

No. 2025-1368

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

LINFO IP, LLC,

Plaintiff-Appellant,

v.

TRUSTPILOT, INC.,

Defendant.

Appeal from the United States District Court for the Southern
District of New York, No. 1:24-cv-02796-JMF, Judge Jesse M. Furman

**PETITION FOR PANEL REHEARING
AND REHEARING EN BANC**

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CERTIFICATE OF INTEREST

Counsel for Appellant Linfo IP, LLC certifies the following (Fed. Cir. R. 47.4; Fed. R. App. P. 26.1):

1. The full name of every party represented by the undersigned is Linfo IP, LLC.
2. The real party in interest is: None
3. Linfo IP, LLC has no parent corporation, and no publicly held corporation owns 10% or more of its stock.
4. The law firm and attorneys that appeared for Linfo IP, LLC in the trial court or are expected to appear in this Court are: William P. Ramey, III (Ramey LLP); David J. Hoffman (Law Office of David J. Hoffman) (not expected to appear).
5. Cases known to counsel that will directly affect or be directly affected by this Court's decision: *Linfo IP, LLC v. American Exchange Apparel Group, Corp. / Aero Global, LLC*, No. 2025-2006 (Fed. Cir.).
6. Organizational victims and bankruptcy cases: None.

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STATEMENT OF COUNSEL

(Fed. R. App. P. 35(b); Fed. Cir. R. 35(b))

Based on my professional judgment, I believe the panel decision is contrary to the following decisions: *Avid Identification Systems, Inc. v. Crystal Import Corp.*, 603 F.3d 967 (Fed. Cir. 2010); *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950); *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18 (1994); and *Cardinal Chemical Co. v. Morton International, Inc.*, 508 U.S. 83 (1993).

Based on my professional judgment, I believe this appeal requires an answer to the following precedent-setting question of exceptional importance: Whether a district-court judgment of patent invalidity, appealed to this Court and then dismissed as moot following settlement, should be left intact, and thereby permitted to operate as collateral estoppel against the patentee under *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, including in a co-pending appeal presenting the identical eligibility question, or should be vacated under *United States v. Munsingwear, Inc.*, and 28 U.S.C. § 2106.

/s/ William P. Ramey, III
William P. Ramey, III

INTRODUCTION AND RULE 35 STATEMENT

This petition presents two questions. First, whether the panel misapprehended the scope and structure of the parties' settlement when it dismissed this appeal as moot. The Agreement did not resolve a single two-party dispute. It settled multiple actions, licensed an entire portfolio of dozens of patents and applications, extended covenants to a broad and forward-looking class of Trustpilot's customers and business partners, and, most tellingly, preserved this appeal by docket number and preserved the right to litigate validity in future disputes. A settlement built to carry the validity controversy forward is not one that extinguishes it.

Second, and in the alternative, whether the unreviewed § 101 invalidity judgment should be left intact to operate as collateral estoppel while the identical eligibility question is live before this Court in the co-pending appeal, *Linfo IP, LLC v. American Exchange Apparel Group / Aero Global, LLC*, No. 2025-2006 — or whether it should be vacated under *United States v. Munsingwear, Inc.* and 28 U.S.C. § 2106. Linfo respectfully petitions for panel rehearing and rehearing en banc.

BACKGROUND

On January 3, 2025, the district court held the claims of U.S. Patent No. 9,092,428 (the '428 patent) ineligible under § 101 and dismissed Linfo's

infringement suit against Trustpilot. *Linfo IP, LLC v. Trustpilot, Inc.*, 761 F. Supp. 3d 679 (S.D.N.Y. 2025). Linfo timely appealed.

While the appeal was pending, Linfo and Trustpilot settled. The Agreement resolved more than this case: it settled both this action and *Linfo IP, LLC v. Air Oasis, LLC*, No. 3:25-cv-00129 (N.D. Tex.); it licensed the entire portfolio of dozens of patents and applications listed in Exhibit A; and it extended licenses and covenants to Trustpilot's past, present, and future customers, partners, distributors, resellers, channel partners, vendors, suppliers, and web content providers. Agreement, Recitals, §§ 1.4, 2.1(a)-(b), 4(a) & Ex. A. Sappx0380-0381. Section 2.1(d), negotiated after the § 101 ruling, preserved Trustpilot's right to participate in this appeal by docket number and preserved the right to assert invalidity in future disputes; § 4(b) provided only a conditional dismissal of this action, triggered if this Court remands or the case resumes.

