15-1201
No. _____

In The
Supreme Court of the United States

VEHICLE INTELLIGENCE AND SAFETY LLC,

Petitioner,

v.

MERCEDES-BENZ USA, LLC, DAIMLER AG,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Vehicle Intelligence and Safety LLC respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit, that while quoting the test in *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014) in deciding patent eligibility under 35 U.S.C. § 101, has however in actual practice, multiple-mutated this test into a universal pesticide to kill and invalidate virtually all patents. The first mutation makes every invention's inevitable ***use or application*** of an abstract idea (as a tool or stepping stone for a greater goal) in ***a claim element*** automatic, conclusive proof of ***preemption*** of the abstract idea by the ***entire patent claim.*** The second mutation demands teaching all the invention implementation details, which implicitly requires that every patent and every patent claim go back and re-teach in a vacuum the already known prior art all over again in order to have any qualifying inventive concepts for *Alice* test patent eligibility.

1. Does the Supreme Court's *Alice* test for 35 U.S.C. § 101 patent eligibility, or 35 U.S.C. §101, actually state that use or application of an abstract idea is automatic, conclusive proof of preemption of the abstract idea?

2. Does the Supreme Court's *Alice* test for 35 U.S.C. § 101 patent eligibility actually require any patent which improves on already known prior art

technology, to re-teach in a vacuum the already known prior art technology all over again in the specification and in each claim in order to have any inventive concepts that qualify for court recognition to satisfy the second step of the Supreme Court's *Alice* test?

3. Doesn't a patent satisfy step two of the Supreme Court's *Alice* test for 35 U.S.C. § 101 patent eligibility by having independent patent claims that include multiple explicitly-stated inventive concepts?

PARTIES TO THE PROCEEDING

The parties to this proceeding are Petitioner Vehicle Intelligence and Safety LLC ("VIS") and Respondents Mercedes-Benz USA LLC and Daimler AG ("Mercedes-Benz"). There are no parties to the proceedings other than those listed in the caption.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner, Vehicle Intelligence and Safety LLC, has no parent corporations and no publicly held company owns 10% or more of its stock.

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PETITION FOR A WRIT OF CERTIORARI

Vehicle Intelligence and Safety LLC respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Federal Circuit (Pet. App. 1a-14a) is unpublished.

The opinion of the United States district court (Pet. App. 15a-37a) is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Federal Circuit decided this case was December 28, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

35 U.S.C. § 101 provides that:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to

the conditions and requirements of this title.

STATEMENT OF THE CASE

Final Opinion and Order (A1-A19) of the U. S. District Court for the Northern District of Illinois Eastern Division in CV 1:13-04417, pursuant to 28 U.S.C. § 1295(a)(1), regarding U.S. Patent No. 7,394,392 ('392 patent), dismissed Plaintiff's cause of action with prejudice and declared U.S. Patent No. 7,394,392 invalid as not eligible to be patented under 35 U.S.C. § 101.

Previous to this, Mercedes-Benz USA, LLC and Daimler AG ("Defendants") filed a first Rule 12(c) Motion (Doc. 45) to dismiss on the pleadings the '392 patent on Nov. 25, 2013, alleging the claims were directed to an abstract idea of "testing equipment operators for impairment," and that the patent and claims are ineligible for patenting under § 101. The district court issued its first Opinion and Order (Doc. 62) on March 27, 2014, dismissing the Defendant's first Rule 12(c) Motion.

Defendants filed a second Rule 12(c) Motion and Memo (Docs. 94 and 95) to dismiss on the pleadings the '392 patent on Oct. 16, 2014, alleging the claims were directed to an abstract idea of "testing equipment operators for impairment," and that the patent claims are ineligible for patenting under § 101.

Patent owner Vehicle Intelligence and Safety LLC ("VIS") filed a Response (Doc. 96) in opposition

on Nov. 6, 2014, asserting that the Defendants' second Rule 12(c) Motion had not met their statutory burden of proof, the asserted claims of the '392 patent are not directed to a fundamental truth or principle in the abstract or an abstract idea, there is no risk of preemption, the claims have inventive concepts, the invention is not "a series of steps that are implemented in a non-specific way using generic computer components," the invention cannot be totally carried out in the human mind, the '392 patent does not provide a monopoly of the entire field of "impairment detection," and no claim is subject to § 101 invalidity.

