

No. 17-695

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IN THE  
**Supreme Court of the United States**

RPOST COMMUNICATIONS LIMITED, RMAIL  
LIMITED, RPOST INTERNATIONAL LIMITED  
AND RPOST HOLDINGS INCORPORATED,

*Petitioners,*

v.

GODADDY.COM, LLC,

*Respondent.*

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

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**BRIEF OF NETWORK-1 TECHNOLOGIES, INC.,  
MIRROR WORLDS TECHNOLOGIES, LLC,  
BROADBAND ITV, INC., ISLAND INTELLECTUAL  
PROPERTY, LLC, DOUBLE ROCK CORPORATION,  
AND ACCESS CONTROL ADVANTAGE, INC. AS  
*AMICI CURIAE* IN SUPPORT OF PETITIONER**

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## INTEREST OF *AMICI CURIAE*

Amici Curiae Network-1 Technologies, Inc. (“Network-1”), Mirror Worlds Technologies, LLC (“MW”), Broadband iTV, Inc. (“BBiTV”), Island Intellectual Property, LLC (“IslandIP”), Double Rock Corporation (“Double Rock”), and Access Control Advantage, Inc. (“ACA”) (collectively “Amici Curiae”) respectfully submit this *amici curiae* brief in support of the Petition for a Writ of Certiorari by Petitioners.<sup>1</sup>

Network-1 and MW collectively own thirty-six patents covering various telecommunications and data networking technologies as well as technologies relating to document stream operating systems and the identification of media content. These patents include inventions by world-class professors from such prestigious higher education institutions as Yale University, University College London, and University of Copenhagen. Network-1 and MW work with such inventors to develop, commercialize and license the results of their research and thus maintain a substantial interest in protecting it.

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<sup>1</sup> Pursuant to Sup. Ct. R. 37.2, all counsel of record received timely notice of Amici Curiae’s intent to file this *amici curiae* brief. Petitioner consented to the filing of this *amici curiae* brief on November 14, 2017 and Respondent consented to the filing of this *amici curiae* brief on November 16, 2017. Pursuant to Sup. Ct. R. 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae made a monetary contribution to its preparation or submission.

BBiTV is a former practicing entity and patent holder in the field of delivering video-on-demand content via television communication services. It continues to enhance its technology by investing in ventures within its field that commercially implement its inventions. BBiTV maintains a substantial interest and investment in the fruits of its developments in the form of its patents.

Double Rock, IslandIP, and ACA are former practicing entities and patent holders that have built, developed, and commercialized computer-implemented technology in the field of financial services and have patented the results of their research and development. While the portions of their businesses that commercialized the results of their patented technologies have since been sold and/or licensed, Double Rock, IslandIP, and ACA maintain a substantial interest and investment in the fruits of their research and developments in the form of their respective patent portfolios.

The extra-statutory use of challenges to patent-eligibility under 35 U.S.C. § 101 is causing harm to patent owners, inventors, and the marketplace. Thus, Amici Curiae each believe it is important for this Court to clarify the availability under 35 U.S.C. § 282 (b)(2) and (3) to raise patent-eligibility challenges under 35 U.S.C. § 101 in district courts.

## SUMMARY OF ARGUMENT

Section 101 of the Patent Act was codified as part of the 1952 Patent Act. At the same time, Congress set forth in Section 282(b) a list of available defenses that may be asserted in a patent infringement action brought in court. While Congress has tinkered with Section 282 a number of time since its enactment in 1952, including identifying other invalidity defenses, such as failure to comply with some portions of Section 112 (*see* 35 U.S.C. § 282(b)(3)), Congress has never added “Inventions Patentable” (35 U.S.C. § 101) as an available enumerated defense. Amicus Curiae respectfully submit that the Petition for Writ of Certiorari should be granted in this case to address this important issue.

I. Sections 282(b)(2) and (3), as amended by the American Invents Act (“AIA”), do not provide a court with statutory authority to address patent-eligibility challenges under Section 101 to previously issued patents.

