No. 26-

In the Supreme Court of the United States

INNOVAPORT LLC,

Petitioner,

v.

TARGET CORPORATION,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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September 4, 2026

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QUESTIONS PRESENTED

Section 101 of the Patent Act, 35 U.S.C. § 101, provides that "any new and useful process, machine, manufacture or composition of matter" is eligible for patenting. That provision is subject to a judicial exception that excludes "laws of nature, natural phenomena, and abstract ideas." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014). The Federal Circuit held Innovaport's patent claims, which involve responding to a product location inquiry by providing the location of the product with additional relevant information that was not the subject of the inquiry, are unpatentable as an abstract idea.

In doing so, the Federal Circuit (i) failed to attribute any weight to the United States Patent and Trademark Office's ("USPTO's") findings regarding eligibility under § 101 notwithstanding the presumption of validity accorded to patents under 35 U.S.C. § 282 (ii) did not consider the doctrine of preemption, i.e., whether the claimed invention would preempt an entire field and therefore grant a monopoly over an abstract idea; (iii) found that Innovaport's patent claims were ineligible for patenting particularly because the patent claims did not recite fundamental or technological improvements to computer capabilities or functionality; and (iv) made factual findings without citing to record evidence.

The questions presented are:

1. Whether a court can disregard the USPTO's eligibility findings under 35 U.S.C. § 101?

2. Whether a court may disregard preemption considerations when evaluating patent eligibility under 35 U.S.C. § 101?

3. Whether a computer-related invention can be patent eligible when directed toward a useful, practical application even if the invention does not change or improve computer technology, computer capabilities, or computer functionality?

4. Whether a court may make factual findings on a motion for summary judgment regarding conventionality of recited claim limitations under *Alice* without supporting evidence in the record?

PARTIES TO THE PROCEEDING

Petitioner Innovaport, LLC was an appellant in the court of appeals and plaintiff in the district court.

Responding Target Corporation was appellee in the court of appeals and defendant in the district court.

RULE 26.9 DISCLOSURE STATEMENT

Innovaport, LLC has no parent corporation, and no publicly held company has a 10% or greater ownership interest in Innovaport.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Innovaport LLC v. Target Corporation*, No. 2024-1545 (Fed. Cir.) (judgment entered February 6, 2026)

- *Innovaport LLC v. Target Corporation,* No. 3:22-cv-00425-wmc (W.D. Wis.) (judgment entered February 7, 2024)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 41.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Innovaport respectfully submits this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The Federal Circuit's decision is not reported but is available at 2026 WL 321266 (Fed. Circ., February 6, 2026). Pet.App. 1a-20a. The Federal Circuit's order denying Innovaport's petition for rehearing en banc is not reported but is available at Pet.App. 42a-43a.

The decision of the United States District Court for the Western District of Wisconsin granting Target's motion for summary judgment is not reported but is available at 2025 WL 451308 (W.D. Wisc., February 6, 2024). Pet.App. 21a-41a.

JURSIDICTION

The Federal Circuit entered judgment on February 6, 2026. The Federal Circuit subsequently denied Innovaport's petition for rehearing en banc on April 8, 2026. The deadline for filing the instant petition is September 4, 2026. This Court has jurisdiction under 25 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Section 101 of the Patent Act of 1952, 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."

Additionally, 35 U.S.C. § 282(a) provides: "A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity."

INTRODUCTION

After 12 years of wandering in the wilderness, it is time for the Court to clarify patent eligibility law under 35 U.S.C. § 101 as interpreted by *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014). Such clarification is critically needed due to the complete legal disarray and the significant harm resulting therefrom. We need a map. Please provide one.

Innovaport's petition is the direct result of the Federal Circuit's misapplication of *Alice*, which not only conflicts with the two-step framework the Supreme Court laid out in *Alice*, but also diverges from the USPTO's interpretation and application of eligibility law. Granting certiorari will enable this Court not only to correct the ongoing misapplication of *Alice* by the federal courts, but also to rectify a grave discrepancy between the federal courts' and the USPTO's application of eligibility law—a discrepancy so large that, since *Alice*, the Federal Circuit has invalidated USPTO-granted patent claims under § 101 about 78% of the time. Erik Robinson, *Federal Circuit Opinion Analysis: Technology in Ariscale, LLC v. Racer USA*

Ltd. (Jan. 7, 2026) (https://www.linkedin.com/pulse/federal-circuit-opinion-analysis-technology-ariscale-llc-robinson-turoc/).[1]

Indeed, the Federal Circuit has failed to accord any meaningful presumption of validity to USPTO-granted patents when evaluating those patents for subject matter eligibility, notwithstanding that the presumption of validity of patents is clearly set forth in 35 U.S.C. § 282. Even though it is a long-standing principle that the presumption of validity regarding a patent is especially strong in regard to issues that have been specifically vetted by the USPTO during the patenting process, and even though the Federal Circuit itself has admitted that this presumption of validity extends to USPTO subject matter eligibility determinations, nevertheless in practice the federal courts including the Federal Circuit in this case have given short shrift to, or entirely ignored, the Patent Office's eligibility findings and the presumption of validity as it concerns those findings.

In other words, patent applicants must navigate a first forest at the USPTO to secure patent rights, avoiding trees and pitfalls along the way. However, after emerging from the first forest, the patentee must navigate an entirely new forest in the federal courts,

[1] The disconnect between the USPTO and federal courts was recognized in the Brief of *Amicus Curiae* filed by the Honorable Paul R. Michel (Ret.) and Professor John F. Duffy in *CareDx, Inc. Et al., v. Natera, et al.*, Case No. 22-1066: "That split produces intolerable uncertainty for businesses, with the Executive Branch issuing meritorious patents like the three patents at issue here, only to have the courts invalidate them." *See* Br. 2, *CareDx, Inc. Et al., v. Natera, et al.*, Case No. 22-1066.

where the trees and pitfalls have shifted and are almost completely unrecognizable. The patentee's efforts navigating the first forest are disregarded and rendered meaningless, and it is far more difficult to navigate the second forest, as evident by the 78% invalidity rate at the Federal Circuit.

