Appeal No. 2024-1202

United States Court of Appeals for the Federal Circuit

LONGITUDE LICENSING LTD.,

Plaintiff-Appellant,

v.

GOOGLE LLC,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of California, Case No. 3:23-cv-03046-VC

APPELLANT LONGITUDE LICENSING LTD.'S PETITION FOR REHEARING EN BANC

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May 30, 2025

CERTIFICATE OF INTEREST

No. 2024-1202
Longitude Licensing Ltd. v. Google LLC

Counsel for Longitude Licensing Ltd. certify under Federal Circuit Rule 47.4 that the following information is accurate and complete to the best of their knowledge:

1. **Represented Entities.** Provide the full names of all entities represented by undersigned counsel in this case.

Longitude Licensing Ltd.

2. **Real Parties in Interest.** Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.

None.

3. **Parent Corporations and Stockholders.** Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.

Meridian IP Ireland, Ltd.

4. **Legal Representatives.** List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court.

David Martinez and Navin Ramalingam of Robins Kaplan LLP.

5. **Related Cases.** Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

No.

6. **Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees).

N/A

Date: May 30, 2025 /s/ Aaron R. Fahrenkrog

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STATEMENT OF COUNSEL UNDER FEDERAL CIRCUIT RULE 40(c)(1)

Based on my professional judgment, I believe the panel decision is contrary to the following decisions of the Supreme Court of the United States or the precedents of this Court: *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016); *CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358 (Fed. Cir. 2020); *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016); *Ancora Techs., Inc. v. HTC Am., Inc.*, 908 F.3d 1343 (Fed. Cir. 2018); *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253 (Fed. Cir. 2017); *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299 (Fed. Cir. 2018); *CosmoKey Sol'ns GmbH & Co. KG v. Duo Security LLC*, 15 F.4th 1091 (Fed. Cir. 2021); *Cooperative Entm't, Inc. v. Kollective Tech., Inc.*, 50 F.4th 127 (Fed. Cir. 2022); and *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

Dated: May 30, 2025

/s/ Aaron R. Fahrenkrog
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Counsel for Plaintiff-Appellant
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PRELIMINARY STATEMENT

Since the Supreme Court's *Alice* decision,[1] commentators have lamented a perceived uncertainty in § 101 law.[2] The Court's body of precedent, however, has followed a consistent principle throughout: in each case where the specification explains that the claimed arrangement provides a technological improvement over prior systems or processes, and nothing in the evidentiary record indicates that the claim recites only conventional technology, the Court has either upheld the claim's eligibility or vacated a Rule 12 dismissal for resolution of factual disputes. This precedent necessarily requires courts to consider and weigh the specification evidence and any other evidence of record to resolve patent eligibility.

The panel decision departs from this precedent and stands to introduce uncertainty for district courts and litigants. Here, the '365 patent's specification explains that the claimed arrangements differ from prior image processing systems and processes and thereby enhance the computer's ability to achieve improved visual image quality compared to prior computing systems.[3] The panel, however,

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[1] *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014).

[2] *See, e.g.*, R. Gruner, *Lost in Patent Wonderland with* Alice*: Finding the Way Out*, 72 Syracuse L. Rev. 1053 (2021-2022); J. Kesan & R. Wang, *Eligible Subject Matter at the Patent Office: An Empirical Study of the Influence of* Alice *on Patent Examiners and Patent Applicants*, 105 Minn. L. Rev. 527 (Dec. 2020); M. Sipe, *Patent Law 101: I Know It When I See It*, 37 Harvard J.L. & Tech. 448 (Spring 2024).

[3] Longitude limits its Petition to the '365 patent.

did not consider this evidence. Instead, the panel found the '365 claims ineligible without considering the specification's descriptions of the computing improvements provided by the recited claim limitations.

No issue in patent law under the Court's precedent depends solely on review of the claim language, divorced from the specification. The panel's determination of ineligibility without considering the specification departs not only from the Court's § 101 precedent, but also from the fundamental tenet of patent law: "[t]he claims, of course, do not stand alone. . . . For that reason, claims 'must be read in view of the specification, of which they are a part.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 978 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996)). The § 101 analysis is no exception—determining whether a claim is directed to an improvement to computer functionality versus an abstract idea, or whether the claim recites an inventive concept versus only conventional technology, necessarily depends on reading the claim in view of the specification evidence.

Rehearing en banc is necessary because the panel decision conflicts with the Court's body of § 101 precedent applying *Alice* and introduces uncertainty as to the role of the specification in the § 101 analysis. The Court should clarify that courts must accord weight to specification evidence favoring eligibility under both steps of the *Alice* analysis and may not determine ineligibility based on claim

language in a vacuum. The Court also should clarify that, under Rule 12, courts must interpret specification evidence in the light most favorable to the non-movant, and deny dismissal where that evidence, so interpreted, raises factual issues in favor of eligibility.

