

No. 24-1202

**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
in Case No. 3:23-cv-03046-VC, Hon. Vince Chhabria

**GOOGLE LLC'S OPPOSITION TO
LONGITUDE'S PETITION FOR REHEARING EN BANC**

GINGER D. ANDERS
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Avenue NW
Suite 500E
Washington, DC 20001
Telephone: (202) 220-1100

Email: ginger.anders@mto.com

Counsel for Defendant-Appellee Google LLC

July 14, 2025

CERTIFICATE OF INTEREST

Counsel for Google certifies the following:

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

Google LLC
2. The names of the real parties in interest represented by me are:

None other than Google.
3. All parent corporations and any publicly held companies that own 10% or more of stock in the parties represented by me are:

Alphabet Inc.; XXVI Holdings Inc.
4. The names of all law firms and the partners or associates that appeared for the parties now represented by me before the originating court or that are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

Quinn Emanuel Urquhart & Sullivan, LLP: Melissa J. Bailey, Anastasia M. Fernands, Patrick Daniel Curran;

J. Kain Day (formerly of Munger, Tolles & Olson LLP)
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 is:

None.
6. Organizational Victims and Bankruptcy Cases: Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees) are not applicable because this is not a criminal or bankruptcy case. See Fed. Cir. R. 47.4(a)(6).

N/A

DATED: July 14, 2025

By: /s/ Ginger D. Anders
Ginger D. Anders

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INTRODUCTION

This Court’s nonprecedential decision holding that Longitude’s claims are directed to patent-ineligible subject matter is a straightforward application of well-established Section 101 principles to the specific claims in this case. As the panel explained, claim 32 of U.S. Patent No. 7,668,365 is directed 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.” Op. 5 (quotation marks omitted). That claim encompasses using conventional computers to manipulate image data, without “explaining how these arrangements actually result in [any] claimed improvement” in the computer’s functioning. *Id.* As a result, claim 32 falls within the heartland of claims that this Court has held are directed to an abstract idea at *Alice* step one. *See id.* at 6-7 (collecting comparable cases). At step two, as the panel explained, Longitude failed to identify anything beyond the abstract idea itself—which “cannot transform” the claims into patent-eligible subject matter. *Id.* at 14. Nothing about that reasoning departed from established precedent or involved anything beyond applying settled law to the claims and written description.

Longitude’s petition therefore relies on mischaracterizing the panel’s decision and this Court’s precedent. Longitude argues that the panel “analyz[ed] the claim language in a vacuum” and failed to “consider[] the specification evidence.” Pet. 8. Not so. The panel simply rejected Longitude’s specification-based arguments based

on the well-established principle that technical details from the specification may not be imported into the claims. Op. 7-8. Longitude does not challenge the validity of that principle, and the panel’s application of it to the claims in this case is consistent with all of the decisions on which Longitude relies. Longitude next resorts to mischaracterizing this Court’s precedent, asserting that the Court has affirmed dismissal on Section 101 grounds of the pleading stage only “where the specification expressly confirms that the claims recite only conventional technology and techniques.” Pet. 14. But that rule has no basis in this Court’s caselaw and would conflict with fundamental Section 101 principles.

In sum, no conflict or question of exceptional importance justifies further review. *See* Fed. R. App. P. 40(b)(2). This Court should deny Longitude’s petition for rehearing en banc.

BACKGROUND

Longitude sued Google in the U.S. District Court for the Northern District of California, alleging infringement of at least one claim in each of seven patents that, at a high level, relate to image-processing systems and methods. Appx119-250. Its complaint alleged that several Google devices (e.g., Pixel smartphones) and Google applications (e.g., Photos and Snapseed) infringe. Appx125-126.

Google moved to dismiss Longitude’s infringement allegations for four of the seven asserted patents,¹ arguing that those patents are directed to ineligible subject matter. The district court granted that motion. Appx002-004.

This Court affirmed. Op. 1-14. At *Alice* step one, the panel concluded that the claims were directed to the abstract idea of improving image quality by adjusting an image based on its main object. Op. 5. The panel explained that this Court has repeatedly held that claims that manipulate data using generic computing components are abstract. *Id.* (citing cases). The panel acknowledged that Longitude asserted that the district court had failed to consider the patent specification, but held that nothing in the claim itself explained how the computer would achieve the claimed improvement. *Id.* at 7. The panel therefore rejected Longitude’s attempt “to import disclosures from the specification into the claim.” *Id.* at 8. At step two, the panel held that Longitude failed “to identify any relevant factual dispute,” and failed to identify any inventive concept beyond the abstract idea itself. *Id.* at 14.

