

No. 20-1760

In The
Supreme Court of the United States

ILIFE TECHNOLOGIES, INC.,

Petitioner,

v.

NINTENDO OF AMERICA INC.,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Federal Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Federal Circuit correctly affirmed the District Court's conclusion that claim 1 of U.S. Patent No. 6,864,796 is invalid because it is directed to the patent-ineligible abstract idea of gathering, processing, and transmitting information, and recites no inventive concept.

RULES 24(b) AND 29.6 STATEMENT

All parties are identified in the caption of this brief. Respondent Nintendo of America Inc. is a wholly owned subsidiary of Nintendo Co., Ltd., whose stock is publicly traded in Japan.

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INTRODUCTION

This is a run-of-the-mill Section 101 case regarding a single, now-expired patent claim. The non-precedential decision below correctly and unanimously affirmed the District Court’s judgment that a patent claim generically reciting the use of conventional hardware to evaluate body movement is an abstract idea not eligible for patenting. There is no basis for this Court’s review of that factbound decision, and Petitioner identifies none.

Rather, Petitioner asks that this case be held for *American Axle & Manufacturing v. Neapco Holdings*, No. 20-891. A hold is not warranted for two independent reasons. First, Petitioner waived its right to raise the two questions presented in *American Axle*—which Petitioner copies as its questions presented here—by failing to preserve those questions at any stage of the proceedings below. Second, even were the Court to grant the petition in *American Axle*, its resolution of that case will have no impact on the Federal Circuit’s decision here.

The petition should be denied.

STATEMENT

I. Abstract Ideas, Laws of Nature, and Natural Phenomena Have Long Been Recognized as Non-Patent Eligible.

Section 101 of the Patent Act sets out the subject matter eligible for patent protection: “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.” 35 U.S.C. § 101. For over 150 years, this Court has held that laws of nature, natural phenomena, and abstract ideas—“the basic tools of scientific and technological work”—are not patentable, and has interpreted Section 101 accordingly. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (collecting cases, including *Le Roy v. Tatham*, 14 How. 156, 174-175 (1853)) (quotation marks omitted). Those three categories are patent ineligible because “monopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it.” *Id.* (citation omitted). That concern has been described “as one of pre-emption”—essentially, patents that improperly claim the “building blocks of human ingenuity” stifle innovation. *Id.*

With the advent and popularization of computers and computer components, this Court has expressed specific concern about patents that attempt to circumvent these principles of patentability by reciting generic computer hardware as a claimed implementation of an otherwise unpatentable concept. Accordingly, this Court explained in *Alice* that simply reciting or implementing an abstract idea on a “physical machine” or a “computer” does not automatically render an otherwise ineligible patent claim eligible for patentability. *Alice*, 573 U.S. at 222; *see id.* at 223 (“[T]he mere recitation of a generic computer cannot transform a

patent-ineligible abstract idea into a patent-eligible invention. . . . Nor is limiting the use of an abstract idea to a particular technological environment.” (internal quotation marks and citation omitted)). Generic hardware implementation provides no “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.” *Id.* at 223-224 (bracket in original; citation omitted).

II. The Settled Two-Step Test to Determine Patent Eligibility Consistently Leads to the Invalidation of Patent Claims Like Petitioner’s.

This Court’s 2014 decision in *Alice*, relying on its earlier rulings, including *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), confirmed that courts apply a two-step test to determine patent eligibility under Section 101. First, the court determines if the claim at issue is directed to a patent-ineligible concept. *Alice*, 573 U.S. at 217-218. If so, then the court determines whether the claim recites an “inventive concept” sufficient to “transform the nature of the claim into a patent-eligible application.” *Id.* (quotation marks omitted). That second step is intended “to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Id.* at 218-219 (quotation marks omitted, brackets in original).