SUMMARY OF DISTRICT COURT PROCEEDINGS

Longitude filed suit against Google in the Northern District of California on June 21, 2023, asserting that Google's Pixel smartphones, Pixel tablets, and image editing software infringe seven Longitude image processing patents. Appx120. Google filed a motion to dismiss, under Rule 12(b)(6), Longitude's claims for four patents under § 101. The district court granted Google's motion in a brief order just over two pages long. Appx002-004. The district court's order did not cite or address any record evidence, including specification evidence regarding the computing benefits of the claimed inventions. *Id.* The parties agreed to dismiss the remaining three patents without prejudice, Appx005, and Longitude appealed the Rule 12(b)(6) dismissal. Appx311-312.

SUMMARY OF PANEL DECISION

The panel decision affirmed the district court's dismissal by evaluating only the claim language, without analysis of the specification evidence supporting eligibility. At *Alice* step one, the panel decision concluded that, for '365 claim 32, "the language of the claim does not explain how" it achieves a computing

improvement. Op. at 8. The panel further explained that claim 32 lacked "sufficient recitation of how the purported invention improves the functionality of image correction methods." *Id.* at 7 (underline original; quotation omitted). The panel treated the other '365 claims in the same manner as claim 32. *Id.* at 8-10.

The panel's step one analysis, like the district court's, did not address evidence from the '365 specification articulating how the steps recited in claim 32—specifically, the limitations "acquiring the properties of the determined main object image data" and "acquiring correction conditions corresponding to the properties that have been acquired"—enhance a computer's ability to improve image quality in automated image adjustment. Op. at 5-8. The panel did not identify any record evidence suggesting that claim 32 recites only conventional technology or techniques. *Id.* At *Alice* step two, the panel decision again assessed only the claims, without reference to the specification, and concluded that the claim language itself establishes a lack of inventive concept. *Id.* at 13-14.

ARGUMENT

I. The Panel Departed from Precedent at Step One by Not Addressing the Specification Evidence Explaining that the Claimed Limitations Provide a Computing Improvement.

The Court has consistently found that specification evidence describing how the claim limitations at issue improve a computing system weighs in favor of eligibility at *Alice* step one. The Court has never sanctioned refusing to accord

such evidence any weight (particularly in the Rule 12 context) or relying on the claim language in isolation. The panel opinion's determination of ineligibility without considering the specification evidence supporting eligibility sets a new path that requires en banc review to correct. Op. at 5-8.

The '365 specification explains how the specific limitations recited in claim 32 enable a computer to improve the picture quality of main objects in digital images compared to prior computer systems. Principal Br. 34, 36-38; Reply Br. 11-12. (collecting specification citations). The panel's step one analysis, however, does not cite or address any evidence from the '365 specification describing the benefits provided by the claimed steps "acquiring the properties of the determined main object image data," "acquiring correction conditions corresponding to the properties that have been acquired," and "adjusting the picture quality of the main object image data using the acquired correction conditions." Op. at 5-8.

The '365 specification explains that the claimed steps "acquiring properties" and "acquiring correction conditions corresponding to the properties" "permit[] more suitable adjusting of the picture quality according to the properties of the main object." Appx032 at 14:51-61. The specification explains that prior computing systems did not "tak[e] into consideration subtle differences in the main object characterizing the image," Appx026 at 1:30-40, and, unlike the claimed invention, those systems performed a "standardized picture quality adjusting

process . . . on the main object." *Id.* Thus, in prior systems, "[i]t is . . . inherently impossible to carry out a picture quality adjusting process that takes advantage of the subtle characteristics of the main object, and it is not always possible to output a more attractive main object." *Id.* The invention of claim 32 made it "possible to improve the picture quality of the main object characterizing the image." Appx027 at 3:42-61; Appx032 at 14:51-61.

The specification makes clear that claim 32 recites how a computer is improved: by introducing the steps "acquiring the properties of the determined main object image data," "acquiring correction conditions corresponding to the properties that have been acquired," and "adjusting the picture quality of the main object image data using the acquired correction conditions." Appx032-034 (describing the "Second Embodiment," which corresponds to claim 32). These steps make it "possible [to] carry out a picture quality adjusting process that makes the main objects in an image look more attractive." Appx034 at 17:54-63. Acquiring correction conditions corresponding to properties of the main object further allows the "identified main object [to] also be classified in further detail, allowing the optimal picture quality adjusting process to be carried out on the main object." *Id.* at 17:64-18:9. The specification provides examples of specific improvements achieved by utilizing a correspondence between properties and correction conditions associated with main object classifications—for example,

when "the sky is the main object," different correction conditions can be applied to provide a "more attractive, higher picture quality for bright sky, ordinary sky, dark sky, brilliant sky, overcast sky, clear sky, and red sky." *Id.*

The '365 specification thus explains how the exact limitations of claim 32 improve the performance of computers compared to prior systems. No one—Google, the district court, or the panel—identified any evidence suggesting that claim 32 recites only conventional technology. Op. at 5-8. This evidentiary record, properly weighed, should have resolved the step one inquiry in Longitude's favor.