Longitude now seeks rehearing en banc.²

¹ U.S. Patent Nos. 7,668,365; 8,355,574; 7,454,056; 7,945,109.

² The petition is limited to a single patent (the ’365 patent) and addresses only one representative claim in that patent (claim 32), likely because Longitude entered a statutory disclaimer for the three other asserted patents. *See* Pet. 2 n.3; *see also* <https://patentcenter.uspto.gov/applications/12590586/ifw/docs> (’574 patent); <https://patentcenter.uspto.gov/applications/11093941/ifw/docs> (’056 patent); <https://patentcenter.uspto.gov/applications/12456491/ifw/docs> (’109 patent).

ARGUMENT

I. Rehearing Is Unwarranted Because the Panel’s Decision Correctly Applied Well-Settled Law to Longitude’s Claims.

The panel’s nonprecedential decision is a straightforward application of well-established Section 101 principles to the specific claims in this case. Perhaps realizing this, Longitude attacks a straw man. It accuses the panel of failing to “cite or address any evidence from the ’365 specification.” Pet. 6. But the panel in fact addressed the specification and applied governing precedent in rejecting Longitude’s specification-based arguments. Longitude also asserts that the panel erred because patents should not be ruled ineligible at the pleading stage unless the specification concedes that the technology is conventional. That purported rule has no basis in this Court’s precedent, and it conflicts with basic Section 101 principles as set forth in this Court’s precedent and Supreme Court decisions. Longitude has offered no basis for rehearing en banc, and its petition should be denied.

A. Longitude Mischaracterizes the Panel Decision, Which Correctly Applied Settled Law to the Specific Facts of this Case.

Applying the well-established patent-eligibility principles announced by this Court, the panel held that claim 32 is directed to an abstract idea. As the panel explained, this Court has “repeatedly held that claims that organize, alter, or

Notably, although Longitude’s merits briefing presented distinct arguments for claim 5 in the ’365 patent, it has abandoned those arguments here.

manipulate data, without more, are patent ineligible.” Op. 5 (collecting cases). Likewise, claims that recite only functional limitations “without explaining how these arrangements actually result in the claimed improvement” cannot survive Section 101 scrutiny. *Id.* (collecting cases). The panel correctly held that claim 32 is just such a claim. Claim 32 recites—“entirely in functional, results-oriented terms”—the idea of adjusting the characteristics of an image based on its main object, but it does not give any hint as to *how* the computer will achieve that purported advancement. Op. 8. The panel acknowledged Longitude’s contention that “claim 32 is directed to an improved digital image processing technique,” i.e., more accurately adjusting the main object using correction conditions. Op. 6. But the panel concluded that “nothing in the language of claim 32” explained the use of correction conditions or how that use might occur. *Id.* Claim 32 therefore was directed to the abstract result of manipulating image data, rather than any patent-eligible improvement in how computers function.

Longitude does not contest the validity of the doctrine that claims describing data manipulation using generic computer components, without explaining “how these arrangements actually result in the claimed improvement,” are directed to an abstract idea. Op. 5; *see, e.g., Trinity Info Media, LLC v. Covalent, Inc.*, 72 F.4th 1355, 1363 (Fed. Cir. 2023). Nor does Longitude meaningfully engage with the substance of the panel decision. Instead, it asserts that “the panel found the ’365

claims ineligible without considering the specification’s descriptions of the computing improvements provided by the recited claim limitations.” Pet. 3. According to Longitude, the panel considered the claims “in a vacuum.” Pet. 4. Longitude mischaracterizes the panel’s decision.

