

No. 20-__

IN THE
Supreme Court of the United States

ILIFE TECHNOLOGIES, INC.,
Petitioner,

v.

NINTENDO OF AMERICA, INC.,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are the same as those presented in the petition for a writ of certiorari filed in connection with *American Axle & Manufacturing, Inc. v. Neapco Holdings, LLC*, No. 20-891:

1. What is the appropriate standard for determining whether a patent claim is “directed to” a patent-ineligible concept under step 1 of the Court’s two-step framework for determining whether an invention is eligible for patenting under 35 U.S.C. § 101?

2. Is patent eligibility (at each step of the Court’s two-step framework) a question of law for the court based on the scope of the claims or a question of fact for the jury based on the state of art at the time of the patent?

CORPORATE DISCLOSURE STATEMENT

Petitioner iLife Technologies, Inc. has a parent company, iLife Solutions, Inc. No publicly held company owns more than 10 percent of petitioner's stock.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *iLife Technologies, Inc. v. Nintendo of America, Inc.*, No. 13-cv-4987, U.S. District Court for the Northern District of Texas. Judgment entered Jan. 17, 2020.
- *iLife Technologies, Inc. v. Nintendo of America, Inc.*, No. 20-1477, U.S. Court of Appeals for the Federal Circuit. Judgment entered Jan. 13, 2021.

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Petitioner, iLife Technologies, Inc. (iLife), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case. As explained further below, iLife submits that this petition should be held pending the disposition of the petition for a writ of certiorari seeking review of the Federal Circuit’s decision in *American Axle & Manufacturing, Inc. v. Neapco Holdings LLC*, 967 F.3d 1285 (Fed. Cir. 2020). See No. 20-891.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-8a) is not published in the Federal Reporter but is reprinted at 839 Fed. Appx. 534. The district court’s post-trial order granting judgment as a matter of law in favor of respondent (App. 9a-22a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 13, 2021. On March 19, 2020, this Court extended the time within which to file any petition for a writ of certiorari due on or after that date to 150 days from the date of the lower-court judgment. That order extended the deadline for filing this petition to June 14, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION

35 U.S.C. § 101 provides: “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 therefor, subject to the conditions and requirements of this title.”

INTRODUCTION

Section 101 of the Patent Act makes “any new and useful improvement” of a “process” or “machine” (among other things) eligible for patent protection. In *American Axle & Manufacturing, Inc. v. Neapco Holdings LLC*, 967 F.3d 1285 (Fed. Cir. 2020), a divided panel of the Federal Circuit held that patent claims covering an improved manufacturing process were ineligible for patenting under § 101—not based on the statutory text of § 101—but based on the majority’s finding that the claims were not sufficiently “specific,” invoked “nothing more” than an atextual “exception” to patent eligibility, and recited no “real inventive work.” The court of appeals made each of those findings as a matter of law. After the full Federal Circuit split 6-6 over whether to rehear the case en banc, American Axle filed a petition for a writ of certiorari, seeking review of: (1) the “appropriate standard for determining whether a patent claim is ‘directed to’ a patent-ineligible concept”; and (2) whether patent eligibility is “a question of law for the court based on the scope of the claims or a question of fact for the jury based on the state of art at the time of the patent.” No. 20-891 Pet. i.

Last month, this Court invited the Acting Solicitor General to file a brief in *American Axle* expressing the views of the United States. In response to prior requests from this Court regarding § 101, the United States has noted that “recent decisions have fostered uncertainty concerning th[e] substantive Section 101 standards,” No. 18-415 U.S. Br. 10, and has urged a return to “the application of traditional tools of statutory construction to the language that Congress enacted” by “interpreting Section 101’s

terms in light of statutory context, history, and constitutional purpose.” No. 18-817 U.S. Br. 21.

The Court’s disposition of the petition in *American Axle* will affect the proper disposition of this petition, which presents the same questions. Like the patent holder in *American Axle*, iLife patented a type of invention—an improved machine for motion detection—falling squarely within the subject matter that § 101 expressly makes patentable. As in *American Axle*, the Federal Circuit conditioned patent eligibility on claim specificity, reduced the invention to “nothing more” than a patent-ineligible concept, and deemed it not “inventive”—all as a matter of law.

iLife respectfully submits that this petition should be held pending the Court’s disposition of the *American Axle* case, and then disposed of accordingly. Alternatively, this petition should be granted.

STATEMENT

1. iLife owns U.S. Patent No. 6,864,796 (the ’796 patent), which claims a motion detection system in a physical device. The motion detector includes a particular type of sensor that detects changes in acceleration (*i.e.*, an accelerometer) and a processor configured to “evaluat[e] relative movement of a body based on both dynamic acceleration (*e.g.*, vibration, body movement) and static acceleration (*i.e.*, the position of a body relative to earth).” App. 2a. The patent specification explains that by “advantageously” sensing and processing both static and dynamic acceleration as a function of specific movement characteristics, the claimed motion-detection device improved upon “conventional detectors” that were “directed to measuring one or the other, but not both.”

'796 patent at 1:30-2:17, 3:25-32. As a result, iLife's improved motion detector could more reliably distinguish between different body movements with similar acceleration profiles like lying down and falling. *Id.* at 12:12-20. iLife's only asserted claim (claim 1) recites:

A system within a communications device capable of evaluating movement of a body relative to an environment, said system comprising:

a sensor, associable with said body, that senses dynamic and static accelerative phenomena of said body, and

a processor, associated with said sensor, that processes said sensed dynamic and static accelerative phenomena as a function of at least one accelerative event characteristic to thereby determine whether said evaluated body movement is within environmental tolerance

wherein said processor generates tolerance indicia in response to said determination; and

wherein said communication device transmits said tolerance indicia.