A. Under the statutory framework, as amended by the AIA, the type and scope of defenses that can be raised in district courts in patent-infringement actions was limited to two categories of invalidity defenses:

(i) “Invalidity of the patent or any claim in suit on any ground specified in part II as a condition for patentability” (35 U.S.C. §

282(b)(2)), *i.e.*, challenges based on prior art under 35 U.S.C. §§ 102 and 103; and

(ii) “Invalidity of the patent or any claim in suit for failure to comply with” certain but not all “requirements of section 112” and “any requirement of section 251” (35 U.S.C. § 282(b)(3)).

Authority to bring challenges under Section 101, which like Section 112 is under part II of the Patent Act, but not “a condition for patentability,” was not included, and thus is beyond the statutory authority for district courts to consider in patent-infringement actions.

B. The Court of Appeals analysis in *Versata Development Group, Inc. v. SAP America, Inc.*, 793 F.3d 1306 (Fed. Cir. 2015), is flawed, and does not provide the extra-statutory authority necessary to give district courts the ability to invalidate issued patents for failing to meet patent-eligibility requirements under Section 101.

(i) This Court’s prior decisions have not addressed this issue or provided the missing statutory authority.

(ii) Congress intentionally made the policy choice to limit the kinds of challenges that can be made to issued patents, even if other requirements, such as an obligation to disclose best mode of an invention, are imposed

on patent applicants in original patent office proceedings.

II. This Court should grant the Petition to clarify whether patent-eligibility defenses are available in district court proceedings in patent infringement actions.

A. This case represents an ideal vehicle for the Court to reach these determinations, since it clearly and unequivocally raises the issue.

B. If the Court does not take this case up now, the extra-statutory invalidation of issued patents at the lower courts is likely to continue, causing substantial harm to patent owners, innovation, and the economy.

C. As was the case in *Oil States*, which is currently being considered by this Court, since the panel decision in *Versata*, all dialog in the lower courts has been silenced.

D. The parties are more than capable, with the assistance of the substantial *amici curiae* resources likely to be obtained, to present the issues for this Court's consideration.

This Court's intervention is necessary to address the extra-statutory challenges to innumerable issued patents.

## ARGUMENT

### I. THE COURTS LACK THE STATUTORY AUTHORITY TO FIND THE CHALLENGED CLAIMS NOT PATENT-ELIGIBLE UNDER SECTION 101 IN THIS PROCEEDING

#### A. The Statutory Framework Under the Patent Act Listing Defenses in a Court Proceeding to a Patent Infringement Action of Issued Patents Does Not Include Challenges to Patent-Eligibility Under Section 101

In Section 282(b), Congress specified the “[d]efenses in any action involving the validity or infringement of a patent” as including four categories of specifically enumerated defenses. The relevant paragraphs of Section 282(b) read as follows:<sup>2</sup>

(2) Invalidity of the patent or any claim in suit on any ground specified in part II *as a condition for patentability*.

(3) Invalidity of the patent or any claim in suit for failure to comply with—

(A) any requirement of section 112, *except that the failure to disclose the best mode shall not be a basis on which any claim of a patent*

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<sup>2</sup> Unless otherwise indicated, all emphasis is added.

*may be canceled or held invalid or otherwise unenforceable; or*

(B) any requirement of section 251.

The only “conditions of patentability” specified in part II of the Patent Act are:

- Section 102, entitled “*Conditions for patentability*; novelty” and
- Section 103, entitled “*Conditions for patentability*; non-obvious subject matter.”

By contrast, Section 101 of the Patent Act, entitled “Inventions patentable,” and Section 112, entitled “Specification,” are also included in “part II” of the Patent Act but are not, however, “conditions of patentability.”

The fact that the “conditions of patentability” do not include all the sections of the patent act set forth in Part II (*i.e.*, 35 U.S.C. §§ 100–212) is reinforced by the separate delineation in Section 282(b)(3)(A) and (B) of some portions of Section 112 and “any requirement of section 251.” A contrary reading of the statute would render the “conditions of patentability” language in Section 282(b)(1) meaningless. *Cf. Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010) (applying canon against interpreting provision in a manner that would render another provision superfluous, even when Congress enacted the provisions at different times).

While the titles of these sections make it easy to see the distinction between a “condition” and “requirement,” the language of each provision draws these distinctions as well.

For example, Section 102, begins “A person shall be entitled to a patent *unless . . .*” certain conditions are met. Similarly, Section 103 provides when “[a] patent for a claimed invention *may not be obtained . . .*” Each of these provisions, as the titles suggest, specifies “conditions for patentability.”