1. The panel in fact considered the very specification-based arguments that Longitude presents in its petition. Said differently, Longitude’s petition merely rehashes arguments raised in its merits briefing, despite this Court’s guidance that an en banc petition “should not be used to reargue issues that were previously presented but not accepted by the merits panel.”³ As the panel explained, Longitude “repeatedly fault[ed] the district court for ostensibly failing to consider claim 32 in light of the patent specification.” Op. 7; *see, e.g.*, Appellant’s Reply Br. 1-7; *see also* Pet. 2. But the panel correctly rejected Longitude’s arguments, invoking another well-established principle: the Section 101 inquiry centers on the *claim language*. Although the written description can be “helpful in illuminating what a claim is directed to” in the Section 101 inquiry, reliance on the written description “must always yield to the claim language in identifying th[e] focus” of the claims. *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 766 (Fed. Cir. 2019) (citation

³ *See* Information Sheet: Filing a Petition for Hearing En Banc or a Petition for Rehearing available at https://www.cafc.uscourts.gov/wp-content/uploads/RulesProceduresAndForms/FilingResources/Petitions_Rehearing_En_Banc_-_Information_Sheet.pdf.

omitted); *see* Op. 8 (collecting cases to the same effect). That proposition follows from a central concern of the abstract-ideas doctrine: preemption. A patentee cannot lay claim to the entirety of an abstract idea. *Id.* And for that reason, even if the written description is “full of technical details about a physical invention,” the patent may nonetheless be directed to ineligible subject matter if the “claims ... claim nothing more than the broad law or abstract idea underlying the claims.” *Id.* at 769. An important corollary to that principle is that technical elements contained in the written description may not be imported into the claims for purposes of the abstract-ideas inquiry if the claims themselves do not include those elements. *ChargePoint*, 920 F.3d at 766.

Applying that precedent, the panel concluded that “Longitude effectively ask[ed] [the panel] to import disclosures from the specification into the claim.” Op. 8. The panel acknowledged—contrary to Longitude’s arguments, Pet. 8—that the written description is relevant to determining the claims’ focus. Op. 8. But the panel concluded that the purported details that Longitude identified in the written description did not appear in the claims. *Id.* (noting lack of “specificity” in claims). That conclusion represents a case-specific application of uncontested legal principles to the language of claim 32 that does not warrant rehearing.

Indeed, Longitude’s own articulation in its petition of the details in the specification only confirms the correctness of the panel’s decision. *See* Pet. 6-8.

Longitude argues that the written description explains the purported advantages of the claim steps—for instance, the step of “acquiring correction conditions” helps “improve the picture quality of the main object characterizing the image.” *E.g.*, Pet. 7. But Longitude fails to address the key issue: nothing in the claim language explains *how* the functional step of “acquiring correction conditions” (or any of the other functional steps) is performed. For example, no claim limitation requires any specific method for “determining” the main image data; explains how the “properties” or “correction conditions” are to be acquired; or explains how an image might be “adjusted.” So long as a generic “integrated circuit” can perform the “determining,” “acquiring,” and “adjusting,” those steps will fall within the scope of claim 32. The alleged invention thus encompasses employing typical adjustment methods, in a typical way, to adjust image quality based on characteristics of the main object in the image—rather than “across the board.” Appx026 at 1:31. It does not even specify what adjustments are made or require that those adjustments improve image quality. Put in simple terms, claim 32 requires collecting and adjusting data using basic computer hardware. That is an abstract idea.

2. The panel’s analysis is entirely consistent with this Court’s precedent and, in particular, all of the decisions on which Longitude relies. *See* Pet. 9-14. Most fundamentally, Longitude identifies no precedent supporting the proposition that the

Court should consider *unclaimed* details in the specification as though they were claim limitations.

Longitude first relies on *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, 957 F.3d 1303, 1309 (Fed. Cir. 2020), but it takes snippets of that decision out of context. Longitude notes that this Court stated there that the “[c]laims need not articulate the advantages of the claimed combinations to be eligible.” *Id.* But in so stating, the Court was simply rejecting LG’s argument that “the claims themselves must *expressly* mention [the alleged benefit].” *Id.* (emphasis added). Of course, the claims need not specifically state the claimed invention improves speed, reduces latency, or adds some other benefit. Rather, what they must do is capture the alleged invention with sufficient specificity to describe *how* the claims “concretely capture any improvement in computer functionality.” *Id.* at 1308. As the panel held, claim 32 fails on that score.