On July 6, 2026, the panel dismissed the appeal as moot, reasoning that the settlement ended the controversy between the parties. Meanwhile, in the co-pending appeal No. 2025-2006, the district court invalidated the same '428 patent on the strength of the unreviewed *Trustpilot* judgment; that appeal is pending before this Court.

ARGUMENT

I. The appeal is not moot; the panel misapprehended the scope and structure of the settlement.

A case becomes moot only when it is impossible for a court to grant any effectual relief. *Chafin v. Chafin*, 568 U.S. 165, 172-173 (2013). Mootness turns on whether a live controversy persists. The panel answered that question by treating the Agreement as an ordinary settlement that resolved this single lawsuit. The Agreement is not that. It settled multiple actions, not one — both this case and *Linfo 2, Linfo IP, LLC v. Air Oasis, LLC* (N.D. Tex.). Agreement, Recitals; *id.* § 4(a). It licensed not the ’428 patent alone but an entire portfolio of dozens of patents and applications. *Id.* § 1.4 & Ex. A. Sappx0390-0391 And it extended covenants and licenses to a broad, forward-looking class of Trustpilot’s past, present, and future customers, partners, distributors, resellers, channel partners, vendors, suppliers, and web content providers. *Id.* §§ 2.1(a)-(b) Sappx0380-0381. That is not the single-suit buy-off the panel described.

More telling than the breadth is what the parties preserved. Section 2.1(d), negotiated after the § 101 ruling had entered, provides that nothing in the Agreement shall prevent Trustpilot from “fully participating in the pending ... appeal,” which it identified by docket number, and it preserved the right to assert that the Licensed Patents are “invalid, not infringed, or unenforceable” if asserted against the broad class of covered entities. Parties do not reserve, by docket

number, the right to litigate an appeal they understand to be over. They preserved it because the validity controversy was not resolved between them.

The Agreement's structure confirms the point. Section 4(b) does not dismiss this action; it provides a conditional dismissal that triggers only if this Court remands or the case otherwise resumes. That mechanism is meaningful only if the Court decides the merits. Had the parties regarded the appeal as moot, they would have dismissed outright. They did not. And the recitals record that the parties "disagree as to the validity, enforceability, and infringement of the Patents-In-Suit," and that the license is not comparable to one between parties in agreement about validity.

This is the *Crystal Import* posture. There, a live controversy survived a post-judgment settlement because the appellee remained free under the agreement to oppose the appeal on the merits. *Avid Identification Sys., Inc. v. Crystal Import Corp.*, 603 F.3d 967, 971-972 (Fed. Cir. 2010). Section 2.1(d) gives Trustpilot that freedom. The panel distinguished *Crystal Import* on the ground that the settlement there also tied consideration to the appellate outcome, reading *Allflex* to require such consideration. But *Allflex* addressed a materially different arrangement — a flat rebate "completely untethered" to the issues on appeal, and *Crystal Import* treated the appellee's freedom to oppose as a sufficient basis for a live controversy. *Allflex USA, Inc. v. Avid Identification Sys., Inc.*, 704 F.3d 1362, 1369 (Fed. Cir.

2013). Making outcome-tied consideration a necessary condition of justiciability is not what these decisions hold.

Section 3.1's recital that the fee was paid in consideration of settling the Lawsuits does not resolve the question. The fee purchased what the parties could resolve between themselves, a paid-up license across the portfolio and covenants running to Trustpilot's broad ecosystem, while the recitals disclaim that the price reflects any agreement on validity. That the fee is non-refundable if the patents are later held invalid shows only that the license was fully paid; it does not show that the parties resolved the § 101 question this Court was asked to decide.

II. In the alternative, the Court should vacate the district court's § 101 judgment; the co-pending Aero Global appeal makes the question one of exceptional importance.

