No. 24-764

IN THE
SUPREME COURT OF THE UNITED STATES

HARRIS BRUMFIELD, TRUSTEE FOR ASCENT TRUST,

Petitioner

v.

IBG LLC, INTERACTIVE BROKERS LLC,

Respondents

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

AMICUS CURIAE BRIEF OF AUDIO EVOLUTION DIAGNOSTICS, INC. IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICUS CURIAE[1]

Audio Evolution Diagnostics, Inc. is the owner of U.S. Patent Nos. 8,920,343, 8,870,791 and 11,357,471 issued to Michael E. Sabatino, M.D., A.B.P.N. (the "Sabatino Patents"). The patents disclose inventions in the field of telemedicine. The Sabatino patents describe and claim a novel machine for collecting, transforming, processing, analyzing, recording, displaying, and transmitting sounds associated with the physiologic activities of various human organs. The machine includes one or more transducers that are placed on the body surface at the operator's discretion, which detect the organ sounds as analog data signals.

Two of the three Sabatino Patents—like the patents at issue in the Petition filed by Petitioner here—were determined by the Court of Federal Claims to be invalid under this Court's decision in *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014). See *Audio Evolution Diagnostics, Inc. v. U.S.,* 160 Fed. Cl. 513 (2022).

AED appealed to the Federal Circuit, like petitioner here. On AED's appeal, the Federal Circuit affirmed without opinion pursuant to Fed. Cir. R. 36. See *Audio Evolution Diagnostics, Inc. v. U.S.*, No.

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[1] Pursuant to Rule 37.2, counsel of record for all parties received timely notice of the amicus curiae's intent to file this brief. In accordance with Rule 37.6, counsel for the amicus curiae certifies that no counsel for any party authored this brief in whole or in part and that no person or entity other than the amicus curiae, its members, or its counsel made a monetary contribution intended to fund the brief's preparation or submission.

2023-1096, 2024 U.S. App. LEXIS 11641, 2024 WL 2143376 (Fed. Cir. May 14, 2024).

AED's petition is pending review by this Court. *Audio Evolution Diagnostics, Inc. v. U.S.,* Supreme Court Case No. 24-806 (http://www.supremecourt.gov/DocketPDF/24/24-806/340237/20250127152123120_Audio%20Evolution%20v%20US%20-%20Petition.pdf) ("AED Petition").

SUMMARY OF THE ARGUMENT

Petitioners' petition raises issues long overdue for review by this Court. This petitioner, other petitioners, and *amici* in case after case have implored this Court to take up the issue of lower courts' application of *Alice/Mayo*[2] again and again. The problem will not go away. The problem will get worse and worse. This Court must act. The petitions offers an effective and efficient opportunity for this Court's review and should be granted.

Patents are a property right. The Founders enumerated that right in the Constitution.[3] The scope of Section 101 patent eligibility circumscribes that property right. Without clarity, patent owners cannot know with any certainty where their property right in their patent begins and ends.

Alice was decided a decade ago. Since then division among decisionmakers on how to correctly apply the two-step framework has dominated the jurisprudence. In the absence of intervention from this Court, the core objective of patent law—fostering innovation—has been undermined.

This case is an ideal vehicle for addressing the issue. The application of the "abstract idea" question to

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[2] *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.* 566 U.S. 66 (2012).

[3] "[The Congress shall have Power . . .] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const., Art. I, § 8, cl. 8.

the technology at issue previously found patent eligible is straightforward. The factual record is well-developed. Paradoxically, patents with substantially similar claims to the claims invalidated by the courts below were previously upheld as patent eligible.

Count this as one more petition deserving of a grant of certiorari by this Court.

ARGUMENT

I. The Correct Application of this Court's Rulings in *Alice* and *Mayo* is a Significant Issue that Deserves this Court's Attention.

The patent eligibility doctrine under § 101 is in a state of disarray, with widespread calls for this Court's intervention. Despite disagreements on the specifics, stakeholders unanimously agree that further guidance from the Court is crucial. *Amicus* AED urges this Court to take up the issue squarely presented in the petition.