The federal courts' failure to properly address the presumption of validity in relation to patent eligibility goes hand-in-hand with those courts' ongoing misapplication of the law of eligibility law. As currently implemented by the federal courts, eligibility is untethered to any meaningful touchstone, such as whether a claimed invention preempts an entire field, and routinely fails to consider whether a claimed invention as a whole is eligible for patent protection. The meaning of the term "abstract ideas" referenced in *Alice* has been stretched and contorted to such an extent that, as implemented by the federal courts, the concept is completely nebulous and "un-constitutionally vague." Federal courts present a seemingly infinitely elastic and effectively standardless whiteboard by which USPTO-approved parents are over-generalized, mischaracterized, and ultimately invalidated before cases have even gone to trial.

Given the federal courts' inability to reasonably apply any discernable standard for eligibility, they have increasingly latched onto a narrow safe harbor test for subject matter eligibility – whether an invention is directed to a specific improvement to computer technology – as being necessary, rather than merely sufficient, for eligibility when it comes to computer-related inventions. Requiring satisfaction of such a narrow safe harbor requirement is not only an improper interpretation of eligibility law under *Alice*, but also is inconsistent with the expansive concept of eligibility envisioned by the Patent Laws and the U.S. Constitution's Intellectual Property Clause.

To make matters even worse, federal courts have inconsistently and inappropriately applied their own case law interpreting *Alice*, so eligibility often hinges on factual issues such as whether an invention is well-understood, routine, and conventional. Even though *Alice* recognizes that patent-eligible inventions can take the form of a combination of features (i.e., an "ordered combination of elements") federal courts often ignore or dismiss facts bearing on whether such combinations are indeed well-understood, routine, and conventional. Rather than presenting these fact-based eligibility questions to a jury, courts often cavalierly and prematurely resolve these factual issues without referencing any facts, but instead rely upon nonsense-upon-stilts assertions as to the abstractness of unrepresentative subparts of the inventions.

Such inappropriate application of eligibility law by the federal courts, and such divergence between the federal courts and the USPTO, constitutes a grave impediment to the proper interpretation and application of eligibility law. This legal disarray severely undermines the integrity of the patent system. Indeed, federal courts' misapplication of eligibility law raises serious concerns regarding equality before the law, due process, and the taking of property rights, which warrant the attention of and resolution by this Court.

For all of these reasons, and as discussed further herein, Innovaport respectfully asks this Court to grant certiorari. Please provide us with a map through the wilderness.

STATEMENT OF THE CASE

I. Statutory Background

This case involves 35 U.S.C. § 101, which sets forth patent eligibility requirements that serve as the threshold inquiry in determining whether an inventor is entitled to patent rights. Section 101 broadly defines the scope of patent-eligible subject matter as encompassing "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101.

In *Alice*, this Court addressed an "important implicit exception" to § 101: "Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice*, 573 U.S. at 216. The Court reaffirmed the two-step framework for determining eligibility with respect to these exceptions:

> First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, "what else is there in the claims before us?" To answer that question, 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. We have described step two of this analysis as a search for an "'inventive concept'"—i.e., an element or combination of elements

> that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept itself.

Alice, 573 U.S at 217-218 [citations and quotations omitted].

The concern that "drives" the exclusionary principle of the implicit exception to § 101 is "preemption." *Alice*, 573 U.S. at 216. "Laws of nature, natural phenomena, and abstract ideas are the basic tools of scientific and technological work." *Id*. [citation and quotations omitted]. "Monopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it, thereby thwarting the primary object of the patent laws." *Id*. [citations and quotations omitted]. Alice recognized the "concern that patent law not inhibit further discovery by improperly tying up the future use of these building blocks of human ingenuity." *Id*. [citations and quotations omitted].

Over the past twelve years, federal courts have misapplied and misunderstood *Alice*. Federal courts often fail to consider preemption at Step 1 of *Alice*, instead parsing claims into separate, abstract ideas without considering the entirety of the claim to determine whether the claim prevents use of a "basic tool" or a fundamental "building block." Moreover, for claims involving computers, federal courts require an improvement to computer functionality for patent eligibility. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). At Step 2, which looks for an "inventive concept," federal courts often repeat their Step 1 determination of abstractness, thus collapsing Step 2 into Step 1. Though Step 2 involves factual questions to determine whether the claim involves something that is well-understood, routine, and conventional, federal courts often substitute bare conclusions of abstractness for evidentiary findings.

As a result, the Federal Circuit invalidates patents under § 101 at an alarming rate: about 78% of the time. This exceedingly high invalidity rate illustrates confusion and uncertainty in the law, particularly between the USPTO, which finds claims to be patent eligible and issues the patents, and federal courts, which subsequently find the opposite and invalidate the patents. Moreover, federal courts frequently disregard the USPTO's findings regarding eligibility, which contravenes the presumption of validity for patent claims issued by the USPTO set forth in 35 U.S.C. § 282 and the concomitant heightened evidentiary burden for proving invalidity in federal court, i.e., by clear and convincing evidence.

II. Factual Background

John Pienkos, an electrical engineer and patent attorney, invented a means for assisting customers in locating products within a store. He developed this technology on his own, including creating a prototype, hoping to sell or license his technology to big box retailers, such as Target. His company, Innovaport LLC reached out to Target to ask if the retailer would be interested in its technology. Target did not respond to Innovaport's overtures, but later implemented its own product location system mirroring Innovaport's. That location system is the subject of this lawsuit

We have all experienced the frustration of wandering aimlessly through a store looking for something. Innovaport's technology allows a retailer to provide an application that may be implemented on a mobile phone or a stationary kiosk that enables a consumer to directly search for products. In response to an inquiry from a consumer, the application provides the location of the requested product, as well as information about a product that was not the subject of the inquiry, for example a related product or a product the consumer previously requested. For example, a customer who asks for the location of toothpaste would be provided with the store aisle in which toothpaste is found, as well as an offer to purchase floss, because toothpaste and floss are linked together in a database as related items. Or a person who asks for the location of toothpaste may be provided with an offer to purchase batteries, because the customer previously searched for batteries.

