

No. 2025-1764

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

CADDO SYSTEMS, INC., 511 TECHNOLOGIES, INC.,
Plaintiffs-Appellants,

v.

JETBRAINS AMERICAS, INC., JETBRAINS, INC., JETBRAINS S.R.O.,
Defendants-Appellees.

Appeal from the United States District Court for the District of Delaware
in No. 1:22-cv-01033-JLH-LDH, Judge Jennifer L. Hall

**CORRECTED
APPELLANTS' PETITION FOR
REHEARING EN BANC**

Joesph J. Zito
DNL ZITO
1250 Connecticut Avenue, NW, Suite 700
Washington, DC 20036
202-466-3500
jzito@dnlzito.com

Benjamin C. Deming
DNL ZITO
3232 McKinney Avenue, #500
Dallas Texas, 75204
214-799-1145

October 21, 2026
Counsel for Plaintiffs-Appellants
Caddo Systems, Inc. and
511 Technologies, Inc.

CERTIFICATE OF INTEREST

Undersigned counsel for Plaintiffs-Appellants certifies as follows:

1. The full names of every party represented by the undersigned are:

Caddo Systems, Inc. and 511 Technologies, Inc.

2. The real party parties in interest are:

N/A

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the entities are:

N/A

4. The names of all law firms and the partners or associates that appeared for Caddo Systems, Inc. and 511 Technologies, Inc. in the trial or agency or are expected to appear in this Court are:

DEVLIN LAW FIRM, LLC: Timothy Devlin, Alex Chan, Veronica McCarty, Peter Mazur, Andrew DeMarco

DNL ZITO: Joseph J. Zito, Benjamin C. Deming, and Robert B. Cadle

5. Other than the originating case, 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. See Fed. Cir. R. 47.4(a)(5) and 47.5(b).

N/A

6. Organizational victims and bankruptcy cases:

N/A

/s/ Joseph J. Zito
Joseph J. Zito

TABLE OF CONTENTS

Certificate of Interest	2
Table of Authorities	4
Statement of Counsel Under Federal Circuit Rule 40(c)	6
Questions Presented	8
Introduction	8
Points of Law or Fact Overlooked or Misapprehended	10
Argument	11
I. This Court's user-interface decisions state two irreconcilable rules, and nothing identifies which one governs a given claim	11
II. The consequences are not academic: the same judge, applying the same precedents, reached opposite results on comparable interface claims	12
III. This Court has not resolved whether a specification's problem statement can carry a user-interface claim that does not recite it	15
IV. Panel rehearing is warranted because the judgment does not identify the ground of affirmance	16
V. This case is a clean vehicle	17
Conclusion	17
Addendum	19
Certificate of Compliance	20

TABLE OF AUTHORITIES

Alice Corp. v. CLS Bank Int'l, 573 U.S. 208 (2014)	7
Apple, Inc. v. Ameranth, Inc., 842 F.3d 1229 (Fed. Cir. 2016)	6, 9
Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC, 927 F.3d 1333 (Fed. Cir. 2019) (en banc denial)	17
BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC, 827 F.3d 1341 (Fed. Cir. 2016)	6
Berkheimer v. HP Inc., 881 F.3d 1360 (Fed. Cir. 2018)	6, 10
Broadband iTV, Inc. v. Amazon.com, Inc., 113 F.4th 1359 (Fed. Cir. 2024)	6, 9, 13
Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc., 880 F.3d 1356 (Fed. Cir. 2018)	6, 7, 8, 9, 10, 11, 13, 14, 15, 17
Customedia Techs., LLC v. Dish Network Corp., 951 F.3d 1359 (Fed. Cir. 2020)	6, 10, 13
Data Engine Techs. LLC v. Google LLC, 906 F.3d 999 (Fed. Cir. 2018)	6, 8, 12, 13, 15
Enfish, LLC v. Microsoft Corp., 822 F.3d 1327 (Fed. Cir. 2016)	6, 13
Int'l Bus. Machs. Corp. v. Zillow Grp., Inc., 50 F.4th 1371 (Fed. Cir. 2022)	6, 9, 12, 13
Interval Licensing LLC v. AOL, Inc., 896 F.3d 1335 (Fed. Cir. 2018)	13

