

In the  
Supreme Court of the United States

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PLOTAGRAPH, INC., ET AL.,

*Petitioners,*

v.

LIGHTRICKS, LTD.,

*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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PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Inventors Troy Plota, Sascha Connelly and Plotagraph, Inc (Plotagraph) own and practice five patents that disclose applications allowing users to create the illusion of movement within a digital photograph or video. Through a series of specific claimed steps, the patents allow a user to automate pixel shifting in digital photos or videos. The pixel shifting cannot be accomplished manually or with pen and paper. The question presented is:

Whether the claims at issue in the Plotagraph patents are patent-eligible under 35 U.S.C. § 101, as interpreted in *Alice Corporation Pty v. CLS Bank International*, 573 U.S. 208 (2014) in view of the claims directed to computer animation as allowed in *McRO, Inc. v. Bandai Namco Games America*, 837 F.3d 1299 (Fed. Cir. 2016).

## **PARTIES TO THE PROCEEDINGS**

### **Petitioners and Plaintiffs-Appellants below**

- Plotagraph, Inc.
- Troy Plota
- Sascha Connelly

### **Respondent and Defendant-Appellee below**

- Lightricks, Ltd.

## **CORPORATE DISCLOSURE STATEMENT**

Plotagraph, Inc. has no parent corporation and no publicly traded company owns 10% or more of its stock.

## LIST OF PROCEEDINGS

### **Direct Proceedings below**

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U.S. Court of Appeals, Federal Circuit

No. 2023-1048

Plotagraph, Inc., Troy Plota, Sascha Connelly,  
*Plaintiffs-Appellants*, v. Lightricks, Ltd.,  
*Defendant-Appellee*

Memorandum and Opinion: January 22, 2024

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U.S. District Court, S.D. Texas (Houston)

Civil Action No. H-21-3873

Plotagraph, Inc, Troy Plota, and Sascha Connelly,  
*Plaintiffs*, v. Lightricks, Ltd, *Defendant*.

August 9, 2022

### **Related Proceedings below**

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Two related proceedings were filed by Respondent Lightricks, Ltd. at the Patent Trial and Appeals Board (PTAB) in which trial institution has been denied: IPR2023-00152 (Patent # 10,558,342) and IPR2023-00569 (Patent # 11,301,119). The PTAB determined that Respondent here did not demonstrate a reasonable likelihood that it would prevail, as to both patents wherein all claims were challenged, under either anticipation (35 U.S.C. § 102) or obviousness (35 U.S.C. § 103) with respect to at least one challenged claim. The final judgment in IPR2023-00152 (Termination) was entered on June 20, 2023. The final judgment in IPR2023-010569 (Terminated) on October 2, 2023.

There are three pending related proceedings filed by Respondent Lightricks Ltd. at the Patent Trial and Appeals Board related to this case:

IPR2023-00153 (Patent # 10,346,017)

IPR2023-00154 (Patent # 10,621,469)

IPR2023-00568 (Patent # 11,182,641)

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## PETITION FOR A WRIT OF CERTIORARI

Petitioners Plotagraph Inc., Troy Plota and Sascha Connelly (Plotagraph) respectfully petition 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 court of appeals is *Plotagraph, Inc. v. Lightricks, Ltd.*, No. 2023-1048 (Fed. Cir. Jan. 22, 2024). (App.1a). The opinion of the district court is United States District Court for the Southern District of Texas in No. 4:21-cv-03873, August 9, 2022, Judge Lee H. Rosenthal. (App.14a).



## JURISDICTION

The judgment of the court of appeals was entered on January 22, 2024. (App.1a). An Order filed denying en banc rehearing entered March 26, 2024. (App.38a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).



## STATUTORY PROVISIONS INVOLVED

### **35 U.S.C. § 101 provides:**

#### **Inventions Patentable**

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.