2. iLife sued Nintendo of America Inc. (Nintendo) asserting that Nintendo infringed claim 1. Nintendo moved for summary judgment asserting that claim 1 was ineligible for patenting under 35 U.S.C. § 101. "After the court declined to decide that issue, the parties continued to trial, agreeing not to present eligibility questions to the jury." App. 3a. After the

jury returned a verdict in iLife’s favor, Nintendo moved for judgment as a matter of law, renewing its argument that claim 1 was patent-ineligible. The district court granted Nintendo’s motion, holding that claim 1 was directed to the patent-ineligible concept of “gathering, processing, and transmitting information,” and failed to recite an inventive concept. App. 4a, 13a. iLife appealed the district court’s patent-ineligibility finding.

3. Shortly before the completion of briefing on iLife’s appeal, a divided panel of the Federal Circuit issued its modified decision in *American Axle*. The patent in that case claimed an improvement to an automobile driveshaft manufacturing process by “the tuning of a liner in order to produce frequencies that dampen both the shell mode and bending mode vibrations simultaneously.” 967 F.3d at 1289. The majority held that American Axle’s patent claimed “nothing more” than the use of a patent-ineligible concept—“Hooke’s law.” *Id.* at 1289. Although the *American Axle* claims recited several physical limitations apart from the purported ineligible concept, *id.* at 1290, the Federal Circuit held, as a matter of law, that the claims did not “have the specificity required to transform the claim from one claiming only a result to one claiming a way of achieving it.” *Id.* at 1296. The court of appeals derived this “specificity” requirement from its precedents “involv[ing] the abstract idea category,” finding that “the same principle necessarily applies in natural law cases.” *Id.* at 1297. The Federal Circuit also determined, again as a matter of law, that the claims recited no “real inventive work.” *Id.* at 1299. On the same day that the *American Axle* panel issued its modified opinion, the

full Federal Circuit issued an evenly divided (6-6) decision denying en banc review in the same case. See *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 966 F.3d 1347 (Fed. Cir. 2020).

4. In January 2021, the Federal Circuit affirmed the district court’s patent-ineligibility finding in this case. App. 1a. The court of appeals recognized that iLife’s patent asserted an improvement to a physical “motion sensor system” by “evaluat[ing] relative movement of a body based on both dynamic ... and static acceleration.” App. 2a, 5a. Yet the Federal Circuit again reduced the claimed invention to “nothing more” than a patent-ineligible concept—here, “gather[ing,] process[ing,] and transmit[ting] data.” App. 6a. Just as in *American Axle*, the Federal Circuit conditioned eligibility on specificity, holding iLife’s patent claim ineligible because it purportedly “[f]ail[ed] to provide any *concrete* detail for performing the associated functions,” did “not focu[s] on a *specific* means or method to improve motion sensor systems,” and was not “directed to a *specific* physical configuration of sensors.” App. 4a-5a. The Federal Circuit also concluded as a matter of law that claim 1 “fail[ed] to recite an inventive concept” because it “d[id] not recite any unconventional means or method[.]” App. 7a.

5. Shortly before issuance of the Federal Circuit’s decision in this case, the patent holder in *American Axle* filed a petition for a writ of certiorari seeking this Court’s review of two questions:

1. What is the appropriate standard for determining whether a patent claim is “directed to” a patent-ineligible concept under

step 1 of the Court’s two-step framework for determining whether an invention is eligible for patenting under 35 U.S.C. § 101?

2. Is patent eligibility (at each step of the Court’s two-step framework) a question of law for the court based on the scope of the claims or a question of fact for the jury based on the state of art at the time of the patent?

See No. 20-891 Pet. i. Last month, the Court invited the Acting Solicitor General to file a brief in *American Axle* expressing the views of the United States.

REASONS FOR GRANTING THE PETITION

This petition presents the same questions as the petition for a writ of certiorari filed in *American Axle*. See No. 20-891. Accordingly, this petition should be held pending final disposition of *American Axle*, then disposed of as appropriate in light of that decision.

1. If the Court grants the petition in *American Axle* (or any other case presenting the same questions), the Court’s decision will determine the proper disposition of this case.

For example, if the Court clarifies, refines, or modifies “the appropriate standard for determining whether a patent claim is ‘directed to’ a patent-ineligible concept,” the Federal Circuit’s judgment in this case will have to be vacated and the case remanded for further consideration under the standard articulated by the Court. Both in this case and in *American Axle*, the Federal Circuit held that patent claims were “directed to” patent-ineligible concepts because they purportedly contained “nothing more”

than those concepts. *Compare* App. 6a (“[Claim 1] is, however, directed to an abstract idea because it contains nothing more than the idea of gathering processing and transmitting data.”), *with Am. Axle*, 967 F.3d at 1298 (“This holding as to step 1 of *Alice* extends only where, as here, a claim on its face clearly invokes a natural law, and nothing more, to achieve a claimed result.”). If the Court ultimately rejects or clarifies the Federal Circuit’s so-called “*Nothing More* test” in *American Axle*, that ruling would require reconsideration of the instant case as well. 967 F.3d at 1304 (Moore, J., dissenting).¹ Furthermore, if the Court were to follow the Solicitor General’s most recent recommendation for a return to the Court’s traditional “approach of interpreting Section 101’s terms in light of statutory context, history, and constitutional purpose,”² such a ruling would require

¹ Judge Moore, who authored the decision below finding “nothing more than the idea of gathering processing and transmitting data,” App. 6a, dissented from the panel decision in *American Axle* based in part on “the majority’s application of its new *Nothing More* test” for which she argued that “[t]here is simply no justification ... other than result-oriented judicial activism.” 967 F.3d at 1305.