By contrast, Section 101 positively recites when someone “may obtain a patent . . . *subject to the conditions and requirements* of this title.” Likewise, Section 112 lists a series of “requirements” for a patent “specification” with positive language setting out what the specification “*shall contain*,” “*shall conclude with*,” or “*may be expressed as*.”

Thus, the plain terms of the statute do not extend Sections 282(b)(2) and (3) to include challenges to patent-eligibility under Section 101. Because the plain terms of the statute are unambiguous, no further statutory analysis is necessary. *See, e.g., Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835 (1990) (“The starting point for interpretation of a statute ‘is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.’”).

**B. The Federal Circuit’s Conclusion in *Versata* That Section 282(b)(2) Includes Challenges to Patent-Eligibility Under Section 101 Is Wrong**

In *Versata Development Group, Inc. v. SAP America, Inc.*, 793 F.3d 1306 (Fed. Cir. 2015), a three-judge panel of the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) cursorily addressed the same issue being raised in this appeal, in the context of its applicability to a Covered Business Method proceeding under the AIA.

Significantly, although the panel recognized that the Patentee (*Versata*) “is correct that a strict adherence to the section titles can support an argument that § 101 is not listed as a ‘condition of patentability,’ but rather has the heading of ‘inventions patentable,’ it nonetheless relied upon extra-statutory judicial decisions that purportedly “have established that §101 challenges constitute validity and patentability challenges.” 793 F.3d at 1330 (citing two pre-AIA Federal Circuit decisions with no Section 282 analysis). With all due respect, this Court’s guidance on this issue is sorely needed.

In order to disregard the unambiguous statutory framework, the panel relied upon an offhand reference in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), concerned with the scope of Section 103 (not Sections 101 or 282), and the fact that many lawsuits have been brought raising patent-eligibility as an invalidity defense. *Id.* Neither of these

arguments justifies departing from the clear mandate of the statute.

First, while this Court in *Graham* did state that the 1952 Patent Act “sets out the conditions of patentability in three sections,” and that Section 101 was one of them, this statement was made in the context of the “pivotal” new Section 103 relating to obviousness. 383 U.S. at 12–13. *Graham* stated “that patentability is dependent upon three explicit conditions: novelty and utility as articulated and defined in § 101 and § 102, and nonobviousness, the new statutory formulation, as set out in § 103.” *Id.* at 12. To the extent that *Graham* does identify any “conditions for patentability” from Section 101 (which Amicus Curiae respectfully submit it does not), it would at most be Section 101’s “utility” requirement, and not patent-eligibility. Moreover, *Graham* did not make any reference to the language of Section 282 when making this statement, much less give any substantive analysis of whether Section 101 is included under the scope of Section 282(b)(2).

The fact that Section 282(b)(2) was not intended to include challenges to patent-eligibility under Section 101 in the 1952 Act version is consistent with its legislative history and contemporaneous understanding. As the House and Senate Reports associated with the 1952 Act explain, “[t]he defense of a suit for infringement are stated in general terms, changing the language in the present statute, but not materially changing the substance.” H.R. Rep. No. 82-

1923, at 10 (1952); S. Rep. No. 82-1979 at 8–9 (1952), reprinted in 1952 U.S.C.C.A.N. 2394, 2422 (same). The “present statute” was R.S. 4920, which included defenses corresponding to the failure to correctly describe the claimed invention (corresponding to the 1952 version of Section 112), and prior art defenses including prior invention (corresponding to the 1952 version of Section 102(g)), prior patenting or publication more than two years prior to application (corresponding to the 1952 version of Section 102(b)), derivation (corresponding to the 1952 version of Section 102(f)), and prior public use or sale (corresponding to the 1952 version of Section 102(b)). Lack of patent-eligible subject matter (or even lack of utility) was not one of the defenses listed pre-1952.

While Congress drafted Section 282 in broad and general terms as a whole, it nonetheless categorized the defenses under discrete paragraphs:

- (1) “Noninfringement, absence of liability for infringement or unenforceability”;
- (2) Invalidity based on “any ground specified . . . as a *condition for patentability*”;
- (3) Invalidity for failure to comply with Section 112 (or Section 251); and
- (4) “Any other fact or act made a defense by this title.”