## INTRODUCTION

The issue in this case is whether five of petitioner Plotagraph’s method patents are patent-eligible under 35 U.S.C. § 101. The Federal Circuit held that they are not because they are directed to an abstract idea and lack an inventive concept—even though the patents recite a series of steps, and even though the amended complaint factually alleged innovation over the prior art and which necessarily requires a computer and cannot be performed by hand J.A. 265–66 ¶¶ 6–7, 9. In so holding, the court of appeals employed the two-step patent-eligibility structure from *Alice Corporation Pty. v. CLS Bank International*, 573 U.S. 208, 216 (2014), to invalidate five issued patents. There is a pressing need of national importance for this Court’s intervention, both to revisit the *Alice* two-step framework and to provide much-needed guidance on the scope of the judicially created exceptions to 35 U.S.C. § 101.



## STATEMENT OF THE CASE

### A. Patent Eligibility

The Patent Act defines the subject matter eligible for patent protection as “any new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. This Court has recognized three “implicit exception[s]” to Section 101: “laws of nature, natural phenomena, and abstract ideas.” *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (internal quotation marks omitted). An invention that claims a law of nature, physical phenomenon, or abstract idea, without more, is not eligible for patent protection, while an invention that “integrate[s]” one of those “into something more” may be patent-eligible. *Id.* at 217 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 73 (2012)).

This Court has developed a two-step test for distinguishing between patents that claim only laws of nature, natural phenomena, and abstract ideas, and patents that claim patent-eligible applications of those concepts. First, a court determines “whether the claims at issue are directed to [a] patent-ineligible concept.” *Alice*, 573 U.S. at 217. If they are, the court searches for an “inventive concept” by asking, “[W]hat else is there in the claims before us?” *Ibid.* (internal quotation marks omitted). In answering that second question, the court 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.” *Ibid.* (quoting *Mayo*, 566 U.S. at 73).

## B. The Patents at Issue

Plotagraph owns and practices the claims of U.S. Patent No. 10,346,017 (“the ’017 patent”), U.S. Patent No. 10,558,342 (“the ’342 patent”), U.S. Patent No. 10,621,469 (“the ’469 patent”), U.S. Patent No. 11,182,641 (“the ’641 patent”), and U.S. Patent No. 11,301,119 (“the ’119 patent”) (collectively, the “Asserted Patents”). As Plotagraph explained in its Amended Complaint, the Asserted Patents are directed to “technology [that] allows users to animate portions of a digital still photo or a frame of a video file” by “select[ing] a set of pixels within the photo or video file,” which are then “shifted” to “simulat[e] motion.” J.A. 265–66 ¶¶ 6–7. “For example, a still photo showing an individual standing before a waterfall could be animated to have the waterfall in the still photo appear to be flowing.” *Id.* at 265 ¶ 6.

## C. Proceedings Below

Plotagraph sued Lightricks, Ltd. (“Lightricks”) in the United States District Court for the Southern District of Texas for infringement of five patents related to automated pixel shifting in digital photos or videos.

The courts below deemed the following ’641 patent claim representative:

12. A computer program product comprising one or more non-transitory computer storage media having stored thereon computer-executable instructions that, when transmitted to a remote computer system for execution at a processor, cause the remote computer system to perform a method for automating a shifting of pixels within an image file, the method comprising:

receiving a first indication of a first starting point through a user interface, wherein the first starting point is received through a user selection of a first portion of a first image frame;

receiving, through the user interface, a first direction associated with the first starting point;

creating a first digital link extending in the first direction from the first starting point;

selecting a first set of pixels that are along the first digital link and extend in the first direction away from the first starting point; and

shifting the first set of pixels, in the first image frame, in the first direction.

'641 patent col. 17 ll. 25–44.

After Plotagraph filed suit, Lightricks moved to dismiss Plotagraph's complaint under Rule 12(b)(6) for failure to state a claim. Lightricks argued that Plotagraph cannot state a claim for infringement because the claims of the Asserted Patents are patent ineligible under § 101. J.A. 201–05. After briefing and a hearing on the issue, the district court granted Lightricks' motion before Lightricks filed an answer. The court observed that "[s]hifting pixels to create the illusion of movement within an image is a digital version of animation, which is an abstract idea." *Plotagraph*, 620 F.Supp.3d at 600.

