

No. 24-47

In the Supreme Court of the United States

RETURN MAIL, INC., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR

Solicitor General

Counsel of Record

BRIAN M. BOYNTON

Principal Deputy Assistant

Attorney General

JOSHUA M. SALZMAN

JOSHUA DOS SANTOS

Attorneys

Department of Justice

Washington, D.C. 20530-0001

SupremeCtBriefs@usdoj.gov

(202) 514-2217

QUESTION PRESENTED

Whether claims reciting the steps for processing returned mail and updating addresses are ineligible for patenting under the abstract-idea exception to 35 U.S.C. 101.

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OPINIONS BELOW

The judgment of the court of appeals (Pet. App. 1a-2a) is available at 2024 WL 562455. The opinion and order of the Court of Federal Claims (Pet. App. 3a-31a) is reported at 159 Fed. Cl. 187.

JURISDICTION

The judgment of the court of appeals was entered on February 13, 2024. On May 7, 2024, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including July 12, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner filed suit against the United States in the Court of Federal Claims (CFC), alleging patent infringement. The court granted summary judgment to

the government on the ground that the patent claims were invalid under 35 U.S.C. 101. Pet. App. 3a-31a. The court of appeals summarily affirmed. *Id.* at 1a-2a.

1. a. The Constitution authorizes Congress “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to * * * Inventors the exclusive Right to their * * * Discoveries.” U.S. Const. Art. I, § 8, Cl. 8. The Patent Act of 1952 (Patent Act), 35 U.S.C. 1 *et seq.*, confines patents to particular types of innovations. It directs that “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. 101.

The Court has long held that “laws of nature, natural phenomena, and abstract ideas” are not eligible for patenting under 35 U.S.C. 101. *Alice Corp. v. CLS Bank International*, 573 U.S. 208, 217 (2014). Thus, newly discovered “‘manifestations of nature,’” such as Newton’s “law of gravity” or Einstein’s “law that $E=mc^2$,” are not eligible for patents. *Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980) (citation and ellipsis omitted). Likewise, “a new mineral discovered in the earth or a new plant found in the wild” is a patent-ineligible natural phenomenon. *Ibid.* And “an idea of itself is not patentable” because “[a] principle, in the abstract, is a fundamental truth; an original cause; a motive” in which “no one can claim * * * an exclusive right.” *Alice*, 573 U.S. at 218 (brackets and citations omitted).

The exception for abstract ideas covers purely “intellectual concepts” like mathematical “algorithm[s].” *Gottschalk v. Benson*, 409 U.S. 63, 67, 72 (1972). It also includes non-technological “method[s] of organizing hu-

man activity.” *Alice*, 573 U.S. at 220. Strategies for achieving non-technological aims, such as improved business or economic practices, are thus largely unpatentable under Section 101. See *Bilski v. Kappos*, 561 U.S. 593, 609 (2010); *Alice*, 573 U.S. at 219. And an abstract idea remains patent-ineligible even if a claim calls for the idea to be implemented on a “generic computer.” *Alice*, 573 U.S. at 225.

In *Alice*, this Court sought to distill the guideposts above into a two-step test. First, a court “determine[s] whether the claims at issue are directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. “If so,” the court “ask[s], ‘what else is there in the claims’” to determine whether any “additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Ibid.* (brackets and citations omitted). The claim at issue in *Alice* concerned “a computer-implemented scheme for mitigating ‘settlement risk’ * * * by using a third-party intermediary.” *Id.* at 212. The *Alice* Court found it unnecessary “to delimit the precise contours of the ‘abstract ideas’ category” because the claim’s recitation of steps for “intermediated settlement” recited a non-technological method of organizing human activity and added nothing but “generic computer implementation.” *Id.* at 219, 221.