Longitude also cites a string of decisions—on which it also relied before the panel—holding that claims were directed to eligible subject matter. Pet. 9-10. But those decisions held that the *claims themselves* sufficiently described a nonabstract application of the idea, often because aspects contained in the written description were incorporated within the claims. *E.g.*, *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313-14 (Fed. Cir. 2016) (relying on narrow construction, incorporating technical details from the specification); *Finjan, Inc. v. Blue Coat Sys.*,

Inc., 879 F.3d 1299, 1304 (Fed. Cir. 2018) (same); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016) (the specific “self-referential table” was “reflected in” claim language and amounted to the “present invention” described in the patent). Although some cases looked to the specification to “confirm[]” the meaning of the claims, none relied on details from the specification that were not captured in the claims themselves. *E.g.*, *CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358, 1368 (Fed. Cir. 2020) (“the language of claim 1 indicates that it is directed to” patentable subject matter).

The conclusion that aspects of the specification are encompassed within the claims is, of course, a case-specific determination based on the language of the claims and the written description. Longitude argues that although *McRO* “stressed that the language of the claims themselves was limited to rules with specific characteristics,” that decision “did not assess the claims in a vacuum.” Pet. 11-12. Neither did the panel here. It simply came to a different conclusion in a case involving different claims. At bottom, then, Longitude’s challenge to the panel’s decision is a quarrel with its case-specific understanding of the claims that does not warrant en banc review.

B. Longitude’s Effort to Recast this Court’s Precedent as Permitting Rule 12 Dismissal Only When the Specification Concedes Conventionality Is Misconceived.

Failing to make any headway in establishing that the panel’s decision conflicts with existing precedent, Longitude attempts to recharacterize this Court’s jurisprudence as permitting a pleading-stage dismissal on Section 101 grounds *only* when the specification concedes that a claimed invention is conventional. According to Longitude, “[o]nly where the specification expressly confirms that the claims recite only conventional technology and techniques should the courts resolve [the step one inquiry] against the patent owner in adjudicating a Rule 12 motion.” Pet. 14. But this Court’s precedents do not establish any such rule, which would be inconsistent with the basic principles undergirding the Section 101 inquiry.

1. Longitude’s efforts to shoehorn this Court’s precedents into its conventionality framework are unavailing. Contrary to Longitude’s argument, Pet. 9, the Court has routinely found claims ineligible at the Rule 12 stage where the written description did not concede that the invention used conventional techniques. In *Hawk Tech. Sys., LLC v. Castle Retail, LLC*, for instance, the written description asserted that the claims *improved* the performance of generic computers by providing a method of viewing multiple videos using less bandwidth than previously. 60 F.4th 1349, 1353 (Fed. Cir. 2023). The Court held that the claims were directed to an abstract idea because they did not explain how to attain those

improvements. *Id.* at 1357. So too here: the written description asserts that the claims improve generic computers’ ability to enhance images, but the claims do not describe how to achieve that improvement. *Accord RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1324, 1327 (Fed. Cir. 2017) (written description asserted invention provided a method of facial recognition using less memory, but claims did not describe that technological improvement). And the decisions on which Longitude relies that held claims eligible—such as *Enfish*, *CardioNet*, and *McRO*—did not find eligibility based on the “specification’s benefits evidence and lack of conventionality evidence.” Pet. 9. Instead, they held the claims eligible after concluding that the claims themselves concretely described how to attain the improvements described in the written description. *See* pp. 9-10, *supra*.

2. Longitude’s conventionality argument also rests on a fundamental misunderstanding of the principles governing the Section 101 inquiry.

First, although conventionality is relevant to the abstract-idea analysis, it is only one consideration. The category of longstanding practices implemented on conventional computers—for instance, the intermediated bank settlement method at issue in *Alice* itself, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 220 (2014)—represents *one* category of claims directed to abstract ideas, but it is far from the only one. Abstract ideas also include fundamental principles, mental processes, and intangible subject matter such as manipulating information. *Id.* at 219-20; *Elec.*

Power Grp., LLC v. Alstom S.A., 830 F.3d 1350, 1353-54 (Fed. Cir. 2016). After all, “a claim for a new abstract idea is still an abstract idea.” *Trinity Info Media*, 72 F.4th at 1363 (citation and emphasis omitted).⁴ Thus, whether the claims recite “conventional technology and techniques” is only one part of the analytical framework. And Longitude points to no authority suggesting that courts considering a motion to dismiss on Section 101 grounds may consider only *one* legally relevant aspect of the analysis to the exclusion of others.