² No. 18-817 U.S. Br. 21 (“[U]nlike the Court’s more recent attempts to articulate and apply atextual exceptions to Section 101’s coverage, the Court’s pre-*Bilski* approach of interpreting Section 101’s terms in light of statutory context, history, and constitutional purpose involved the application of traditional tools of statutory construction to the language that Congress enacted”); see also *id.* at 17-20 (nothing that “[t]he present difficulties in applying Section 101 ultimately derive in substantial part from the *Bilski* Court’s reconceptualization of the limits on Section 101’s coverage as freestanding ‘exceptions’ rather than as context-sensitive interpretations of the provision’s terms”).

that the judgment in this case be vacated and the case remanded to the Federal Circuit.

Vacatur and remand of this case would also be required if the Court were to determine in *American Axle* that patent eligibility—at either step of the Court’s two-step framework—involves a “question of fact for the jury based on the state of art at the time of the patent.” As in *American Axle*, no issue of patent eligibility in this case was submitted to a jury or decided by a district court based on findings of fact and conclusions of law. *Compare* App. 3a (noting that the district court decided patent-eligibility on a motion “for judgment as a matter of law”), *with Am. Axle*, 967 F.3d at 1291 (noting district court decided patent-eligibility on a “motion for summary judgment”). Should the Court determine that questions of fact impact any aspect of the patent eligibility inquiry, that ruling will require reconsideration of this case.

2. The Federal Circuit’s § 101 analysis in this case reflects the same errors that it made in *American Axle*.

First, the Federal Circuit in both this case and *American Axle* applied an erroneous “nothing more” test to determine whether patent claims are “directed to” patent-eligible subject matter under § 101. App. 6a; *Am. Axle*, 967 F.3d at 1300. By ignoring physical claim limitations and reducing iLife’s mechanical invention to “nothing more” than a disembodied patent-ineligible concept—“the idea of gathering processing and transmitting data”—the Federal Circuit disregarded this Court’s admonition that “an invention is not rendered ineligible for patent simply

because it involves a[] [patent-ineligible] concept” because “applications of such concepts to a new and useful end ... remain eligible for patent protection.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (cleaned up). Like the claims in *American Axle*, claim 1 of iLife’s patent “does not preclude all use of, or even expressly recite” the broad idea of gathering, processing, and transmitting data, and “it does expressly articulate the ‘machinery’ used to achieve the [claimed] result.” 967 F.3d at 1308-09 (Moore, J., dissenting). Because many inventions “[a]t some level ... embody, use, reflect, rest upon, or apply” the concept of gathering, processing, and transmitting data, the Federal Circuit’s application of the “exception” to § 101 threatens to “swallow all of patent law.” *Alice*, 573 U.S. at 217.

The Federal Circuit’s approach to § 101 in both cases illustrates how far the doctrine of patent eligibility has drifted from its statutory mooring. Both in this case and *American Axle*, the Federal Circuit engaged in no inquiry whatsoever regarding whether the patent claims recited “any new and useful process, machine, ... or any new and useful improvement thereof” within the plain meaning of § 101. Instead, the court of appeals in both cases began and ended its analysis with the application of an “implicit exception.” *Am. Axle*, 967 F.3d at 1292; App. 3a-4a. That approach is unparalleled in its operation entirely outside, and without any regard to, the controlling statutory text. It cannot be reconciled with this Court’s approach to statutory interpretation in every other area of law. See, e.g., *Rotkiske v. Klemm*, 140 S. Ct. 355, 360-61 (2019) (“It is a fundamental principle of statutory interpretation that ‘absent

provision[s] cannot be supplied by the courts.’ To do so ‘is not a construction of a statute, but, in effect, an enlargement of it by the court.’”) (citations omitted); *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013) (“As in any statutory construction case, we start, of course, with the statutory text, and proceed from the understanding that unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning.”) (cleaned up); *Carr v. United States*, 560 U.S. 438, 458-59 (2010) (Scalia, J., concurring) (“When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.”). Patent law is no exception. See, e.g., *Diamond v. Diehr*, 450 U.S. 175, 182 (1981) (“In cases of statutory construction, we begin with the language of the statute.... [I]n dealing with the patent laws, we have more than once cautioned that courts should not read into the patent laws limitations and conditions which the legislature has not expressed.”) (cleaned up); *Bilski v. Kappos*, 561 U.S. 593, 603 (2010) (“In patent law, as in all statutory construction, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.”) (cleaned up).

The path to restoring objectivity and stability to § 101 is clear: “When the express terms of a statute give us one answer and extratextual considerations suggest another, it’s no contest[, as] [o]nly the written word is the law, and all persons are entitled to its benefit.” *Bostock v. Clayton Cty. Ga.*, 140 S. Ct. 1731, 1737 (2020). As the federal government observed in a recent invitation brief, “courts construing Section 101 should ‘begin with the language’ but should also bear in mind the provision’s history and

context,” as that “interpretative method place[s] courts on familiar judicial terrain, even if it d[oes] not make every case an easy one.” No. 18-817 U.S. Br. 21.³ Under the express terms of § 101, the eligibility of iLife’s improved motion-detection “machine” and American Axle’s improved driveshaft manufacturing “process” should have been no contest.

Second, by conditioning patent eligibility on claim specificity in both cases, the Federal Circuit transformed a “threshold” legal inquiry concerning the types of subject matter statutorily made eligible for patenting into a factbound, subjective exploration on which no patent holder or accused infringer can predictably rely.⁴ As in *American Axle*, the Federal Circuit held iLife’s patent claim ineligible based on a purported failure to recite a “specific means or method” for achieving a claimed result. App. 5a; *Am. Axle*, 967 F.3d at 1297 & n.7. The court of appeals did so despite its own precedent upholding the patent-eligibility of inventions in the same field of technology, for no other reason than that it considered the claims in those cases more “particular” and “specific.” App. 5a.