2. a. The United States Postal Service has long processed returned mail that is undeliverable. In 1982, the Postal Service introduced a system called Address Change Service to electronically transmit to senders change-of-address information for undeliverable and forwarded mail. C.A. App. 3858. In 1999, the Postal Service announced a new generation of that system called the Postal Automated Redirection System. *Id.* at

4644. The Postal Service has continually updated that system since then. *Id.* at 3856-3858.

In 2004, petitioner obtained U.S. Patent No. 6,826,548, titled “System and method for processing returned mail.” C.A. App. 47. The patent’s specification states that the patent relates to a method for “processing of mail that is returned to sender.” *Id.* at 53. After further proceedings before the United States Patent and Trademark Office, the original claims were cancelled and a new set of claims, including the claims relevant here, were issued. *Id.* at 63-65.

Only claims 42 and 44 are at issue here. Claim 42 states as follows:

42. A method for processing a plurality of undeliverable mail items, comprising:
- [a] receiving from a sender a plurality of mail items, each including i) a written addressee, and ii) encoded data indicating whether the sender wants a corrected address to be provided for the addressee;
 - [b] identifying, as undeliverable mail items, mail items of the plurality of mail items that are returned subsequent to mailing as undeliverable;
 - [c] decoding the encoded data incorporated in at least one of the undeliverable mail items;
 - [d] creating output data that includes a customer number of the sender and at least a portion of the decoded data;
 - [e] determining if the sender wants a corrected address provided for intended recipients based on the decoded data;

- [f] if the sender wants a corrected address provided, electronically transferring to the sender information for the identified intended recipients that enable the sender to update the sender's mailing address files; and
- [g] if the sender does not want a corrected address provided, posting return mail data records on a network that is accessible to the sender to enable the sender to access the records.

C.A. App. 63. Claim 44 claims “[t]he method of claim 42, wherein the encoded data further indicates a name and address of the intended recipient.” *Ibid.*

b. In 2011, petitioner brought suit against the United States in the CFC, alleging that the Postal Service's most recent Address Change Service had used petitioner's claimed process without compensation in violation of 28 U.S.C. 1498(a). See C.A. App. 1325, 1383. The United States then petitioned the Patent Trial and Appeal Board (PTAB) to institute covered business method review of the patent, and the CFC stayed the litigation. See Leahy-Smith America Invents Act, Pub. L. No. 112-29, § 18, 125 Stat. 329-331 (2011); 35 U.S.C. 321 note (Transitional Program for Covered Business Method Patents); C.A. App. 1957.

The PTAB instituted review and held that claims 42 and 44 are not eligible for patenting under 35 U.S.C. 101 because they are “directed to the abstract idea of relaying mailing address data” and do not “recite limitations that amount to significantly more than th[e] abstract idea.” C.A. App. 4769-4770. The Federal Circuit affirmed for the same reasons, noting that the claims “simply recite [an] existing business practice” and that reciting “generic computing technology” is not enough to make the abstract idea patent-eligible. *Return Mail*,

Inc. v. United States Postal Service, 868 F.3d 1350, 1368 (2017), reversed on other grounds, 587 U.S. 618 (2019). This Court granted review but did not address patent eligibility; instead, it reversed on the ground that the Postal Service is not a “person” who may petition for covered business method review by the PTAB. *Return Mail, Inc. v. United States Postal Service*, 587 U.S. 618, 621 (2019). The Federal Circuit’s judgment was accordingly vacated and the case dismissed. See *Return Mail, Inc. v. United States Postal Service*, 774 Fed. Appx. 684, 684 (Fed. Cir. 2019) (mem.).

c. The CFC resumed its consideration of the case. In a bifurcated proceeding that focused on patent defenses other than non-infringement, the court granted summary judgment to the Postal Service. Pet. App. 5a. Like the PTAB and the prior Federal Circuit panel, the court concluded that the claims are not patent-eligible under 35 U.S.C. 101. Pet. App. 5a.