Unlike Section 282(b)(1), which was written broadly to include the common law defenses encompassed by “[n]oninfringement, absence of

liability for infringement or unenforceability,” Section 282(2) was written with specificity, referring back to only specific parts of the statute. These specific provisions of the statute were altered under the 1952 Patent Act (hence, *Graham*’s discussion of the obviousness provision codified under Section 103, and derived from common law). Sections 101 and 102 were derived from R.S. 4886, which Congress “split into two sections, [Section 101] relating to the subject matter for which patents may be obtained, and [Section 102] relating to the ***conditions under which a patent may be obtained***” Proposed Revision and Amendment of the Patent Laws, Preliminary Draft with Notes, Comm. on the Judiciary, House of Representatives 11 (Comm. Print Jan. 10, 1950); *see also Diamond v. Diehr*, 450 U.S. 175, 191 (1981) (citing similar language from Revision Notes to Section 101).

It is worth noting that when P.J. Federico, the author of the 1952 Act, published his commentary discussing Section 282, he also did not include Section 101 as one of those conditions of patentability to be considered under Section 282(2). Instead, Section 282(2) was the portion of the new provision that was most closely meant to correlate with the prior statute, R.S. 4920. As Mr. Federico explained, Sections 282 (b)(2) and (3) patent-eligibility challenges were not included:

The second item specifies “Invalidity of the patent or any claim in suit on any ground specified in Part II of this title as

a condition for patentability”; *this would include most of the usual defenses such as lack of novelty, prior publication, prior public use, lack of invention.* The third item specifies “Invalidity of the patent or any claim in suit for failure to comply with any requirement of section 112 or 251 of this title”; the first section mentioned would include the defense of insufficient disclosure, and the second sentence mentioned would include reissue defenses. All the defenses usually listed in textbooks on patent law may be placed in one or another of the enumerated categories, *except a few which are no longer applicable in view of changes in the new statute.*

P.J. Federico, *Commentary on the New Patent Act*, 35 U.S.C.A. 1, 55 (West 1954).<sup>3</sup> Thus, Mr. Federico, the drafter of the original Section 282, identified invalidity defenses under Sections 102 and 103 (as then enacted), and did not include challenges to patent-eligibility.

Thus, neither *Graham*, nor the 1952 Act, supports the Federal Circuit’s strained position that

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<sup>3</sup> In this same commentary, Mr. Federico explained that Section 282(b)(1) broadly includes “the defenses such as that the patented invention has not been made, used or sold by the defendant; license; and equitable defenses such as laches, estoppel and unclean hands.” *Id.*

patent-eligibility under Section 101 is a “condition for patentability” for purposes of Section 282(b)(2).

Similarly, the fact that Section 101 has become a “major industry”—as so characterized in *Versata*, 793 F.3d at 1330—does not justify allowing these improper attacks to continue. Just because recent activity in the courts and at the Patent Trial and Appeal Board (“PTAB”) has created this “major industry” by misinterpreting the clear language of this recent statute does not mean that this Court should not correct that misinterpretation. *Compare Teva Pharmas. USA, Inc., v. Sandoz, Inc.*, 135 S. Ct. 831 (2015) (clarifying the standard of review for claim construction by overturning Federal Circuit standard established in *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448 (Fed. Cir. 1998)), with *Lighting Ballast Control LLC v. Philips Elecs. N. Am. Corp.*, 744 F.3d 1272, 1286 (Fed. Cir. 2014) (“The proponents of overruling *Cybor* have not met the demanding standards of the doctrine of *stare decisis*. They have not shown that *Cybor* is inconsistent with any law or precedent . . . .”), *pet. for cert. granted, vacated, and remanded in light of Teva*, No. 13-1536 (S. Ct. Jan. 26, 2015).

Indeed, in the last few terms, this Court has rejected long-standing practices notwithstanding the length of their application. For example, in *Matal v. Tam*, 137 S. Ct. 1744 (2017), this Court overturned the longstanding practice of the U.S. Patent and Trademark Office’s enforcement of a restriction on

registering disparaging marks under an unconstitutional provision of the Lanham Act (*see Matal*, 137 S. Ct. at 1764–65). Likewise, in *SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC*, 137 S. Ct. 954 (2017), this Court rejected as beyond the scope of Section 282’s list of available defenses a defense of laches to claims for patent infringement damages, despite a long history of the lower courts repeatedly and consistently applying such defense since the 1952 Act was passed, and certainly since the Federal Circuit was formed in 1982 and its *en banc* decision in *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020 (Fed. Cir. 1992) (*en banc*) was decided in 1992.