Innovaport's patented technology offers real-world benefits to consumers and retailers alike. Consumers get the benefit of real-time location information, easing the frustration of aimlessly searching for a product in the store. Consumers also receive information about other products, e.g., products on sale, of which the consumer may not have been aware. Retailers can affordably offer a more consumer-friendly and efficient shopping environment, while promoting products that the consumer was not initially intending to purchase and thereby enhancing sales.

Claims from six Innovaport patents (the "Asserted Patents") are at issue in this litigation: U.S. Patent Nos. 9,990,670 ("the '670 patent"), 9,489,690 ("the '690 patent"), 8,787,933 ("the '933 patent"), 8,775,260 ("the '260 patent"), 7,819,315 ("the '315 patent"), and 7,231,380 ("the '380 patent"). The six patents each derive from, i.e., claim "priority" to, the same provisional application No. 60/158,444 filed on October 9, 1999. The patents also share a common description, i.e., text and figures, referred to as a "specification." Importantly, four of the patents issued after *Alice*, which construed Section 101's provision for patent-eligible subject matter. Moreover, the claims of two of the patents – the '670 and '690 patents – overcame initial USPTO objections to patent eligibility under 35 U.S.C. § 101 expressly raised by the patent examiner.

III. Proceedings Below

The district court granted summary judgment that all Asserted Claims are invalid under 35 U.S.C. § 101, and Innovaport appealed. The Federal Circuit upheld the district court's summary judgment decision. Innovaport filed a petition for rehearing *en banc*, which was denied.

With respect to Step 1 of *Alice*, i.e., determining whether the claims are directed to an exception under § 101, the Federal Circuit held that the claims are "directed to an 'abstract idea' of 'collecting, analyzing, retrieving, and displaying information,' and 'customizing information.'" Pet.App. 10a. The Federal Circuit further held that the Asserted Claims "are directed to an abstract idea using computers as a tool, not an improvement in computer capabilities." *Id*. Thus, the Federal Circuit held that the Asserted Claims did not present "technological solutions to technological problems." Pet.App. 14a. Though Innovaport presented argument that the claims are not abstract because they are narrowly tailored and do not preempt all manners of providing product location to a customer – a prominent consideration set forth in *Alice* – the Federal Circuit did not address this argument.

Under Step 2 of *Alice*, which looks to whether the claims recite an "inventive concept," the Federal Circuit affirmed the district court and held that "'[l]inking' two products in a cross-referential manner and providing a recommendation about another product are not inventive concepts because they are merely abstract ideas." Pet.App. 18a. The Federal Circuit relied on its previous determination at Step 1 relating to "abstract ideas," which was premised upon a citation to prior Federal Circuit decisions about organizing data. Pet.App. 13a-14a. The relied-upon Federal Circuit decisions were issued many years after the priority date of Innovaport's patents and the invention of Innovaport's patented concepts.

The Federal Circuit further reasoned, again, that the claims do not improve computer functionality, characterizing the claims as "nothing more than routine business steps, implemented on a computer." Pet.App 19a. However, the Federal Circuit did not cite any record evidence in support of this factual determination.

In making these determinations, the Federal Circuit did not address the fact that, for two of Innovaport's patents, the USPTO initially objected to the eligibility of the claims before subsequently allowing the claims after Innovaport amended the claim language and presented argument as to why the claims were patent eligible.

REASONS FOR GRANTING THE PETITION

This case presents the Court with an important opportunity to clarify patent eligibility law under 35 U.S.C. § 101. Finding patent claims invalid under § 101 should be the exception, not the rule, as patent eligibility should be a low hurdle to clear. Eligibility does not focus on whether the invention is new and non-obvious. Rather, the inquiry simply looks to whether the invention meets the threshold criteria for eligibility.

Unfortunately, the exception has swallowed the rule, elevating the hurdle to nearly impossible heights for certain categories of patents, such as the patents at issue here, even though Innovaport's patents are directed to a useful, practical application of technology that realizes real-world benefits. In the years after *Alice*, district courts resolved hundreds of § 101 motions, a large fraction at the pleading or summary-judgment stage. Perhaps more problematic, since *Alice*, the Federal Circuit has invalidated patent claims under § 101 about 78% of the time.

This extraordinarily high invalidity rate demonstrates that there is a great divide between how the USPTO and federal courts view eligibility, and this case highlights that discrepancy. How can it be that, when applying the same law, the USPTO determined Innovaport's patent claims to recite patent eligible subject matter, yet the district court and the Federal Circuit, applying the same law under a higher evidentiary burden, found Innovaport's claims to be invalid?

Unfortunately, Innovaport did not receive an answer to this question because neither the district court nor the Federal Circuit addressed the prosecution history.

This leaves patentees in a precarious predicament. Can a patentee such as Innovaport rely upon and trust the USPTO's allowance of its patent claims? Innovaport thought it did everything right during prosecution of the '670 and '690 patents by amending claims and presenting argument to overcome § 101 rejections. Yet, when asserting the '670 and '690 patents six and four years after they issued, respectively, the district court and the Federal Circuit overruled the USPTO without explaining why the USPTO purportedly got it wrong. Such disregard for the USPTO's findings contravenes the presumption of validity and the associated higher burden of proof, i.e., that claims can only be invalidated based upon clear and convincing evidence.

The courts and USPTO are in a state of dissonance and discord. This Court must bring them into harmony. It is the Federal Circuit that has raised the bar for patent eligibility far above the statutory requirements as interpreted by this Court, to the detriment of patentees such as Innovaport.