During the pendency of the second Rule 12(c) Motion, VIS filed a Notice of Supplemental Authority (Doc. 98) on Nov. 6, 2014, informing the district court of a case decided on Dec. 5, 2014, by the Court of Appeals for the Federal Circuit, in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). Despite the relevancy of *DDR Holdings* and other objections raised by VIS to the second Rule 12(c) Motion of the Defendants, the district court issued its final Opinion and Order (A1-A19 includes Doc. 102, the "Opinion and Order") on Jan. 29, 2015, dismissing Plaintiff's cause of action with prejudice and declaring U.S. Patent No. 7,394,392 invalid as not eligible to be patented under 35 U.S.C. § 101. VIS timely filed a Notice of Appeal (Doc. 104) on Feb. 27, 2015.

The Appeal Brief of VIS was filed on June 3, 2015, and docketed by the Court of Appeals for the Federal Circuit as 15-1411. The Response Brief of Mercedes-Benz and Daimler AG was filed on July

16, 2015. The Reply Brief of VIS was filed on July 29, 2015 (*worth reading - it's the best case summary by far*). Despite the objections raised by VIS, the Court of Appeals for the Federal Circuit issued its final Opinion Filed and Judgment Entered (The Appendix includes the "Opinion Filed and Judgment Entered") on Dec. 28, 2015, dismissing Plaintiff's cause of action with prejudice and affirming the district court's decision declaring U.S. Patent No. 7,394,392 invalid as not eligible to be patented under 35 U.S.C. § 101.

REASONS FOR GRANTING THE PETITION

I. THE FEDERAL CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S PRECEDENT

The Federal Circuit's decision in this case conflicts with the two-step test restated by the Supreme Court's ruling in *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014) in deciding patent eligibility under 35 U.S.C. § 101. Affirming *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294 (2012), the Supreme Court set forth an analytical framework under § 101 to distinguish patents that claim patent-ineligible laws of nature, natural phenomena, and abstract ideas—or add too little to such underlying ineligible subject matter—from those that claim patent-eligible applications of those concepts. First, given the nature of the invention in this case, this Court determines whether the claims at issue are directed to a patent-ineligible abstract idea. *Alice,* 134 S. Ct. at 2355. If so, this Court then considers the elements of each

claim—both individually and as an ordered combination—to determine whether the additional elements transform the nature of the claim into a patent-eligible application of that abstract idea. *Id.* This second step is the search for an "inventive concept," or some element or combination of elements sufficient to ensure that the claim in practice amounts to "significantly more" than a patent on an ineligible concept. *Id.*

Before conducting the § 101 analysis, the Supreme Court noted that in order to exclude patents, there is a fine line to "pre-empt the use of an approach" that leads to a "monopoly over an abstract idea," while taking into account that "all inventions ... embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Alice*, 134 S. Ct. at 2354 (citing *Mayo*, 132 S. Ct., at 1293). "Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept" *Id.* (citing *Diamond v. Diehr*, 450 U.S. 175, 187 (1981)). Thus, the U.S. Supreme Court itself ***realized that all inventions fundamentally use or apply abstract concepts or ideas***. *So the* ***use or application*** *of a concept or an idea merely as a tool or stepping stone in a patent claim element* ***is not automatic, conclusive proof of the preemption of the concept or idea*** *by an entire patent claim.*

But the United States Court of Appeals for the Federal Circuit, while quoting the Supreme Court's *Alice* test for 35 U.S.C. § 101 patent eligibility, has however in actual practice, multiple-mutated this test into a universal pesticide to kill and invalidate

virtually all patents. The first mutation makes every invention's inevitable ***use or application*** of an abstract idea (as a tool or stepping stone for a greater goal) in ***a claim element*** automatic, conclusive proof of ***preemption*** of the abstract idea by the ***entire patent claim.*** The second mutation demands teaching all the invention implementation details, which implicitly requires that every patent and every patent claim go back and re-teach in a vacuum the already known prior art all over again in order to have any qualifying inventive concepts for *Alice* test patent eligibility.

