

No. 21-1281

IN THE
Supreme Court of the United States

INTERACTIVE WEARABLES, LLC,

Petitioner,

v.

POLAR ELECTRO OY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**BRIEF OF THE CHICAGO PATENT
ATTORNEYS AS *AMICI CURIAE* IN
SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*

The *amici curiae* are patent practitioners who regularly prosecute and litigate U.S. patents. The *amici curiae* are concerned with preserving the integrity of a patent system that fosters innovation, so that such innovation can be commercialized in the marketplace.¹

SUMMARY OF THE ARGUMENT

This Court has repeatedly warned against overbroad interpretations of the judicial exceptions to patent eligibility lest they “eviscerate” or “swallow all of patent law.” *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012) and *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). And yet the Federal Circuit has done just that in multiple opinions. Worse are instances, as in this case, where the court sanctioned, without comment, a district court’s misapplication of this Court’s jurisprudence and reasoning in a Rule 36 affirmance. The district court’s reasoning was faulty in finding that Interactive Wearables’ claims failed to satisfy 35 U.S.C. § 101. By not authoring an opinion, the panel left the parties and the public without further guidance towards § 101 eligibility. The public and the parties had a reasonable expectation that they would receive such guidance, in view of the Federal Circuit’s role as set forth

1. No party’s counsel authored this brief in whole or part; no party or party’s counsel contributed money intended to fund preparing or submitting the brief; and no person other than *amici* or counsel for *amici* contributed money intended to fund preparing or submitting the brief. Sup. Ct. R. 37.6. Counsel for the respective parties were provided timely notice and consented to the filing of this brief. Sup. Ct. R. 37.2(a).

by Congress with regard to providing harmonization and consistency over U.S. patent law as supervised by this Court. This abdication of the court's proper role continues to allow district courts to further wander away from this Court's test for the proper scope of patent-eligible subject matter as set forth in *Alice* and *Mayo*.

At present, there is no clear consensus, in the district courts or the Federal Circuit, as to how a court should apply this Court's rubrics to properly conduct a patent eligibility analysis under § 101. The disarray concerning this fundamental question of subject matter eligibility is clearly displayed in *American Axle*, where a split Federal Circuit issued no fewer than five different opinions with vastly divergent views. In that case, the claims were directed to methods for producing a truck axle with improved vibration-reducing characteristics. The panel majority conducted a faulty § 101 analysis by reading into the claims a law of nature (Hooke's law) that was neither recited as a claim element nor otherwise present in the claim. The panel then compounded their error by engrafting a § 112 enablement argument into the § 101 analysis. Nowhere does this Court's precedent indicate that a court should conduct an enablement analysis under § 112 to inform conclusions with regard to subject matter eligibility, and yet that is precisely what the panel majority did, as recognized by the dissenting judge. *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 967 F.3d 1285, 1304 (Fed. Cir. 2020) (Moore, Cir. J., dissenting).

Perhaps unsurprising in view of the inconsistent precedent from the Federal Circuit, here the lower court dismissed the tangible structure recited in the claims on the grounds that it was not of "sufficient detail" (*i.e.*,

enabled) and was therefore routine and conventional. Cert. Pet. App., 38. Having thus effectively deleted all tangible elements from the claims, the lower court concluded that claims were not patent eligible because only an abstract idea remained. *Id.* at 43. This deviation from precedent regarding how the patent eligibility analysis should be performed not surprisingly yielded the wrong result, adding yet another example to the spate of conflicting and inconsistent opinions from the inferior courts, including the Federal Circuit. This untenable situation has imposed a remarkably high cost to patentees, U.S. industry, and the public.

To contextualize the present ambiguity concerning subject matter eligibility, *amici curiae* identify two critically important patents, one related to a commodity trading graphic user interface and the other related to one-click purchasing technology. Although both of these patents were found by courts to possess valid and inventive claims, they would nevertheless be invalidated under the Federal Circuit's current misguided application of this Court's subject matter eligibility framework. The divide within the Federal Circuit is evident by the departure from precedent in *American Axle*, the Federal Circuit's affirmance in this *Interactive Wearables* case, and among the abundance of murky, inconsistent holdings from the Federal Circuit in this area. Compare, for example, the reasoning and outcomes in *McRo, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) with *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322 (Fed. Cir. 2017). Consequently, practitioners and inventors have been left apprehensive and uncertain whether any computer-related patent will survive a § 101 challenge.

