

No. 18-1697

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

BRIDGE AND POST, INC.,

Plaintiff-Appellant,

v.

VERIZON COMMUNICATIONS, INC., CELLCO PARTNERSHIP, dba Verizon
Wireless, VERIZON INTERNET SERVICES INC., VERIZON ONLINE LLC,
AOL INC., OATH INC.,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of
Virginia, Case Nos. 3:17-cv-00094-JAG & 3:17-cv-00710-JAG
Hon. John A. Gibney, Jr.

APPELLEES' RESPONSE TO PETITION FOR REHEARING EN BANC

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OCTOBER 23, 2019

CERTIFICATE OF INTEREST

Counsel for defendants-appellees certify the following:

1. The full name of every party or amicus represented by me is:

Verizon Communications Inc.

Cellco Partnership d/b/a Verizon Wireless (“Cellco”)

Verizon Internet Services Inc.

Verizon Online LLC f/k/a Verizon Internet Services Inc.

AOL Inc.

Verizon Media f/k/a Oath Inc. f/k/a AOL Inc.

2. The name of the Real Party in interest (if the party named in the caption is not the real party in interest) represented by me is:

N/A

3. All parent corporations and any publicly held companies that own 10% or more of the stock of the party or amicus curiae represented by me are:

Verizon Communications Inc.: Verizon Communications Inc. is a publicly held company. No publicly held corporation owns 10% or more of the stock of Verizon Communications Inc.

Cellco: Cellco is a wholly owned subsidiary of Verizon Communications Inc.

Verizon Internet Services Inc.: Verizon Internet Services Inc. is the former name of Verizon Online LLC, a wholly owned subsidiary of Verizon Communications Inc.

Verizon Online LLC: Verizon Online LLC is a wholly owned subsidiary of Verizon Communications Inc.

AOL Inc.: AOL Inc. is the former name of Oath Inc., a wholly owned subsidiary of Verizon Communications Inc.

Oath Inc.: Oath Inc. is a wholly owned subsidiary of Verizon Communications Inc.

4. The names of all law firms and the partners or associates (including those no longer with the firm) that appeared for the party or amicus now represented by me

in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case or have withdrawn their appearance) are:

McGUIRE WOODS LLP: Brian Charles Riopelle; Andriana Shultz Daly; Brian David Schmalzbach; David Evan Finkelson; Rachelle Harley Thompson.

MORRISON & FOERSTER LLP: Michael F. Qian

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this Court's decision in the pending appeal:

Cellco Partnership dba Verizon Wireless v. Bridge and Post, Inc.,
Nos. 19-1962, -1963 (Fed. Cir.)

Cellco Partnership dba Verizon Wireless v. Bridge and Post, Inc., No. 19-2296
(Fed. Cir.)

Dated: October 23, 2019

/s/ Deanne E. Maynard

TABLE OF CONTENTS

CERTIFICATE OF INTEREST	i
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
BACKGROUND	2
A. Bridge And Post’s Patents Claim Basic Targeted Marketing Using Generic Computer Technology	2
B. Applying Settled Precedent, This Court Held That All Three Of Bridge And Post’s Patents Claim Ineligible Subject Matter	4
REASONS TO DENY REHEARING EN BANC	8
A. The Court’s Decision Faithfully Applied Supreme Court Precedent	8
B. This Is A Poor Vehicle For Resolving Any Issue About The Court’s Section 101 Jurisprudence Because Bridge And Post’s Flawed Reading Of Supreme Court Precedent Would Not Save Its Claims	14
CONCLUSION	17