The Federal Circuit has repeatedly applied that two-step test to invalidate generic computer and

software patent claims like those at issue here, which are directed to gathering, storing, transmitting, and displaying information and thus are unpatentable abstract ideas. *E.g.*, *Elec. Commc’n Techs., LLC v. ShoppersChoice.com, LLC*, 958 F.3d 1178, 1182 (Fed. Cir. 2020) (patent “amounts to nothing more than gathering, storing, and transmitting information”); *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 769 (Fed. Cir. 2019) (focus of claims was communicating and receiving communication information over a network); *SAP Am., Inc. v. Investpic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (claims directed to “selecting certain information, analyzing it using mathematical techniques, and reporting or displaying the results of the analysis”); *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1337-1338 (Fed. Cir. 2017) (claims directed to sending, directing, monitoring, and accumulating information); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (claims directed to “the abstract idea of collecting, displaying, and manipulating data”); *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (using a generic telephone environment to classify and store images); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“[W]e have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.”); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (“The

concept of data collection, recognition, and storage is undisputedly well-known.”).

III. The Patent Claim at Issue Here is Directed To Gathering, Processing, and Transmitting Information, Without Reciting Any Inventive Concept.

The petition is the final remaining vestige of Petitioner iLife’s blitz of nine different lawsuits asserting its “fall detection” patents. (App. 128.) All of these patents relate to evaluating movement based on dynamic and static acceleration information.

iLife sought to enforce its patents against a disparate set of industries and products, starting with fall detector companies, then fitness trackers, and then finally Respondent Nintendo of America Inc.’s (“Nintendo”) video game products. (App. 90.) With respect to Nintendo, iLife argued its patents covered various Nintendo products, including four virtual video games—Mario Kart 8, Wii Sports, Wii Sports Resort, and Wii Sports Club. (App. 128.) All of iLife’s other cases settled and only this case remains. iLife currently “does not have sufficient cash or assets” to satisfy the costs it owes. (App. 116, ¶ 5.)

A. Upon Nintendo’s Challenge, the Patent Office Invalidated iLife Patent Claims that Are Substantively Identical to the ’796 Claim At Issue Here.

iLife originally asserted six patents against Nintendo, all stemming from the same asserted grandparent patent, U.S. Patent No. 6,307,481, titled “Systems for Evaluating Movement of a Body and Methods of Operating the Same.” (App. 129.)

Nintendo challenged the validity of iLife’s claims in *inter partes* review (“IPR”) proceedings,¹ and the Patent Office found nearly all of the challenged iLife patent claims unpatentable and invalid based on earlier prior art, meaning someone else had already patented the same invention. (App. 7-59.) iLife never appealed those decisions. (App. 131.)

The ’796 claims were the only ones to survive *inter partes* review, but not due to any substantive difference with the grandparent patent claims that failed. Rather, the Patent Office decided that the asserted prior art publication for the ’796 patent did not predate the relevant date of the ’796 patent (called the “priority date”). (App. 69-70; App. 79; App. 93-94 (color-coded table comparing claims).)² Accordingly, the Patent

¹ *Inter partes* review is an administrative process by which a person can challenge the validity of patent claims based on earlier patents or printed publications—“prior art.” *Oil States Energy Servs., LLC v. Greene’s Energy Grp., LLC*, 138 S. Ct. 1365, 1371 (2018).

² A different prior art publication was used for the IPR challenge to the ’796 patent than was used for the ’481 patent.

Office did not reach the merits of the unpatentability challenge to the '796 claims. (App. 79; *Nintendo of Am. Inc. v. iLife Techs., Inc.*, 717 F. App'x 996, 1004 (Fed. Cir. 2017).)

B. The Trial Was Based on Broad Constructions of the '796 Claim Urged by iLife.

iLife asserted claim 1 of the '796 patent against Nintendo in the District Court. Presiding Chief District Judge Barbara M. G. Lynn held two claim construction hearings.³ iLife pursued broad constructions of the claim language, arguing that it “should not be limited based on the written description” of the patent. (*E.g.*, App. 3-6; App. 2 (“claims are broadly written to cover systems and methods for evaluating body movement”).)

The District Court adopted iLife’s broad proposed claim constructions. (App. 88.) For example, the term “communications device” was interpreted in no unique or special way, but rather broadly to include “cellular telephones, personal digital assistants, hand held computers, laptops, computers, wireless Internet

³ Claim construction is the process of construing and defining the patent’s claim terminology, which directly affects the scope of the patented invention. Because the “focus” of the analysis under Section 101 centers on the claim language in the patent, claim construction can significantly impact the Section 101 analysis. See *Ericsson v. TCL Commc’n Tech. Holdings Ltd.*, 955 F.3d 1317, 1325, 1329 (Fed. Cir. 2020); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016) (“The § 101 inquiry must focus on the language of the Asserted [Patent] Claims themselves.”).

access devices, and other similar types of communications equipment.” (App. II-12 at 2:19-23; App. 88.)