³ According to the federal government, the atextual approach to § 101 is only of recent origin. See No. 18-415 U.S. Br. 3-4 (noting that “[u]ntil 2010, the Court’s decisions ... were best understood as interpreting the specific terms ... contained in Section 101’s list of patent-eligible inventions, based in part on history and statutory context” but that “[t]he Court’s recent decisions, however, have applied a different approach”).

⁴ See *Bilski*, 561 U.S. at 602 (noting patent eligibility under § 101 “is only a threshold test” that precedes questions of patentability under 35 U.S.C. §§ 102, 103, and 112).

Like the “nothing more” test, the Federal Circuit’s “specificity” requirement is a judicial creation that cannot be “implied” from the text of § 101. In fact, as several members of the court of appeals now recognize, the Federal Circuit’s search for specificity conflates legal questions of eligibility under 35 U.S.C. § 101 with factual questions of enablement and written description under 35 U.S.C. § 112, but without the latter’s attendant consideration of the knowledge of skilled artisans.⁵ See, e.g., *Am. Axle*, 967 F.3d at 1305, 1316 (Moore, J., dissenting) (noting that the court of appeals “has imbued § 101 with a new superpower—enablement on steroids,” which “is confusing, converts fact questions into legal ones and eliminates the knowledge of a skilled artisan”); *Am. Axle*, 966 F.3d at 1359 (Newman, J., dissenting from denial of en banc review) (“Breadth of claiming is a matter of the scope and content of the description and enablement in the specification, considered in light of the prior art[.]”); *id.* at 1363 (Stoll, J., dissenting from denial of en banc review) (“The majority’s reasoning also introduces further uncertainty by blurring the line between patent eligibility and enablement.”). Those observations are supported by the statutory text of § 101, which expressly makes eligibility “subject to the [other] conditions and requirements of this title,” including § 112.

⁵ Nintendo separately challenged iLife’s patent on enablement and written-description grounds at trial, both of which the jury rejected. The trial court declined to disturb those aspects of the verdict, App. 22a, and the Federal Circuit did not reach the § 112 issues on appeal.

Third, the Federal Circuit’s application of the § 101 exception to iLife’s invention—a physical motion detector with specific hardware and software—exemplifies yet another historically-eligible mechanical invention now disqualified from the patent system under modern § 101 jurisprudence. Like American Axle’s automobile driveshaft manufacturing process that was undisputedly a “new and useful process” within the meaning of § 101 that had “historically been eligible to receive the protection of our patent laws,” *Diehr*, 450 U.S. at 184, iLife’s motion detector comprised an “improvement” to a “machine” long recognized as patentable. See *Corning v. Burden*, 56 U.S. (15 How.) 252, 267 (1853) (“The term machine includes every mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result.”). No one contended that iLife’s patent preempted any “basic tool[] of scientific and technological work,” “building block[] of human ingenuity,” or “fundamental economic practice.” *Alice*, 573 U.S. at 216, 220. Nor was it ever argued or determined that iLife’s patent would preempt the asserted ineligible concept of “gathering, processing, and transmitting information.” Nevertheless, under the Federal Circuit’s expanding categories of inventions subject to an “implicit exception” to § 101, historically-eligible inventions that at some level engage in “gathering, processing, and transmitting information” can no longer be patented.

In sum, because the Court’s disposition of the petition in *American Axle* will affect the proper disposition in this case, this petition should be held pending the disposition of *American Axle* (or another case ad-

dressing the same questions), and then disposed of as appropriate in light of the decision in that case.

CONCLUSION

The petition for a writ of certiorari should be held pending disposition of the *American Axle* petition (No. 20-891), and any further proceedings in this Court, and then disposed of as appropriate in light of the Court's decision in that case. In the alternative, this petition should be granted.

Respectfully submitted,

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JUNE 14, 2021

APPENDICES

**APPENDIX A — OPINION OF THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT,
DATED JANUARY 13, 2021**

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2020-1477

ILIFE TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

NINTENDO OF AMERICA, INC.,

Defendant-Appellee.

OPINION ISSUED: January 13, 2021

Appeal from the United States District Court for the
Northern District of Texas in No. 3:13-cv-04987-M,
Chief Judge Barbara M.G. Lynn

Before MOORE, REYNA, and CHEN, *Circuit Judges*

MOORE, *Circuit Judge.*

iLife Technologies, Inc., appeals a Northern District of Texas order holding that claim 1 of U.S. Patent No. 6,864,796 is directed to patent ineligible subject matter under 35 U.S.C. § 101. We affirm.

Appendix A

BACKGROUND

iLife owns the '796 patent, which is directed to a motion detection system that evaluates relative movement of a body based on both dynamic acceleration (*e.g.*, vibration, body movement) and static acceleration (*i.e.*, the position of a body relative to earth). *See* '796 patent at Abstract; 1:62–67; 3:26–32. Claim 1 recites:

1. A system within a communications device capable of evaluating movement of a body relative to an environment, said system comprising:

a sensor, associable with said body, that senses dynamic and static accelerative phenomena of said body, and

a processor, associated with said sensor, that processes said sensed dynamic and static accelerative phenomena as a function of at least one accelerative event characteristic to thereby determine whether said evaluated body movement is within environmental tolerance

wherein said processor generates tolerance indicia in response to said determination; and

wherein said communication device transmits said tolerance indicia.

iLife sued Nintendo asserting that Nintendo infringed claim 1. Nintendo moved for summary judgment asserting that claim 1 was directed to patent

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ineligible subject matter. After the court declined to decide that issue, the parties continued to trial, agreeing not to present eligibility questions to the jury. Following a jury verdict in iLife’s favor, Nintendo moved for judgment as a matter of law (“JMOL”), renewing its assertions that claim 1 was directed to ineligible subject matter. The court granted Nintendo’s motion, holding that claim 1 was directed to the abstract idea of “gathering, processing, and transmitting information” and failed to recite an inventive concept. J.A. 25. iLife appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(1).