TABLE OF AUTHORITIES

Cases

<i>Affinity Labs of Tex., LLC v. DIRECTV, LLC</i> , 838 F.3d 1253 (Fed. Cir. 2016)	11
<i>Alice Corp. Pty. Ltd. v. CLS Bank International</i> , 573 U.S. 208 (2014).....	5, 6, 9, 10, 11, 14, 15, 16
<i>Amdocs (Israel) Ltd. v. Openet Telecom</i> , 841 F.3d 1288 (Fed. Cir. 2016)	12
<i>Ariosa Diagnostics, Inc. v. Sequenom, Inc.</i> , 788 F.3d 1371 (Fed. Cir. 2015)	9
<i>Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC</i> , 915 F.3d 743 (Fed. Cir. 2019)	9
<i>BASCOM Global Internet Services v. AT&T Mobility LLC</i> , 827 F.3d 1341 (Fed. Cir. 2016)	6, 12, 13
<i>Berkheimer v. HP</i> , 881 F.3d 1360 (Fed. Cir. 2018)	12
<i>Berkheimer v. HP Inc.</i> , 890 F.3d 1369 (Fed. Cir. 2018)	13
<i>Bilski v. Kappos</i> , 561 U.S. 593 (2010).....	9, 12, 16
<i>Cellspin Soft v. Fitbit</i> , 927 F.3d 1306 (Fed. Cir. 2019)	12
<i>DDR Holdings, LLC v. Hotels.com L.P.</i> , 773 F.3d 1245 (Fed. Cir. 2014)	6, 12
<i>Intellectual Ventures I LLC v. Capital One Bank (USA)</i> , 792 F.3d 1363 (Fed. Cir. 2015)	5
<i>Intellectual Ventures I LLC v. Symantec Corp.</i> , 838 F.3d 1307 (Fed. Cir. 2016)	11

<i>Mayo Collaborative Servs. v. Prometheus Labs., Inc.</i> , 566 U.S. 66 (2012).....	10, 13
<i>Parker v. Flook</i> , 437 U.S. 584 (1978).....	9
<i>SAP Am., Inc. v. InvestPic, LLC</i> , 898 F.3d 1161 (Fed. Cir. 2018)	5, 7, 14
<i>Secured Mail Sols. LLC v. Universal Wilde, Inc.</i> , 873 F.3d 905 (Fed. Cir. 2017)	5, 6, 16
<i>SIPCO v. Emerson Elec.</i> , 939 F.3d 1301, 2019 WL 4656205 (Fed. Cir. 2019).....	12
<i>Trading Techs. Int’l v. CQG</i> , 675 F. App’x 1001 (Fed. Cir. 2017)	12
<i>Two-Way Media Ltd. v. Comcast Cable Commc’ns LLC</i> , 874 F.3d 1329 (Fed. Cir. 2017)	11
<i>Uniloc USA v. ADP</i> , 772 F. App’x 890 (Fed. Cir. 2019)	12
Statutes	
35 U.S.C. § 101	1, 5, 9, 12, 13, 14, 16

INTRODUCTION

The Court's application of settled law to the facts of this case warrants no further review. Bridge and Post's en banc petition accuses this Court's jurisprudence of creating "a mess" of Section 101 by ignoring Supreme Court precedent. Pet. 5. But Bridge and Post identifies no actual conflict between the nonprecedential decision here and Supreme Court precedent, no workable solution to that nonexistent conflict, and no way in which Bridge and Post's flawed reading of Supreme Court precedent would affect the outcome of this case. Indeed, despite complaining that the Court has "effectively written" step two "out of the test for computer-related inventions" (Pet. 2), Bridge and Post all but concedes its patents lack any inventive concept. It repeatedly admits its patents involve only "existing network architecture and existing protocols that were available to all for decades." Pet. 18. And while Bridge and Post is wrong in insisting that claims are patent eligible so long as they do not preempt "all computer implementations of" an abstract idea (Pet. 12) (emphasis omitted), it has no answer to the Court's holding that its claims monopolize broad swaths of online targeted advertising. Its claims recite functional steps like "receiving" a user request, "analyzing" user information, and "placing directed media" into a website without specifying how to perform them. Op. 6-14. Nothing about this case warrants review by the full Court.

BACKGROUND

A. Bridge And Post's Patents Claim Basic Targeted Marketing Using Generic Computer Technology

Bridge and Post's patents are directed to targeted marking—a practice that the patents admit “dates back at least to local radio and television advertisements, which played only for users located in specific cities and were published in-between otherwise national programs.” Op. 3 (citing Appx76 (col.1:28-33)). The patents claim methods of “tracking a user's computer network activity and using information gained about the user to deliver targeted media, such as advertisements.” Op. 3. The patents acknowledge that there is nothing new about applying these concepts to the Internet. Appx58 (col.1:28-33). They admit that prior-art systems tracked users based on personal website accounts or with small “programs,” known as “cookies,” downloaded onto user devices. Appx58 (col.1:28-33).