The need for consideration by this Court is compelling in the utmost. The crisis in the Federal Circuit over the application of *Alice/Mayo* demands this Court exercise its leadership and grant the petition.

A. The Federal Circuit is in Crisis on *Alice/Mayo* Application

"[A] decision without principled justification [is] no judicial act at all." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 865 (1992). The law is learned "by studying the judicial opinions that invented it." Antonin Scalia, A Matter of Interpretation: Federal

Courts and the Law 4, 30 (1997). There is a long appellate tradition of explaining decisions–of not just "declaring justice between man and man, but of settling the law." Benjamin N. Cardozo, Jurisdiction of the Court of Appeals (2d ed. 1909) § 6. See also, *Carter v. Stanton*, 405 U.S. 669, 672 (1972) (vacated and remanded because the district court's order was "opaque and unilluminating as to either the relevant facts or the law.")

Finding "principled justification" at the Federal Circuit in its application of *Alice/Mayo* is impossible. The Federal Circuit's internal conflicts with § 101 are "worse than a circuit split." *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 977 F.3d 1379, 1382 (Fed. Cir. 2020) (Moore, C.J., concurring). That court specializes in patents, but it is "bitterly divided" and deadlocked, having failed to go *en banc* on a §101 issue since *Alice*. *Id.* At this point, "every judge on [the Federal Circuit has] request[ed] Supreme Court clarification." *Id.* "If a circuit split warrants certiorari, such an irreconcilable split in the nation's only patent court does likewise." *Id.*

The Federal Circuit's precedent diverged significantly from the Supreme Court's rulings in *Alice* and *Mayo*. It conflates § 101 with other patentability criteria such as novelty, obviousness, and enablement under §§ 102, 103, and 112. This approach transforms essential factual inquiries into legal questions. The Federal Circuit's common-law adjudication method resulted in a tangled web of conflicting precedents, giving the impression that patent eligibility depends on the random assignment of panels.

1. The Federal Circuit Bungles the Analysis of Eligibility versus Patentability

The Federal Circuit's caselaw on § 101 merges the threshold condition of eligible subject matter (§ 101) with other patentability requirements such as novelty (§ 102), nonobviousness (§ 103), and enablement (§ 112).

The Federal Circuit adopted this blending of distinct statutory requirements, asserting that § 101's "threshold level of eligibility is often usefully explored by way of the substantive statutory criteria of patentability" found in other provisions. *Trading Techs. Int'l, Inc. v. CQG, INC.*, 675 F. App'x 1001, 1005 (Fed. Cir. 2017). The Federal Circuit justifies importing "novelty, nonobviousness, and enablement" into § 101 as serving "the public interest in innovative advance." *Id.* at 1005-06. No part of § 101 has been spared from this judicial activism, including the abstract-idea exception. *See e.g.*, *Internet Pats. Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1347 (Fed. Cir. 2015).

Novelty (§ 102) and nonobviousness (§ 103) are "not the realm of Section 101 eligibility," *Yu v. Apple Inc.*, 1 F.4th 1040, 1047 (Fed. Cir. 2021) (Newman, J., dissenting). But the Federal Circuit has repeatedly "conflated" them with § 101. *See e.g.*, *Internet Pats.*, 790 F.3d at 1346-47 ("pragmatic analysis of § 101 is facilitated by considerations analogous to those of §§ 102 and 103 as applied to the particular case"); *Return Mail, Inc. v. United States Postal Serv.*, 868 F.3d 1350, 1370 (Fed. Cir. 2017) (same); *Trading Techs.*, 675 F. App'x at 1005 (similar).