Federal courts have rendered the concept of "abstract ideas" unconstitutionally vague and, given the lack of meaning of the term, have introduced improper litmus tests as to what is mandated to overcome a finding of abstractness, particularly a finding that a computer-related invention provide a specific improvement to computer technology. Further, federal courts have blurred the lines between the eligibility analysis under § 101 and the patentability requirements under §§ 102 and 103, i.e., that an invention must be new from the standpoint of both novelty and non-obviousness. Yet, where patentability requirements under §§ 102 and 103 are analyzed against disclosures in the prior art, which are submitted as record evidence, eligibility under § 101 has evolved into a nebulous exercise that has become completely untethered from the necessary evidentiary showings, even though the Federal Circuit has recognized that there are factual issues embedded within the § 101 analysis.

Indeed, eschewing the Federal Rules, courts routinely support findings of abstractness with general and conclusory statements that an individual claim limitation is a "well known" or "longstanding" abstract concept or practice without citation to any record evidence whatsoever, which is what happened in this case. Such bare proclamations that run afoul of fundamental legal principles have severe consequences to patentees – their patents are invalidated. The Federal Rules of Civil Procedure are in place to ensure that litigants are afforded due process. When courts set the rules aside to invalidate patents, the result is an unjust taking of property.

As a result, the net effect of the federal court's application of this Court's precedent on § 101 is an overly restrictive barrier to patentability that contravenes the plain language of the statute, which simply states that "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title." 35 U.S.C. § 101.

Section 101 defines an invention as something that is "new and useful." However, the eligibility analysis as applied in many court decisions has regressed so as to exclude "new and useful" inventions that should be patentable, even when as here, the USPTO found those inventions to be eligible for patenting.

In summary, when invalidating all of Innovaport's patent claims under § 101, the district court and the Federal Circuit (i) ignored the USPTO's findings for two of Innovaport's patents where claims were initially objected to under § 101 and subsequently allowed after amendment and argument; (ii) ignored the critical notion of preemption; (iii) applied an overly restrictive eligibility analysis; and (iv) ignored the evidentiary requirements of the Federal Rules.

This case offers the Court a timely opportunity to clarify (i) that a court may not disregard the USPTO's findings regarding eligibility; (ii) that preemption is the touchstone of the eligibility analysis under § 101, which requires evaluation of the claim as a whole; (iii) that patent-eligible computer-related inventions are not limited to those involving improvements to computer technology in the sense of computer capabilities or functionality but rather also include useful, practical applications of computers; and (iv) that an invalidity determination based upon patent eligibility must be supported by evidence.

I. Thoroughly Vetted USPTO Findings On Eligibility Deserve Heightened Respect By The Courts In Accordance With The Presumption Of Validity

In support of its decision invalidating all of the Asserted Claims, the Federal Circuit cited *Sanderling Mgmt. Ltd. v. Snap Inc.*, 65 F.4th 698, 705 (Fed. Cir. 2023), for the proposition that "courts are not required to defer to Patent Office determinations as to eligibility." Pet.App. 16a-17a, fn. 5. The *Sanderling* decision supports this proposition by citing *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015), which simply sets forth the appellate standard of review: "[p]atent eligibility under 35 U.S.C. § 101 is an issue of law reviewed de novo."

Neither *Sanderling* nor *OIP*, however, hold that USPTO determinations regarding patent eligibility may be disregarded. Accordingly, the Federal Circuit had no basis to ignore the USPTO's findings with respect to the '670 and the '690 patents, in which objections under § 101 were expressly raised and overcome.

In the context of obviousness, the Federal Circuit has held that the presumption of validity under 35 U.S.C. § 282 is particularly strong where the prior art was considered by the USPTO examiner: "the challenger's burden is especially difficult when the prior art was before the PTO examiner during prosecution of the application." *Al-Site Corp. v. VSI Int'l, Inc.*, 174 F.3d 1308, 1323 (Fed. Cir. 1999) [citations and quotations omitted]. The Federal Circuit further recognized that "[t]his presumption reflects the fact that the Patent and Trademark Office has already examined whether the patent satisfies the prerequisites for issuance of a patent, including § 101." *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1319 (Fed. Cir. 2019) [citations and quotations omitted].

Here, as happens in many cases, the Federal Circuit merely paid lip service to the presumption of validity. Though Innovaport presented detailed argument with citation to the prosecution history where eligibility issues were thoroughly considered and addressed by the USPTO, the Federal Circuit completely disregarded it. Rather than placing an "especially difficult" burden on Target, the Federal Circuit gutted the presumption of validity by ignoring the prosecution histories of the '670 and '690 patents, including claim amendments and associated argument.

Where a court disagrees with an eligibility determination by the USPTO, as happened here, the court should be required to explain why the court reached a different result than the USPTO, and how the challenger has overcome the "especially difficult" burden of proving invalidity.

There are also important policy considerations as to whether patentees can rely upon the USPTO's evaluation and application of eligibility law when issuing patent claims that are entitled to the presumption of validity. The Federal Circuit's reliance upon *Sanderling* rendered the USPTO's eligibility analysis moot. Indeed, the Federal Circuit opinion goes even further to dismiss the notion that the USPTO's guidance regarding patent eligibility is binding, without comment as to whether that guidance is accurate or not, even though that guidance has been and continues to serve as a fundamental basis upon which the USPTO determines eligibility. Pet.App. 20a, fn. 7. If the USPTO's eligibility determinations are meaningless and can be ignored on appeal, patentees are entitled to know.

