
**In the
Supreme Court of the United States**

**SIGRAM SCHINDLER
BETEILIGUNGSGESELLSCHAFT MBH,**
Petitioner,

v.

CISCO SYSTEMS, INC.,
Respondent,

AND

**TERESA STANEK REA, ACTING DIRECTOR,
UNITED STATES PATENT AND TRADEMARK
OFFICE,** *Respondent.*

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

“Does the US Constitution, for a legal decision based on 35 USC §§ 101/102/103/112,

- require using the uniform refined claim construction framework set forth by the Supreme Court’s line of *KSR/Bilski/Mayo/Myriad/Biosig/Alice* decisions, which overcomes the shortcomings of the classical claim construction as to emerging technology inventions, or does it
- entitle any one of the institutions PTO, district court, and CAFC to continue using the classical claim construction and its “broadest reasonable interpretation, BRI^{pto}” of a claim, including refining both on its own – for meeting, as suitable for its business, emerging technology inventions’ needs just ‘in the light’ of the above Supreme Court decisions”

PARTIES AND RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, counsel for petitioner certifies that:

Sigram Schindler Beteiligungsgesellschaft mbH ("SSBG") has no direct parent companies. No publicly held company owns 10 percent or more of SSBG.

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Cases

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35 U.S.C. §§ 311-318..... 28

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Other Authorities

37 C.F.R. § 1.913 28

Reference List (V.15)

- [1] S. Schindler: “US Highest Courts’ Patent Precedents in Mayo/Myriad/CLS/Amgen/LBC: ‘Inventive Concepts’ Accepted – ‘Abstract Ideas’ Next? Patenting Emerging Tech. Inventions Now without Intricacies” *).
- [2] AIT, “Advanced Information Technology”, denotes topical IT research areas, e.g. AI, KR, DL, NL, Semantics, ...
- [3] R. Brachmann, H. Levesque “Knowledge Representation & Reasoning”, Elsevier, 2004.
- [4] “The Description Logic Handbook”, Cambridge UP, 2010.
- [5] S. Schindler: “Math. Model. Substantive Patent Law (SPL) Top-Down vs. Bottom-Up”, Yokohama, JURISIN 2013*).
- [6] S. Schindler, “FSTP” pat. appl.: “THE FSTP EXPERT SYSTEM”, 2012 *).
- [7] S. Schindler, “DS” pat. appl.: “AN INNOVATION EXPERT SYSTEM, IES, & ITS DATA STRUCTURE, PTR-DS”, 2013 *).
- [8] S. Schindler, J. Schulze: “Technical Report #1 on the ‘902 PTR”, 2014*(soon)
- [9] S. Schindler: “Patent Business – Before Shake-up”, 2013*).
- [10] SSBG's AB to CAFC in LBC, 2013*).
- [11] S. Schindler, “inC” pat. appl.: “inC ENABLED SEMI-AUTOMATIC SPL TESTS”, 2013*).
- [12] C. Correa: “Res. Handbook on Protection of IP under WTO Rules”, EE, 2010.
- [13] N. Klunker: "Harmonisierungsbestr. im mat. Patentrecht", MPI, Munich, 2010.
- [14] “USPTO/MPEP: “2111 Claim Interpretation; Broadest Reason. Interpr. [Eighth Ed., Rev.1, Feb. 2003; Rev.2, May 2004; Rev.3, Aug. 2005;