Petitioner appealed to the Federal Circuit arguing that the district court erred with respect to both steps of the *Alice* test.

The court overgeneralized the claims of the Asserted Patents as simply being directed to the concept of animation or digital animation, which was then summarily dismissed as an unpatentable abstract concept that can be performed with pen and paper. Plotagraph contends that this determination was “untethered from the actual claim language” and improperly incorporated limitations from the specification into the claims. Appellant’s Br. 27–28; Oral arg. at 20:10–22:08 (“[N]owhere in this claim does it say this exact abstract idea “[E]xamine all of [the independent claims of all five patents]. It nowhere says ‘shifting pixels to create the illusion of movement.’”), 20:50–22:10. In addition, Plotagraph takes issue with the district court’s reliance on cases in which the Federal Circuit has held claims reciting the automation of manual processes using generic computers to be abstract because Plotagraph contends that pixel-shifting cannot be done by hand. *Id.* at 16, 21–23, 27–28; *see also id.* at 28–29 (discussing an amendment made during the prosecution of the first patent, the ‘017 patent, to add the word “automatically” before the pixel-shifting step “specifically to disclaim manual and mental ‘shifting’ of pixels and the abstract idea of shifting pixels”). The court erroneously overgeneralized the claimed invention to a degree that it encompassed mental processes. Appellant’s Br. 16, 27–34, 37–38. In making these arguments, Plotagraph relies on *McRO, Inc. v. Bandai Namco Games America*, 837 F.3d 1299, *Enfish LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), *Research Corp. Technologies v. Microsoft Corp.*, 627 F.3d 859, 868 (Fed. Cir. 2010), and *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1376 (Fed. Cir. 2011). Appellants’ Br. 30–31, 33–34.

Petitioner explained the five patents are not directed to an ineligible concept, and that even if they were they would still be eligible because they contained an inventive concept sufficient to transform them into a patent-eligible application.

The Federal Circuit affirmed the district court *Plotagraph, Inc. v. Lightricks, Ltd.*, No. 2023-1048 (Fed. Cir. Jan. 22, 2024). On step one of the *Alice* patent-eligibility framework, the panel held that the patent claims as a whole are directed to the abstract idea of digital animation. The panel quotes from the '017 patent, “The shifted pixels may give a digital image the perception of movement.” Petitioner does not dispute this. Plotagraph’s claims, like *McRO*’s claims, are directed to computer or digital animation, which is not an abstract idea.

Petitioner disputes that other cited cases that in fact use a computer to automate pen and paper technologies have any relevance whatsoever to pixel shifting in a digital image using a computer as claimed in Plotagraph’s five patents. Pixel shifting as claimed and alleged in the Amended Complaint simply has no pen and paper equivalent and digital pixel shifting cannot occur using pen and paper.

The panel cites to *Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1167–68 (Fed. Cir. 2019) and *Univ. of Fla. Res. Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363, 1367 (Fed. Cir. 2019) (concluding that automating “pen and paper methodologies” using a computer, even if “laudable, does not render it any less abstract”). Petitioner has no quarrel with these decisions, but they simply are not applicable to this case. The claims of the five patents cannot be performed by pen and paper as Petitioner properly alleged in the district court.



There is no pen and paper equivalent to Plotagraph’s claims, no evidence cited by Respondent or either court below that addressed this case that such evidence exists in the record. Petitioner has plausibly alleged in the First Amended Complaint at 9: “The automatic shifting of pixels is a process which necessarily requires a computer and is not performed by hand.” J.A. 265–66 ¶ 9. There is no record or evidence anywhere in this case otherwise. Unrebutted allegations must be accepted at the 12(b) stage and cannot be weighed, much less dismissed, without evidence. The panel states that the Plotagraph claims “simply performs more efficiently what could otherwise be accomplished manually” citing to *Bancorp Servs. LLC v. Sun Life Assur. Co. of Canada*, 687 F.3d 1266, 1279 (Fed. Cir. 2012). Again, this case is not applicable, as there is no evidence anywhere in the record that the claims can be performed manually or with pen and paper. There is no pen and paper equivalent to shifting pixels in a digital image.