The resulting unpredictability puts a significant strain on the incentives for innovation that the Patent Act is intended to promote. This uncertainty is present across technologies of many types, from computer-related technologies to medical diagnostics. Even conventional industrial technologies – long the bedrock of American innovation – have not been immune to misinterpretations of this Court’s precedents. Taken as a whole, it is difficult not to conclude that U.S. patent law has been seriously led astray.

The pending petition for writ of certiorari is directed to these and other issues that fundamentally affect the eligibility of patents under § 101 and illustrates a situation ripe for guidance regarding the proper application of this Court’s jurisprudence.

Lastly, this case provides a better opportunity for this Court to clarify § 101 patent eligibility than in *American Axle*. This case involves an intuitive technology—a content player for audio or video content having tangible components for executing a series of recited operations. In contrast, *American Axle* involves highly technical subject matter that calls for an understanding of more than one law of nature. Accordingly, *amici* submit that this matter is an opportune case for this Court to rein in the lower courts’ inconsistent application of § 101 patent subject matter eligibility jurisprudence.

For at least these reasons, *amici curiae* urge this Court to grant the petition for a writ of certiorari.

ARGUMENT

I. The Federal Circuit is Split on How Judges Interpret and Apply the *Alice/Mayo* Analysis

A. The judges' several divergent opinions in *American Axle* illustrated an irreconcilable divide in the Federal Circuit.

In the *per curiam* denial of rehearing *en banc* in *American Axle*, a severely divided Federal Circuit issued five separate opinions regarding the proper application of § 101 as it applies to laws of nature. The panel majority's opinion compared the circumstances in that case to those in *O'Reilly v. Morse*, 56 U.S. (15 How.) 62, 14 L. Ed. 601 (1853), and held that one of *American Axle's* claims was directed to Hooke's Law and "nothing more." *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 966 F.3d 1347, 1352 (Fed. Cir. 2020) (Dyk, J., concurring in denial of rehearing *en banc*). The six judges dissenting from the *per curiam* denial of rehearing *en banc* contended that their colleagues supporting denial had overstepped by "hold[ing] that when technological advance is claimed too broadly, and the claims draw on scientific principles, the subject matter is barred 'at the threshold' from access to patenting." *Id.* at 1357 (Newman, J., dissenting in denial of rehearing *en banc*).

The five opinions demonstrate a deep divide in the Federal Circuit's understanding of how (or whether) this Court's framework set forth in *Mayo* and *Alice* should be applied to patent claims. Even worse, this divide evinces an inability of the Federal Circuit to address their differences on the proper application of this Court's instructions

regarding the proper scope of what subject matter is eligible, and, perhaps worse still, an unwillingness to sit *en banc* to attempt to resolve their differences. The confusion in the district courts appears to be a natural consequence of the Federal Circuit’s dissonance.

The parlous state of subject matter jurisprudence in the lower courts including the Federal Circuit has not gone unnoticed, several individuals well-regarded in patent law having been sufficiently concerned to raise an alarm. These include former Federal Circuit Chief Judge Paul Michel, who has said that “nary a week passes without another decision that highlights the confusion and uncertainty in patent-eligibility law” (Brief of Paul R. Michel as *Amicus Curiae* Supporting Petitioner, *Univ. Secure Reg. LLC v. Apple Inc.*, No. 21-1056 (2022)) and “recent changes to patent case law have produced unending chaos. Uncertainty, unpredictability, inconsistent results and undue and harmful exclusions of new technologies abound. Consequently, patents are considered unreliable by the very people – business executives and innovation investors like venture capital firms – who make the necessary, but risky, investments” (testimony before the Subcommittee on Intellectual Property, June 4, 2019); former Director of the U.S. Patent and Trademark Office David Kappos: “[i]t’s a disturbing trend for the U.S. to take [biotechnology and software inventions], which are the crown jewel of the innovation economy, and provide less protection for them than other countries” (Ryan Davis, *Kappos Calls for Abolition of Section 101 of Patent Act*, LAW360 (April 12, 2016)); academics (“The generality and vagueness in the *Mayo-Alice* test has produced the seemingly perverse effect of it being both *indeterminate*, as no one is certain how it will be applied in any particular case, and *overly*