Importing these § 102 concepts into § 101 has led the Federal Circuit to deny that *Alice*'s two-step

framework even has two steps. The court has "reject[ed]" the notion that it should "draw a bright line between the two steps." *CareDx, Inc. v. Natera, Inc.*, 40 F.4th 1371, 1379 (Fed. Cir. 2022) (cleaned up); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (the steps are "overlapping"); *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (same); *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1342 (Fed. Cir. 2018) (same); *CareDx,* 40 F.4th at 1379 (same); *Ancora Techs., Inc. v. HTC Am., Inc.*, 908 F.3d 1343, 1349 (Fed. Cir. 2018) (same); *Yu*, 1 F.4th at 1043 (patent was directed to an abstract idea because it had only "conventional" and "well-known" elements used for their "basic functions"); *Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1349 (Fed. Cir. 2017) (patent was not directed to an abstract idea because of an "unconventional choice"); *Cleveland Clinic Found. v. True Health Diagnostics LLC*, 859 F.3d 1352, 1361 (Fed. Cir. 2017) (patent was directed to ineligible subject matter because it had "no meaningful non-routine steps"); *Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC*, 915 F.3d 743, 751 (Fed. Cir. 2019) (patent was directed to ineligible subject matter because the steps were "conventional").

Sometimes the Federal Circuit "assume[s]" step one is met or "defer[s]" meaningful analysis for step two. *See e.g.*, *CosmoKey Sols. GmbH & Co. KG v. Duo Sec. LLC*, 15 F.4th 1091, 1097 (Fed. Cir. 2021); *Exergen Corp. v. Kaz USA, Inc.*, 725 F. App'x 959, 966 (Fed. Cir. 2018); *Bascom Glob. Inter- net Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016); *Amdocs*, 841 F.3d at 1306.

Other times the Federal Circuit says it can "accomplis[h]" the whole analysis "without going beyond step one." *Amdocs,* 841 F.3d at 1294; *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1376 (Fed. Cir. 2018) (Linn, J., concurring) ("Section 101 does not need a two-step analysis."); *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1382 n.2 (Fed. Cir. 2017) (Linn, J., concurring in part and dissenting in part) (similar).

The Federal Circuit often conducts only a cursory analysis at step two because of what it concludes as a matter of law at step one. *See, e.g.*, *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 967 F.3d 1285, 1299 (Fed. Cir. 2020) (quickly dispensing with step two because what remained after step one was "a restatement of the assertion" of ineligible subject matter found at step one); *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1378, 1385 (Fed. Cir. 2019) (similar); *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999, 1013 (Fed. Cir. 2018) (similar).

The Federal Circuit's combination of patentability requirements introduces obstacles related to obviousness and novelty under § 101 without incorporating the safeguards of those doctrines. For instance, the Federal Circuit considers whether the combination of steps is "logical," "natural," or leads to an "expected result." *See, e.g.*, *CareDx*, 40 F.4th at 1380; *Universal Secure Registry LLC v. Apple Inc.*, 10 F.4th 1342, 1350 (Fed. Cir. 2021); *Ancora*, 908 F.3d at 1348; *Trinity Info Media, LLC v. Co-valent, Inc.*, 72 F.4th 1355, 1366 (Fed. Cir. 2023). However, those terms are directly derived from the nonobviousness precedents under § 103. *See, e.g.*, *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S.

398, 417 (2007); *Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587 F.3d 1324, 1329 (Fed. Cir. 2009). Moreover, the Federal Circuit fails to apply the safeguards against "hindsight" bias when incorporating these terms into § 101. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 36 (1966). This omission further complicates the patent eligibility analysis and undermines the integrity of the evaluation process.

This Court emphasized "secondary considerations," like "commercial success" should be analyzed to guard against "the distortion caused by hindsight bias." *KSR*, 550 U.S. at 406, 421 (cleaned up). Although the Federal Circuit employs these considerations under § 103, it does not apply them, or any other safeguards, under § 101. *See, e.g.*, *Ficep Corp. v. Peddinghaus Corp.*, 2023 WL 5346043, at *7 (Fed. Cir. Aug. 21, 2023) ("Questions of nonobviousness such as secondary considerations . . . are irrelevant when considering eligibility."); *WhitServe LLC v. Dropbox, Inc.*, 854 F. App'x 367, 373 (Fed. Cir. 2021) ("Objective indicia of nonobviousness are relevant in a § 103 inquiry, but not in a § 101 inquiry."). This selective application further complicates the patent eligibility analysis and undermines the consistency and fairness of the evaluation process.