Then, the panel says this case is also distinguishable from *McRO, Inc. v. Bandai Namco Games America*, 837 F.3d 1299, 1306, 1314–16 (Fed. Cir. 2016), where the claims incorporated an in-depth, extensive set of rules that enabled computers to automate phonemes in 3-D animation, eliminating the previous need for human-intermediated judgment and steps. However, the claims here in *Plotagraph* and *McRO* are directed to computer animation. Both claimed inventions automate movement based on a set of rules or instruction to create an animation effect after preparatory steps. The panel’s euphemistic use of the phrase ‘in-depth, extensive set of rules’ is a distinction without a difference. The *McRO* claims steps are no more or less

in-depth and extensive as compared with the Plotagraph claims (compare Claim 1 in *McRO* at 1307). The degree of how in-depth or extensive a set of rules or claim steps are, have no relevance as to whether an invention is abstract under 35 U.S.C. 101. Plotagraph's claim 12 above, compared with *McRO* claim 1, is as in-depth and extensive, therefore as self-evidently patentable exactly in the same way as the claims in *McRO*, and neither invention is abstract under 35 U.S.C. § 101.

The panel then cites to a discussion of *Research Corp.*, in *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1376 (Fed. Cir. 2011). The claims at issue in *Research Corp.*, according to the panel, not only required the use of a computer but also provided a technological advance further citing *Bancorp*, 687 F.3d at 1279. The panel is saying the five Plotagraph issued patents do not provide a technological advance and that the computer merely performs what could be accomplished manually. Manual shifting of digital pixels is not possible. Again, the only evidence in the record is that Petitioner has plausibly alleged in the First Amended Complaint at 9: "The claims of the Patents-in-Suit are directed to systems and methods which provide an improvement to the functioning of a computer, smartphone, or similar device by allowing said device to automatically shift pixels in a digital photo or video file in a quick, convenient manner" (J.A. 266–67 ¶ 9) The panel points to no evidence in the record that the Plotagraph patents as claimed do not provide a technological advance as factually alleged in the amended complaint. The courts below, contrary to Plotagraph's factual allegations, state that there is no technological advance, the claims merely employ generic computers to perform animation. The panel

simply does not comprehend the claims and ignores Plotagraph’s factual allegations, which is the only evidence in the record.

After determining that under first step of *Alice* that the claims of the Asserted Patents are directed to the abstract idea of digital animation, the panel turned to the second step of the *Alice* test. The panel states that Plotagraph points to four features of the patents it alleges supply an inventive concept: (a) “the use of paths or digital links and starting and ending points to provide directions for automatic shifting”; (b) “non-linear paths”; (c) “masks which prevent shifting”; and (d) “edges/anchor points for creation of masks.” Appellants’ Br. 23–25 (citing J.A. 266–67 ¶ 9). Pointing to these features, Plotagraph asserts that the inventive concept issue cannot be resolved at the Rule 12(b)(6) stage. *Id.* at 27. After all, it’s a fact issue, and courts below cited to no evidence. The case record only contains Plotagraph’s plausible and un rebutted factual allegations in the Amended Complaint J.A. 265–66 ¶¶ 6–7, 9, which the courts below were obligated to have accepted as true.

Patentees who adequately allege their claims contain inventive concepts should survive a § 101 eligibility analysis under Rule 12(b)(6). Dismissal is appropriate where the factual allegations are not plausible, are refuted by the record, or are conclusory. *See Aatrix Software v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018); *Simio, LLC v. FlexSim Software Prods., Inc.*, 983 F.3d 1353, 1365 (Fed. Cir. 2020) (quoting *Aatrix*, 882 F.3d at 1125). Here, the panel simply concludes, without evidence, that none of the four features Plotagraph points to provides an inventive concept and the panel doesn’t address the

ordered combination as a whole. “An inventive concept that transforms the abstract idea into a patent-eligible invention must be significantly more than the abstract idea itself . . . .” *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016).