Although Bridge and Post's appeal involves three patents with sixty-two claims, its rehearing petition treats all of the claims from all three patents as rising or falling together. Pet. 7-19. It never gives any reason for treating any claim or patent differently from the others. Pet. 7-19. For good reason: as the Court held, all Bridge and Post's patents claim generic ways of performing targeted marketing on the Internet, often with broad, functional language. Op. 3-4.

The '594 patent, for example, claims basic online targeted marketing, with steps like receiving a request for online content, identifying the user via a

“persistent” identifier, and determining and providing appropriate targeted advertising. Appx63 (col.11:58-col.12:31). Representative claim 1 recites these steps in generic terms: “receiving a request from the user to access a content provider web site”; “retrieving a persistent device identifier,” such as a computer’s MAC address, and “determining a current network address” of the user’s device; “retrieving historic information” and “location-centric information”—such as the “times and locations” related to the user’s past use of the same device to access the network; saving this information into a “user profile”; grouping the user with similar users and “assigning a group identifier to the group”; “analyzing” the user’s information “to determine a directed media component to be provided”; and “placing directed media” that is “customized to the user based on the user profile” into the “web site requested by the user.” Appx63 (col.11:58-col.12:31).

The claims of the ’314 and ’747 patents are similar. They also claim the basic idea of targeted marketing online, this time using a “personalized marking” to track users and serve targeted content. Op. 10-14. They recite generic steps such as “creating a unique device identifier” corresponding to a client computer; “performing a one-way hashing operation” on the device identifier; “deriving instance information” from “timing information” provided by the client computer and “geographic location and demographic information for the client computer”; and “tagging, with a network routing device, network traffic” so that information about

the user is either included within the network traffic or retrievable based on a unique identifier. Appx47 (col.17:16-38); Appx83-84 (col.16:55-col.17:39).

Contrary to the impression Bridge and Post tries to create by paraphrasing rather than quoting the claim language, its claims recite no “new platform” that is “ISP based.” Pet. 7-10 (referring to Internet service providers). Instead, as the above language shows, the claims recite no technological requirement for how to perform their recited steps and contain no limit as to who performs them. Appx47 (col.17:16-38); Appx63 (col.11:58-col.12:31); Appx83-84 (col.16:55-col.17:39). Bridge and Post itself concedes that its claims cover the recited steps “implemented on standard computer hardware.” Pet. 4. The ’594 patent even admits its claims encompass prior-art methods of targeted advertising performed by content providers, such as with “the use of a cookie.” Appx59 (col.4:31-37).

As Bridge and Post notes (Pet. 8 n.8), the Patent Office reviewed the claims of the ’314 and ’747 patents in separate proceedings, found them unpatentable, and ordered them canceled. *Bridge and Post, Inc. v. Cellco P’ship*, Nos. 19-1962, -1963, -2296 (Fed. Cir.) (appeals pending).

B. Applying Settled Precedent, This Court Held That All Three Of Bridge And Post’s Patents Claim Ineligible Subject Matter

Bridge and Post brought two suits against Verizon, alleging infringement of the ’594 and ’747 patents in one and the ’314 patent in the other. Op. 2. After consolidating the suits, the district court granted Verizon’s motions to dismiss,

holding that the asserted patents claim ineligible subject matter under 35 U.S.C. § 101. Op. 2. In a nonprecedential decision, this Court affirmed, applying the two-step framework from *Alice Corp. Pty. Ltd. v. CLS Bank International*, 573 U.S. 208 (2014). Op. 1-22. The Court unanimously agreed that the '594 and '314 patents claim abstract ideas and lack any inventive concept. Op. 6-22; Separate Op. 1-2. Chief Judge Prost and Judge Lourie concluded the same about the '747 patent. Op. 10-13, 17-19.