At *Alice* step one, the CFC held that the claims are directed to the abstract idea of “processing returned mail and relaying mailing address data.” Pet. App. 22a. The court explained that the claims “restate a process that was historically performed manually by people and invoke[] computers merely as a tool to automate that previously manual process.” *Id.* at 23a. The court rejected petitioner’s argument that the claims rely on a specific combination of “tangible items[] such as computers and scanners,” explaining that “those limitations do not appear in the subject claims.” *Id.* at 24a. The court further observed that, even if the claims had described using computers to accomplish an abstract idea, the description “would not render that idea ‘less abstract.’” *Ibid.* (citation omitted).

At *Alice* step two, the CFC held that the claims do not add significantly more than the abstract idea itself because the claims “provide for the conventional processing of undeliverable mail items but on a computer.” Pet. App. 29a. The court explained that, to be patent-eligible, a claim must “do more than simply instruct the practitioner to implement the abstract idea on a generic computer.” *Ibid.* (quoting *Alice*, 573 U.S. at 225) (ellipsis omitted).

d. The Federal Circuit affirmed in a per curiam summary order without opinion. Pet. App. 1a-2a.

ARGUMENT

Petitioner contends (Pet. 26-28) that the claims reciting steps for processing returned mail do not attempt to patent an abstract idea, and it asks this Court to grant review to clarify more generally the proper application of the abstract-idea exception under 35 U.S.C. 101. Although the government previously has urged this Court to clarify the scope of the abstract-idea exception, this case is an inappropriate vehicle in which to do so because the claims at issue here are patent-ineligible under any reasonable view of that exception. Rather, claims 42 and 44 of petitioner’s patent constitute paradigmatic examples of a non-technological method of organizing human activity without any particular technological implementation. The Federal Circuit correctly affirmed the CFC’s judgment finding those claims patent-ineligible, and further review of the court’s summary order is not warranted.

1. The courts below correctly determined that petitioner’s claims are not patent-eligible under 35 U.S.C. 101 because they claim an abstract idea.

a. In *Alice Corp. v. CLS Bank International*, 573 U.S. 208 (2014), this Court rejected claims that listed

the steps involved in the “concept of intermediated settlement” through “the use of a third party to mitigate settlement risk.” *Id.* at 219. The Court explained that the claims fell “squarely within the realm of ‘abstract ideas’” because they attempted to patent a “‘fundamental economic practice’” and “method of organizing human activity.” *Id.* at 219-221 (citation omitted). The Court further explained that the claims’ references to the use of computers in implementing the intermediated-settlement concept did not render those claims patent-eligible because “generic computer implementation fails to transform that abstract idea into a patent-eligible invention.” *Id.* at 212.

In *Bilski v. Kappos*, 561 U.S. 593 (2010), “all Members of the Court agree[d] that the patent application at issue * * * claim[ed] an abstract idea” because it sought to patent steps for implementing the “‘fundamental economic practice’” of “hedging risk.” *Id.* at 609, 611 (citation omitted); see *id.* at 599. The claims recited steps to “explain[] how buyers and sellers of commodities in the energy market can protect, or hedge, against the risk of price changes,” but the Court explained that the non-technological “concept of hedging” “is an unpatentable abstract idea.” *Id.* at 599, 609.

The Court has consistently held that claims seeking to patent abstract concepts cannot be rendered patent-eligible merely by reciting the use of a generic computer to apply the concept. For example, in *Gottschalk v. Benson*, 409 U.S. 63 (1972), the contested claims recited “a method for converting binary-coded decimal * * * numerals into pure binary numerals” and “purported to cover any use of the claimed method in a general-purpose digital computer of any type.” *Id.* at 64. Despite the claims’ recitation of a computer to apply the

method, the Court held that the claims “in practical effect” amounted to “a patent on the algorithm itself.” *Id.* at 71-72. Similarly, in *Parker v. Flook*, 437 U.S. 584 (1978), the Court found it “absolutely clear” that claims reciting steps to calculate alarm limits in a chemical process were not patent eligible, despite recitation of a computer to automatically calculate the limits. *Id.* at 594.