Following claim construction, the parties filed cross-motions for summary judgment, including cross-motions on whether claim 1 was directed to an abstract idea and thus invalid under 35 U.S.C. § 101. (App. 80-82 (iLife’s Section 101 summary judgment motion); App. 83-84 (Nintendo’s motion).) The District Court deferred ruling on the Section 101 cross-motions and the case proceeded to trial. (Pet. App. at 12a.)

At trial, iLife demanded \$144 million from Nintendo for alleged infringement of the ’796 patent. (App. 114.) iLife broadly argued that any evaluation of movement would be covered by what it described as its general purpose “tool” patent for fall detection. (App. 101-102.) The lead inventor of the ’796 patent acknowledged that he and his co-inventors did not invent the hardware recited in the patent claim, but simply used off-the-shelf conventional sensors and processors. (App. 102-107.) The iLife inventors also admitted that they never contemplated applying their alleged invention to video game systems and that they had never developed any video games. (App. 109; App. 108; App. 111-112.) Indeed, “video game” is never even mentioned in the ’796 patent.⁴ (*See* App. II-1-App. II-20.)

⁴ iLife’s petition tries to characterize its patent as covering an “improved motion-detection ‘machine.’” (*E.g.*, Pet. at 12, 3, 14.) But the ’796 patent—which iLife did not include with its petition—recites nothing about an improved “machine.”

The jury awarded iLife \$10.1 million. (Pet. App. at 11a.)

C. The District Court Granted Nintendo’s Post-Trial Motion for Judgment as a Matter of Law, Holding Claim 1 of the ’796 Patent Invalid Under Section 101.

Following trial, Nintendo moved for judgment as a matter of law (“JMOL”), arguing that claim 1 was invalid under Section 101. (Pet. App. at 11a.) Chief District Judge Lynn, who presided over the case for six years, including two claim construction hearings and the jury trial, granted the motion. (Pet. App. at 20a.)

First, under *Alice* step one, the District Court held that claim 1, as construed, was directed to the abstract idea of gathering, processing, and transmitting information using “conventional” components “performing conventional activities previously known to the industry.” (Pet. App. at 13a, 16a.) The District Court explained claim 1’s recitation of a certain type of information (“dynamic and static accelerative phenomena”) did not make the claim “any less abstract.” (Pet. App. at 14a.) Rather, claim 1 was “not limited to any particular configuration of the components that results in a technological improvement.” (Pet. App. at 16a.)

Then, under *Alice* step two, the District Court held that claim 1 recites no inventive concept. (Pet. App. at 18a.) It explained that the “claim elements, whether considered individually or as an ordered combination,” do not add “any meaningful limitations to the routine

steps of data collection, analysis, and transmission using conventional computer components.” (*Id.*) According to the patent, preexisting “conventional detectors” could “gauge movement of the body” and “a body’s position by various means.” (App. II-12 at 2:5-8.) Claim 1 simply recites three generic components—a sensor, processor, and communications device. The patent admits each component was “conventional” and capable of doing the recited purpose off the shelf. (App. II-14 at 5:52-53 (“conventional” sensor); App. II-12 at 2:1-2 (could “measure both static and dynamic acceleration”); App. II-14 at 6:65, 6:55-59 (“conventional” processor); App. II-12 at 2:19-23 (communications device).) The claim merely 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.” (Pet. App. at 18a.)

D. The Federal Circuit Unanimously Affirmed in a Non-Precedential Opinion.

iLife appealed the District Court’s invalidity ruling to the Federal Circuit. Its sole bases for appeal were as follows: “(1) claim 1 is not ‘directed to’ an abstract idea or, alternatively, (2) Nintendo failed to prove that the claimed invention was well-understood, routine, and conventional before the critical date.” (App. 120.) iLife maintained that *Alice* step one presented a “legal question” that could be answered based on the ’796 patent. (App. 122.) iLife requested “reversal of the district court’s ineligibility judgment and remand for further proceedings, including entry of

judgment on the jury’s verdict.” (App. 125.) iLife did not challenge the District Court’s broad claim constructions, which iLife itself had requested.