Regarding § 112, the Federal Circuit has "imbued § 101 with a new superpower—enablement on steroids." *Am. Axle*, 967 F.3d at 1305 (Moore, J., dissenting). Under current caselaw, "Section 101 can do everything 112 does and then some." *Id.* at 1316 (cleaned up). By considering enablement issues under § 101, the Federal Circuit manufactured a requirement that a patent's "*claims*" must "teach a skilled

artisan *how* to [perform the invention] without trial and error." *Id.*; *see, e.g.*, *Am. Axle*, 966 F.3d at 1359 (Newman, J., dissenting). The Federal Circuit "blurs" § 101 and § 112 by "demanding that the claims provide a degree of detail more appropriate to the enablement inquiry," according to the SG. U.S.-Br. 16 in *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, No. 20-891, 2022 WL 1670811 (May 24, 2022) ("U.S.-*Axle*-Br.").

Enablement is supposed to be assessed "under 35 U.S.C. §112, not . . . under §101" based on a patent's "specification," not its claims. *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1261 (Fed. Cir. 2017); *see Amgen Inc. v. Sanofi*, 598 U.S. 594, 610-11 (2023). The Federal Circuit's "inject[ion]" of "a heightened enablement requirement into the § 101 analysis" is especially concerning in cases like this one, where the infringer does not argue that there is a § 112 problem. *Am. Axle*, 967 F.3d at 1317 (Moore, J., dissenting). The Federal Circuit's mixing of patentability factors with eligibility "introduces further uncertainty." *Am. Axle*, 966 F.3d at 1363 (Stoll, J., dissenting); *accord Realtime Data LLC v. Array Networks Inc.*, Nos. 2021-2251, 2021-2291, 2023 U.S. App. LEXIS 19857, 2023 WL 4924814, 2023 U.S.P.Q.2D (BNA) 901 (Fed. Cir. Aug. 2, 2023) (Newman, J., dissenting).

2. The Federal Circuit Transforms Factual Issues into Legal Issues

The Federal Circuit's mixed § 101 analysis also wrongly "converts factual issues into legal ones." *Am. Axle*, 967 F.3d at 1305 (Moore, J., dissenting). The prevailing view is that step one is purely a legal question, while step two can involve factual issues. *See e.g.*, *In*

re Rudy, 956 F.3d 1379, 1383 (Fed. Cir. 2020); *Berkheimer*, 881 F.3d at 1368. That view is unsound.

The Federal Circuit frequently considers concepts like conventionality in step one, but when conventionality is applied to other patentability requirements, it raises factual questions. *See Caredx,* 40 F.4th at 1379 (analyzing conventionality at step one); *Athena Diagnostics,* 915 F.3d at 751 (stating at step one "the specification describes the claimed concrete steps for observing the natural law as conventional"); *Cleveland Clinic Found.,* 859 F.3d at 1361 (stating that, at step one the claims contained "no meaningful non-routine steps").

The Federal Circuit has shoehorned enablement (§ 112) into eligibility (§ 101), but enablement also relies upon "underlying factual findings." *Alcon Rsch. Ltd. v. Barr Lab'ys, Inc.*, 745 F.3d 1180, 1188 (Fed. Cir. 2014). By incorporating these patentability factors into step one, the Federal Circuit's precedent transforms fact questions into legal ones.