Like the claims in those cases, the claims here attempt to patent an abstract idea: “processing returned mail and relaying mailing address data,” Pet. App. 22a. The claims recite the steps of “receiving” returned mail items; “identifying” the “undeliverable mail items”; “decoding” any code used to convey information on the piece of mail; “creating output data”; “determining if the sender wants a corrected address provided”; and either electronically sending the new information to the sender or storing it in a network depending on the sender’s preference. C.A. App. 63. Nothing in the claims identifies any particular technological method for accomplishing those steps. *Ibid.* Instead, the claims merely describe an unadorned “method of organizing human activity.” *Alice*, 573 U.S. at 220.

Nor are the claims “limited to any particular art or technology” or “to any particular apparatus or machinery.” *Benson*, 409 U.S. at 64. The patent’s specification states that “historically” it was “not uncommon” for businesses “to retain a staff of several employees” to perform the steps recited in the claims, and that the claimed invention “addresses the shortcomings” of such “manual” methods by performing those steps “virtually entirely automatically through the exchange of data files between computers.” C.A. App. 53, 55; see *id.* at 56 (stating that “[a]ny kind of computer system or other

apparatus” could be used). But a patent’s *specification* does not define the invention (only its *claims* do), and in any event non-technological methods of organizing human activity do not become patent-eligible merely by adding the words “apply it with a computer.” *Alice*, 573 U.S. at 223. “[I]f that were the end of the § 101 inquiry, an applicant could claim any principle of the physical or social sciences by reciting a computer system configured to implement the relevant concept.” *Id.* at 224. “Such a result would make the determination of patent eligibility ‘depend simply on the draftsman’s art,’” which would undermine “the rule that ‘laws of nature, natural phenomena, and abstract ideas are not patentable.’” *Ibid.* (brackets and citations omitted).

b. Petitioner argues (Pet. 26-28) that the CFC’s grant of summary judgment was improper because the decisions below misconstrued petitioner’s claims and ignored an expert report. Those factbound arguments do not warrant this Court’s review, and they lack merit in any event.

Petitioner contends (Pet. 26) that the disputed patent claims actually describe “a specific combination of hardware and software (including decoding data with decision-logic coded to each client’s wishes) that have been adapted and configured in a certain way.” But Claims 42 and 44 do not mention any hardware or software at all. See C.A. App. 63. Nor do they speak of any coding or technological adaptation or configuration. The specification in fact disavows any “specific combination of hardware and software,” Pet. 26, instead stating that “[a]ny kind of computer system” could be used, C.A. App. 56. The courts below thus correctly recognized that the claims at issue here are not limited to a specific combination of hardware and software. See

Pet. App. 24a (rejecting petitioner’s arguments about limitations that “do not appear in claims 42 and 44”); C.A. App. 4771 (PTAB opinion reaching the same conclusion); *Return Mail, Inc. v. United States Postal Service*, 868 F.3d 1350, 1369 (Fed. Cir. 2017) (rejecting petitioner’s arguments because “those limitations do not appear in the subject claims”), reversed on other grounds, 587 U.S. 618 (2019).

Petitioner contends (Pet. 5, 26) that updating an address *after* mail is returned as undeliverable (what petitioner calls “upstream” updating) was unconventional when the patent claims were first filed in 2004. Pet. 26; see Pet. 27 (stating that address updating occurs at “a later strategic point in the mailing process”). That contention is contradicted by the patent’s own specification, which states that, “historically,” it was “not uncommon” for persons to manually accomplish the same kind of address updating after “receiv[ing] the returned mail.” C.A. App. 53.