The Federal Circuit unanimously affirmed the District Court’s JMOL order. (Pet. App. at 1a.) The Federal Circuit agreed with the District Court that claim 1 was directed to the abstract idea of “gathering, processing and transmitting data,” and that, because the claim invoked only “generic computer components” and recited no inventive concept sufficient to “transform the nature of claim 1 into patent eligible subject matter,” the claim was invalid. (Pet. App. at 6a-8a.) iLife did not seek panel rehearing or rehearing *en banc*.



REASONS FOR DENYING THE PETITION

I. Petitioner Waived the Issues in the Questions Presented.

Prior to its petition for writ of certiorari, iLife never raised the issues set forth in its questions presented, which are copied from and identical to those in the *American Axle* petition. iLife therefore has waived these issues. See *Sprietsma v. Mercury Marine*, 537 U.S. 51, 56, n.4 (2002) (“Because this argument was not raised below, it is waived.”); *United States v. United Foods, Inc.*, 533 U.S. 405, 417 (2001) (declining to allow petitioner to assert “new substantive arguments” attacking the judgment “when those arguments were not pressed in the court whose opinion we are reviewing, or at least passed upon by it”).

As to the first question presented both here and in *American Axle* (the appropriate standard for applying *Alice* step one), iLife never argued below that the standard for *Alice* step one should be revisited. iLife, in fact, thought the law was so well-settled that it filed its own motion for summary judgment seeking an offensive ruling of validity under Section 101, and argued that “controlling authority” supported its position. (App. 80-82; App. 96.) iLife never preserved the argument, in either the District Court or the Federal Circuit, that the *Alice* standard was wrong or unclear.

As to the second question presented (whether patent eligibility is a question of law or a question of fact), iLife consistently treated patent eligibility as a question of law and never argued or even sought to preserve the argument that patent eligibility is a question of fact that requires a jury. Indeed, iLife itself moved for summary judgment on Section 101, unambiguously arguing that the District Court could decide patent eligibility as a matter of law, that no factual disputes existed, and that the *Alice* step one analysis was a “legal question.” (App. 81; App. 96; App. 122.) Thereafter, iLife never submitted proposed jury instructions or jury verdict questions directed to Section 101. Rather, at the final pretrial conference, iLife’s counsel said: “For example, 101 and 112, indefiniteness. Those are—I think it’s *undisputed that those are issues for the*

Court to decide, and they're fully briefed." (App. 100 (emphasis added).)⁵

iLife's failure to raise the issues underlying both questions presented is especially notable given that: the Federal Circuit issued its initial panel decision in *American Axle* months before iLife filed its notice of appeal to the Federal Circuit; the petitioner in *American Axle* filed its petition for rehearing *en banc* well before iLife noticed its appeal; the Federal Circuit denied rehearing *en banc* and issued the modified opinion in *American Axle* two weeks before iLife's appellate reply brief was due; and the cert petition in *American Axle* was filed over two weeks before the Federal Circuit issued its decision in this case. *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 939 F.3d 1355, 1357-1358 (Fed. Cir. 2019), *reh'g granted, opinion withdrawn*, 966 F.3d 1294 (Fed. Cir. July 31, 2020), *and opinion modified and superseded on reh'g*, 967 F.3d 1285 (Fed. Cir. 2020); App. 117 (notice of appeal, dated Feb. 7, 2020); App. 133-139 (reply brief, dated August 12, 2020). In short, although iLife was on notice that the questions presented in the *American Axle* cert petition were being actively debated and could be taken up by this Court, iLife never cited *American Axle* in any of its Federal Circuit briefing, never filed a Rule 28(j) letter, never asked that the Federal Circuit hold this case in

⁵ iLife's petition argues that "no issue of patent eligibility in this case was submitted to a jury" (Pet. at 9), but that is because, as the District Court explained, "the parties continued to trial *agreeing* not to present eligibility questions to the jury." (Pet. at 4 (citing Pet. App. at 3a) (emphasis added).)

abeyance or delay issuance of the mandate pending resolution of the *American Axle* cert petition, and never asked for panel rehearing or rehearing *en banc*.

