restated the same “implicit exception” to Section 101 for “[l]aws of nature, natural phenomena, and abstract ideas” that this Court has recognized “for more than 150 years,” stretching back to before the invention of the telegraph. 573 U.S. at 216; *see Morse*, 56 U.S. at 113. Far from burdening America’s preeminence in technological innovation, *Alice* has protected it by protecting the innovating public’s right to achieve the same results as those claimed by a patent but in different, better, faster and less expensive ways. America’s innovative edge is as strong as ever. *See* National Academies of Sciences, Engineering, & Medicine, *Protecting U.S. Technological Advantage* (2022), <https://nap.nationalacademies.org/catalog/26647/protecting-us-technological-advantage>; Beethika Khan et al., National Science Board, *Science and Engineering Indicators: The State of U.S. Science and Engineering* at 13 (Fig. 24) (2020), <https://nces.nsf.gov/pubs/nsb20201> (showing that, in 2018, the United States accounted for 32% of value-added global output in R&D-intensive industries, such as pharmaceuticals and software publishing).

Contrary to Eolas’s conclusory assertion that *Alice* has led “investors to shift their ‘investments away from companies that [are] developing new software,’” Pet. 18 (alteration in original) (quoting Falati, *supra*, at 38-39), rigorous empirical analysis indicates that *Alice* has had “no apparent effect on the receipt of investment or on subsequent acquisitions and initial public offerings (IPOs)” for software developers. James Hicks, *Do Patents Drive Investment in Software?*, 118 Nw. U. L. Rev. 1277, 1283-84 (2024). The crisis painted by Eolas is an illusion.

III. This Case Is A Singularly Bad Vehicle For Revisiting *Alice*

Even if there were a pressing need for this Court to revisit *Alice*, this is not the case for it. The Federal Circuit’s resolution of this case did not depend on any controversial interpretation of *Alice*. Nor did it depend on some general proposition about problems with computer- or Web-related patents. Rather, it rested on the Federal Circuit’s understanding of the relevant claim language as involving only generic concepts with no improvement in computer technology. Based on the Federal Circuit’s understanding of the claims, there is no principle by which Eolas could prevail here. Indeed, Eolas puts forward no such principle by which “interacting with content on the World Wide Web,” without any specific technological improvement in that interaction, is not abstract.

Nor does Eolas ask this Court to change *Alice*’s two-part test or to provide additions or exceptions to that test. And while Eolas asks for “clarification,” Pet. 4-5, it provides virtually no detail as to what that clarification should entail. That is because no form of

clarification would save the asserted patent claims, which are abstract under well-established principles.

Eolas's argument thus rests on the assertion that the Federal Circuit simply misunderstood Eolas's patent claims. That argument is a case-specific one that provides no basis for certiorari. As discussed above, *supra* at 20-21, the Federal Circuit considered the four supposedly inventive concepts Eolas raised below. Two do not actually appear in the '507 patent claims, Pet. App. 18a-20a, of which one was not even presented to the district court, *see id.* at 18a. The other two—the “concept of distributed processing” and the concept of “viewing transformations”—are purely generic and conventional. *Id.* at 18a-21a. Eolas barely addresses this reasoning in its petition. Thus, contrary to Eolas's petition, the “computer-related improvements” that Eolas has posited are neither “squarely raised” nor “cleanly presented.” Pet. 31.

Finally, if the Court were to seek an opportunity to revisit more than 150 years of consistent precedent on the question of patent eligibility, it should await a case (unlike this one) where the issue is better presented, where there is at least some lower-court disagreement about the outcome, and where the preemptive risk to American commerce and innovation is far less extreme.

CONCLUSION

The petition for a writ of certiorari should be denied.

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