restrictive, as it has been applied to invalidate patents covering ‘everything from computer animation to database architecture to digital photograph management and even to safety systems for automobiles,’” K. Madigan, *Turning Gold into Lead: How Patent Eligibility Doctrine is Undermining U.S. Leadership in Innovation*, 24 Geo. Mason L. Rev. 939, 952 (2017)); and industry groups such as the Innovation Alliance (“Intellectual property in the field of artificial intelligence has been heavily impacted by the recent Section 101 developments. Because the application of Alice is so fraught with uncertainty and unpredictability, a cloud of uncertainty hangs over these patents, threatening incentives to innovate in this key technology area,” in their comments submitted during the public comment period for the USPTO’s patent eligibility jurisprudence study). The very breadth of experience and expertise of the individuals making these calls for reconsideration of subject matter eligibility standards supports this Court’s grant of certiorari in this case.

B. The district court’s decision in this case, based in part on a misplaced enablement analysis, shows how far lower court judges have strayed from the *Alice/Mayo* framework.

The *Alice/Mayo* analysis as described by the Supreme Court in *Alice* is a two-part test. First, the Court must “determine whether the claims at issue are directed to a patent-ineligible concept.” *Alice*, 573 U.S. at 218. The Supreme Court has held that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012)).

This inquiry is not concerned merely with “whether the claims involve a patent-ineligible concept”; rather, it “applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

Second, if the challenged claims are found to recite a patent-ineligible concept, the Court must then “examine the elements of the claim” to establish whether they “include ‘additional features’ to ensure that the claims are more than a drafting effort designed to “monopolize” the abstract idea. *Alice*, 573 U.S. at 221 (quoting *Mayo*, 566 U.S. at 77). “An inventive concept that transforms the abstract idea into a patent-eligible invention must be significantly more than the abstract idea itself, and cannot simply be an instruction to implement or apply the abstract idea on a computer.” *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016) (citing *Alice*, 573 U.S. at 222- 23). Claims “must involve more than performance of ‘well understood, routine, conventional activit[ies] previously known to the industry.’” *In re TLI Commc’ns LLC*, 823 F.3d 607, 613 (Fed. Cir. 2016) (quoting *Alice*, 573 U.S. at 225); see also *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347–48 (Fed. Cir. 2014).

Despite these instructions set forth in this Court’s decisions, lower courts are confused by the Federal Circuit’s overlapping and sometimes inconsistent holdings in how the instructions should be implemented in each case. This is the consequence of the Federal Circuit’s

steady drift away from the predictable moorings this Court's decisions provide for how a §101 analysis should be conducted. For example, in the present case, the district court relied heavily on the Federal Circuit's holding in *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759 (Fed. Cir. 2019). Specifically, the court motivated by *ChargePoint* immediately jumped to the specification to "illuminat[e] whether the claims are 'directed to' the identified abstract idea." *Interactive Wearables, LLC v. Polar Electro Oy*, 501 F.Supp.3d 162, 172 (E.D.N.Y. 2020). Relying on *ChargePoint*, the court stated that "[t]he 'directed to' inquiry may ... involve looking to the specification to understand 'the problem facing the inventor' and, ultimately, what the patent describes as the invention." Cert. Pet. App. at 18. However, the *Interactive Wearables* court neglected to note that in the same decision the Federal Circuit also wrote, "But while the specification may help illuminate the true focus of a claim, when analyzing patent eligibility, *reliance on the specification must always yield to the claim language* in identifying that focus. This is because 'the concern that drives' the judicial exceptions to patentability is 'one of preemption.'" *ChargePoint*, 920 F.3d at 766 (citing *Alice*, 573 U.S. at 216, 134 S.Ct. 2347) (*emphasis added*). Though the language of the claims should control over the specification, the district court in *Interactive Wearables* proceeded in exactly the opposite direction. The court dismissed elements of the claim as merely routine and conventional, found that the plaintiff's arguments were merely conclusory, and combed through the specification to determine whether the elements of the claim were enabled to make the claim relate to anything more than an abstract idea.