Furthermore, the Federal Circuit’s unanimous opinion in this case, authored by Judge Moore—notwithstanding her dissent in *American Axle*—indicates no connection between this case and *American Axle*. Specifically, the opinion below does not cite *American Axle* or say anything suggesting this case implicates the questions at issue there.

Having wholly failed to preserve the questions presented here, it is too late for iLife to try to raise them now. See *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 109 (2001) (“We ordinarily ‘do not decide in the first instance issues not decided below.’”) (citation omitted). The petition can and should be denied on this ground alone.

II. This Case Should Not Be Held Pending Disposition of *American Axle*.

A. No Resolution of *American Axle* Would Change the Result Here.

Although iLife’s waiver is dispositive, this case also does not warrant a hold pending disposition of *American Axle* because any resolution of the questions presented in *American Axle* will not affect the outcome here. The *only* common thread between this case and *American Axle* is that they both involve Section 101. Yet the Federal Circuit hears a significant number of

Section 101 cases every year, and this Court should not open the floodgates to petitions seeking to hold all Section 101 cases pending resolution of *American Axle*. Indeed, this Court already has denied review in at least one Section 101 case asking for a hold for *American Axle*, and it should do the same here. See *Fast 101 Pty. Ltd. v. Citigroup Inc.*, No. 20-1517, 2021 WL 2301993, at *1 (U.S. June 7, 2021).

The Section 101 issues presented in *American Axle* and here are entirely distinct. As explained above, patents for patentable subject matter can include “any new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. And the three categories of ineligible subject matter are “[l]aws of nature, natural phenomena, and abstract ideas.” *Alice*, 573 U.S. at 216. Whereas this case involves a computer-related claim directed at an abstract idea (decided on a post-trial motion for judgment as a matter of law), *American Axle* involves a manufacturing-related claim and the “law of nature” exception (decided at summary judgment). Because neither the patentable subject matter nor the ground of exclusion are the same in the two cases, the ruling in *American Axle* will shed no further light on the resolution of iLife’s claim here.

Specifically, the *American Axle* patent claimed “methods” for “manufacturing a shaft assembly of a driveline system” and sought to cover a “process” under Section 101. *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 967 F.3d 1285, 1290, 1293, 1295 (Fed. Cir. 2020). The case involved the question “whether the claimed methods [were] directed to laws of nature.” *Id.* at 1293.

The patent claims required using Hooke's law— $F = kx$ —a “natural law of relating frequency to mass and stiffness.” *Id.* at 1293-1294, 1291. Consequently, Judge Moore's dissent and the petition in *American Axle* are focused on the application of the laws of nature category, and specifically whether there was sufficient development of the factual record in *American Axle* to determine if the patent claims there were actually drawn to a patent ineligible law of nature or application thereof. For example, because *American Axle* was decided on summary judgment, American Axle's petition before this Court argues, among other things, that given the “factual questions of physics,” a jury should weigh the evidence to determine patent eligibility. 2019 WL 11611081, Pet. at 24. According to American Axle, the jury could “read the emails among Neapco's engineers discussing their need to copy the '911 patent and its teachings,” and hear “conflicting testimony of the parties' experts.” 2019 WL 11611081, Pet. at 24. And as Judge Moore stated in her dissent: “If we are going to embark in a tumultuous area of law on a new test for ascertaining when claims are directed to unmentioned *natural laws*—we should do so with the benefit of briefing or even better, we should remand for the district court to apply the test in the first instance since it requires resort to extrinsic evidence.” *Am. Axle*, 967 F.3d at 1312 (emphasis added).