McRO, Inc. v. Bandai Namco Games Am. Inc., 837 F.3d 1299 (Fed. Cir. 2016)	6, 13
Microsoft Corp. v. i4i Ltd. P'ship, 564 U.S. 91 (2011)	11
Trading Techs. Int'l, Inc. v. CQG, Inc., 675 F. App'x 1001 (Fed. Cir. 2017) .	6, 8
Trustees of Columbia Univ. v. Gen Digital Inc., No. 2024-1243 (Fed. Cir. Mar. 11, 2026)	15
U.S. Patent No. 7,679,637 LLC v. Google LLC, No. 2024-1520 (Fed. Cir. Jan. 22, 2026)	15
Apple Inc. v. Masimo Corp., No. 1:22-cv-01378-JLH, D.I. 688 (D. Del. Oct. 9, 2024).	9
35 U.S.C. § 101;	
Fed. R. Civ. P. 56;	
Fed. Cir. R. 36;	
Fed. Cir. R. 40	

STATEMENT OF COUNSEL UNDER FEDERAL CIRCUIT RULE 40(c)

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: *Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018); *Data Engine Technologies LLC v. Google LLC*, 906 F.3d 999 (Fed. Cir. 2018); *Trading Techs. Int'l, Inc. v. CQG, Inc.*, 675 F. App'x 1001 (Fed. Cir. 2017); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016); *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016); *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018); and *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

Based on my professional judgment, I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance:

(1) What distinguishes a claim directed to a specific manner of displaying or navigating information in a computer interface, held patent eligible in *Core Wireless*, *Data Engine*, and *Trading Technologies International, Inc. v. CQG, Inc.*, from a claim directed to displaying information or improving a user's experience, held ineligible in *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229 (Fed. Cir. 2016); *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359 (Fed. Cir. 2020); *IBM v. Zillow Group, Inc.*, 50 F.4th 1371 (Fed. Cir. 2022); and *Broadband iTV, Inc. v. Amazon.com, Inc.*, 113 F.4th 1359 (Fed. Cir. 2024)?

(2) May a technological improvement disclosed in the specification render a user-interface claim non-abstract at *Alice* step one when the claim does not recite the hardware constraint or performance benefit the specification identifies, as *Core Wireless* held, and if so, how does that rule operate alongside this Court's more recent decisions requiring that the improvement be embodied in the claims?

/s/ Joseph J. Zito
Joseph J. Zito
Counsel for Plaintiffs-Appellants

QUESTIONS PRESENTED

1. Under what standard does a claim to a graphical user interface qualify as directed to a specific manner of displaying or navigating information, rather than to the abstract idea of displaying information or improving a user's experience?

2. When a claim does not recite the hardware constraint or performance benefit that the specification identifies as the problem solved, may the specification nonetheless establish that the claim is directed to a technological improvement?

.

INTRODUCTION

This petition is not a request to re-decide whether four expired patents on menu navigation claim eligible subject matter. It is a request that this Court state the rule that governs an entire category of appeals it decides every term.

Two lines of authority run through this Court's user-interface cases. One holds that a claim reciting a particular arrangement of interface elements and a prescribed response to user input is directed to a technological improvement and is eligible. *Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018); *Data Engine Technologies LLC v. Google LLC*, 906 F.3d 999 (Fed. Cir. 2018); and *Trading Techs. Int'l, Inc. v. CQG, Inc.*, 675 F. App'x 1001 (Fed. Cir. 2017) are its leading examples. The other holds that a claim reciting what an interface displays, and how a user reaches it, does no more than improve a user's

experience and is abstract. *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229 (Fed. Cir. 2016); *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359 (Fed. Cir. 2020); *IBM v. Zillow Group, Inc.*, 50 F.4th 1371 (Fed. Cir. 2022); and *Broadband iTV, Inc. v. Amazon.com, Inc.*, 113 F.4th 1359 (Fed. Cir. 2024) are its leading examples. Each line is stated at a level of generality that comfortably describes the claims in the other. Nothing in this Court's decisions tells a district court, a patent examiner, or a party which line a given interface claim falls on.