DISCUSSION

We review a grant of a motion for JMOL under regional circuit law. *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1309 (Fed. Cir. 2009). The Fifth Circuit reviews an order granting JMOL de novo. *Hurst v. Lee Cty., Miss.*, 764 F.3d 480, 483 (5th Cir. 2014). We also review a district court’s determination of patent eligibility under 35 U.S.C. § 101 de novo. *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1255 (Fed. Cir. 2014).

We apply a two-step framework for “distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 217, 134 S.Ct. 2347, 189 L.Ed.2d 296 (2014). “First, we determine whether the claims at issue are directed to” a patent-ineligible concept, such as an abstract idea. *Id.* If they are, we examine “the elements of

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[each] claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 221, 134 S.Ct. 2347 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72, 79–80, 132 S.Ct. 1289, 182 L.Ed.2d 321 (2012)). If the elements involve “well-understood, routine, [and] conventional activity previously engaged in by researchers in the field,” *Mayo*, 566 U.S. at 73, 132 S.Ct. 1289, they do not constitute an “inventive concept.”

I. *Alice* Step One

At step one, the district court held that claim 1 is directed to the abstract idea of “gathering, processing, and transmitting information.” J.A. 25. We agree. Claim 1 recites a motion sensor system that evaluates and communicates the relative movement of a body using static and dynamic acceleration information collected from sensors. Failing to provide any concrete detail for performing the associated functions, however, claim 1 merely amounts to a system capable of sensing information, processing the collected information, and transmitting processed information.

We have routinely held that claims directed to gathering and processing data are directed to an abstract idea. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (holding claims directed to the abstract idea of “selecting certain information, analyzing it using mathematical techniques, and reporting or display-

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ing the results of the analysis”); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (holding claims directed to the “abstract idea of 1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory”).

iLife argues claim 1 is not directed to an abstract idea because it recites a physical system that incorporates sensors and improved techniques for using raw sensor data like the claims we held eligible in *Thales Visionix Inc. v. United States*, 850 F.3d 1343 (Fed. Cir. 2017) and *CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358 (Fed. Cir. 2020). But in *Thales*, the claims recited a particular configuration of inertial sensors and a specific choice of reference frame in order to more accurately calculate position and orientation of an object on a moving platform. 850 F.3d at 1349. We held the claims were not directed to an abstract idea because they sought to protect “only the application of physics to the unconventional configuration of sensors as disclosed.” *Id.* Likewise, the claims in *CardioNet* were not abstract because they focused on a specific means or method that improved cardiac monitoring technology, improving the detection of, and allowing more reliable and immediate treatment of, atrial fibrillation and atrial flutter. 955 F.3d at 1368. In contrast, claim 1 of the ’796 patent is not focused on a specific means or method to improve motion sensor systems, nor is it directed to a specific physical configuration of sensors. It merely recites a motion sensor system that

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evaluates movement of a body using static and dynamic acceleration information.

While we agree with the district court that these claims are directed to the abstract idea of gathering, processing and transmitting data, the district court erred to the extent that it incorporated conventionality of claim elements at step 1. *See, e.g.*, J.A. 26 (“Nothing in claim 1, understood in light of the specification, requires anything other than conventional sensors and processors performing ‘conventional activit[ies] previously known to the industry.’” (quoting *Alice*, 573 U.S. at 225, 134 S.Ct. 2347 (quoting *Mayo*, 566 U.S. at 73, 132 S.Ct. 1289))). The conventionality of the claim elements is only considered at step two if the claims are deemed at step 1 to be directed to a patent ineligible concept, such as an abstract idea. *Alice*, 573 U.S. at 217, 225, 134 S.Ct. 2347. A claim is not directed to an abstract idea simply because it uses conventional technology. This claim is, however, directed to an abstract idea because it contains nothing more than the idea of gathering processing and transmitting data.

II. *Alice* Step Two

At step two, we “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217, 134 S.Ct. 2347 (quoting *Mayo*, 566 U.S. at 78–79, 132 S.Ct. 1289). We have explained that this step is satisfied when the claim elements “involve more than performance of ‘well-understood, routine, [and] conven-

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tional activities previously known to the industry.” *Content Extraction*, 776 F.3d at 1347–48 (quoting *Alice*, 573 U.S. at 225, 134 S.Ct. 2347); *see also Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1128 (Fed. Cir. 2018) (collecting cases).

As the district court held, the elements of claim 1, considered individually and as an ordered combination, fail to recite an inventive concept. J.A. 28. Aside from the abstract idea, the claim recites only generic computer components, including a sensor, a processor, and a communication device. The specification’s description of these elements confirms they are generic. *See, e.g.*, ’796 patent at 2:46–50 (communication device includes “cellular phones, ... laptops, computers, ... and other similar types of communications equipment”); 2:64–67 (sensor broadly means “a device that senses one or more absolute values, changes in value ... of at least the sensed accelerative phenomena”); 4:34–38 (processor means “any device, system, or part thereof that controls at least one operation”). iLife argues that configuring an acceleration-based sensor and processor to detect and distinguish body movement as a function of both dynamic and static acceleration is an inventive concept. Appellant’s Br. at 53–54. But the specification clarifies sensors (*e.g.*, accelerometers) “that measure both static and dynamic acceleration [were] known.” ’796 patent at 2:1–2. And unlike the claims in *Thales*, claim 1 does not recite any unconventional means or method for configuring or processing that information to distinguish body movement based on dynamic and static acceleration. Therefore, we con-

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clude that claim 1's mere call for sensing and processing static and dynamic acceleration information using generic components does not transform the nature of claim 1 into patent eligible subject matter. *See Elec. Power*, 830 F.3d at 1355; *see also BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290–91 (Fed. Cir. 2018) (“If a claim’s only ‘inventive concept’ is the application of an abstract idea using conventional and well-understood techniques, the claim has not been transformed into a patent-eligible application of an abstract idea.”). Accordingly, we hold claim 1 is directed to patent-ineligible subject matter.