Petitioner contends (Pet. 27) that summary judgment was improper in light of an expert report purportedly showing that the claims recite an unconventional and novel way of processing returned mail and updating addresses. Regardless of the expert’s opinions on the claims’ inventiveness, the specification’s admissions regarding conventionality are binding on the patentee. See *Pharmastem Therapeutics, Inc. v. ViaCell, Inc.*, 491 F.3d 1342, 1362 (Fed. Cir. 2007), cert. denied, 552 U.S. 1258 (2008). As noted, the specification here purported only to automate a “historical[ly] manual” process. C.A. App. 55. The expert’s opinion also assumed limitations that do not appear in the claims themselves, such as a “specially programmed machine[] necessary to perform the [patent] claim elements.” *Id.* at 264; see

id. at 265. And in any event, an abstract idea is unpatentable even if it is novel or unconventional. See *Flook*, 437 U.S. at 593.

Petitioner briefly suggests (Pet. 27) that the claims are patent-eligible because they do not preempt *all* possible approaches to updating addresses for returned mail. But “limiting an abstract idea to one field of use or adding token * * * components [does] not make the concept patentable.” *Bilski*, 561 U.S. at 611-612; see *Flook*, 437 U.S. at 589-590. Even if the claims do not cover all possible ways to process returned mail and update addresses, they nonetheless concern a non-technological method of organizing human activity. And, as the specification makes clear, the claims purport to preempt “many” ways to update addresses, regardless of how or whether the process is implemented technologically. C.A. App. 56.

2. Petitioner observes (Pet. 10-11) that the government has recently and repeatedly recommended that this Court grant certiorari to address the scope of the abstract-idea exception to patent-eligibility. While the considerations that animated those recommendations persist, this case is not a suitable vehicle for addressing them.

The United States has previously identified uncertainties concerning the application of *Alice*’s two-step test for identifying subject matter that is patent-ineligible under the abstract-idea exception. The *Alice* test asks courts to first “determine whether the claims at issue are directed to” a law of nature or another “patent-ineligible concept[.]” 573 U.S. at 217. “If so,” the court must ask whether other “elements * * * ‘transform the nature of the claim’ into a patent-eligible application.” *Ibid.* (citation omitted). In practice that

formulation has led to confusion and can bleed into separate statutory requirements of novelty, obviousness over the prior art, and enablement. See, *e.g.*, U.S. Amicus Br. at 20-21, *Interactive Wearables, LLC v. Polar Electro Oy*, 143 S. Ct. 2482 (2023) (No. 21-1281). It also has led the Federal Circuit to mistakenly apply the exception to quintessentially *technological* inventions. *Ibid.* In light of the statutory and historical context of Section 101, the abstract-idea inquiry should focus on whether a claimed invention falls within the traditional bailiwick of scientific, technological, and industrial arts. *Id.* at 10.

This case, however, is not an appropriate vehicle in which to clarify the abstract-idea exception or patent-eligibility under Section 101 more generally. Because the claims at issue here present a paradigmatic example of a non-technological idea recited without any particular technological implementation, they fall within any reasonable conception or articulation of the abstract-idea exception. The Court in *Bilski* unanimously found that similar claims (reciting a non-technological method of risk hedging) fell within the abstract-idea exception. See 561 U.S. at 609-611. The Court in *Alice* likewise found it unnecessary “to delimit the precise contours of the ‘abstract ideas’ category” because the claims at issue there (which described a non-technological method of intermediated settlement) fell “squarely within the realm of ‘abstract ideas,’” even though they called for generic computer implementation. 573 U.S. at 221.