Relying on settled precedent, the Court held that the asserted claims of all three patents are directed to “nothing more than a computer-implementation” of abstract ideas. Op. 6-15 (citing, among others, *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161 (Fed. Cir. 2018); *Secured Mail Sols. LLC v. Universal Wilde, Inc.*, 873 F.3d 905 (Fed. Cir. 2017); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363 (Fed. Cir. 2015)). The Court agreed with the district court that the '594 patent's claims are directed to “the abstract idea of using persistent identifiers to implement targeted marketing.” Op. 7-9. It explained that such targeted marketing is a form of customizing online content based on user information, which this Court already concluded is abstract. Op. 7-8 (citing *Intellectual Ventures I*, 792 F.3d at 1369). The Court similarly held (Op. 12-15) that the '314 and '747 patents' claims are directed to the “idea of communicating information using a personalized

marking,” which this Court previously held was abstract. Op. 12 (citing *Secured Mail*, 873 F.3d at 911).

The Court further held that Bridge and Post’s claims lack any inventive concept sufficient to transform the claims’ elements “‘into a patent-eligible application.’” Op. 15-20 (quoting *Alice*, 573 U.S. at 217). On the ’594 patent, the Court held that the claimed combination was “no more than a computer implementation of the abstract idea of using persistent identifiers to implement targeted marketing.” Op. 16. The Court explained that the ’594 patent itself “‘acknowledge[s] that tracking users in order to display advertisements was known in the pre-Internet world, and that its steps for accomplishing this on the Internet were conventional.” Op. 17. Combining those steps merely “‘recite[s] the performance of some business practice known from the pre-internet world’” using “‘conventional’” Internet technology. Op. 17 (quoting *DDR Holdings, LLC v. Hotels.com L.P.*, 773 F.3d 1245, 1258 (Fed. Cir. 2014)).

The Court unanimously reached the same conclusion on the ’314 patent. Op. 19-20. The Court observed that Bridge and Post did “not identify any arguably inventive limitations” (Op. 20) but argued instead that its claims were an inventive combination like the eligible claims in *BASCOM Global Internet Services v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016). The Court disagreed; the claims there “‘improve[d] the performance of the computer itself.’” Op. 20 (quoting *BASCOM*,

827 F.3d at 1351). By contrast, the '314 patent “describes its solution as filling a need for ‘effective and efficient revenue modeling for advertising,’ and ‘efficiently enabling the creation of dynamic ad campaigns and effective targeted ad serving.’” Op. 20 (quoting '314 patent). The Court held those were advances in *advertising*, not in any technology, and thus advances “‘entirely in the realm of abstract ideas.’” Op. 20 (quoting *SAP Am.*, 898 F.3d at 1163).

On the '747 patent, Bridge and Post alleged two inventive concepts: (1) “intercepting a request ... from the client computer to a server computer”; and (2) embedding the alphanumeric string in an extensible field of a packet.” Op. 17. The Court held that the “intercepting” limitation lacks an inventive concept because “even interpreted generously, [it] amounts to no more than a computer-focused reformulation of affixing and using a personalized marking.” Op. 17-18. But a personalized marking is the abstract idea itself, which cannot qualify as an inventive concept at step two. Op. 17-18. The Court also held that “intercepting” traffic is nothing more than the abstract idea of receiving and sending communications. Op. 17-18. For the “embedding” limitation, the Court concluded that storing information in HTTP packet headers was conventional. Op. 18. The '747 patent admitted it was known that “‘any extensible space of the header or similar portion of a pervasively used network traffic component can be used” for embedding data. Op. 18 (quoting '747 patent). The Court thus held Bridge and Post’s claims

ineligible because “[t]he claimed advance is a method of tagging and tracking user traffic, which amounts to nothing more than the abstract idea of communicating information using a personalized marking.” Op. 19.

Judge Bryson concurred in part and dissented in part. Separate Op. 1-2. Unlike Bridge and Post’s petition, he took no issue with this Court’s precedent interpreting Supreme Court precedent. Separate Op. 2-6 (relying on multiple decisions from this Court). Rather, he agreed with Chief Judge Prost and Judge Lourie that the “asserted claims of the ’314 and ’594 patents are drawn to an abstraction” (Separate Op. 2), while disagreeing with them about what the claims of the ’747 patent are directed to (Separate Op. 2-6).