Although a patent’s specification is often useful in construing patent claims and bound by statute to provide sufficient enablement for an invention, nowhere does Supreme Court precedent direct that a court should perform an enablement-type analysis to inform any conclusion under subject matter eligibility. But this is precisely what the lower court did, and this is the process that the Federal Circuit encouraged under its earlier decisions and then implicitly condoned by summarily affirming the district court’s holding under Rule 36. Cherry-picking language from Federal Circuit cases, the lower court in this case looked to the language of the claims, concluded that the tangible elements of the claims were generic, and then further concluded that because the specification did not describe the tangible elements of the invention in sufficient detail, they should be disregarded as routine and conventional. Consequently, the district court determined that, in the face of routine and conventional elements not further explained by the specification, all that could remain in the claims was an abstract idea, and therefore the claims were not patent eligible. Such a conclusion illustrates a fundamental misunderstanding of the spirit and purpose of the law and is contrary to this Court’s *Alice/Mayo* test for subject matter eligibility.

Looking to the specification to ascertain the level of support for claims is properly left to an enablement determination under §112. The petitioner correctly asserts that “[c]laims ‘that are not enabled raise questions of patentability [under Section 112], not eligibility.’” Brief for Petitioner at 19, *Interactive Wearables*, 501 F.Supp.3d 162 (No. 19-CV-3084) (citing *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1354 (Fed. Cir. 2016) (Newman, J., concurring)), and that “the

Federal Circuit has further indicated that the question of a specification's level of detail should not play a role in the Section 101 inquiry." Brief for Petitioner at 19, *Interactive Wearables*, 501 F.Supp.3d 162 (No. 19-CV-3084) (citing *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1261. (Fed. Cir. 2017) (recognizing enablement plays no role in whether a claim satisfies Section 101)). While it is evident that lower court's holding directly conflicts with at least one of the Federal Circuit's own cases, the Federal Circuit's overall body of precedent has grown into such an inconsistent, confusing collection of holdings that they do not provide district courts with the harmonization of U.S. patent law that Congress intended when it created the Federal Circuit, necessitating this Court's intervention.

II. Extending the Federal Circuit's Misapplication of the *Alice/Mayo* Framework Threatens to Swallow All of Patent Law

A. Fundamental Computer-Related Patents Could be Reinterpreted as Invalid Under the Reasoning in *Interactive Wearables*.

In the future, courts following *Interactive Wearables* could easily invalidate large swaths of computer-related patents, even those with tangible elements in their claims. Applying the district court's misguided process in *Interactive Wearables* to previously eligible claims could lead to widespread reversals of prior determinations regarding subject matter eligibility.

For example, in *Trading Techs. Int'l, Inc. v. CGQ, Inc.* (TTI), the Federal Circuit considered U.S. Patents No. 6,772,132 ("the '132 patent") and No. 6,766,304 ("the '304

patent”) that broadly describe “a trading system in which a graphical user interface ‘display[s] the market depth of a commodity traded in a market, including a dynamic display for a plurality of bids and for a plurality of asks in the market for the commodity and a static display of prices corresponding to the plurality of bids and asks.’” *Trading Techs. Int’l, Inc. v. CGQ, Inc.*, 675 Fed.Appx. 1001, 1003 (Fed. Cir. 2017).