CONCLUSION

We have considered iLife's remaining arguments and find them unpersuasive. For the foregoing reasons, we conclude that claim 1 of the '796 patent is ineligible under § 101, and, therefore, we affirm.

AFFIRMED

**APPENDIX B — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS,
DATED JANUARY 17, 2020**

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

C.A. No. 3:13-cv-4987-M

ILIFE TECHNOLOGIES, INC.,

Plaintiff,

v.

NINTENDO OF AMERICA, INC.,

Defendant.

ORDER

LYNN, U.S. District Judge:

Before the Court are the Motion for Judgment as a Matter of Law and Motion for New Trial (ECF No. 356), filed by Defendant Nintendo of America, Inc., and the Motion for Entry of Judgment (ECF No. 349), filed by Plaintiff iLife Technologies, Inc. For the reasons stated below, the Court grants Defendant's Motion for Judgment as a Matter of Law, conditionally denies its alternative Motion for a New Trial, and denies Plaintiff's Motion for Entry of Judgment.

*Appendix B***I. Background**

Plaintiff sued Defendant for infringing U.S. Patent No. 6,864,796. Plaintiff argued that Defendant's Wii and Wii U devices, when used with certain video games, infringed claim 1 of the '796 patent.

The '796 patent generally discloses a system for evaluating body movement relative to an environment. The system includes a sensor that detects dynamic and static accelerative phenomena of the body.¹ '796 patent at 2:53–55. The sensor “senses one or more absolute values, changes in value, or some combination of the same” and “generates an output signal to [a] processor.” *Id.* at 2:64–3:5, 5:46–52. The processor then evaluates the signal to determine whether the body is in an acceptable or unacceptable state. *Id.* at 9:48–51. The patent describes acceptable or unacceptable as within or beyond “tolerance.” *Id.* Claim 1 provides:

A system within a communications device capable of evaluating movement of a body relative to an environment, said system comprising:

a sensor, associable with said body, that senses dynamic and static accelerative phenomena of said body, and

¹ The specification distinguishes between “static acceleration, or gravity,” which is “a gauge of position,” versus “dynamic acceleration (i.e., vibration, body movement, and the like).” '796 patent at 1:65–2:1.

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a processor, associated with said sensor, that processes said sensed dynamic and static accelerative phenomena as a function of at least one accelerative event characteristic to thereby determine whether said evaluated body movement is within environmental tolerance

wherein said processor generates tolerance indicia in response to said determination; and

wherein said communication device transmits said tolerance indicia.

Id. at 13:47–61.

The case was tried to a jury. The jury returned a verdict, finding that Defendant infringed claim 1 with respect to the accused products. (ECF No. 342 at 25). The jury awarded Plaintiff \$10,100,000 in damages, as a lump sum reasonable royalty. (*Id.* at 29). The jury also found that the patent was not invalid due to the alleged lack of (1) an adequate written description or (2) enablement. (*Id.* at 26–27). Defendant moved for judgment as a matter of law. (ECF No. 356). In the alternative, Defendant moved for a new trial. (*Id.*).

II. Motion for Judgment as a Matter of Law

Defendant moves for judgment as a matter of law, arguing that claim 1 is invalid for three reasons: (1) claim 1 is directed to patent-ineligible subject matter under 35 U.S.C. § 101, (2) claim 1 is indefinite under 35 U.S.C. § 112(b), and (3) claim 1 is inva-

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lid under 35 U.S.C. § 112(a) for lack of written description and enablement.² (ECF No. 357 at 7–33). Defendant also argues that the accused products do not infringe claim 1. (*Id.* at 33–40). Because the Court finds that claim 1 is invalid under 35 U.S.C. § 101, it will not expressly address Defendant’s other invalidity or infringement arguments.

Section 101 of the Patent Act states: “[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.

The Supreme Court has established a two-step framework to determine patent eligibility under § 101. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 84 (2012). First, a court must determine whether the character of the relevant claims is directed to a patent-ineligible concept, such as laws of nature, natural phenomena, or abstract ideas. *Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 573 U.S. 208, 217–18 (2014). If the character of the claims is directed to a patent-ineligible concept, the court must then consider the elements of each claim both individually and “as an ordered combination” to determine whether the elements “transform the na-

² In its Motion for Summary Judgment, Defendant contended that claim 1 is invalid under 35 U.S.C. § 101 and indefinite under 35 U.S.C. § 112(b). (ECF No. 224). The Court carried these issues, and because they are matters of law, they were not presented to the jury. (ECF No. 302).

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ture of the claim” into a patent-eligible matter. *Id.* at 217 (citing *Mayo*, 566 U.S. at 72–73). To save a patent at the second step, an inventive concept must be evident in the claims. *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016).

A. Step One

Claim 1 recites a system comprising conventional computer components performing various operations. ‘796 patent at 13:48–61. A sensor collects data, i.e., “senses dynamic and static accelerative phenomena.” *Id.* at 13:51–52. A processor analyzes that data, i.e., “processes said sensed dynamic and static accelerative phenomena as a function of at least one accelerative event characteristic to thereby determine whether said evaluated body movement is within environmental tolerance.” *Id.* at 13:51–57. After analysis, the processor outputs variables, i.e., “tolerance indicia.” *Id.* at 13:58–69. A communication device then transmits the tolerance indicia. *Id.* at 13:60–61. At its core, claim 1 is therefore directed to the abstract idea of “gathering, processing, and transmitting ... information.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016); *see also SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018), *cert. denied*, 139 S. Ct. 2747 (2019); *Smartflash LLC v. Apple Inc.*, 680 F. App’x 977, 983 (Fed. Cir. 2017), *cert. denied*, 138 S. Ct. 687 (2018) (“[M]erely storing, transmitting, retrieving, and writing data to implement an abstract idea on a computer does not transform the nature of the claim into a patent-eligible application.”).