The claims here are so similar to the non-technological method claims that were held invalid in *Alice* and *Bilski* that the disposition of this case is essentially controlled by those precedents. Claims 42 and 44 of petitioner’s patent are not the sort of technological method claims

that have created controversy in the Federal Circuit and have produced confusion and disagreement about how to apply the abstract-idea exception. Compare, e.g., *International Business Machines Corp. v. Zillow Group, Inc.*, 50 F.4th 1371, 1380-1383 (2022) (claims for a method of displaying layered data on a spatially oriented display, such as a digital map, were not patent-eligible because they described the abstract idea of organizing and displaying visual information), and *Yu v. Apple Inc.*, 1 F.4th 1040, 1043 (2021) (claims for digital camera were “directed to the abstract idea of taking two pictures * * * and using one picture to enhance the other in some way”), cert. denied, 142 S. Ct. 1113 (2022); with, e.g., *International Business Machines*, 50 F.4th at 1384-1385 (Stoll, J., dissenting in part) (opining that the claims were patent-eligible because they were directed to technical improvements in user interactions with graphical interfaces), and *Yu*, 1 F.4th at 1047 (Newman, J., dissenting) (accusing majority of applying novelty considerations, which are “not the realm of Section 101 eligibility”). Granting review in this case therefore would likely result in straightforward application of *Alice* and *Bilski* rather than any broader elaboration or clarification of the relevant legal principles. That two Federal Circuit panels, the CFC, and the PTAB have all reached the same conclusion regarding Claims 42 and 44 in petitioner’s patent underscores that this case is a poor vehicle in which to address patent-eligibility in general or the abstract-idea exception in particular.

Contrary to petitioner’s suggestion (Pet. 25), the case does not present a good opportunity to address whether patent-eligibility under Section 101 should be decided as a question of law or of fact. The abstract nature of the claims at issue is clear on the face of the

claims, so the determination whether the patent-eligibility inquiry could require fact-finding in some circumstances would not matter in this case. That procedural question is “not profitably addressed” until after the Court revisits the substantive *Alice* formulation in an appropriate case because “[r]esolution of that satellite procedural question depends on the substantive Section 101 standard,” “and answering it would be difficult while uncertainty about the substance of that standard persists.” U.S. Amicus Br. at 22-23, *Interactive Wearables, supra* (No. 21-1281); see U.S. Amicus Br. at 21-22, *American Axle & Manufacturing, Inc. v. Neapco Holdings, LLC*, 142 S. Ct. 2902 (2022) (No. 20-891).

Petitioner argues (Pet. 24) that this case is a suitable vehicle for review because the facts are purportedly well developed. But prior abstract-idea cases in which this Court has denied certiorari have likewise involved a well-developed factual record, such as on a grant of summary judgment or following a trial. See, e.g., *Tropp v. Travel Sentry, Inc.*, 143 S. Ct. 2483 (2023) (No. 22-22) (claimed method for using dual-access luggage locks, on review following summary judgment); *Chamberlain Group, Inc. v. Techtronic Industries Co.*, 141 S. Ct. 241 (2020) (No. 19-1299) (claim directed to wirelessly communicating status information about a garage door, on review following a jury trial).

Petitioner also observes (Pet. 24) that the claims here involve “comparatively less complex” technology. In fact the claims do not recite a technological method at all. That makes this a worse, not better, vehicle for clarification of the patent-eligibility inquiry under Section 101 than cases involving claims that are within patent law’s traditional bailiwick. See, e.g., *Eolas Technologies, Inc. v. Amazon.com, Inc.*, cert. denied, No. 23-

1184 (Oct. 7, 2024) (web server and browser configurations); *Interactive Wearables, LLC v. Polar Electro Oy*, 143 S. Ct. 2482 (2023) (No. 21-1281) (wearable media player); *American Axle & Manufacturing, Inc. v. Neapco Holdings, LLC*, 142 S. Ct. 2902 (2022) (No. 20-891) (automobile driveshaft); *Yu v. Apple Inc.*, 142 S. Ct. 1113 (2022) (No. 21-811) (digital camera); *Hikma Pharmaceuticals USA Inc. v. Vanda Pharmaceuticals Inc.*, 140 S. Ct. 911 (2020) (No. 18-817) (pharmaceuticals). The Court denied review in those cases, and there is no reason for a different result here.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
*Principal Deputy Assistant
Attorney General*
JOSHUA M. SALZMAN
JOSHUA DOS SANTOS
Attorneys

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