The panel found otherwise by analyzing the claim language in a vacuum and not considering the specification evidence. Op. at 5-8. The panel repeatedly emphasized that the claim language itself did not recite "how" it improves computing functionality. *Id.* For example (bold emphasis added in each quote):

> Similarly, **claim 32** describes "determining" a main object, "acquiring" the main object image data and correction conditions, and "adjusting" the main object image data's parameters **without sufficient recitation of <u>how</u>** the purported invention improves the functionality of image correction methods.

Op. at 7 (underline original; quotation omitted; cleaned up).

> The specific improvement purportedly recited in **claim 32** does not make it non-abstract because **the language of the claim does not explain how** that improvement is achieved.

Id. at 8.

The panel decision thus found ineligibility without considering the specification evidence that explains how the recited steps (1) were not performed by prior computing systems and (2) enabled computers to produce better image quality compared to those prior systems. Appx026 at 1:30-40; Appx027 at 3:42-61; Appx032 at 14:51-61; Appx034 at 17:54-18:9; Principal Br. 34, 36-38; Reply Br. 11-12. However, "[c]laims need not articulate the advantages of the claimed combinations to be eligible." *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, 957 F.3d 1303, 1309 (Fed. Cir. 2020). Precedent requires consideration of other evidence to make that determination: the specification or other evidence of record. *See id.* at 1307-08 (citing specification as evidence of computing improvement).

Until the panel decision, to Longitude's knowledge, the Court has never affirmed a Rule 12 dismissal for ineligibility where the specification explains how the claimed arrangement improves computing performance or functionality and there is no evidence (in the specification or otherwise of record) that the claim recites only conventional technology. The Court frequently has found eligibility at step one based on such evidentiary records. *See, e.g.*, *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337-38 (Fed. Cir. 2016) (analyzing specification evidence of improvements to find eligibility under step one); *CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358, 1368-71 (Fed. Cir. 2020) (relying on specification's benefits evidence and lack of conventionality evidence to find eligibility under step one);

McRO, Inc. v. Bandai Namco Games Am. Inc., 837 F.3d 1299, 1313-14 (Fed. Cir. 2016) (same); *Ancora Techs., Inc. v. HTC Am., Inc.*, 908 F.3d 1343, 1348-49 (Fed. Cir. 2018) (same); *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1259-60 (Fed. Cir. 2017) (relying on specification's benefits evidence and analogizing to *Enfish* on the basis that "the specification discusses the advantages offered by the technological improvement"); *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1304 (Fed. Cir. 2018) (referencing specification to determine virus scanning improvement).

In other cases, the Court has upheld eligibility at step two or identified a fact issue that precludes Rule 12 dismissal based on evidence akin to the specification evidence presented here. *See, e.g.*, *CosmoKey Sol'ns GmbH & Co. KG v. Duo Security LLC*, 15 F.4th 1091, 1097-98 (Fed. Cir. 2021) (relying on specification's description of improvements and lack of conventionality evidence to find eligibility under step two); *Cooperative Entm't, Inc. v. Kollective Tech., Inc.*, 50 F.4th 127, 131-32 (Fed. Cir. 2022) (relying on the specification's explanation of "how [the claimed invention] is different from and improves upon the prior art" to find a fact question under step two precluding Rule 12 dismissal); *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349-50 (Fed. Cir. 2016) (relying on specification evidence to find a fact question under step two precluding Rule 12 dismissal).

This consistent precedent necessarily requires consideration and weighing of specification evidence supporting eligibility at both step one and step two. For example, in *Ancora*, the Court found that the claim "addresses a technological problem" based on aspects of the claimed arrangement "that the patent asserts, and we lack any basis for disputing, were not previously used in the way now claimed, and the result is a beneficial reduction of the risk of hacking." *Ancora*, 908 F.3d at 1348-49 (finding eligibility under step one).

CardioNet, too, weighed the specification's description of benefits against its lack of description of conventionality. *CardioNet*, 955 F.3d at 1368-71 (finding eligibility under step one). The Court found that the "written description identifies a number of advantages gained by the elements recited" in the claim, and, conversely, the specification contained "no suggestion . . . that doctors were previously employing the techniques performed on the claimed device." *Id.* at 1369-70. *CardioNet* analogized the evidentiary record to *McRO* and *Visual Memory*: where the specification evidence describes the claimed arrangement as a technological improvement and not as conventional technology, the Court has consistently upheld the corresponding claims. *Id.*

The panel decision distinguished *McRO* on the basis that "in *McRo* [*sic*], we stressed that the language of the claims themselves was 'limited to rules with specific characteristics.'" Op. at 7-8 (citing *McRO*, 837 F.3d at 1313). This

statement is correct, but lacking the material context that *McRO* did not assess the claims in a vacuum.[4]

Indeed, *McRO* weighed the specification evidence supporting eligibility against the absence of evidence of conventionality in the same way as in *CardioNet*, and reached the same conclusion of eligibility. *McRO*, 837 F.3d at 1313-14. The Court relied on the fact that "the specification confirms" the computing improvement provided by the claim and, on the other side of the scale, "Defendants provided no evidence that the process previously used by animators is the same as the process required by the claims." *Id. McRO* continued to emphasize the absence of evidence demonstrating conventionality, explaining that "[t]here has been no showing that any rules-based lip-synchronization process must use rules with the specifically claimed characteristics," and, again, "no record evidence supports this conclusion." *Id.* at 1315.