The panel asserts that each of the four features appears to be a feature *inherent in nonautomated computer animation* (emphasis added). Again, this assertion has absolutely no foundation in the record and is contrary to the plausible allegations in the Amended complaint. Plotagraph plausibly alleged that the claims cannot be performed in nonautomated computer applications. On what basis does the panel assert that each of the four features “appears to be inherent” in nonautomated computer animation? The panel does not cite to any evidence or expertise for this position. The use of the word ‘nonautomated’ presumably is an effort to tie the claims to a method that can be performed manually. As explained above, the claims cannot be performed manually or with pen and paper.

Whether or not each parameter defined by a user through conventional user-interface tools is sufficiently “specified at a high level of generality” (*Alice*, 573 U.S. at 222 quoting *Mayo*, 566 U.S. at 82), this in itself is absolutely enough to confer an inventive concept as is plausibly alleged in Plotagraph’s Amended Complaint “[t]hese features were not previously used with image editing, were not generic computer software or hardware, and were not well-understood, routine, or conventional at the time of invention,” J.A. 266–67 ¶ 9. The district court disregarded these statements and the record (or lack thereof) that fully support Petitioners

contentions. The district court and the panel ignored the only evidence that is in the record to improperly dismiss the five issued patents.



## REASONS FOR GRANTING THE PETITION

### I. **The Federal Circuit’s *Plotagraph* Decision Directly Conflicts with the Federal Circuit’s *McRO* Decision and Should Be Resolved in Order to Provide Guidance on 35 U.S.C. § 101 Patent Eligibility.**

The decisions below are in direct conflict with the Federal Circuit’s decision in *McRO*. The *McRO* claims and Plotagraph’s claims here are both directed to forms of computer animation. Digital animation is not an abstract idea. The claim structure for *McRO* claims and the Plotagraph claims both use specific claim limitations to create animation type effects.

Plotagraph disagrees with the courts below that the claims simply use a computer to automate conventional activity (*see McRO* at 1314). No record evidence supports this assertion. Plotagraph asserts that claim 12 of the ‘641 patent, as well as the claims of all five patents, are specific rules applied in a specific technical way.

The decisions below rest on applying the two-step framework this Court set out in *Alice Corporation Pty. v. CLS Bank International*, 573 U.S. 208 (2014), for determining whether claims are ineligible for patent protection because they concern one of this Court’s “implicit exception[s]” (*id.* at 216) to 35 U.S.C. § 101. The issue in this case is whether the claims in Plotagraph’s patents are patent eligible under 35 U.S.C.

§ 101. Applying the *Alice* framework, the district court found the claims ineligible as directed to an abstract concept (digital animation), and the Federal Circuit panel affirmed in direct conflict with the identical-type specific claims with ‘sets of rules’ directed to computer animation as affirmed by the Federal Circuit in *McRO*. The Court should grant certiorari to provide guidance on the scope of judicially created exceptions to 35 U.S.C. § 101 patent eligibility and both steps of the *Alice* framework. This Court’s attention is necessary to return this area of jurisprudence to the statutory text at issue here, for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101.

## **II. This Case Would Provide for the Court’s Guidance on 35 U.S.C. § 101 Patent Eligibility.**

It is well-known that the U.S. Patent & Trademark Office, practitioners, and scholars alike are calling for guidance on how to assess whether patents fall into one of the judicially created exceptions to 35 U.S.C. § 101. *See, e.g.*, U.S. Patent & Trademark Office, *Patent Eligible Subject Matter: Public Views on the Current Jurisprudence in the United States* 18-41 (June 2022). Many stakeholders find the current state of 35 U.S.C. § 101 law unclear and unpredictable.

The United States has repeatedly urged the Court to revisit the *Alice* two-step framework for Section 101 patent eligibility and provide much needed course correction. For years, and across administrations, the Solicitor General has asked the Court to weigh in on how the judicially created exceptions to patent eligibility should be assessed. This case provides for the Court to address both steps of *Alice*.



**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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September 9, 2024