Significantly, the plain words of the AIA amendments to Section 282 make it crystal clear that Congress did not seek to make every requirement under the Patent Act into a defense in litigation. For example, although the AIA kept Section 112(a) as continuing to require that a patent applicant include the “best mode” for practicing an invention in an application (and thus the PTO in original prosecution may reject a disclosure that fails to meet this statutory requirement), Section 282(b)(3) expressly excludes this prior invalidity defense from the “invalidity” defenses otherwise available under Section 282(b).

While there is some legislative history from the AIA that indicates that Congress expected CBMs would allow for the PTO to address questionable business method patents, Congress did not draft the

CBM provision of the AIA, nor amend Section 282(b)(2), to include an invalidity defense based on Section 101.

Interpreting at least the post-AIA version of Section 282(b)(2) as not including challenges to patent-eligibility under Section 101 would therefore not be inconsistent with how Congress treated other “requirements” of patentability not otherwise enumerated.

## **II. THE PETITION SHOULD BE GRANTED**

Amici Curiae support Petitioner’s request for clarification regarding whether patent ineligibility under Section 101 is a cognizable defense in patent litigation and respectfully request that the Court grant Petitioner’s petition for a writ of certiorari to hear the question presented.

### **A. This Is the Proper Case to Clarify the Law of Patent-Eligibility**

This is the best opportunity now available for this Court to address the issues raised in the Petition.

While, in many circumstances, the fact that the court below merely granted a summary decision of “affirmed” might caution against granting certiorari, here it indicates the opposite. The summary dismissal of the fully briefed and presented issues being raised in this Petition with a simple “affirmed,” reflects the

fact that the lower courts are done discussing this issue.

Thus, much like the situation in *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 639 Fed. Appx. 639 (Fed. Cir. 2016), *cert. granted*, 137 S. Ct. 2239 (2017), the failure of the Federal Circuit to continue to offer opinions and develop the law on this point makes this Petition timely for this Court's consideration.

Since this case turns on whether or not the lower courts had authority to find Petitioner's claims not patent-eligible under Section 101, and the issue was fully and extensively briefed below, this is an appropriate case for the Court to resolve this issue.

#### **B. If the Court Does Not Take the Case, Harm Will Continue**

Perhaps it is ironic that one of the justifications adopted by the Federal Circuit for ignoring the statute is a reason why this Court should act now and grant this Petition. *Versata* is correct that patent-eligibility challenges under Section 101 have become a "major industry."

Since this Court's decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), district courts have been invalidating issued U.S. patents for lack of patent-eligible subject matter under Section 101 in record numbers. By our count, district courts have granted over 140 motions to dismiss or

judgments on the pleadings and over 60 summary judgment motions on the grounds that asserted claims are not eligible under Section 101.

Similarly, while *Versata* was the first CBM in which the PTAB issued a final written decision to cancel claims as not meeting patent-eligibility requirements under Section 101, it does not stand alone. Since the AIA was implemented in September 2012, the PTAB has had over 529 CBM petitions filed, of which over 430 raised challenges to patent-eligibility under Section 101, and of which over 110 issued a final written decision declaring one or more claims not patent-eligible.

All of these cases are causing a backlog in the Federal Circuit, and are starting to work their way up to this Court.

If the Court does not act now, these extra-statutorily authorized disputes will continue to explode and deluge not only the district courts and PTAB deciding them in the first instance, but also the Federal Circuit and eventually this Court.

In the meantime, the post-*Alice* environment for computer-implemented inventions is harmful to the U.S. economy and the patent system as a whole. Judge Moore warned in her dissent in *Alice* at the Federal Circuit that the recent jurisprudence was in danger of “decimat[ing] the electronics and software industries” as well as other industries that are built on computer-implemented patent claims. *CLS Bank Int’l*

*v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1313 (Fed. Cir. 2013) (Moore, J., dissenting). Her prophecy is coming true, with hundreds of patents and thousands of claims invalidated since then using *Alice*.