The claimed invention was directed to decreasing the transaction time associated with online trading. “Specifically, the present invention is directed to a graphical user interface for displaying the market depth of a commodity traded in a market, including a dynamic display for a plurality of bids and for a plurality of asks in the market for the commodity and a static display of prices corresponding to the plurality of bids and asks.”¹³² Patent, Col. 3, 11-15. The Federal Circuit stated that “[i]t is not disputed that the TTI System improves the accuracy of trader transactions, utilizing a software-implemented programmatic [method],” but nonetheless held that the claim was patent-eligible because it was “directed to a specific implementation of a solution to a problem in the software arts.” *TTI*, 675 Fed.Appx. at 1006 (citing *Bascom Global Internet Services v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)).

However, if a district court were to apply the *Interactive Wearables* analysis to these claims they would likely be held invalid. The *Interactive Wearables* analysis would direct the court first to determine whether the claim is directed to an abstract idea, and that the specification should be consulted to determine whether the computer components in the claim are common or known in the art.

As a specific example, the term “electronic exchanges” are defined in the specification as consisting of mainframe computers, communication servers, and the exchange participants’ computers. ’132 Patent, Col. 1, 23-34. All of these are well known in the art, and not particularly inventive by themselves. Similarly, a graphical user interface (GUI) is a routine and conventional feature of computers and general computer technology. Accordingly, a court conducting an *Interactive Wearables*-type subject matter eligibility analysis could effectively “strike-through” each of these “routine” claim terms, ignoring important, tangible elements of the invention.

Regarding additional steps in the claim elements, there is nothing that cannot be accomplished by a user with access to multiple screens and an internet connection. These include the following elements: **displaying a first indicator** in a bid display region, **displaying a second indicator** in an ask display region, **displaying the bid and ask display regions** in relation to fixed price levels, **displaying an order entry region** comprising a plurality of locations for receiving commands to send trades and in response to a selection of a particular location of the order entry region by a single action of a user input device, **setting a plurality of parameters for a trade order**. If the court in *Interactive Wearables* could conclude that the claims in that case were comparable to “consulting a TV Guide while watching a program,” there is no reason claims of the ’132 patent reciting these elements could not be compared to trading with multiple computer screens that display various data points insightful to a trader—something traders have done in the prior art and thus could be considered routine and conventional.

Under the *Interactive Wearables* standard, the example claim could be found invalid because that claim is directed to an abstract idea of providing and displaying information in conjunction with electronic trading data “applied to the context” of a GUI. Similarly, the specification could be found not to provide sufficient detail or expressly characterize the related components as inventive. The TTI technology could then be found to merely invoke conventional and generic components arranged in a conventional manner, although the data would be displayed differently. This invention would not overcome the threshold requirements set forth in the decision at issue. On the contrary, of course, just five years ago, the TTI claim was upheld under a § 101 analysis and this Court has not changed or clarified the subject matter eligibility test during that time.

Another illustrative example is Amazon’s 1-Click technology, something utilized on a daily basis by computer users all around the world. US Patent No. 5,960,411 (’411 Patent) for Amazon’s “1-Click” system broadly describes “a method and system in which a consumer can complete a purchase order for an item via an electronic network using only a ‘single action.’” *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1347 (Fed. Cir. 2001).

The claimed invention was described as being directed to reducing “the number of purchaser interactions needed to place and order and reduce[] the amount of sensitive information that is transmitted between a client system and a server system.” ’411 Patent, Col. 3., ll. 34–38. The ’411 Patent was granted on September 28, 1999 and expired in 2017. The ’411 Patent’s validity was upheld on reexamination by the U.S. Patent and Trademark Office.

However, if a court were to apply the *Interactive Wearables* analysis, the patent could be invalidated. The *Interactive Wearables* analysis would direct the district court to determine whether the claim is directed to an abstract idea. In such scenarios, the specification could indicate that the computer components are common or known in the art. For example, “a client system” is defined in the specification as comprising “any combination of hardware or software that can interact with the server system.” ’411 Patent, Col. 6, 33–34. The server system “assigns a unique client identifier to each client system” and “stores purchaser-specific order information.” ’411 Patent, Col. 3, 37–40. A “single action” is described, for example, as “clicking a mouse button.” ’411 Patent, Col. 2, 56. All of these elements, taken alone, are well known in the art, and not particularly inventive.