The number of patents an inventor or company is able to secure – which is based almost entirely on resources – should not be the determining factor as to whether an inventor is entitled to reliable and enforceable patent rights. As it is now, invalidity rulings under § 101 disproportionately impact small or startup companies and solo inventors, who, as here, spend significant time and resources to secure patent rights, only to have them invalidated by the district courts or the Federal Circuit. The result is particularly jarring here, where the USPTO expressly addressed § 101 repeatedly over the course of several years of prosecution with respect to the '670 and '690 patents, only for the district court and Federal Circuit to reach the opposite result without even addressing what happened at the USPTO. If a patentee like Innovaport cannot be confident that the USPTO's decisions on eligibility are rock-solid after having run the gauntlet of the patent prosecution process and USPTO subject matter eligibility review to such a significant extent, surely this calls into question the legitimacy of the patent system.

The petition should be granted to correct and clarify the Federal Circuit's holding in *Sanderling* that "courts are not required to defer to Patent Office's determinations as to eligibility." While courts are not absolutely bound by the determinations of the USPTO, this Court should confirm that the presumption of validity applies regarding § 101, and that the presumption is "especially strong" where claims issue over rejections under § 101, and that consequently courts must articulate compelling reasons for contravening thoroughly vetted USPTO findings on eligibility, or otherwise the USPTO conclusions and findings should stand.

II. The Court Should Clarify That Preemption Is The Touchstone Of The Eligibility Analysis

In *Alice*, the Court explained that "the concern that drives th[e] exclusionary principle [of 35 U.S.C. § 101] as one of pre-emption." *Alice*, 573 U.S. at 216, *citing Bilski*, 561 U.S. at 611–12 (upholding the patent "would pre-empt use of this approach in all fields, and would effectively grant a monopoly over an abstract idea"). Thus, *Alice* reaffirmed the importance of preemption when considering the question of abstractness, which considers whether the claim would preempt an entire field. In the context of this case, the question is whether the claim would preempt all manners of providing product location information to a customer.

Here, the Federal Circuit ignored preemption despite Innovaport's detailed argument explaining how the Asserted Claims are narrowly tailored and do not preempt the field of providing product location information – the word "preemption" does not appear in the opinion. Unfortunately, federal courts routinely ignore the important issue of preemption. *See, e.g., AI Visualize, Inc. v. Nuance Commc'ns, Inc.*, 97 F.4th 1371 (Fed. Cir. 2024); *Broadband iTV, Inc. v. Amazon.com, Inc.*, 113 F.4th 1359 (Fed. Cir. 2024); *Int'l*

Bus. Machs. Corp. v. Zillow Grp., Inc., 50 F.4th 1371 (Fed. Cir. 2022).

This Court has explained that preemption is a prominent consideration for eligibility as a fundamental principle underlying § 101. Here, as it does in many cases, the Federal Circuit did not address the issue of preemption, though Innovaport relied upon the bedrock principle to demonstrate that the invention is not an abstract idea. If a claim is found to be sufficiently narrow and limited in scope so that it does not preempt a broad methodology at a conceptual level, then the claim is not abstract. Preemption should be the primary framework to analyze abstractness under Step 1 of *Alice*.

Rather than looking at the whole invention when considering abstractness, the Federal Circuit broke the invention into separate elements and found those individual elements to be abstract. Such an approach is inapposite to and does not resolve the question of preemption, which looks to whether the claim for the whole invention would preempt an entire field. Federal courts often ignore the notion of preemption and proceed straight to an *Electric Power Group*-style abstraction or a conventionality finding without measuring claim scope against real-world alternatives, as happened here. *See Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016); *Ai Visualize, Inc. v. Nuance Communications, Inc.*, 97 F.4th 1371 (Fed. Cir. 2024); *Universal Secure Registry LLC v. Apple Inc.*, 10 F. 4th 1342 (Fed. Cir. 2021).

By way of example, when considering preemption here, claim 1 of the '690 patent recites an "information storage device" that "includes both product location information and additional product-related information linking a product with an other product in a cross-referential manner" and an "output signal" that "includes location information concerning the product and also provides at least one suggestion related to the other product." Thus, the claim recites that particular, product-related information is stored in a specific way, including linking one product with another in cross-referential manner, and further recites providing a suggestion for a product that was not the subject of the search. Using the claimed invention, for example, a user who searches for toothpaste may be provided with the location of the toothpaste as well as an offer to purchase floss, because toothpaste and floss are linked together in a database as related items.

Importantly, this claim does not preempt all manners of providing product location information, much less all manners of providing information or assistance to customers in stores. Indeed, a system that merely provides product location information is outside the scope of the claim, as the claim requires the system to provide a suggestion about a product that was not the subject of the location inquiry. Taking it one step further, the claim also does not preempt all methods of providing such a suggestion. In this claim, the suggestion is based upon linking products in a cross-referential manner (e.g., linking toothpaste and floss in the database). Thus, for example, providing a suggestion based upon a consumer's past purchases would fall outside the scope of this claim (e.g., providing a suggestion about batteries when a customer searches for toothpaste because the customer previously purchased batteries).

When looking at claim 1 of the '690 patent through the lens of preemption, it is apparent that the claim is directed to a specific and narrow combination of limitations that takes the claim outside the realm of abstractness.

If courts are permitted to ignore preemption and the associated holistic review of the claim, the result is a parsing of individual claim limitations and an overgeneralization of the claimed subject matter. Requiring courts to assess eligibility through the lens of preemption will guard against this trend that has become all too common, resulting in the invalidation of countless claims.

This case presents an important opportunity for the Court to clarify that preemption must be addressed and substantively evaluated when considering patent eligibility under Step 1 of the *Alice* framework. The Court should further clarify that to analyze preemption, the whole claim must be reviewed. Merely parsing claim limitations and labeling them as "abstract" is not the appropriate analysis and does not adequately address preemption. The courts need a cognizable test for abstractness, and preemption is the appropriate test to be employed.

III. This Court Should Clarify That An Improvement To Computer Capabilities Or Functionality Is Not Required For Computer-Related Claims To Be Patent Eligible

In *Enfish*, the Federal Circuit stated that "we find it relevant to ask whether the claims are directed to an improvement to computer functionality versus being directed to an abstract idea, even at the first step of the *Alice* analysis." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016).