The cases discussed by the panel—*Recentive* and *Hawk*—follow the Court's precedent finding claims ineligible where the balance of record evidence demonstrates that the claimed arrangements recite only conventional technology

[4] The panel decision also asserted that "Longitude effectively asks to import disclosures from the specification into the claim," but the decision does not identify what disclosures it refers to or explain why those disclosures do not describe claim 32. Op. at 8.

and techniques. Op. at 6-7. These cases do not support the panel's decision to disregard intrinsic evidence supporting eligibility. Op. at 5-8.

In *Recentive*, the specification and the patent owner conceded that the claims did not improve any machine learning technology, and instead merely applied conventional machine learning techniques to a new data environment. *Recentive Analytics, Inc. v. Fox Corp.*, 134 F.4th 1205, 1212-13 (Fed. Cir. 2025). *Recentive* found claims ineligible based on affirmative evidence not present here—intrinsic evidence and concessions—that the claims recited conventional techniques. *Id.*

Hawk, too, explained that the specification described the claimed arrangement as using only conventional technology: "'existing broadband infrastructures' and a 'generic PC-based server.'" *Hawk Tech. Sys., LLC v. Castle Retail, LLC*, 60 F.4th 1349, 1353 (Fed. Cir. 2023) (citing the patent's specification). The Court agreed with the district court's finding that the "specification and claims do not explain or show how the monitoring and storage is improved, except by using already existing computer and camera technology." *Id.* at 1358. The Court further noted that "[t]he '091 patent itself confirms that the invention is meant to 'utiliz[e] existing broadband media and other conventional technologies.'" *Id.* at 1358-59 (citing the patent's specification).

In contrast, *CardioNet* aligns with the record in this case. The *CardioNet* majority found that—as here—"the district court erred by disregarding the written

description's recitation of the advantages of the claimed invention." 955 F.3d at 1371. The *CardioNet* majority further confirmed that step one requires appropriate weighing of evidence by applying the Rule 12(b)(6) standard, finding that "the district court must construe all facts and draw all reasonable inferences in favor of . . . the non-moving party." *Id.* In particular, the majority weighed the record evidence and found, because "there is no record evidence undermining the statements in the written description concerning the benefits of the claimed device," the district court's contrary "finding is contrary to fact and fails to draw all reasonable inferences in [the patent owner's] favor." *Id.*

So too here. The intrinsic evidence indicates that '365 claim 32 improves computer functionality, and the record includes no evidence to the contrary, such as any admissions that claim 32 recites only conventional technology and techniques. The Court should clarify that step one requires weighing all available record evidence, including evidence from the specification, in favor of and against eligibility. Under Rule 12, that weighing must include drawing all reasonable inferences in the patent owner's favor. Only where the specification expressly confirms that the claims recite only conventional technology and techniques should the courts resolve this factual issue against the patent owner in adjudicating a Rule 12 motion.

II. The Panel Departed from Precedent at Step Two by Determining that the Claim Language Itself Establishes that the Claims Do Not Recite Any Inventive Concept.

The panel decision further departed from the Court's precedent by ruling that claim language itself, without considering the specification or other evidence, can establish the absence of an inventive concept at step two. The panel held:

> But the absence of an inventive concept does not necessarily entail subsidiary factual determinations, and a patent itself may establish that the claims contain no inventive concept. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018). That is the case here: Longitude fails to identify any relevant factual dispute, and the claims do not recite any inventive concept.

Op. at 14. Under step two, as under step one, the panel did not consider any evidence from the '365 specification. Op. at 13-14.

The Court's precedent does not allow the panel's finding of no inventive concept based on solely the claim language itself, without consideration of the specification. *Berkheimer* itself explains that "[t]he improvements in the specification, to the extent they are captured in the claims, create a factual dispute regarding whether the invention describes well-understood, routine, and conventional activities." *Id.* Indeed, *Berkheimer* did not rely on only the claim language to find ineligibility—instead, the patent owner conceded conventionality of the claim limitations: "Mr. Berkheimer, however, admitted that [the claimed]

parsers and the functions they perform existed for years before his patent." *Id.* at 1370.

Google, too, recognized that the Court looks to the written description, not only the claims, to determine whether "the patent itself" establishes the absence of an inventive concept:

> The patent itself may establish that the claims contain no inventive concept, and the complaint's allegations of inventiveness need not be taken as true, for instance, when they are contradicted by the written description.