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Claim 1 is not any less abstract because the information is of a specific type—dynamic and static accelerative phenomena. *See Elec. Power*, 830 F.3d at 1353 (“[W]e have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.”). Analyzing the information through some mathematical algorithm and generating wholly new information is also “essentially [a] mental process[] within the abstract-idea category.” *Id.* at 1354; *see also Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) (“A process that employs mathematical algorithms to manipulate existing information to generate additional information is not patent eligible ... even if the [output] is for a specific purpose.”). Merely then transmitting “the results of abstract processes of collecting and analyzing information, without more ... is abstract as an ancillary part of such collection and analysis.” *Elec. Power*, 830 F.3d at 1354.

Furthermore, an abstract idea implemented on conventional computer components is still an abstract idea. *See Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016); *Shortridge v. Found. Constr. Payroll Serv., LLC*, 655 F. App’x 848, 853 (Fed. Cir. 2016) (holding ineligible a patent that implements an abstract idea through “computer components . . . conventional and known to the industry at the time of the patent”). Nothing in claim 1, understood in light of the specification, requires anything other than conventional

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sensors and processors performing “conventional activit[ies] previously known to the industry.” *Alice*, 573 U.S. at 225 (quoting *Mayo*, 573 U.S. at 72); *see also* ‘796 patent at 2:1–4 (disclosing that sensors “measur[ing] both static and dynamic accelerative phenomena are known” in the industry).³

A claim disclosing some improvement to the functionality of conventional computer components, however, may be patent-eligible under step one. For example, in *Thales Visionix Inc. v. United States*, the asserted claims recited a system for tracking the motion of an object relative to a moving platform, comprised of (1) inertial sensors mounted on the object and the platform and (2) an unnamed element to receive the sensors’ signals and determine the orientation of the object. 850 F.3d 1343, 1345–46 (Fed. Cir. 2017). The system used conventional sensors. *Id.* However, the Federal Circuit found the claims patent-eligible because they specified an “unconventional configuration of sensors,” which reduced errors in tracking motion. *Id.* at 1349; *see also* *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336–37 (Fed. Cir. 2016) (holding that a claim disclosing a method for improving computer search and retrieval

³ Evidence introduced at trial supports this finding. (*See* Aug. 21, 2017, Trial Tr. at 118:23–119:2 (inventor of ‘796 patent testifying that processors were known at the time of invention and that Plaintiff purchased them from other companies); *id.* at 116:16–21 (inventor testifying the same for sensors that collected acceleration data); Aug. 22, 2017, Trial Tr. at 105:9–11 (Plaintiff’s expert testifying that processors were well-known at the time of invention)).

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using self-referential tables, which was a “specific improvement to the way computers operate,” was not directed to an abstract idea); *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1261–62) (Fed. Cir. 2017) (acknowledging that the claimed “programmable operational characteristics” enabled a memory system to be operable with multiple different processors and could outperform prior art memory systems); *SRI Int’l, Inc. v. Cisco Sys., Inc.*, 930 F.3d 1295, 1304 (Fed. Cir. 2019) (determining that claims were not abstract because they “actually prevent the normal, expected operation of a conventional computer network”).

But claim 1 is not directed to an improvement in the functionality of sensors and processors. For example, the claim does not disclose any improvement in the sensor’s ability to collect information, such as collecting previously unknown information or collecting information more accurately. It does not disclose some improvement in the processor itself, such as faster or more powerful processing. Unlike in *Thales*, claim 1 is not limited to any particular configuration of the components that results in a technological improvement. Instead, the sensor and processor are merely tools to execute an abstract idea; claim 1 does not recite “any particular assertedly inventive technology” for collecting, analyzing, and transmitting information. *Elec. Power*, 830 F.3d at 1354.

Indeed, claim 1 is analogous to and materially indistinguishable from other claims that have failed at step one because they were directed to collecting, gathering, and transmitting information. *See TDE*

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Petroleum Data Sols., Inc., v. AKM Enter., Inc., 657 F. App'x 991, 992 (Fed. Cir. 2016), *cert. denied*, 137 S. Ct. 1230 (2017) (finding claims disclosing processes for (1) receiving data from sensors deployed on an oil well drill, (2) validating the data, (3) determining, based on the data, the present state of the oil well drill, “e.g., drilling, sliding, or bore hole conditioning” to be patent ineligible); *Elec. Power*, 830 F.3d at 1354 (concluding that claims disclosing processes for detecting events on an interconnected electric power grid by collecting information from various sources, analyzing this information to detect events in real time, and displaying the event analysis results and diagnoses were ineligible); *SAP Am., Inc.*, 898 F.3d at 1167 (concluding that claims focused on “selecting certain information, analyzing it using mathematical techniques, and reporting or displaying the results of the analysis” were ineligible); *Prism Techs. LLC v. T-Mobile USA, Inc.*, 696 F. App'x 1014, 1017 (Fed. Cir. 2017), *cert. denied*, 138 S. Ct. 689 (2018) (determining that claims disclosing “abstract process that includes: (1) receiving identity data from a device with a request for access to resources; (2) confirming the authenticity of the identity data associated with that device; (3) determining whether the device identified is authorized to access the resources requested; and (4) if authorized, permitting access to the requested resources” were ineligible); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1339, 1346 (Fed. Cir. 2013) (finding claims that recite “applying ... information related to the insurance transaction to rules to determine a task to be completed” to be patent ineligible).