In contrast, iLife's patent claim is directed not to natural law, but to a different category of ineligible subject matter—an abstract idea so broad and simple that it falls directly under a long line of precedent

holding such claims patent ineligible. (Pet. App. at 4a, 16a.) Moreover, iLife obtained a “system” claim, seeking to cover a “machine” under Section 101—not a mechanical or industrial process like that at issue in *American Axle*. (See Pet. at 12.) The courts below held iLife’s patent claim ineligible because the claim (broadly construed at iLife’s urging) was directed to “gathering, processing, and transmitting information,” and simply invoked conventional components to achieve the abstract idea, without reciting any inventive concept. (Pet. App. at 4a-6a, 7a-8a.) The Federal Circuit’s decision was so unquestionably consistent with precedent from this Court and Federal Circuit cases dealing with similar abstract ideas that the Federal Circuit decided the case without needing oral argument.

Additionally, unlike in *American Axle*, there is no claimed issue of an undeveloped factual record here. Whereas *American Axle* argues it was disadvantaged by not being afforded the opportunity to show emails and try factual questions to a jury, 2019 WL 11611081, Pet. at 24, iLife already developed a full factual record. Indeed, iLife’s case was decided by a Chief District Judge who presided over the case for six years, including two claim construction hearings and the jury trial, and granted Nintendo’s post-trial motion for a judgment as a matter of law after hearing all the evidence. (Pet. App. at 11a, 9a, 15a (footnote 3 (citing trial transcript)).)

Finally, contrary to iLife’s assertion, the Federal Circuit’s use of the two words “nothing more” does not

turn a run-of-the-mill Section 101 case into a case requiring a hold for *American Axle*. (E.g., Pet. at 9.) The claimed concern with the “nothing more” principle—where courts reduce a claim to a law of nature, abstract idea, or natural phenomena and then find that the claim does “nothing more” than apply that law of nature, abstract idea, or natural phenomena in a routine, well-known way—is that it invites courts to oversimplify claims. But here, it was *iLife* that purposefully broadened its claims through claim construction so it could allege infringement of video games based on a patent that had nothing to do with video game technology. That broadening made the sole asserted claim so abstract that it was no longer patentable under Section 101. The claim’s reference to “machinery” could not save it, as that merely recited the use of well-known, off-the-shelf hardware to apply the claimed abstract idea.

In short, there was no oversimplification by either the District Court or the Federal Circuit here. *iLife*’s claim as construed at its urging rendered its claim unpatentable. *American Axle*’s call for clarifying the contours of the “nothing more” principle in the distinct context presented by that case has nothing to do with the decision here. *iLife* does not even attempt to explain how any standard that could result from *American Axle* would change the outcome here.

Whether a case using the phrase “nothing more” should be held for *American Axle* thus depends not simply on the appearance of the words “nothing more,” but instead on the role (if any) that the underlying

principle played in the decision. The phrase “nothing more” appears in more than 75 Federal Circuit Section 101 decisions issued since this Court’s 2014 *Alice* decision. A bright-line rule that the mere recitation of “nothing more” warrants a hold or certiorari would be unworkable. Indeed, this Court recently declined to hold for *American Axle*, a Federal Circuit case that used the phrase “nothing more” three times. *See Fast 101 Pty Ltd. v. CitiGroup Inc.*, 834 F. App’x 591, 594 (Fed. Cir. 2020), *cert. denied*, No. 20-1517, 2021 WL 2301993 (U.S. June 7, 2021). Just as with *Fast 101*, this case should not be held pending disposition of *American Axle*.

B. The Federal Circuit’s Decision is Correct.

Not only does *American Axle* have no bearing on the resolution of this case, but the decision below is correct and fully consistent with Section 101. This is a straightforward case about an unremarkable and meritless patent claim. iLife did not patent a new device or solve a specific problem unique to communication devices. (*See, e.g.*, Pet. App. at 18a-20a, 7a.) It therefore was not entitled to patent protection, as the courts below correctly ruled.

As the Federal Circuit explained when applying *Alice* step one, iLife’s claim 1 “is directed to the abstract idea of ‘gathering, processing, and transmitting information.’” (Pet. App. at 4a.) It is well-established that merely gathering, processing, and transmitting data is a patent ineligible abstract idea. *E.g., Elec.*

Power Grp., LLC, 830 F.3d at 1354; *SAP Am., Inc.*, 898 F.3d at 1167; *Content Extraction & Transmission LLC*, 776 F.3d at 1347. iLife’s claim 1 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 evaluates movement of a body using static and dynamic acceleration information.” (Pet. App. at 5a-6a.)