Response Br., 24 (citing *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166 (Fed. Cir. 2018)). Likewise, *SAP* relied on the specification, not only the claims, to find that the claims recited only conventional computer components:

> But it is clear, from the claims themselves and the specification, that these limitations require no improved computer resources InvestPic claims to have invented, just already available computers, with their already available basic functions, to use as tools in executing the claimed process. . . Rather, to the extent that parallel processing is discussed in the specification, it is characterized as generic parallel processing components—not even asserted to be an invention of InvestPic—on which the claimed method could run.

898 F.3d at 1169-70. This approach aligns with the Court's other cases finding conventionality at step two—none, to Longitude's knowledge, rely solely on the claim language. Instead, such cases instead rely on either the specification's

concessions or the patent owner's admissions. *See, e.g.*, *Recentive*, 134 F.4th at 1212-13, 1215; *Hawk*, 60 F.4th at 1358-59.

Here, there is no argument or evidence that the '365 specification establishes conventionality of the limitations in claim 32. Instead, the specification distinguishes the limitations recited in claim 32 from conventional computing approaches. It explains that acquiring properties of main object image data and then acquiring correction conditions corresponding to those properties—as recited in claim 32—makes it "possible to improve the picture quality of the main object characterizing the image," Appx027, 3:42-61, and "permit[s] more suitable adjusting of the picture quality according to the properties of the main object." Appx032, 14:51-61.

The limitations recited in claim 32 improve the computer's ability to adjust picture quality compared to existing "automatic picture quality adjusting techniques" in which a "standardized picture quality adjusting process is carried out on the main object that has been determined." Appx026, 1:30-35. With those inferior techniques, unlike claim 32, "[i]t is . . . inherently impossible to carry out a picture quality adjusting process that takes advantage of the subtle characteristics of the main object, and it is not always possible to output a more attractive main object." Appx026, 1:35-40.

The panel's finding that the claim language itself establishes the absence of an inventive concept, without considering this specification evidence, departs from the Court's consistent precedent. That precedent requires consideration of specification evidence demonstrating that the claim limitations provide a computing improvement. The Court's precedent also does not allow a finding of conventionality without some record evidence—from the specification, patent owner admissions, or otherwise—to support that finding.

CONCLUSION

Longitude requests that the Court vacate the panel decision and grant en banc review to clarify the standards for considering and weighing record evidence in the § 101 analysis under *Alice*.

Dated: May 30, 2025

Respectfully submitted,

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ADDENDUM

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

LONGITUDE LICENSING LTD.,
Plaintiff-Appellant

v.

GOOGLE LLC,
Defendant-Appellee

2024-1202

Appeal from the United States District Court for the Northern District of California in No. 3:23-cv-03046-VC, Judge Vince Chhabria.

Decided: April 30, 2025

AARON ROBERT FAHRENKROG, Robins Kaplan LLP, Minneapolis, MN, argued for plaintiff-appellant. Also represented by WILLIAM JONES, SAMUEL J. LAROQUE, EMILY TREMBLAY.

GINGER ANDERS, Munger, Tolles & Olson LLP, Washington, DC, argued for defendant-appellee. Also represented by J. KAIN DAY.

Before LOURIE, DYK, and CHEN, *Circuit Judges*.

DYK, *Circuit Judge*.

Longitude Licensing Ltd. ("Longitude") sued Google LLC ("Google") in the Northern District of California, alleging infringement of claims of U.S. Patents Nos. 7,668,365 (the "'365 patent"), 8,355,574 (the "'574 patent"), 7,454,056 (the "'056 patent"), and 7,945,109 (the "'109 patent"), all owned by Longitude. The district court dismissed the complaint on the ground that the asserted claims are not patent eligible under 35 U.S.C. § 101. *See Longitude Licensing Ltd. v. Google, LLC*, No. 23-CV-03046-VC, 2023 WL 7109896, at *2 (N.D. Cal. Oct. 27, 2023) ("*Dismissal*"). We *affirm*.

BACKGROUND

The four patents at issue are directed to performing digital image correction techniques on a computer. The '574 patent is a continuation of the '365 patent, and the two share a title and specification; the specifications of the '056 and '109 patents are not significantly different from that shared specification. The specifications describe identifying the subject, or "main object," of an image and adjusting the main object image data by using "correction conditions," which include any kind of "statistical values and color values" that correspond to the "properties" of the main object. *See* '365 patent, col. 14 ll. 51–58; *see also* '574 patent, col. 14 ll. 53–59; '056 patent, col. 5 ll. 33–36, 53–59; '109 patent, col. 9 l. 65–col. 10 l. 6.

On June 21, 2023, Longitude sued Google for infringement of claims of the four patents.[1] Google filed a motion

[1] Longitude also accused Google of infringing three other patents that Google did not address in its motion to dismiss. Those other patents are not at issue in this appeal

to dismiss, arguing that the claims of the four patents are "directed to an abstract idea that merely uses computers as a tool." J.A. 256. Google treated claim 32 of the '365 patent as representative.