When assessing the claims for recitation of “something more,” there is nothing that cannot be accomplished by a web page with a display, a network, and a user with a computer mouse. These include the following elements: **displaying information** identifying the item and **displaying an indication** of a single action that is to be performed, **sending to a server system** a request to order the identified item, and **the item is ordered**. Applying the lower court’s reasoning in *Interactive Wearables*, Amazon’s patent claims could be considered to be little more than the abstract idea of a customer going to a café, looking at what’s on the menu, and telling the waiter, “coffee,” and the waiter understanding that the customer ordered coffee and intends to pay for said coffee—but instead doing this on a general purpose computer, with a general purpose server, using a general purpose display, and single-clicking using a general purpose mouse to complete an order.

Under the *Interactive Wearables* standard, the Amazon claim could be found invalid because the claim is directed to the abstract idea of providing and displaying information in conjunction with electronic shopping made easier by a single action. Similarly, the specification could be found to not provide sufficient detail or expressly characterize the related components as inventive. The Amazon technology could be found to merely invoke conventional and generic components arranged in a conventional manner, although the action would be slightly more streamlined. This invention would not overcome the threshold requirements set forth in the decision at issue. Yet the Amazon claim was upheld under litigation and re-examination and the patent was allowed to persist until expiration. Such a fundamental shift, within such a short time-period, illustrates the marked instability and confusion in recent jurisprudence under subject matter eligibility.

B. The new Precedent set by *Interactive Wearables* Threatens all Computer-Related Patents

In one way or another, nearly any invention can be characterized as an abstract idea or as directed towards a law of nature. Indeed, this observation has been articulated by this Court, and recognized by the Federal Circuit as well. For example, in *ChargePoint*, the Federal Circuit writes “[w]e recognize that “[a]t some level, ‘all inventions ... embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.’” *ChargePoint*, 920 F.3d at 765 (citing *Alice*, 537 U.S. at 217, 134 S.Ct. 2347). Thus, at step one, “it is not enough to merely identify a patent-ineligible concept underlying the claim; we must determine whether that patent-ineligible concept is what the claim is ‘directed to.’” *Id.* Despite

these considerations, no claims in a computer-related patent will be safe under the precedent established by the Federal Circuit's summary affirmance of the district court's decision in *Interactive Wearables*. As shown above, even computer-related patents that have been previously held valid can be easily invalidated under the *Interactive Wearables* § 101 /pseudo-§ 112 analysis. Extending the district court's analysis to all computer related inventions would invalidate tens or hundreds of thousands of existing patents and could dramatically change the prosecution of thousands of pending patent applications.

Searching for new computer components and their arrangement as enabled by their specifications to somehow serve as the standard for patent eligibility would also create an impossible standard for what is considered routine and conventional, all but ensuring that no computer-related patent claim will survive the §101/pseudo-§112 analysis. As computer technology advances, even the newest receivers, processors, displays, and remote controls, will soon be considered nothing more than routine and conventional computer components—irrespective of the level of detail in which they are described in the specification. As the world continues to evolve into a digital one, characterized by apps, data profiles, and wearable tech, American innovation and our patent law must be equipped to protect such innovation.

C. Inconsistency in § 101 Analysis Threatens to Have Economic Consequences on the United States Software Industry

Cases in which this Court grants certiorari are always of significant legal consequence. With respect to patent law, this Court's decisions often additionally have