At *Alice* step two, the Federal Circuit held that claim 1 recites no inventive concept. (Pet. App. at 18a, 7a-8a.) A “claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.” *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018). 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.” (Pet. App. at 8a.)

The correctness of these decisions is plain from the face of the patent itself. According to the patent, preexisting “conventional detectors” could “gauge movement of the body” and “a body’s position by various means.” (App. II-12 at 2:5-8.) Just like the generic invocation of a computer in the *Alice* patent claim, iLife’s ’796 patent claim invokes a generic “communications device.” *Alice*, 573 U.S. at 223 (stating an “abstract idea while adding the words ‘apply it with a computer’” is not patent eligible). iLife’s patent simply

uses off-the-shelf “conventional” components that the patent itself admits were available to accomplish the goal of gathering, processing, and transmitting information. (App. II-14 at 5:52-53, 6:55-65; App. II-12 at 2:1-23.) Nothing recited in the claim supplies the necessary “inventive concept” sufficient to transform the claim into a patent-eligible application. *Alice*, 573 U.S. at 217. The Patent Office decision invalidating iLife’s other substantively similar claims further confirms that the ’796 patent recites nothing patentable. (App. 93-94.)

Finally, iLife’s petition erroneously argues that “[n]o one contended that iLife’s patent preempted” any basic “tool” or idea. (Pet. at 14.) To the contrary, Nintendo repeatedly argued that iLife’s claim, as construed, threatened to preempt vastly different fields, including as evidenced by iLife’s serial litigation, and iLife calling its patent a “tool” before the jury. (*E.g.*, App. 83-84 (preemption argument); App. 89-91 (arguing “iLife has already filed nine lawsuits, asserting the same theory against different industries from fall detection to cargo monitoring to fitness trackers to video games” and “Claim 1 thus threatens to stifle evaluating motion across vastly different fields.”); App. 85-86; App. 101-102 (iLife’s counsel: “So iLife views this as kind of a core technology, a tool that can be used in a variety of different applications.”); App. 128 (Nintendo: “The breadth of claim 1 also raises the preemption concerns that lie at the heart of the Supreme Court’s abstract-idea exception to patent eligibility. iLife initially sought to enforce its patent to

cover fall detector products, then morphed it to apply to fitness tracking devices, and finally, Nintendo’s video game systems.”.) In short, iLife’s patent case is a textbook example of a claim that as construed and applied would tie up the basic building blocks of human ingenuity to stifle innovation. *Alice*, 573 U.S. at 216.

III. iLife Presents No Argument or Basis for Granting Review Independent of *American Axle*.

Without any argument or reasoning, iLife summarily asks that if this case is not held for *American Axle*, it should be granted. (Pet. at 3.) That one sentence, bare bones request is wholly insufficient to support a grant of certiorari. See Rule 14 (petition should state reasons for writ); Rule 10 (requiring “compelling reasons” for writ).

Although iLife’s failure to present any argument or basis for this Court’s review is dispositive, there also is no such basis for review. This is a run-of-the-mill Section 101 case, hundreds of which are decided every year.⁶ As noted above, iLife waived the arguments

⁶ This Court has recently denied certiorari in numerous cases involving Section 101. *E.g.*, *NetScout Sys., Inc. v. Packet Intelligence LLC*, No. 20-1289, 2021 WL 1520847, at *1 (U.S. Apr. 19, 2021) (denying cert); *Whitserve LLC v. Donuts Inc.*, 141 S. Ct. 848 (2020) (same); *ChargePoint, Inc. v. SemaConnect, Inc.*, 140 S. Ct. 983 (2020) (same); *Athena Diagnostics, Inc. v. Mayo Collaborative Servs. LLC*, 140 S. Ct. 855 (2020) (same); *HP Inc. v. Berkheimer*, 140 S. Ct. 911 (2020) (same). Since 2014, there have been more than 1,200 district court decisions addressing Section 101.

underlying its questions presented and the decisions below therefore did not pass on those questions. The decision below is unpublished, unanimous, was not the subject of panel or *en banc* rehearing, and is entirely correct and consistent with precedent. There is thus no basis for the Court's review.

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CONCLUSION

For the above reasons, the Court should deny review.

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