However, this observation has wrongly evolved into a requirement for claims involving computers. As happened here, the Federal Circuit ignored preemption and only considered whether the claimed invention fundamentally changes or improves how a computer functions.

Section 101 permits anyone who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" to obtain a patent. 35 U.S.C. § 101. Section 101 does not state that claims involving computers are *only* eligible where the claimed invention changes or improves the functionality of the computer. In *Alice*, this Court identified an improvement to computer functionality as an "example" of an indicator that a method claim involving computers is not abstract – not a requirement for eligibility. *Alice*, 573 U.S. at 225.

This Court has recognized, consistent with that plain statutory text, that the scope of subject matter eligible for patenting under § 101 is "extremely broad." *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 130 (2001); *see also Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980) ("Congress intended statutory subject matter to 'include anything under the sun that is made by man.'" (citation omitted)). Such narrowing of eligibility requirements by *Enfish*, which has been used to invalidate countless patents involving computers (like Innovaport's here), also runs afoul congressional intent.

This case presents the Court with an important opportunity to clarify that an improvement or change to the functioning of a computer is not required at Step 1 of *Alice* for claims involving computers. Such a requirement is overly narrow and constrained, to the exclusion of new and useful inventions that should qualify for patent eligibility under § 101.

This Court recognized and explained this principle in *Diamond v. Diehr*, 450 U.S. 175 (1981). When discussing *Diehr*, this Court explained that "the claims in *Diehr* were patent eligible because they improved an existing technological process, not because they were implemented on a computer." *Alice*, 573 U.S. at 223. Thus, *Diehr* addressed a method involving computers, where the method did not improve computer functionality. A claim involving computers can still be "useful" even if it does not improve the speed of a computer microprocessor, enlarge a computer's memory, or otherwise improve the functionality of the computer.

Innovaport's claims admittedly do not improve computer technology, in the sense of a computer's fundamental capabilities or functionality, such as an improvement to the speed of a computer microprocessor or an improvement in the storage size of a computer memory. But that fact alone should not render them ineligible. Rather, the claims are directed to computer-based systems and methods that provide useful, practical, real-world benefits to consumers in a retail environment, and to the retailers as well. For example, the claimed invention provides real-time product location to consumers along with other information that was not requested by the consumer, and allows a retailer to provide a more efficient shopping experience, at lower cost or with less employee involvement, while also enabling the retailer to promote its products and thereby achieve greater sales.

Innovaport's invention is unquestionably "useful," which is the criteria recited in § 101. It is undeniable that Innovaport's inventions involve technology and concerns a technological field such as logistics technology (albeit eligibility should not de-pend upon what arbitrary classification terms or buzzwords may be used to describe a technical field). Of course, whether any invention is indeed "new" and entitled to patent protection is addressed after the eligibility question, which only focuses on whether the claim recites patent eligible subject matter, but, to the extent that this consideration informs eligibility, the USPTO's issuance of 6 patents to Innovaport provides a resounding basis for concluding that Innovaport's claimed invention constituted improvements.

This Court should clarify that when evaluating a claim involving a computer-related invention for eligibility, the question is not limited to some type of "safe harbor," such as whether the claimed invention changes or improves computer capabilities or functionality or constitutes a technical computer technology solution in relation to a technical computer technology problem. While an improvement to computer functionality may demonstrate that a claim is not abstract at Step 1, the absence of such improvement does not necessarily mean that the claim is directed to an abstract idea.

IV. This Court Should Clarify That A Court's Invalidation Of A Patent On Summary Judgment Must Be Supported By Record Evidence

Under Step 2 of Alice, a claim is eligible if it claims an inventive concept that is not well-understood, routine, and conventional. "The question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). When moving for summary judgment, "[a] party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials…" Rule 56(c)(1), Fed. R. Civ. P.

Here, in upholding the district court's summary judgment decision, the Federal Circuit failed to cite to record evidence—as required by Rule 56(c)(1)—in support of the factual determination that the claim elements or combination of elements are "well-understood, routine and conventional." Rather, the court blurred the lines between Step 1 and Step 2, reasoning that the particular claim elements of cross-referencing and providing suggestions about products are "abstract ideas" that are not enough to confer eligibility. Pet.App. 18a.

However, determining in conclusory fashion that individual elements are "abstract" is not "evidence" that a combination of elements is "well-understood, routine, and conventional." Relying on musings of abstractness, rather than clear and convincing evidence, runs afoul of the Federal Rules of Civil Procedure.

Moreover, and perhaps more importantly, relying on the notion of "abstractness" at Step 2 collapses the two-step *Alice* analysis into a single step, rather than applying the two, separate steps required under *Alice*. The Federal Circuit cannot use its answer at Step 1 to find that the claims fail the eligibility analysis at Step 2. Step 2 is a factual inquiry that looks to whether the claim elements, or combination of claim elements, are "well-understood, routine and conventional." This question cannot be answered by merely stating that the individual elements are abstract, though that is precisely what the Federal Circuit did in this case. Pet.App. 18a. The Petitioner in *US Patent No. 7,679,637 LLC v. Google LLC*, Case No. 26-236, similarly identified this problem, i.e., collapsing Step 2 into Step 1, as a question requiring resolution by this Court.[2]

When invalidating Innovaport's claims, the district court and the Federal Circuit ignored the record evidence and instead relied upon its Step 1 analysis pointing to past court decisions that individual claim elements were abstract. Characterizing a claim element as an "abstract idea," whether purportedly supported by a prior court holding or otherwise, does not constitute prima facie evidence that a claim element or, more importantly, that the ordered combination of elements is "well-understood, routine and conventional." Such a characterization does not satisfy the evidentiary burden under Rule 56 of demonstrating by clear and convincing evidence that the invention is "well understood, routine, and conventional" under Step 2 of *Alice*.