The consequence is visible in this very record. In October 2024, the same district judge who entered the judgment here denied summary judgment of ineligibility on a claim to a smartphone interface that displays one screen or another depending on the direction of a user's swipe. She wrote that she saw no principled basis to distinguish that claim from *Core Wireless*, and that the machine-or-transformation test appeared satisfied. *Apple Inc. v. Masimo Corp.*, No. 1:22-cv-01378-JLH, D.I. 688, at 5-7 (D. Del. Oct. 9, 2024). Months later, applying the same precedents to claims reciting an interface element built from a user's navigation history, which responds to a pointer rollover by displaying a hierarchical level while leaving that element undisturbed, the court held every claim ineligible. Petitioners do not contend that the judge erred in *Masimo*. The point is the opposite and more troubling: both rulings are defensible applications of this Court's cases.

This Court affirmed without opinion. That disposition is understandable in a court facing a large eligibility docket, but it leaves the bar with nothing. Petitioners ask the panel to withdraw the Rule 36 judgment and explain which of the several independent grounds below supports affirmance, and ask the full Court to take the case and reconcile its interface decisions.

POINTS OF LAW OR FACT OVERLOOKED OR MISAPPREHENDED

1. The judgment below rests on at least four independent grounds: that the claims are directed to an abstract idea at step one; that they supply no inventive concept at step two; that one claim is representative of all ten asserted claims; and that a factual-dispute argument was forfeited. A judgment of affirmance without opinion does not identify which ground the Court adopted, and the grounds carry different consequences. Step one is a question of law. Step two has factual underpinnings that, on summary judgment, must be resolved against the movant. *Berkheimer*, 881 F.3d at 1368. Representativeness is a distinct inquiry that turns on what the patentee argued below.

2. The decision below distinguished *Core Wireless* on the ground that these claims contain no limitation on the size of the screen or the type of program. The eligible claim in *Core Wireless* contained no such limitation either. It recited "[a] computing device comprising a display screen," and this Court drew the small-screen problem from the specification. 880 F.3d at 1359, 1363.

3. At step two, the court below stated that it was unpersuaded by petitioners' expert evidence and inferred that the claimed interface uses only existing computer capabilities from the absence of implementation detail in the specification, adding that petitioners did not contend otherwise. Invalidity must be proven by clear and convincing evidence, *Microsoft Corp. v. i4i Ltd. Partnership*, 564 U.S. 91, 95 (2011), and on summary judgment a court may not weigh evidence or draw inferences against the non-movant.

4. Nine of the ten asserted claims were never analyzed individually. Those claims recite limitations absent from the claim treated as representative, including truncation of the navigation element upon selection and a search function associated with a particular element of it.

ARGUMENT

I. This Court's user-interface decisions state two rules, and nothing identifies which governs a given claim.

In *Core Wireless*, the claim recited a computing device displaying a menu of applications and an application summary reachable directly from that menu, listing a limited set of data, each item selectable to launch the corresponding application, with the summary displayed while the applications remained un-launched. This Court held the claim directed to "a particular manner of summarizing and presenting information in electronic devices," and not to the abstract idea of an index. 880 F.3d at 1362-63.

In *Data Engine*, the claim recited displaying a spreadsheet page, displaying a row of notebook tabs bearing user-settable characters along one side, and, on selection of a tab, displaying a second page that obscures the first while the row of tabs remains visible. This Court held that the claim recited "a particular manner of navigating three-dimensional spreadsheets" and reversed a judgment of ineligibility. 906 F.3d at 1011.