REASONS TO DENY REHEARING EN BANC

A. The Court’s Decision Faithfully Applied Supreme Court Precedent

Having no argument that its claims are patent eligible under settled law, Bridge and Post argues the Court should cast aside its post-*Alice* precedent and start over. But Bridge and Post bases its attempt to justify doing so on a misreading of *Alice* that this Court repeatedly has rejected: that *Alice* supposedly requires upholding the patentability of computer claims so long as they do not amount to “a monopoly on *all* computer implementations of” an abstract idea. Pet. 12-16 (citing *Alice*, 573 U.S. at 216; emphasis by Bridge and Post).

For starters, Bridge and Post never argued to this Court that an alleged absence of preemption required upholding its claims' patentability, so that newfound argument cannot justify further review by the full Court. Regardless, this Court already has considered and rightly rejected Bridge and Post's reading of *Alice*: while "[p]reemption is sufficient to render a claim ineligible under § 101," it "is not necessary." *Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC*, 915 F.3d 743, 752 (Fed. Cir. 2019); *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (same).

Supreme Court precedent compels that understanding. In *Parker v. Flook*, the Supreme Court held that "the identification of a limited category of useful, though conventional, post-solution applications of" a mathematical formula is ineligible under Section 101. 437 U.S. 584, 585 (1978). As *Alice* explained, the Supreme Court "rejected the argument that 'implementing a principle in some specific fashion' will 'automatically fall within the patentable subject matter of § 101.'" 573 U.S. at 222 (quoting *Flook*, 437 U.S. at 593; brackets omitted). Thus, "the prohibition against patenting abstract ideas cannot be circumvented by attempting to limit the use of the idea to a particular technological environment.'" *Id.* (quoting *Bilski v. Kappos*, 561 U.S. 593, 610-11 (2010); brackets omitted). And even "narrow and specific" claims are invalid when directed to abstract ideas or laws of nature and lacking an inventive concept, regardless of whether they preempt all

“building[]blocks” of future innovation. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 88-89 (2012).

The Court’s decision here correctly applied this Supreme Court precedent. Op. 4-15. It repeatedly relied on *Alice*, as well as this Court’s decisions faithfully implementing *Alice*. Op. 4-15. It also specifically considered whether alleged ““granular specifics’” of Bridge and Post’s claims moved them from the abstract to the concrete, concluding that the claims “as a whole” are directed to abstractions. Op. 12-13. Bridge and Post cites nothing from the decision showing any departure from Supreme Court precedent; instead, the section of the petition alleging a supposed conflict with the Supreme Court argues about *other* decisions from this Court, never even citing the decision here. Pet. 12-16. And unlike Bridge and Post’s petition, Judge Bryson’s separate decision is not based on any supposed conflict between this Court’s decisions and Supreme Court precedent. Separate Op. 1-6 (relying on multiple decisions from this Court).

Bridge and Post also wrongly faults the Court for supposedly focusing on whether computer-implemented claims “purport to improve the functioning of the computer itself” while ignoring an alleged separate inquiry into whether the claims “effect an improvement in any other technology or technical field.” Pet. 13-16 (quoting *Alice*, 573 U.S. at 225-26). But there is only a single inquiry: whether claims “solve a technological problem.” *Alice*, 573 U.S. at 223; *Mayo*, 566 U.S.

at 72, 79. “[I]mprov[ing] the functioning of the computer itself” is just one way to show a solution to such a problem. *Alice*, 573 U.S. at 225.

The Court faithfully performed the required inquiry. Bridge and Post ignores that the Court expressly considered whether its claims “offer *any* concrete technological improvement” and held they did not. Op. 14 (emphasis added). The Court thus applied the very analysis Bridge and Post says is required. Op. 14. This Court also applied that same analysis in the decisions Bridge and Post cites as allegedly conflicting with Supreme Court precedent. *Contra* Pet. 14 n.17. *See Two-Way Media Ltd. v. Comcast Cable Commc’ns LLC*, 874 F.3d 1329, 1338-39 (Fed. Cir. 2017) (holding claims ineligible because they contained no “technological innovation”); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1316 (Fed. Cir. 2016) (holding claims ineligible because they failed to “improve[] an existing technological process”); *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1261 (Fed. Cir. 2016) (holding claims ineligible because they contained no “solution of a ‘technological problem’”). Thus, far from “resurrect[ing] the machine-or-transformation” test (Pet. 3, 15), the Court has applied the Supreme