As the Federal Circuit recognizes in *Berkheimer*, whether an invention is "well understood, routine, and conventional" is a question of fact. Yet here, as in so many other cases, the court deprived Innovaport of the right to have such factual disputes resolved by a jury. This approach flips the burden of proof on its head. It is Target that must provide "clear and convincing" evidence to demonstrate that the ordered combination of elements is "well-understood, routine and conventional." But, the court placed the burden on Innovaport to demonstrate the opposite, and

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[2] Innovaport believes that resolution of the issues presented in the petition in Case No. 26-236 will impact the instant case.

without giving Innovaport the opportunity to have the issue resolved by a jury.

The Federal Circuit's holding under Step 2 of *Alice,* making factual determinations without citing any record evidence, contravenes the evidentiary requirements of Rule 56, Fed. R. Civ. P. Simply put, if a claim recites an invention involving the ordered combination of A, B, C, and D, regardless of whether a court has taken the view that A (or any of the other recited steps) is abstract, such a determination is not a sufficient evidentiary bases for the court to find that the ordered combination of A, B, C, and D as a whole is well-understood, routine, and conventional, or that such ordered combination does not constitute an inventive concept. Further, a previous court decision that a certain concept is abstract insofar as it was supposedly well known and long understood, when that earlier court decision was rendered at a time long after the priority filing date of a patent at issue, should have no bearing upon whether the invention claimed in the patent is eligible for patenting.

Patent claims should not be invalidated based upon the unsupported musings of a court that is not applying the appropriate analysis under *Alice* or adhering to the Federal Rules of Civil Procedure. Nor should patent claims be invalidated based upon a hindsight analysis in which after-the-fact conjectures about what may or may not constitute new technologies are used as bootstraps in place of evidentiary findings based upon the state of the art at the time the patent application was filed. Andre Marais, *WURC vs. WORK: The Evidentiary Asymmetry Between § 101's "Inventive Concept" and § 103's Obviousness*

Framework; (Feb. 17, 2026) (https://www.slwip.com/wurc-vs-work-the-evidentiary-asymmetry-between-%C2%A7-101s-inventive-concept-and-%C2%A7-103s-obviousness-framework/).

This Petition should be granted so that the Court can clarify the evidentiary requirements under Rule 56, Fed. R. Civ. P., and to confirm that a determination that a claim element or ordered combination of elements is "well-understood, routine and conventional" must be supported by record evidence, as opposed to bare conclusions that any subset of individual claim elements are "abstract ideas."

V. Public Policy Considerations

Clarification of the above issues pertaining to eligibility law and the application of that law is of paramount importance on multiple policy levels. Indeed, the current manner of applying eligibility law (i) undermines the integrity of the patent system and reliability of patent rights; (ii) is violative of due process and effectively allows for improper takings of property; (iii) is profoundly inconsistent with the principle of equality under the law; and (iv) is funda-mentally damaging to the progress and development of the U.S. economy.

A. Consistency Between The Courts And The USPTO On Eligibility Law Must Be Restored

It is of critical importance to the U.S. patent system that there be consistency between how the courts interpret and apply eligibility law and how the USPTO does so. For the property rights associated with patents to have meaningful value, those property rights must be highly reliable regarding their scope and validity. If the USPTO routinely issues patents that are subject to invalidity determinations in court under differing standards, those patents can hardly provide a time-limited competitive advantage to inventors who publicly disclose their innovations in exchange for those patents, or provide a basis for investors to make investments. And yet the inconsistencies between the approaches to eligibility law implemented by the courts and the USPTO are so vastly different that patents are invalidated under § 101 by the Federal Circuit at an alarming rate (about 78% of the time). Given this state of affairs, there is an enormous cloud overhanging the validity of many thousands of patents and great uncertainty about the soundness of property rights accorded by the patent system and, indeed, that system itself.

The differences in the application of eligibility law arise on multiple levels. In this case involving Innovaport's patents, and many others like it, the USPTO and the federal courts have refused and continue to refuse to accord a meaningful, much less an "especially strong", presumption of validity to the USPTO's prosecution determinations of eligibility. Although the presumption of validity is statutorily prescribed by 35 U.S.C. § 282, patent owners can have little or no confidence that USPTO decisions on eligibility regarding their patents will ultimately be upheld in the federal courts.

Additionally, even though current USPTO guidance on eligibility has served as the basis for issuing patents, that guidance has never been ratified by the courts and, to the contrary, courts often articulate that they are not bound by that guidance. According to the USPTO's 2019 PEG guidance, the Step 1 analysis of Alice is a two-prong inquiry according to which, even if a patent claim recites something abstract, the claim is still eligible if that abstract feature is "integrated into a practical application." (Section 2106.04 of the Manual of Patent Examining Proce-dure). Further, according to this guidance, whether something is integrated into a practical application does not depend upon whether it is "well-understood, routine, and conventional." *Id.*

The USPTO's guidance has led to many patents being granted for reasons substantially based upon this two-prong analysis--particularly on the basis that, even where a patent claim recited an abstract feature, the patent claim integrated that abstract feature in to practical application, and even where that integration involved the other claimed features that may be well-understood, routine, and conventional. Yet even though this guidance has been followed since 2019 and served as the basis for myriad patents, the Federal Circuit has declined to approve the USPTO's application of eligibility law in this regard.

Worse yet, although the Patent Office guidance on eligibility scrupulously envisions consideration of not only the Step 1 analysis of Alice (refferd to in the guidance as "Step 2A" with 2 Prongs as discussed above) but also the Step 2 analysis of Alice (referred to as "Step 2B" in the USPTO guidance), the Federal Circuit often collapses the Step 2 analysis into Step 1. Indeed, as in the present case involving Innovaport's patents, the Federal Circuit in addressing Step 2 often relies on broad-brush mischaracterizations of claims as lacking an inventive concept based upon assertions that certain claim elements are abstract, rather than on a fact-based evaluation of whether claim elements, or the ordered combination of elements, are well-understood, routine, or conventional.