In *CQG*, the claims recited bid and ask regions positioned against a static price axis, with indicators that move relative to that axis as the market changes, and an order-entry region responsive to a single action. This Court affirmed eligibility because the claims required "a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface's structure that is addressed to and resolves a specifically identified problem in the prior state of the art." 675 F. App'x at 1004.

Now set beside those the other line. In *Ameranth*, this Court held ineligible claims to "generating a second menu from a first menu and sending the second menu to another location." 842 F.3d at 1240-41. In *IBM v. Zillow*, claims reciting three visual workspaces and a mechanism for navigating among them were held abstract because identifying, analyzing and presenting data to a user is "not an improvement specific to computing." 50 F.4th at 1378. *Customedia* supplied the governing formulation: improving a user's experience while using a computer application is

not, without more, enough. 951 F.3d at 1365. *Interval Licensing* and *Broadband iTV* apply the same approach to the display of content in an allotted area and to hierarchically organized program guides.

The difficulty is that each formulation describes the claims in the other line. *Core Wireless's* application summary, reached directly from the main menu, is on its face a second menu generated from a first menu and displayed to the user. *Data Engine's* notebook tabs improve a user's experience navigating pages, and the tab metaphor was borrowed from paper. Conversely, IBM's three workspaces, each performing a defined function and feeding the next, can be described as a specific structure paired with prescribed functionality. The outcome in every one of these cases followed from the level of generality at which the claim was restated, and this Court has never supplied a rule for selecting that level. *Enfish* and *McRO* warn against describing claims at too high a level of abstraction, but a warning is not a test.

II. The same judge, applying the same precedents, reached opposite results on comparable interface claims.

Claim 9 of the patent at issue in *Masimo* recited a computer system that, while in a power-saving state, detects an input meeting display-waking criteria, displays a wake screen, and then, depending on whether a detected movement is in a first or second direction, displays either a home screen of application icons or a widget

screen of objects containing application content. The district court held that claim not directed to an abstract idea, reasoning that it saw no principled basis to distinguish *Core Wireless* and that the machine-or-transformation test appeared satisfied. D.I. 688, at 5-7.

The claims here recite an interface element constructed as the user selects items from a hierarchical menu, one link for each selected item, each link providing direct access to the level from which its item was selected without using the menu, displayed as an alternative to the menu after selection is complete, where a pointer rollover displays the items at the associated level without disturbing the displayed element, and where other claims require that selection truncate the element or invoke a search associated with one of its links.

Structurally the two are the same kind of claim. Each recites an interface in a defined state, a defined user input, and a defined display response that depends on which input occurred. One survived; the other did not. Petitioners emphasize that they do not ask this Court to hold that the district court erred in *Masimo*, which was not appealed on that ground. They ask the Court to notice what the pair demonstrates. When a careful judge, applying the same body of precedent within a single year, resolves two materially similar interface claims in opposite directions, the problem is not the judge. It is that the precedent does not decide the question.

III. This Court has not resolved whether a specification's problem statement can carry a claim that does not recite it.

Core Wireless located the improvement in the specification. The claim recited a display screen; the specification explained that small screens force users to scroll and switch views repeatedly, and this Court relied on that explanation to conclude that the claims improved the functioning of computers. 880 F.3d at 1363. *Data Engine* proceeded the same way, drawing the technological problem from the patents' account of prior art three-dimensional spreadsheets.

The decision below took the opposite approach, treating the absence of a screen-size limitation in the claims, and the brevity of the specification's discussion of screen real estate, as grounds to distinguish *Core Wireless*. That approach finds support in this Court's recent decisions, which have held claims ineligible where the asserted improvement was not reflected in the claim language. See *U.S. Patent No. 7,679,637 LLC v. Google LLC*, No. 2024-1520 (Fed. Cir. Jan. 22, 2026) (claims "need not explicitly recite" an improvement, but it must be embodied in them); *Trustees of Columbia University v. Gen Digital Inc.*, No. 2024-1243 (Fed. Cir. Mar. 11, 2026).

Both approaches cannot be right in the same case. Either the specification's identification of a technological problem informs what the claim is directed to, or the claim must itself recite the constraint that makes the solution technological.