*Appendix B***B. Step Two**

Having determined that claim 1 is directed to an abstract idea, the Court proceeds to step two of the *Alice* framework. There is no inventive concept in the claim elements, whether considered individually or as an ordered combination. Claim 1, as construed, does not add any meaningful limitations to the routine steps of data collection, analysis, and transmission using conventional computer components.

Plaintiff “cannot argue that ... receiving sensor data, validating sensor data, or determining a state based on sensor data is individually inventive.” *TDE Petroleum*, 657 F. App’x at 993. These are the “most ordinary of steps in data analysis and are recited in the ordinary order,” so there is nothing inventive about the ordered combination of these steps. *Id.*; see also *Elec. Power*, 830 F.3d at 1354 (“The advance [the claims] purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.”). Claim 1 requires neither a new source or type of information nor a new method of measuring information. It provides for an unspecified set of rules for analyzing sensor data, but discloses no further details on those rules, like how data might be evaluated for a child versus an adult.⁴ *Compare Se-*

⁴ Claim 1 provides for a processor that analyzes “sensed dynamic and static accelerative phenomena as a function of at least one accelerative event characteristic.” ‘796 patent at 13:53–56. As construed, this limitation simply means that the processor applies some mathematical function to acceleration

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cured Mail Sols. LLC v. Universal Wilde, Inc., 873 F.3d 905, 910 (Fed. Cir. 2017), *cert. denied*, 138 S. Ct. 2000 (2018) (“The claims generically provide for the encoding of various data ... but do not set out how this is to be performed . . . [and] [n]o special rules ... are recited.”) *with McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1315 (Fed. Cir. 2016) (finding a claim patent eligible where the “claimed process uses a combined order of specific rules that renders information into a specific format that is then used and applied to create desired results”). In fact, Plaintiff argued during claim construction that claim 1 “does not contain words requiring any special type of processing.” (ECF No. 113 at 5). Claim 1 discloses outputting variables called tolerance indicia, but “the mere fact that the inventor applied coined labels ... does not make the underlying concept inventive.” *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017). Overall, claim 1 encompasses a sensor that senses data, a processor that processes data, and a communications device that communicates data, and no further inventive concept is recited to transform the abstract idea into a patent-eligible invention.

Plaintiff highlights features discussed in the specification, such as how the claimed processor distinguishes “between normal and abnormal accelerative events, and, when an abnormal event is identi-

data collected from the sensor. That is not a meaningful limitation to supply an inventive concept.

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fied, to indicate whether the abnormal event is tolerable, or within tolerance.” ‘796 patent at 3:7–11. The specification further discusses how the processor may be programmed to distinguish “other physical characteristics, including temperature, pressure, force, sound, light, relative position, and the like.” *Id.* at 3:11–14. But an inventive concept must be apparent in the claim language. Where “[t]he claim language does not provide any specific showing of what is inventive about the [limitation in question] or about the technology used to generate and process it,” the claim does not satisfy step two. *Secured Mail*, 873 F.3d at 912; *see also Intellectual Ventures*, 838 F.3d at 1322 (“The district court erred in relying on technological details set forth in the patent’s specification and not set forth in the claims to find an inventive concept.”). Even if, for example, the preferred embodiment discloses what could arguably be an inventive concept, claim 1 recites none of those details or limitations.

In sum, claim 1 is invalid under 35 U.S.C. § 101. It is directed to an abstract idea and fails to recite any inventive concept sufficient to transform the abstract idea into a patent-eligible invention.

III. Alternative Motion for a New Trial

Under Rule 50(c)(1), the Court must conditionally rule on Defendant’s Motion for a New Trial:

If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial

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should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

Fed. R. Civ. P. 50(c)(1). If the court conditionally grants a new trial and the appellate court finds that the grant of judgment was in error, “the new trial must proceed unless the appellate court orders otherwise.” Fed. R. Civ. P. 50(c)(2). If the court conditionally denies a new trial and the appellate court reverses judgment, “the case must proceed as the appellate court orders.” *Id.*

Under Rule 59(a), a court can grant a new jury trial “for any reason for which a new trial has heretofore been granted in an action at law in federal court.” Fed. R. Civ. P. 59(a)(1)(A). A court can grant a new trial if it concludes that the verdict is against the weight of the evidence, the damages awarded are excessive, the trial was unfair, or prejudicial error was committed in its course. *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 613 (5th Cir. 1985) (citations omitted).

Defendant argues that a new trial is necessary for the following reasons: (1) the jury’s verdict is against the weight of the evidence, because no reasonable jury could have concluded claim 1 was valid and infringed; (2) the Court erred in construing certain claims; (3) the jury was improperly presented with resolving claim construction disputes; and (4) the Court provided several erroneous instructions to the jury. (ECF No. 357 at 40–44).

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The Court conditionally denies Defendant's Motion for a New Trial. If the Court's grant of judgment as a matter of law is reversed on appeal, and the Federal Circuit holds that Plaintiff is entitled to recover the damages awarded by the jury, the Court cannot say that the verdict was against the weight of the evidence. Further, the Court finds that it did not err in construing claims, did not improperly task the jury with resolving claim construction disputes, and did not provide the jury with incorrect instructions.

IV. Attorneys' Fees

Under 35 U.S.C. § 285, "the court in exceptional cases may award reasonable attorney fees to the prevailing party." To the extent Defendant is considering moving for such fees, Defendant is advised that the Court is extremely unlikely to find that this case is exceptional for the purposes of § 285.

V. Conclusion

For the reasons stated above, the Court grants Defendant's Motion for Judgment as a Matter of Law, conditionally denies Defendant's alternative Motion for New Trial, and denies Plaintiff's Motion for Entry of Judgment. The Court will enter judgment in favor of Defendant.

SO ORDERED.

January 17, 2020.