If the appeal is moot, dismissal that leaves the district court's judgment intact is not the correct disposition. Section 2106 empowers this Court to vacate a judgment before it, and *Munsingwear* establishes the ordinary practice: a judgment mooted before review is vacated, so that an untested judgment neither binds the losing party nor radiates preclusive consequences. *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39-41 (1950); 28 U.S.C. § 2106. The Court should exercise that power itself: when a case becomes moot on review, the reviewing court, not the district court, ordinarily vacates the judgment below. *See Camreta v. Greene*, 563 U.S. 692, 712-13 (2011).

U.S. Bancorp reserves vacatur for exceptional circumstances where mootness follows from settlement. *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26-29 (1994). This is that case, for a reason absent from the ordinary settlement: the identical eligibility question is live before this Court now. In the co-pending appeal, No. 2025-2006, the district court invalidated the same '428 patent on the strength of the very judgment the panel here declined to disturb. Leaving an unreviewed § 101 ruling intact to operate as collateral estoppel in a companion appeal on this Court's own docket is not a private matter between Linfo and Trustpilot; it is a court-wide consequence that the equities and the public interest weigh against.

The inequity is not confined to the patent. The unreviewed § 101 determination has already produced a monetary sanction. In the co-pending case, the district court awarded Aero Global \$84,789.50 in attorney fees under 35 U.S.C. § 285, resting that award on its conclusion that the '428 patent is objectively invalid under § 101. *Linfo IP, LLC v. Aero Glob., LLC*, No. 24-cv-2952 (JPO), 2025 WL 2924439 (S.D.N.Y. Oct. 15, 2025); *id.*, ECF No. 75 (S.D.N.Y. Mar. 30, 2026) (fixing the award at \$84,789.50). That award rests on the same invalidity attributed to the *Trustpilot* judgment through estoppel. So long as the *Trustpilot* judgment stands intact and unreviewed, it operates to foreclose merits review of the '428 patent's eligibility in the co-pending appeal, and the fee award it

underwrites rests on a determination no court has reviewed on the merits. A settlement-mooted, never-reviewed § 101 ruling that both extinguishes a patent by estoppel and underwrites a fee award against its owner is the inequity that warrants vacatur under *U.S. Bancorp.* Vacating that judgment removes the estoppel predicate and restores the merits review on which both the patent and the fee award depend.

Two further considerations support vacatur. The Agreement expressly preserved this appeal, § 2.1(d), which distinguishes this case from the settlement in which a party buys peace to escape an adverse precedent Sappx0382. And this Court's precedent treats appellate review as "a component of the one full and fair opportunity" to have validity adjudicated correctly. *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 101-02 (1993). A § 101 judgment that never received this Court's review, yet is helping to decide a co-pending appeal, is in tension with that principle. Linfo does not obscure that the settlement was voluntary and the fee non-refundable; those facts bear on the private equities, not on the public interest in refusing to let an unreviewed ruling govern a live appeal.

CONCLUSION

The Court should grant panel rehearing and hold that the appeal is not moot. In the alternative, the Court should grant rehearing en banc and vacate the district court's judgment of invalidity, *Linfo IP, LLC v. Trustpilot, Inc.*, 761 F. Supp. 3d

679 (S.D.N.Y. 2025), under 28 U.S.C. § 2106 and *United States v. Munsingwear, Inc.*; or remand to the district court to consider vacatur under Fed. R. Civ. P. 60(b). The Court should resolve this appeal itself rather than prolong it. On rehearing it should hold the appeal not moot and reinstate it for decision on the merits; or, *en banc*, it should vacate the invalidity judgment under 28 U.S.C. § 2106. The equities are fully presented on this record, and no further proceedings in the district court are necessary.

Dated: July 20, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I served a copy on counsel of record on July 20, 2026, by electronic means by email via CM/ECF filing.

/s/ William P. Ramey, III
William P. Ramey, III

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)(B)

The undersigned counsel of records for Linfo IP, LLC, certifies that this Petition En Banc complies with the typeface requirement provided in Rule 32(a)(5) and type-volume limitation provided in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. In preparing this certificate, I relied on word-count program of Microsoft Word 2025. This Brief contains 1,858 words.

/s/ William P. Ramey, III
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