- Rev.4, Oct. 2005; Rev.5, Aug. 2006; Rev.6, Sept. 2007; Rev.7, July 2008; Rev.8, July 2010; Rev.9, Aug. 2012]” *).
- [15] S. Schindler: “KR Support for SPL Precedents”, Barcelona, eKNOW-2014*).
 - [16] J. Daily, S. Kieff: “Anything under the Sun Made by Humans SPL Doctrine as Endogenous Institutions for Commercial Innovation”, Stanford and GWU*).
 - [17] CAFC En banc Hearing in LBC, 12.09.13.
 - [18] SSBG AB to the Supreme Court in CLS, 07.10.2013*).
 - [19] SSBG AB to the Supreme Court in WildTangent, 23.09.2013*).
 - [20] USPTO, “Intellectual Property and the US Economy: INDUSTR. IN FOCUS”, 2012*).
 - [21] K. O'Malley: Keynote Address, IPO, 2013*).
 - [22] S. Schindler, “The View of an Inventor at the Grace Period”, Kiev, 2013*).
 - [23] S. Schindler, “The IES and its In-C Enabled SPL Tests”, Munich, 2013*).
 - [24] S. Schindler, “Two Fundamental Theorems of ‘Math. Innovation Science’”, Hong Kong, ECM-2013*).
 - [25] S. Schindler, A. Paschke, S. Ramakrishna, “Formal Legal Reasoning that an Invention Satisfies SPL”, Bologna, JURIX-2013*).
 - [26] SSBG AB to the Supreme Court in Bilski, 06.08.2009*).
 - [27] T. Bench-Capon, F. Coenen: “Isomorphism. and Legal Know. Based Sys.”, AI&Law, 1992*).
 - [28] N. Fuchs, R. Schwitter. "Attempt to Controlled English", 1996.
 - [29] A. Paschke: “Rules and Logic Programming in the Web”. 7. ISS, Galway, 2011.

- [30] K. Ashley, V. Walker, “From Information Retrieval to Arg. Retrieval for Legal Cases:”, Bologna, JURIX-2013*).
- [31] Hearing in Oracle vs. Google, “As to Copyrightability of the Java Platform”, CAFC, 06.12.2013.
- [32] S. Schindler, “A KR Based Innovation Expert System (IES) for US SPL Precedents”, Phuket, ICIM-2014*).
- [33] S. Schindler, “Status Report about the FSTP Prototype”, Hyderabad, GIPC-2014.
- [34] S. Schindler, “Status Report about the FSTP Prototype”, Moscow, LESI, 2014.
- [35] S. Schindler, IPR-MEMO: “Substantive Trademark Law (STL), Substantive Copyright Law (SCL), and Substantive Patent Law (SPL) – STL Tests Are SCL Subtests, SCL Tests Are SPL Subtests”, in prep.
- [36] S. Schindler, “Boon and Bane of Inventive Concepts and Refined Claim Construction in the Supreme Court's New Patent Precedents”, Berkeley, IPSC, 08.08.2014*).
- [37] D.-M. Bey, C. Cotropia, "The Unreasonableness of the BRI Standard", AIPLA, 2009*).
- [38] Transcript of the Hearing in TELES vs. CISCO/USPTO, CAFC, 08.01.2014*).
- [39] Transcript of the en banc Hearing in CLS vs. ALICE, CAFC, 08.02.2013*).
- [40] SSBG's Brief to the CAFC in case '453*).
- [41] SSBG's Brief to the CAFC in case '902*).
- [42] SSBG's Amicus Brief to the CAFC in case CLS, 06.12.2012*).
- [43] S. Schindler, “LAC” pat. appl.: „Semi-Automatic Generation/Customization of (All) Confirmative Legal Argument Chains (LACs)

- in a Claimed Invention`s SPL Test, as Enabled by Its Inventive Concepts”, 2014*).
- [44] R. Rader: "Patent on Life Sciences", Berlin, LESI, 2012.
- [45] SSBG's AB to the Supreme Court as to the CII Question, 28.01. 2014*).
- [46] S. Schindler: "Autom. Deriv. of Leg. Arg. Chains (LACs) from Arguable Subtests (ASTs) of a Claimed Invention's Test for Satisfying. SPL", University of Warsaw, 24.05.2014*).
- [47] S. Schindler: "Auto. Generation of All ASTs for an Invention's SPL Test", subm. for publication*).
- [48] USPTO/MPEP, “2012 ... Proc. for Subj. Matter Eligibility ... of Process Claims Involving Laws of Nature”, 2012*).
- [49] USPTO/MPEP, Supp. Examination Guidelines for Determining Compliance With 35 U.S.C. 112, Federal Register / Vol. 76, No. 27; MPEP 2171, Two Separate Requirements for Claims Under 35 U.S.C. 112(2), Rev. 11, 2014*).
- [50] NAUTILUS v. BIOSIG, PFC, 2013*).
- [51] BIOSIG, Respondent, 2013*).
- [52] Public Knowledge et al., AB, 2013*).
- [53] Amazon et al., AB, 2013*).
- [54] White House, FACT SHEET - ... the President’s Call to Strengthen Our Patent System and Foster Innovation, 2014*).
- [55] USPTO: see home page.
- [56] IPO: see home page.
- [57] M. Adelman, R. Rader, J. Thomas: "Cases and Materials on Patent Law", West AP, 2009.
- [58] SSBG's Amicus Brief to the Supreme Court as to its (In)Definiteness Quest’s, 03.03, 2014*).