Court’s test (which still encompasses the machine-or-transformation test, *Bilski*, 561 U.S. at 604).¹

None of Bridge and Post’s other arguments identifies a conflict with Supreme Court precedent or any other reason justifying the full Court’s review. In arguing that this Court has created a “subjective” test for Section 101, Bridge and Post points only to the Court’s search for whether claims improve computer functionality or effect some other technological improvement. Pet. 12-16. That different panels have reached different conclusions after reasoned application of the law to different facts does not mean the inquiry is subjective. And Bridge and Post makes no real attempt to show how any decision of this Court conflicts with any other in a way warranting en banc review. *See* Pet. 17 n.21.

Bridge and Post also argues—with no support—that “[n]etworking technology” should get special treatment because, “by its nature, [it] must be

¹ Bridge and Post is wrong that “*only two*” (Pet. 2) of this Court’s decisions have held that computer-related patent claims directed to an abstract idea nevertheless survive *Alice* step two. *Cellspin Soft v. Fitbit*, 927 F.3d 1306, 1316-19 (Fed. Cir. 2019); *Uniloc USA v. ADP*, 772 F. App’x 890, 899 (Fed. Cir. 2019); *BASCOM*, 827 F.3d at 1347-48; *Amdocs (Israel) Ltd. v. Openet Telecom*, 841 F.3d 1288, 1300-02 (Fed. Cir. 2016); *Trading Techs. Int’l v. CQG*, 675 F. App’x 1001, 1004-05 (Fed. Cir. 2017); *DDR Holdings v. Hotels.com L.P.*, 773 F.3d 1245, 1258-59 (Fed. Cir. 2014); *see SIPCO v. Emerson Elec.*, 939 F.3d 1301, 2019 WL 4656205, at *7-8 (Fed. Cir. 2019) (concluding that challenged computer claims “provide a technical solution to a technical problem”); *Berkheimer v. HP*, 881 F.3d 1360, 1368-70 (Fed. Cir. 2018) (finding claims abstract at step one but remanding because factual disputes prevented deciding step two).

described using words that seem generic.” Pet. 15. But this Court has had no difficulty applying the *Alice* framework to claims directed to network technology, upholding them where (unlike here) they claim technological improvements. *BASCOM*, 827 F.3d at 1350-51. The Court recognized as much in this case, expressly distinguishing Bridge and Post’s claims from other network claims, like those in *BASCOM*. Op. 20.

Not only does Bridge and Post fail to show that this Court’s precedent has misapplied Supreme Court precedent, it fails to offer any workable solution to the problem it imagines. At times, Bridge and Post appears to advocate that claims should be eligible any time they do not monopolize “all” implementations of an abstract idea. Pet. 10, 12-13, 18 (emphasis omitted). But as the Supreme Court explained in *Mayo*, “[c]ourts and judges are not institutionally well suited to making the kinds of judgments needed to distinguish among” differing degrees of monopolization. 566 U.S. at 89. Elsewhere Bridge and Post appears to suggest that claims should be eligible if they are “implemented in a new and specific way on standard computer hardware.” Pet. 4, 12, 18 (emphasis omitted). But that would only exacerbate concerns about eroding distinctions between the Sections 101, 102, and 103 inquiries—concerns this Court and the Supreme Court have acknowledged and tried to avoid. *Berkheimer v. HP*, 890 F.3d 1369, 1370, 1375 (Fed. Cir. 2018) (Moore, J., and Lourie, J., concurring in denial of rehearing en banc).

B. This Is A Poor Vehicle For Resolving Any Issue About The Court's Section 101 Jurisprudence Because Bridge And Post's Flawed Reading Of Supreme Court Precedent Would Not Save Its Claims

Even were the full Court inclined to review its Section 101 jurisprudence at some point, this case is an unsuitable vehicle for doing so. Even under the standards Bridge and Post seeks, its claims would be unpatentable. The Court correctly concluded that the only alleged advances here are “‘entirely in the realm of abstract ideas.’” Op. 20 (quoting *SAP Am.*, 898 F.3d at 1163). The patents themselves so state, describing how they “fill[] a need for ‘effective and efficient revenue modeling for advertising,’ and ‘efficiently enabl[e] the creation of dynamic ad campaigns and effective targeted ad serving.’” Op. 20 (quoting ’314 patent). Making advertising better is at most improving on an abstract idea, not solving a technological problem.