The '365 patent is titled "Determination of Main Object on Image and Improvement of Image Quality According to Main Object." Claim 32 of the '365 patent recites:

> 32. An image processing method comprising:
>
> determining the main object image data corresponding to the main object characterizing the image;
>
> acquiring the properties of the determined main object image data;
>
> acquiring correction conditions corresponding to the properties that have been acquired; and
>
> adjusting the picture quality of the main object image data using the acquired correction conditions;
>
> wherein each of the operations of the image processing method is executed by an integrated circuit.

Id. at col. 32 ll. 23–33. The '365 patent acknowledges that human users could previously "adjust picture quality using retouching software," *id.* at col. 1 ll. 14–15, but states that already existing "automatic picture quality adjusting techniques[] . . . [apply changes] across the board, without taking into consideration subtle differences in the main object characterizing the image," *id.* at col. 1 ll. 30–33.

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and were voluntarily dismissed without prejudice by Longitude before the district court.

On October 27, 2023, the district court granted the motion to dismiss. The district court also treated claim 32 as representative and held that all the claims were directed to the same abstract idea without supplying an inventive concept, concluding that "the claim language in all four patents is functional and ends-oriented" and that it "need not credit Longitude's conclusory allegations in the complaint that the claims 'recite a specific way to improve a prior computing process' when that is not apparent from the claim language read in light of the specification." *Dismissal* at *1 (quoting J.A. 284).

Longitude timely filed this appeal. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(1).

DISCUSSION

We review the grant of a motion to dismiss de novo. *Trinity Info Media, LLC v. Covalent, Inc.*, 72 F.4th 1355, 1360 (Fed. Cir. 2023). Patent eligibility is a question of law that we review de novo. *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1273 (Fed. Cir. 2012).

Section 101 defines patent-eligible subject matter as "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. The Supreme Court has explained that there are certain "implicit" exceptions in § 101, namely, laws of nature, natural phenomena, and abstract ideas. *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013). To determine whether a patent claim is subject matter ineligible, we apply the two-step *Alice* framework. *Alice Corp. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217–18 (2014); *see also Mayo Collaborative Servs. v. Prometheus Lab'ys, Inc.*, 566 U.S. 66, 77–80 (2012). At step one, we "determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Alice*, 573 U.S. at 217. At step two, 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." *Id.* (quoting *Mayo*, 566 U.S. at 78–79).

I

At *Alice* step one, the district court held that the claims are drawn to the abstract idea of "improving image quality by adjusting various aspects of an image based on features of the main object in the image." *Dismissal* at *1. We agree.

A

We have repeatedly held that claims that organize, alter, or manipulate data, without more, are patent ineligible. *See Broadband iTV, Inc. v. Amazon.com, Inc.*, 113 F.4th 1359, 1368 (Fed. Cir. 2024) (collecting cases); *see also Intell. Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340–41 (Fed. Cir. 2017); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1350–51 (Fed. Cir. 2014). Claims that merely implement longstanding activities and mental processes using new data and generic computing components without explaining how these arrangements actually result in the claimed improvement are similarly directed to unpatentable abstract ideas. *See, e.g.*, *Trinity*, 72 F.4th at 1361–62; *Univ. of Fla. Rsch. Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363, 1367 (Fed. Cir. 2019).

Such is the case here. The specification recognizes that users could already "adjust picture quality using retouching software" and that "accurate adjustment of picture quality requires experience and familiarity." '365 patent, col. 1 ll. 13–17. Claim 32 of the '365 patent merely uses a computer to adjust parameters associated with the main

object data (rather than data of the entire image, an approach previously undertaken by humans) without explaining how this result is achieved.

Longitude argues that claim 32 is directed to an improved digital image processing technique: "how to more accurately adjust th[e] main object image data by using correction conditions corresponding to that data's properties." Appellant's Br. 6. The problem is that nothing in the language of claim 32 in this respect does anything more than describe the use of new data or explain how it is used in the steps of "determining" the main object, "acquiring" its properties, "acquiring correction conditions," and "adjusting" the picture quality. '365 patent, col. 32 ll. 23–33. Claim 32 is similar to those found to be patent ineligible in *Hawk Technology Systems, LLC v. Castle Retail, LLC*, 60 F.4th 1349 (Fed. Cir. 2023), and *Recentive Analytics, Inc. v. Fox Corp.*, No. 2023-2437, 2025 WL 1142021 (Fed. Cir. Apr. 18, 2025).

In *Hawk*, the claims involved methods of viewing multiple simultaneously displayed and stored video images based on sets of "temporal and spatial parameters associated with each image." 60 F.4th at 1353. We explained that these claims were directed to an abstract idea because they merely recited a method of "receiving, displaying, converting, storing, and transmitting digital video 'using result-based functional language.'" *Id.* at 1357 (quoting *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1337 (Fed. Cir. 2017)). We rejected Hawk's argument, similar to Longitude's argument here, that the use of "parameters" made the claims not abstract, since the claims did not "explain what those claimed parameters are or how they should be manipulated." *Id.* at 1357 (citation omitted); *see also Sanderling Mgmt. Ltd. v. Snap Inc.*, 65 F.4th 698, 703 (Fed. Cir 2023) (holding unpatentable claims directed to using a computer as "a tool to identify when a condition is met and then to distribute information

based on satisfaction of that condition"). Similarly, claim 32 describes "determining" a main object, "acquiring" the main object image data and correction conditions, and "adjusting" the main object image data's parameters without "sufficient recitation of how the purported invention improve[s] the functionality" of image correction methods. *Hawk*, 60 F.4th at 1358 (alteration in original) (quoting *Koninklijke KPN N.V. v. Gemalto M2M GmbH*, 942 F.3d 1143, 1152 (Fed. Cir. 2019)).