3. The Federal Circuit's § 101 Analysis Breeds Arbitrariness

The Federal Circuit's muddled doctrine has led it to invalidate patents for digital cameras, garage-door openers, electric-vehicle charging stations, driveshafts, among others. *See, e.g.*, *Yu v. Apple Inc.*, 1 F.4th 1040 (Fed. Cir. 2021); *Chamberlain Grp. v. Techtronic Indus. Co.*, 935 F.3d 1341 (Fed. Cir. 2019); *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759 (Fed. Cir. 2019); *Am. Axle.*

The Federal Circuit decision inflicted on petitioner below provides an excellent example. The Federal Circuit found that the claims of the ’411/’996 patents did not recite an improvement to a technological process. *Brumfield v. IBG LLC*, 97 F.4th 854, 868 (Fed. Cir. 2024). However, five years earlier, a different panel of the Federal Circuit found that the same claims of the ’411/’996 patents recite a specific improvement to the way computers operate because they solve a technical problem with a technical solution. *IBG LLC v. Trading Techs. Int’l, Inc.*, 757 F. App’x 1004, 1007 (Fed. Cir. 2019).

As petitioner noted, the Federal Circuit’s confusion “despite extensive efforts to gain clarity with the support of diverse litigators specializing in patent law and related litigation” is “evidence of the vacuity of the *Alice* standard” and the “abstract idea” category itself. Richard Gruner, *Lost in Patent Wonderland with Alice: Finding the Way Out*, 72 SYRACUSE L. REV. 1053, 1074 (2022).

The Federal Circuit’s affirmance below is just one more in a long list of differing Federal Circuit opinions on § 101. With no *en banc* in sight, outcomes will continue to vary by three-judge panel. This is not “the classic common law methodology for creating law,” *In re Killian*, 45 F.4th 1373, 1383 (Fed. Cir. 2022), as the Federal Circuit claims. It is anarchy.

4. The Federal Circuit Abdicated its Role as a Court of Review of § 101 Decisions.

Combine the Federal Circuit’s arbitrary treatment of § 101 with its failure to agree internally and its practice of issuing one-word decisions on the merits

under its Local Rule 36 and the combination is clearly detrimental to the interests of justice for patentees.

The failure of courts to provide well-reasoned orders "runs contrary to the interest of judicial efficiency by compelling the appellate court to scour the record in order to find evidence in support of the decision." *Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1080 (9th Cir. 2000) (internal quotation marks and citation omitted). Failing to provide well-reasoned, written decisions causes appellate courts to be "handicapped in [their] review." *Peck v. Bridgeport Machines, Inc.*, 237 F.3d 614, 617 (6th Cir. 2001).

District courts face significant challenges in applying § 101. The Federal Circuit makes things worse. Take the example of *Realtime Data LLC v. Reduxio Sys.*, wherein the Federal Circuit criticized the district judge's §101 analysis as too "cursory" to "facilitate meaningful appellate review," and remanded. 831 F. App'x 492, 496-98 (Fed. Cir. 2020). The fifty-page decision on remand reached the same conclusion as before. *Realtime Data LLC v. Array Networks Inc.*, 556 F. Supp. 3d 424 (D. Del. 2021). On appeal, the Federal Circuit affirmed in an unpublished opinion with a divided panel where the judges disagreed on how to apply § 101. *Realtime Data LLC v. Array Networks Inc.,* Nos. 2021-2251, 2021-2291, 2023 U.S.P.Q.2D (BNA) 901, 2023 WL 4924814, 2023 U.S. App. LEXIS 19857 (Fed. Cir. Aug. 2, 2023).

The Federal Circuit has also neglected preemption under § 101. See *Alice*, 573 U.S. at 216, 223. The Federal Circuit seldom, if ever, considers whether a patent raises preemption issues before deeming it ineligible. In recent years, preemption has been

mentioned only once, and even then, only in a cursory manner. *Killian*, 45 F.4th at 1382. The Federal Circuit "has strayed too far from the preemption concerns that motivate the judicial exception to patent eligibility." *Am. Axle*, 966 F.3d at 1363 (Stoll, J., dissenting). What was once "part and parcel with the § 101 inquiry" is now an afterthought. *Return Mail,* 868 F.3d at 1370.