significant commercial consequences, making it even more important that the lower courts properly interpret and implement this Court's rubrics. Take for example how this Court's *Alice/Mayo* framework has been applied to medical diagnostics claims by the district courts and the Federal Circuit. "[S]ince *Mayo*, [medical] diagnostic claims have frequently been found to be patent-ineligible under Section 101." Shridhar Jayanthi, *A Potential Eligibility Safe Harbor for Diagnostic Patents Creates More Confusion in the Alice/Mayo Test*, 34 HARV. J. L. & TECH. DIG. at 1 (2021) (citing *Athena Diagnostics Inc. v. Mayo Collaborative Servs. LLC*, 927 F.3d 1333, 1352 (Fed. Cir. 2019) ("Since *Mayo*, we have held every single diagnostic claim in every case before us ineligible.") (emphasis added)). Furthermore, scholars and industry leaders have demonstrated that patent eligibility, specifically the *Alice/Mayo* framework has real effects that are disadvantaging US-headquartered organizations when compared to their European counterparts. See Johnathon Liddicoat, et al., *The Effects of Myriad and Mayo on Molecular-Test Development in the United States and Europe: Interviews from the Front Line*, 22 VAND. J. ENT. & TECH. L. 785, 833 (2020). Although diagnostic testing may be under the umbrella of laws of nature as opposed to a computer-related invention's abstract ideas, there are parallels between the industries and the overall innovation scheme in the United States. Just as the lower court's implementation of this Court's *Alice/Mayo* jurisprudence has adversely affected the medical diagnostic industry, *American Axle* and *Interactive Wearables* threaten to decimate the consumer electronics and software industries in the United States. As evidenced by these cases, the Federal Circuit stands divided and the consumer electronics and software industries face

a similar fate as has recently befallen innovators in the United States molecular diagnostic testing industry. It is thus of utmost importance that this Court grant certiorari to clarify the law as it pertains to § 101 patent eligibility.

III. This is an Appropriate Case to Provide Clarity and Guidance to Lower Courts

A. In *American Axle*, the Federal Circuit Provided a way to Circumvent the *Alice/Mayo* Framework

The Federal Circuit in *American Axle* “collapsed” § 101 analysis into a single step, imputing a natural law into a claim that previously recited none. *See Am. Axle & Mfg., Inc. v. Neapco Holdings, LLC*, 967 F.3d 1285, 1304 (Fed. Cir. 2020) (Moore, Cir. J., dissenting). The majority in that case also opened the door for a §112 enablement analysis to be blended into eligibility assessments. This hybrid § 101/§ 112 analysis flies in the face of precedent. However, as a result of the Federal Circuit’s Rule 36 affirmation of *Interactive Wearables*, where the district court conducted a similar hybrid analysis, such incorrect § 101 analysis has now become precedent. Even more dangerously, rather than inserting a natural law into claims where there was none, in *Interactive Wearables* the lower court stripped physical elements from a claim and then concluded that “the claims are not focused on a ‘specific asserted improvement in computer capabilities,’ but rather are directed to ‘an “abstract idea” for which computers are invoked merely as a tool.’” Cert. Pet. App. 22. In both cases, the lower courts and the Federal Circuit have strayed quite far from the precedent established by this Court. For at least this reason, certiorari is necessary

to correct the lower courts' errors and steer a clearer course for patent eligibility determinations under § 101.

B. This case represents an even more opportune vehicle than *American Axle* to provide clarity in the proper application of § 101

As correctly pointed out by the Petitioner, the “patents-in-suit here involve relatively straightforward and understandable technology—a content player for audio or video content with a series of concretely-recited components for implementing various recited features. Unlike in *American Axle*, there is no question surrounding whether the claims are directed to a complex mathematical formula.” Cert. Pet. 24. This case presents an opportunity for this Court to clarify § 101 analysis without delving into the technical features and possible inherent laws of nature present in the claim elements in *American Axle*.

Additionally, this case involves consumer electronics—relatively affordable and widely available products—as opposed to the more specialized mechanisms claimed in *American Axle*. By clarifying §101 as it pertains to consumer electronics and its intersection with abstract ideas, this Court will provide guidance for industry leaders regarding common-place devices in one of the most rapidly-growing industries in the world.

Finally, clarifying § 101 as it relates to abstract ideas is worthwhile, as more often than not, claims are rejected on the grounds of being directed to abstract ideas rather than laws of nature.

CONCLUSION

The *amici curiae* urge this Court to grant Interactive Wearable's petition for a writ of certiorari.

Respectfully Submitted,

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