In *Recentive*, the claims were directed to the application of machine learning for determining event schedules and generating network maps for broadcasters. 2025 WL 1142021, at *1. The claims generally involved methods comprising collecting data, using the data to train the machine learning model, and updating the event schedules and network maps. We rejected the patentee's argument that "its patents are eligible because they apply machine learning to [a] new field of use," explaining that merely adapting existing technology to a novel data environment does not create patent eligibility. *Id.* at *6. We concluded that even if there had been a claim of "a technological improvement, neither the claims nor the specifications describe how such an improvement was accomplished." *Id.* at *5. Here, too, Longitude urges that the use of new data (e.g., the correspondence between the main object data and correction conditions) represents a patent-eligible technological improvement. Because the claim "functionally describes a mere concept without disclosing how to implement that concept," *id.*, we agree with the district court that it is directed to a patent-ineligible abstract idea.

Longitude repeatedly faults the district court for ostensibly failing to consider claim 32 in light of the patent specification, seeking to analogize its claims to those found to be patent eligible in *McRo, Inc. v. Bandai Namco Games of America Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016). Longitude argues that "[a]s in *McRo*, the intrinsic record . . .

shows that claim 32 is directed to an improved computing process" because "[l]ike the claimed 'rules' in *McRo*, [the claims'] correction conditions . . . provide how the claimed process improves upon prior automated image adjustment processes." Appellant's Br. 37–38 (internal quotation marks omitted). But in *McRo*, we stressed that the language of the claims themselves was "limited to rules with specific characteristics." 827 F.3d at 1313.

Here, claim 32 is framed entirely in functional, results-oriented terms, and Longitude effectively asks us to import disclosures from the specification into the claim so that it provides the same degree of specificity as those in *McRo*. This we decline to do. While step one requires that "we consider the claims in light of the specification[,] [we] avoid importing concepts from the specification into the claims." *AI Visualize, Inc. v. Nuance Commc'ns, Inc.*, 97 F.4th 1371, 1378 (Fed. Cir. 2024); *accord ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 766 (Fed. Cir. 2019) (explaining that reliance on the specification "must always yield to the claim language in identifying th[e] focus" of the claims); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016) ("The § 101 inquiry must focus on the language of the Asserted Claims themselves."); *In re TLI Commc'ns Patent Litig.*, 823 F.3d 607, 611–12 (Fed. Cir. 2016) (similar). The specific improvement purportedly recited in claim 32 does not make it non-abstract because the language of the claim does not explain how that improvement is achieved.

B

Longitude apparently faults the district court for failing to consider a "distinct" improvement in digital image processing techniques: "how to more accurately identify the main object—meaning, what the image is a picture of—in digital image data by analyzing image and position data." Appellant's Br. 6. This concept appears in claim 32's

limitation of "acquiring the properties of the determined main object image data." '365 patent, col. 32 ll. 26–27. Longitude argues that claim 5 of the '365 patent is more explicitly directed to this improvement:

> 5. An image processing device that determines the main object which characterizes an image, the image processing device comprising:
>
> image data acquiring module that acquires image data which is data of the target image;
>
> image data analyzing module that segments the image data into a plurality of areas for analysis in terms of area units;
>
> position data acquiring module that acquires position data of the areas of the image data; and
>
> main object determining module that determines the main object using the acquired position data and the results of analysis;
>
> wherein each of the modules of the image processing device is executed by an integrated circuit.

Id. at col. 28 ll. 33–48. This argument fails for substantially the same reasons as Longitude's argument as to claim 32.

Like claim 32, claim 5 merely identifies a number of components defined in functional terms that carry out basic data collection and manipulation functions. The claim purportedly identifies the technical improvement of more efficiently locating the subject of an image without actually explaining how this process is achieved other than stating that the new data is used in identifying the main

object. *See Hawk*, 60 F.4th at 1358. We conclude that the invention recited in claim 5 is directed to the same class of abstract data manipulation as claim 32. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014).

C

Longitude also argues that the district court "oversimplif[ied]" the claims by treating claim 32 as representative instead of addressing each claim individually. *See* Appellant's Br. 59. We have already addressed claim 5 in the preceding section. Because the other claims asserted by Longitude were "substantially similar and linked to the same abstract idea" claimed by claims 5 and 32, we conclude that the court was not required to address all sixty-six claims in its order dismissing Longitude's complaint. *Content Extraction*, 776 F.3d at 1348 (citation omitted).