Second, Longitude’s rule would focus on the written description at the expense of the claims. Pet. 10-11. If whether the “specification expressly confirms” conventionality were dispositive of abstractness, the analysis would center on a patent’s written description—not its claims. *Id.* at 14. But “[t]he § 101 inquiry,” like other aspects of patent law, “must focus on the language of the Asserted Claims themselves.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016); *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998). Of course, it is permissible and appropriate to interpret the claims in light of the written description, and to look to the latter to determine what problem the invention purports to solve. *ChargePoint*, 920 F.3d at 766. But the specification cannot be used to override the

⁴ To be clear, no abstract idea captured in the asserted claims is new.

plain language of the claims—whether at trial, summary judgment, or the pleading stage. *Id.*; *see supra*, pp. 6-7.

Third, Longitude improperly attempts to narrow the situations in which courts may hold that claims are patent ineligible at the pleading stage. Longitude suggests that the Section 101 inquiry requires “resolv[ing] [a] factual issue.” Pet. 14. Not so. Patent eligibility is a question of law that may involve subsidiary facts, but like any other such question, it may be resolved as a matter of law in appropriate cases. *PersonalWeb Techs. LLC v. Google LLC*, 8 F.4th 1310, 1314 (Fed. Cir. 2021); *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018) (explaining that “not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry”). Contrary to Longitude’s contention, Pet. 14, the Court need not “weigh[] evidence” of conventionality at step one; rather, this Court often resolves the step one inquiry as a matter of law, by examining the focus of the claims in light of analogous cases. And although, at step two, the question whether the claim has an inventive concept—that is, whether it contains more than conventional, routine steps—can involve questions of fact, including about conventionality, that question too may be resolved as a matter of law. *See Berkheimer*, 881 F.3d at 1368.

In sum, Longitude faults the panel for failing to apply a rule that is neither part of this Court’s precedent nor consistent with that precedent. The petition should be denied.

C. Longitude Ignores the Key Basis for the Panel’s Step Two Analysis.

Longitude briefly argues that the panel misapplied this Court’s precedent at step two. Pet. 10, 15-18. But Longitude ignores the key problem the panel identified with its position: its step two arguments were duplicative of the abstract idea itself. Op. 14. The panel thus straightforwardly applied the well-established principle that the inventive concept has to be different from the abstract idea. *E.g.*, *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018). Instead of grappling with that point or identifying an inventive concept beyond the abstract idea of improving image quality by focusing on the main object, Op. 5, Longitude rehashes the same arguments it made in the context of step one. *E.g.*, Pet. 17-18. Recapitulating those arguments in the step-two framework does not make them any more meritorious.

II. The Case Presents an Exceptionally Poor Vehicle for En Banc Review.

This case is not an appropriate vehicle for en banc review. The panel issued a nonprecedential decision because the panel members concluded that Longitude’s claims are patent ineligible, for reasons that did not break any new ground. Longitude’s argument that the panel decision “sets a new path that requires en banc review to correct” is thus meritless. Pet. 6. The decision has no binding effect on

this Court or other courts, and en banc review “is rarely appropriate” for “a nonprecedential opinion or Rule 36 disposition.” Practice Notes to Fed. Cir. R. 40.

There is no reason to depart from that rule here. Longitude’s claim of a conflict with this Court’s precedents rests on mischaracterizing both the panel decision and this Court’s decisions. Moreover, this case does not implicate the sorts of Section 101 questions that have given rise to en banc consideration in the past, such as how to apply Section 101 to articles of manufacture or pharmaceuticals. Instead, this case concerns a heartland application of Section 101 to a claim for an improved computer process that relies on conventional computers and fails to explain how its purported advancement is achieved. This Court’s jurisprudence applying Section 101 to such patents is well settled, and the panel straightforwardly applied that jurisprudence to the claims at issue.

CONCLUSION

For the foregoing reasons, the Court should deny Longitude’s petition for rehearing en banc.

DATED: July 14, 2025

MUNGER, TOLLES & OLSON LLP

By: /s/ Ginger D. Anders
Ginger D. Anders
Counsel for Google LLC

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Circuit Rule 40(e), because it contains 3,594 words, excluding the parts of the brief exempted by Federal Circuit Rule 32(b)(2).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

DATED: July 14, 2025

By: /s/ Ginger D. Anders
Ginger D. Anders

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system on July 14, 2025.

I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

DATED: July 14, 2025

By: /s/ Ginger D. Anders
Ginger D. Anders