B. The Federal Circuit's Abandonment of its § 101 Post Deters Innovation.

The Federal Circuit's treatment of § 101 "pose[s] a substantial threat to the patent system's ability to accomplish its mission." *Bonito Boats v. Thunder Craft Boats*, 489 U.S. 141, 161 (1989). "[P]recision has been elusive in defining an all-purpose boundary between the abstract and the concrete, leaving innovators and competitors uncertain as to their legal rights." *Internet Pats.*, 790 F.3d at 1345. The Federal Circuit's "rulings on patent eligibility have become so diverse and unpredictable as to have a serious effect on the innovation incentive in all fields of technology." *Am. Axle*, 966 F.3d at 1357 (Newman, J., dissenting). "In the current state of Section 101 jurisprudence, inconsistency and unpredictability of adjudication have destabilized technologic development in important fields of commerce." *Yu*, 1 F.4th at 1049 (Newman, J., dissenting).

"[T]he current law of § 101 creates uncertainty and stifles innovation." *Realtime*, 2023 WL 4924814, at *12 (Newman, J., dissenting). Patent eligibility uncertainty has "stymied research and development, investment, and innovation, and has hurt competition

and the U.S. economy." A. Iancu, *The Patent Eligibility Restoration Act: Hearings on S. 2140 Be- fore the Subcomm. on Intell. Property*, 118th Cong. 4, 13 (Jan. 23, 2024). Section 101 caselaw has "reduced investment in new technologies." B. Fiacco, *Testimony Before the S. Subcomm. on Intell. Prop.*, at 2 (June 5, 2019). Section 101 uncertainty causes investors to shift their "investments away from companies" developing patented technology "harming the innovation economy in the U.S." S. Falati, *To Promote Innovation, Congress Should Abolish the Supreme Court Created Exceptions to 35 U.S. Code §101*, 28 Tex. Intell. Prop. L.J. 1, 36 (2019).

C. The Solicitor General Agrees that the § 101 Crisis Calls for this Court's Leadership.

The SG previously urged this Court to accept certiorari to clarify the scope and application of *Alice/Mayo*. The SG agrees that the Federal Circuit "has repeatedly divided in recent years over the content of the abstract-idea exception and the proper application of the two-step methodology under Section 101." U.S.-Br.11 in *Interactive Wearables v. Polar Electro Oy*, No. 21-1281, 2023 WL 2817859 (Apr. 5, 2023) ("U.S.-*IW*-Br."); *accord id*. at 19. The SG agrees courts place undue emphasis on considerations of novelty, obviousness, and enablement when applying § 101. U.S.-*IW*-Br.11. The SG agrees that the *Alice/Mayo* framework has "given rise to substantial uncertainty." U.S.-*Axle*-Br.10. The SG agrees that "[o]ngoing uncertainty has induced every judge on the Federal Circuit to request Supreme Court clarification." U.S.-*Axle*-Br.20 (cleaned up).

The SG also agrees that the Patent Office "has struggled to apply this Court's Section 101 precedents in a consistent manner" when performing its essential role of reviewing patent applications and issuing patents. U.S.-*IW*-Br.21. The USPTO has "struggled to apply [the] Section 101 precedents in a consistent manner." U.S.-*IW*-Br.21. Its struggles are the result of "lack of clarity in judicial precedent."[4] U.S.-Br.16 in *Hikma Pharms. USA Inc. v. Vanda Pharms. Inc.*, No. 18-817, 2019 WL 6699397 (Dec. 6, 2019).

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[4] The PTO attempted to clarify the standard for patent examiners and judges through guidance five years after Alice and Mayo. It ultimately admitted that "[p]roperly applying the Alice/Mayo test in a consistent manner has proven to be difficult," that Federal Circuit precedent "has caused uncertainty in this area of the law," and that it's "difficult … for inventors, businesses, and other patent stakeholders to reliably and predictably determine what subject matter is patent-eligible." 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 50 (Jan. 7, 2019). In 2022 in its report to Congress, the PTO repeated its challenges with § 101 and the harm that this Court's lack of guidance has caused. See Patent Eligible Subject Matter: Public Views on the Current Jurisprudence in the United States, 18-41 (June 2022).

CONCLUSION

This Court should grant certiorari.

Respectfully submitted.

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