For that reason, Bridge and Post is wrong (Pet. 7-10, 18) that its claims are patent eligible because they improve on prior-art methods of targeted marketing. In *Alice*, the patent purported to overcome the shortcomings of prior-art risk management techniques, but the Supreme Court held the claims ineligible because those purported improvements resulted from nothing more than “the concept of intermediated settlement as performed by a generic computer.” *Alice*, 573 U.S. at 225. The Court correctly applied that reasoning here. Op. 18-20. Because improving targeted marketing is abstract (Op. 20), Bridge and Post’s concession that its claims operate “within the confines of existing network architecture and existing

protocols that were available to all for decades” is not “evidence of their inventive nature” (Pet. 18) (emphasis omitted); rather, it establishes that the claims “simply recite the concept of” targeted marketing with a persistent identifier or personalized marking “as performed by a generic computer.” *Alice*, 573 U.S. at 225.

Even were there merit to Bridge and Post’s arguments about preemption—and there is none, *supra*, pp. 8-10—they would not save the claims here. Although Bridge and Post argues without support that its claims do not “monopolize communicating using a personalized marking” for targeted marketing (Pet. 18-19), its broad claim language shows otherwise. For example, the ’594 patent claims the steps of “receiving a request from the user,” “retrieving a persistent device identifier” associated with the user, “analyzing” information about the user, and “placing directed media” that is “customized to the user based on the user profile” into a requested website. Appx63 (col.11:58-col.12:31). The claims specify no way to achieve those results, instead cutting off any future use of those basic steps for delivering targeted advertising online. Given the breadth of such claims, this Court correctly concluded that Bridge and Post attempted to patent “nothing more than a

computer-implementation of targeted marking over the Internet” using well-known technology. Op. 8-9.²

Similarly, the Court’s one-paragraph discussion of *Secured Mail* (Op. 15) is correct and warrants no review by the full Court in any event. That Bridge and Post’s claims are directed “to network traffic, not physical mail” (Pet. 18) cannot distinguish this case from *Secured Mail*. “[L]imit[ing] the use of the idea to a particular technological environment” is not patentable. *Alice*, 573 U.S. at 222 (quoting *Bilski*, 561 U.S. at 610-11; brackets omitted). Nor does it matter if Bridge and Post’s claims “have nothing to do with addressing anything or using [personally identifiable information].” *Contra* Pet. 18. *Secured Mail* included claims that did not require addressing or using personally identifiable information either. 873 F.3d at 908, 910-11.

² Although Bridge and Post suggests in a footnote that Section 101 determinations should not be made at the motion-to-dismiss stage or before claim construction (Pet. 18 n.23), neither of those issues is presented here. Bridge and Post never asked for claim construction nor argued that a relevant claim construction dispute existed. And it forfeited any objection to having eligibility decided on a motion to dismiss by failing to explain in its opening brief how any specific factual allegation in the complaint creates a material dispute of fact regarding eligibility. *Verizon* Br. 20. While the three-judge Court concluded it “need not address whether the issue is waived” (Op. 21), the full Court would have to find no waiver to reach the issue. In addition, the Court squarely and correctly rejected the argument because Bridge and Post’s complaints lack relevant factual allegations. Op. 20-22.

In short, because the outcome here would be unaffected even were the full Court to adopt Bridge and Post's flawed reading of Supreme Court precedent, this case presents an unsuitable vehicle to reconsider the Court's jurisprudence, as it cannot shed meaningful light on the line between eligible and ineligible claims. That unsuitability is only furthered by the Patent Office's independent findings that the claims of two of the three patents here are invalid on other grounds. Pet. 8 n.8.

CONCLUSION

The en banc petition should be denied.

Dated: October 23, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. Cir. R. 35(e)(4) and Fed. Cir. R. 40(d) because it contains 3,882 words excluding the parts of the response exempted by Fed. Cir. R. 35(c)(2).

This response complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this response has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

Dated: October 23, 2019

/s/ Deanne E. Maynard

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the CM/ECF system on October 23, 2019.

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