The '392 patent invention uses many inventive concepts as tools. But the '392 patent does not attempt to claim any "fundamental truth" or "abstract idea" or "principle, in the abstract." The '392 patent does not invent, monopolize, or preempt all "equipment operator impairment testing." *It only claims an improvement on existing technology,* a more accurate and reliable technology for equipment operator impairment testing. If you carefully re-read the '392 patent, or re-read at least the first five pages of the text (CAFC App. A37-A41) and also read the figures (especially Figures 3-7, Figure 8 and Figures 11, 12, and 13) and their corresponding text, you will realize this invention improves the *accuracy and reliability* of operator impairment testing to solve many severe problems of the prior art technology for equipment operator impairment testing by using several inventive concepts.

The '392 patent claims improve on the prior art with ***at least four explicitly-stated inventive concepts*** (e.g., "screening ... by one or more expert

systems," (henceforth referred to as Inventive Concept 1), "selectively testing ...equipment operator" (Inventive Concept 2) "a time-sharing allocation of at least one processor executing at least one expert system" (Inventive Concept 3), and a screening module that "includes one or more expert system modules that utilize at least a portion of one or more equipment modules selected from the group of equipment modules consisting of: an operations module, an audio module, a navigation module, an anti-theft module, and a climate control module" (Inventive Concept 4)).

The Court of Appeals for the Federal Circuit simply parroted and rationalized the analysis of the district court and affirmed the district court's invalidation. And as part of their multiple-mutated 35 U.S.C. § 101 analysis, the Court of Appeals for the Federal Circuit (e.g., see pages 8, 9, and 10 of the Court of Appeals opinion) now demands teaching all the invention implementation details, which implicitly requires that a patent and every patent claim must teach the invention in a vacuum (i.e., go back and re-teach the already known prior art all over again in the patent specification and the patent claims). But every patent teaches its invention ***in view of all the already known prior art, as well as what is written in the patent itself. No patent teaches in a vacuum.*** This implicit new patent eligibility test requirement to go back and re-teach the already known prior art all over again in the patent specification *and the patent claims* would invalidate virtually all patents.

II. UNLESS REVERSED, THE FEDERAL CIRCUIT'S DECISION WILL HAVE FAR-REACHING DEVASTATING EFFECTS

The precedential ruling by the Court of Appeals for the Federal Circuit in this case will have far-reaching devastating effects. The lower courts' multiple-mutation of a 35 U.S.C. § 101 patent eligibility analysis can now invalidate almost any patent by asserting that the *use or application of any concept or idea by any claim element* is the same as preemption of the concept or idea *by the entire claim*, and then just brush-off any number of true inventive concepts in the patent claims as being irrelevant and meritless to satisfying step two of the Supreme Court's *Alice* test (*unless the patent and patent claims go back and re-teach in a vacuum the already known prior art all over again*). Almost every patent will then still be subject to invalidation for lack of patent eligibility, even if fully compliant with the Supreme Court's *Alice* test for 35 U.S.C. § 101 patent eligibility. This reality will take a few years to filter down to the public, but most inventors will be intelligent enough to eventually figure this out.

Once inventors with any common sense realize that federal courts will now invalidate even valid patents using this new multiple-mutation of the Supreme Court's *Alice* test for 35 U.S.C. § 101 patent eligibility, they will decide to stop wasting their time and money filing patent applications. This will devastate the U.S. patent system. This will also devastate technology innovation in the U.S., followed by major economic harm. The wiser and the

more intelligent of the enemies of the U.S. will be overjoyed to see this self-destructive chain reaction.

CONCLUSION

For the foregoing reasons, Vehicle Intelligence and Safety LLC, respectfully requests that the Court grant this Petition for Writ of Certiorari.

DATED: March 24, 2016

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