District courts are choosing between them without guidance, and patent applicants are drafting without knowing which rule their claims will be measured against.

IV. Panel rehearing is warranted because the judgment does not identify the ground of affirmance.

Federal Circuit Rule 36 permits a judgment of affirmance without opinion in defined circumstances and when an opinion would have no precedential value. This appeal was fully briefed and argued, and it presented a recurring question on which district courts reach divergent results on similar claims. An opinion identifying which ground supports affirmance would have precedential value, whatever the outcome.

That is so for a practical reason. If the affirmance rests on step one, the bar learns something about where the line falls. If it rests on step two, it matters a great deal whether this Court approved the resolution of the conventionality question on a summary judgment record in which the movant's burden was clear and convincing evidence. And if it rests on representativeness or forfeiture, the eligibility questions remain open, and nine claims have been invalidated without any claim-specific analysis by any court. The petition for panel rehearing asks only that the Court say which.

V. This case is a suitable vehicle.

The appeal presents eligibility and nothing else. There is no claim construction dispute, no disputed priority question, and no alternative ground of affirmance outside § 101. The record contains the claim language, the specifications' account of the prior art, and the competing expert evidence on conventionality. It also contains, in the same district and from the same judge, a contemporaneous ruling on a comparable interface claim that came out the other way, which gives the Court a concrete pairing rather than an abstract complaint about uncertainty.

This petition also asks for less than earlier eligibility petitions this Court has declined. It does not ask the Court to overrule or narrow any decision of the Supreme Court, and it does not ask the Court to do what it has said only Congress can do. Compare *Athena Diagnostics, Inc. v. Mayo Collaborative Services, LLC*, 927 F.3d 1333 (Fed. Cir. 2019) (denying rehearing en banc). It asks the Court to harmonize its own precedents on a single recurring claim type. That is the core function of en banc review under Federal Rule of Appellate Procedure 40(b)(2)(A) and (D).

CONCLUSION

The panel should grant rehearing, withdraw the judgment entered under Rule 36, and issue an opinion identifying the ground or grounds on which the judgment below is affirmed. The Court should grant rehearing en banc to decide the questions presented.

Respectfully submitted,

/s/ Joseph J. Zito

Joseph J. Zito

DNL ZITO

Counsel for Plaintiffs-Appellants

October 14, 2026

ADDENDUM

[Attach the Judgment entered September 11, 2026 (Doc. 53). Fed. Cir. R. 40(b)(2)(H), 40(d)(1).]

CERTIFICATE OF COMPLIANCE

This petition complies with the type-volume limitation of Federal Rule of Appellate Procedure 40(d)(3) because it contains 3,262 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b)(2). It complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally spaced 14-point Times New Roman typeface.

/s/ Joseph J. Zito
Joseph J. Zito

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**CADDO SYSTEMS, INC., 511 TECHNOLOGIES,
INC.,**
Plaintiffs-Appellants

v.

**JETBRAINS AMERICAS, INC., JETBRAINS, INC.,
JETBRAINS S.R.O.,**
Defendants-Appellees

2025-1764

Appeal from the United States District Court for the
District of Delaware in No. 1:22-cv-01033-JLH-LDH, Judge
Jennifer L. Hall.

JUDGMENT

JOSEPH J. ZITO, DNL Zito, Washington, DC, argued for
plaintiffs-appellants. Also represented by BENJAMIN
CHARLES DEMING, Dallas, TX.

AARON KAMLAY, Butzel Long, PC, Washington, DC, ar-
gued for defendants-appellees. Also represented by PRIYA
DALAL, DANIEL GEORGE VIVARELLI, JR.

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (MOORE, *Chief Judge*, PROST, *Circuit Judge*, and BARKER, *District Judge*¹).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

September 11, 2026
Date



Jarrett B. Perlow
Clerk of Court

¹ Honorable J. Campbell Barker, District Judge, United States District Court for the Eastern District of Texas, sitting by designation.