Surely President Lincoln's precept that "a house divided cannot stand" applies to the great divide currently existing between the federal courts and the USPTO when it comes to eligibility law, and it is a public policy imperative that this great divide be corrected.

B. Due Process And Improper Property Takings

With respect to due process, the manner in which courts are currently adjudicating eligibility radically runs afoul of fundamental elements of that concept. Indeed, due process concerns are flouted when courts summarily invalidate duly granted patents on eligibility grounds without according a heightened presumption of validity to eligibility determinations made expressly and forthrightly by the USPTO or providing any compelling reasons for overturning the determinations of the USPTO. Likewise, due process concerns are contravened when, in determining whether patent claims satisfy a fact-based inquiry such as Step 2 of the Alice analysis, courts can summarily dispose of the issue without affording a patent holder the opportunity at trial to present facts and cross-examine witnesses.

Further, when courts are applying eligibility law in such manners that conflict with the basic mandates of due process, invalidation of patents on such grounds effectively constitutes an improper taking of property. Indeed, why is it not effectively an improper taking of property when the courts invalidate, on eligibility grounds and in a manner failing due process requirements as described above, patents that not only have been duly granted after an arduous prosecution process but also have been thoroughly vetted by the USPTO from the standpoint of eligibility? Such an improper invalidation has the same effect as any other taking – it necessarily eliminates the property rights of the patent holder and dedicates those property rights to the public.

C. Equality Under The Law

The inappropriate implementation of eligibility law by the federal courts and the divergence between those courts and the USPTO in this area of the law are severely at odds with the principle of equality before the law and with the public policy goals of economic growth and opportunity for all.

Eligibility law as currently implemented is especially detrimental to small or start-up companies, and to individuals and groups, that have far fewer resources than large, established companies. In his testimony to the Committee on the Judiciary of the U.S. Senate on July 14, 2026, former USPTO Director Andrei Iancu recognized this disproportionate impact: "Weakening eligibility, in short, did not lift innovators as a class; it tilted the field toward the largest incumbents and away from the smaller innovators the patent system exists to empower."

There are numerous ways this plays out. First, even if small and start-up companies are successful in obtaining patents from the USPTO, many of those patents immediately have a cloud over them insofar as any would-be infringer can have fairly high confidence that either the patents will be invalidated in court or that the patent owner will concede the matter for a pittance to avoid an invalidity determination. In the end, the unreliability of the property rights provided by these patents means that the patent owners simply lack any reliable competitive moat that would allow them to compete against larger established companies or to attract sufficient investments.

Second when subject matter eligibility law is implemented in an overly-restrictive manner – such as requiring that a specific improvement to computer technology be present – this dramatically favors large, established companies. For, in this era of billion dollar data centers, it is those large, established companies that have the re-sources either to focus specifically upon inventions of this type, or the resources to effectively characterize (even where dubious) their patents as satisfying this requirement.

Third, because the USPTO continues to approve many patents of large, established companies, and the sheer volume of patents obtained by those companies wildly surpass those of start-ups or small companies, the patent portfolios of the large, established companies pose an enormous and often insurmountable obstacle to small companies and similarly situated parties. Even if patents of the larger companies are equally suspect regarding eligibility, the sheer number of patents obtained by the larger companies makes all the difference. Each issued patent, even if ultimately found to be invalid, serves as a deterrent or threat to a competitor. Therefore, the holder of many suspect property rights has a major advantage relative to the holder of a few such suspect property rights.

All of these considerations, in which the property rights afforded by patents are heavily undermined by the inconsistent application of eligibility law, serve to dramatically prejudice startups and small companies. Rather than the property rights afforded by patents to startups and small companies enabling those companies to protect their innovations and compete effectively against large established companies, the property rights associated with patents nearly exclusively benefit the large established companies and serve to amplify the competitive posture of those large established companies.

D. Economic Ramifications Of Eligibility Law

The improper implementation of eligibility law by the federal courts and their disconnect with the USPTO have had immense damaging implications for the U.S. economy. Even though economic growth in the United States has been enormously tied to the development and implementation of computers and computer software over the last 40 years, commentators have recently addressed the lack of new companies that have successfully emerged in recent years in the technology areas of computers and computer software. Coopting Disruption (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4713845).

This is unfortunately not surprising, given that it is patent rights in the area of computer-related inventions that have been most severely undermined by eligibility law. For it becomes much more difficult for a small or startup company to maintain a defensible posture competitively, based upon its innovations, when the primary protective rights – patent rights – are either not obtainable at all or, even if obtained, not seriously enforceable. It is not surprising that many small or start-up companies in today's economy that are innovating in the critical areas of computer and computer software technologies primarily seek an "exit strategy" involving sale of the companies to large, established companies rather than attempting to remain independent through continued innovation and growth.

It is fortunate for the United States that, more than one hundred years ago when innovation was first taking off in the areas of electronics and tele-communications, that a robust patent system offered protection to the likes of Thomas Edison without being handicapped by an improperly-implemented patent eligibility doctrine contending that inventions involving obscure and unseeable electrical or electromagnetic characteristics such as radio waves were somehow outside the scope of the patent system. It is time now for this Court to clarify that, under Alice, computer-related inventions that are useful and practical are broadly eligible for patent protection and that careful USPTO determinations regarding the eligibility of those inventions deserve a heightened presumption of validity from the federal courts.

CONCLUSION

Innovaport respectfully requests that the Court grant the petition to clarify (i) that a court may not disregard the USPTO's findings on eligibility; (ii) that preemption is the touchstone of the eligibility analysis under § 101, which requires evaluation of the claim as a whole; (iii) that patent-eligible computer-related inventions are not limited to those involving improvements to computer technology in the sense of computer capabilities or functionality but rather also include useful, practical applications of computers; and (iv) that an invalidity determination based upon patent eligibility must be supported by evidence.

Respectfully submitted,

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September 4, 2026