The other claims differ from claims 5 and 32 only insofar as they recite additional limitations on what is meant by the "main object" and "correction conditions." Claim 3 of the '574 patent, for example, simply limits the "main object" to a "human face" and limits the "correction conditions" to a set of well-known parameters including "a highlight, a shadow, brightness, color balance, or memory color." '574 patent, col. 28 ll. 17–18.[2] The '056 patent's

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[2] Claim 3 recites:

3. A method of image processing, the method comprising:

> determining a main object in an image generated by an image generating apparatus, wherein the main object includes at least a human face, and wherein the determining of the main object is implemented by

claims are directed to image correction techniques involving color balance correction. Like the '365 patent, the '056 patent identifies the problem in the prior art as image correction being applied "for the overall image," which leads to "the risk of making an undesirable change to the color tone of a specific [human] subject." '056 patent, col. 1 ll. 28–35. In place of claim 32's main object, the claims of the '056 patent are directed to a "specific subject area."[3]

> determining whether the image includes the human face; and
>
> adjusting image quality of the main object using correction conditions corresponding to properties of the determined main object, wherein a parameter used in adjusting the image quality is a highlight, a shadow, brightness, color balance, or memory color;
>
> wherein each operation of the method of image processing is executed by one of a person computer, a printer, or a display device.

'574 patent col. 28 ll. 8–21.

[3] Claim 10 is representative:

> 10. An image processing device for executing color balance correction on image data of a photographed image, said image processing device comprising:
>
> an image data acquisition module that acquires said image data;
>
> a specific subject area determination module that determines a specific subject area in said photographed image, wherein said specific subject area contains a specific subject in said photographed image, and

The claims of the '109 patent similarly relate to locating a human subject of the image and processing that image data in that area, reciting the same abstract idea as claim 5 of the '365 patent. The claims merely replace the '056 patent claims' specific subject area with using shooting scene information and location information in the image data to

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> wherein said specific subject area determination module determines said specific subject area using pixel values of pixel data included in a target area for determination, and a position of said target area in said photographed image;
>
> a specific subject characteristic value calculation module that calculates a specific subject characteristic value, wherein said specific subject characteristic value represents a characteristic of image data corresponding to said determined specific subject area;
>
> a correction value calculation module that calculates a correction value for color balance correction using said calculated specific subject characteristic value and color balance a preset characteristic target value; and
>
> a correction execution module that executes said color balance correction on said image data using said calculated correction value.

'056 patent, col. 16 ll. 32–56.

detect the "location information of a person," and focus on adjusting the sharpness of the location information.[4]

Ultimately, the problem for Longitude is that each claim actually is directed to the same abstract idea of using data to identify an image's subject and modifying image data based on that subject. None of the claims describes how these results are achieved. The court was not required to separately address these "trivial variations of the abstract idea" claimed by the '365 patent. *Trinity*, 72 F.4th at 1362.

II

The district court concluded at *Alice* step two that the claims lack any inventive concept. *Dismissal* at *1. We

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[4] Claim 1 is representative:

1. An image processing apparatus comprising:

a CPU, the CPU executing functions including

acquiring an image file, the image file including image data, shooting scene information, and location information of a person in the image data, and

increasing sharpness of an area in which the person is located and decreasing sharpness of an area in which the person is not located based on the acquired location information when the acquired shooting scene information indicates a portrait scene.

'109 patent, col. 14 l. 63–col. 2 l. 4.

agree and find neither of Longitude's arguments to the contrary persuasive.

First, Longitude argues that the district erred by finding a lack of inventive concept "without evidence or analysis," casting this inquiry as a "fact finding." Appellant's Br. 41. But the absence of an inventive concept does not necessarily entail subsidiary factual determinations, and a patent itself may establish that the claims contain no inventive concept. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018). That is the case here: Longitude fails to identify any relevant factual dispute, and the claims do not recite any inventive concept.

Second, Longitude argues that "the intrinsic evidence demonstrates that the claimed steps addressing 'properties' of main object image data and 'correction conditions corresponding to [those] properties' recite inventive concepts." Appellant's Br. 40–41 (alteration in original) (citation omitted). But adjusting the main object image data's properties according to a set of correction conditions is the same abstract idea we identified at step one above. These elements cannot transform "that idea into significantly more." *Broadband*, 113 F.4th at 1370; *accord BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

CONCLUSION

We have considered Longitude's remaining arguments and find them unpersuasive. Because the claims of the four patents are not patent eligible under § 101, we *affirm*.

AFFIRMED

CERTIFICATE OF SERVICE

I certify that on May 30, 2025, I electronically filed this document, Appellant Longitude Licensing Ltd.'s Petition for Rehearing En Banc, with the Clerk of the Court using CM/ECF, which will automatically send email notification of such filing to the following counsel of record:

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CERTIFICATION OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

I certify that the foregoing reply brief complies with the relevant type-volume limitations of the Federal Rules of Appellate Procedure and Federal Circuit Rules because the filing includes 3,731 words, excluding the items enumerated in Federal Circuit Rule 32(b)(2).

Dated: May 30, 2025

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