The importance of computer-implemented inventions to the U.S. economy extends far beyond the importance of the American computer industry alone. Computer-implemented inventions are critical to the productivity of all sectors of the U.S. economy. Computers power our modern service economy as surely as steam and then internal combustion engines powered the manufacturing sector that drove our economic prosperity in the nineteenth and twentieth centuries. Moreover, computers are now the platforms on which many inventions are built. Thus, computer-implemented inventions must remain patent-eligible as surely as their counterparts in manufacturing enjoyed such protection.

The situation has grown so dire that bar associations and thought leaders have been calling upon Congress to overturn this Court’s precedent. Since the start of this year, the Intellectual Property Owners Association (“IPO”), American Intellectual Property Law Association (“AIPLA”), and American Bar Association Intellectual Property Section (“ABA IP Section”) have released proposals for amendments to Section 101 to void the *Alice* precedent and clarify the definition of an “abstract idea” as it relates to patent-eligibility. *See IPO, Proposed Amendments to Patent Eligible Subject Matter Under 35 U.S.C. § 101* (Feb. 7, 2017), <http://www.ipo.org/wp-content/uploads/2017/02/>

20170207\_IPO-101-TF-Proposed-Amendments-and-Report.pdf; AIPLA, *AIPLA Legislative Proposal and Report on Patent Eligible Subject Matter* (May 12, 2017), <https://www.aipla.org/resources2/reports/2017AIPLADirect/Documents/AIPLA%20Report%20on%20101%20Reform-5-19-17-Errata.pdf>; Letter from the ABA to the Honorable Michelle K. Lee re: Supplemental Comments Related to Patent Subject Matter Eligibility (Mar. 28, 2017), [https://www.americanbar.org/content/dam/aba/administrative/intellectual\\_property\\_law/advocacy/advocacy-20170117-comments.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/intellectual_property_law/advocacy/advocacy-20170117-comments.authcheckdam.pdf).

Indeed, the respondent in *Bilski v. Kappos*, has gone so far as to propose removing Section 101 from the statute. *See, e.g.*, Ryan Davis, *Kappos Calls For Abolition of Section 101 of Patent Act*, Law360 (Apr. 12, 2016).

### **C. Waiting Will Not Result in Further Discourse in Courts Below**

Since *Versata*, while the issue has continued to be raised by parties, neither the PTAB nor the courts have offered any further discourse other than to, at most, rely upon *Versata* as purportedly deciding the issue. The fact that the panel here did not even bother to write a decision addressing the extensive briefing by the parties illustrates that there is no reason for this Court to wait for further discourse. It is not likely to come.

#### D. Numerous *Amici Curiae* and Scholars Have Shown an Interest in This Issue

Scholars have noted the questionable nature of the Federal Circuit's statutory reading in *Versata* on many occasions. *See, e.g.*, Stuart Minor Benjamin & Arti K. Rai, *Administrative Power in the Era of Patent Stare Decisis*, 65 Duke L.J. 1563, 1578–81 (2016); Rochelle Cooper Dreyfuss, *Giving the Federal Circuit a Run for Its Money: Challenging Patents in the PTAB*, 91 Notre Dame L. Rev. 235, 272–76 (2015). As this Court is well aware, the number of petitions filed to this Court addressing patent-eligibility concerns is large (over 35), and the number of *amici curiae* submitting briefs in patent cases remains among the highest on this Court's merits docket. *See, e.g.*, Ryan Davis, *IP Cases Led The Pack In High Court Amicus Briefs*, Law360 (June 26, 2017). These briefs, representing the views of patent practitioners and companies in computer and communications-related industries, collectively confirm that this case involves an “important question of federal law,” and that many believe that the Federal Circuit “decided [this question] in a way that conflicts with relevant decisions of this Court.” *See* Sup. Ct. R. 10. Thus, this case fits the ‘character’ of the compelling reasons required for Supreme Court review. *Id.*

## CONCLUSION

For the reasons set forth herein, Amici Curiae respectfully urge the Court to grant the Petition to determine whether patent-eligibility challenges under Section 101 are available under Section 282(b)(2) and (3) of the Patent Act.

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