- [59] S. Schindler, "UI" pat. appl.: "An IES Capable of Semi-Auto. Generating/Invoking All Legal Argument Chains (LACs) in the SPL Test of a Claimed Invention (CI), as Enabled by Its Inventive Concepts (inCs)", 2014*).
- [60] S. Schindler: "Automatic Derivation of Argument Chains Legally Defending Patenting/Patented Inventions", ISPIM, Americas Innovation Forum, Montreal, 5-8.10.2014.
- [61] H. Wegner: "Indefiniteness, the Sleeping Giant in Patent Law", www.laipla.net/halwegners-top-ten-patent-cases/.
- [62] .a) CAFC decision on reexamination of
- [63] U.S. Pat. No. 7,145,902, 21.02.2014*).
- [63] .b) CAFC decision on reexamination of
- [63] U.S. Pat. No 6,954,453, 04.04.2014*).
- [64] B. Wegner, S. Schindler: "A Mathematical Structure Modeling Inventions", Coimbra, CICM-2014*).
- [65] SSBG's Petition to the CAFC for Rehearing En Banc in the '902 case, 18.04.2014*).
- [66] CAFC: VEDERI vs. GOOGLE decision, 14.03.2014
- [67] CAFC: THERASENSE vs. BECTON & BAYER decision, 25.05.2011
- [68] B. Fiacco: Amicus Brief to the CAFC in VER-SATA v. SAP&USPTO, 24.03.14*).
- [69] Official Transcript of the oral argument in U.S. Supreme Court, Alice Corp. v. CLS Bank, Case 13-298 – Subject to final Review, March 31, 2014, Alderson Reporting Company*).
- [70] R. Rader, Keynote Speech: "Patent Law and Litigation Abuse", ED Tex Bench and Bar Conf., 01.11.2013*).

- [71] S. Schindler, Keynote Speech: “eKnowledge of Substantive Patent Law (SPL) – Trail Blazer into the Innovation Age”, Barcelona, eKNOW-2014*).
- [72] .a) S. Schindler: “The Supreme Court’s ‘SPL Initiative’: Scientizing Its SPL Interpretation Removes 3 Evergreen SPL Obscurities”, Press Release, 08.04.2014*).
- .b) S. Schindler: “The Supreme Court’s ‘SPL Initiative’: Scientizing Its SPL Interpretation Removes 3 Evergreen SPL Obscurities – and Enables Automation in a CI’s SPL Tests and Argument Chains”, Honolulu, IAM2014S, 18.07.14*).
- [73] .a) USPTO/MPEP: “2014 Procedure For Subject Matter Eligibility Analysis Of Claims Reciting Or Involving Laws Of Nature/ Natural Principles, Natural Phenomena, And/Or Natural Products”, see [48,49], 2014*).
- .b) MEMORANDUM: “Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice v. CLS*”, 25.06.2014*).
- [74] B. Wegner, S. Schindler: "A Mathematical KR Model for Refined Claim Construction, I ", sub. for pub.
- [75] CAFC Order as to denial [65], 27.05.2014
- [76] D. Crouch: “En Banc Federal Circuit Panel Changes the Law of Claim Construction”, 13.07.2005*).
- [77] Video of the USPTO Hearing, 09.05.2014*).
- [78] R. Rader, Keynote Speech at GTIF, Geneva, 2014 and LESI, Moscow, 2014
- [79] S. Schindler: “On the BRI-Schism in the US National Patent System (NPS) – A Challenge

- for the US Highest Courts”, 22.05.2014, subm. for publ.*)
- [80] SSBG’s Petition for Writ of Certiorari to the Supreme Court in the ‘902 case, Draft_V.133_of_[121], 14.07.2014*).
 - [81] S. Schindler: “To Whom is Interested in the Supreme Court’s Biosig Decision”, 04.06.2014*).
 - [82] R. DeBerardine: “Innovation from the Corporate Perspective”, FCBA, DC, 23.05.2014*).
 - [83] SSBG’s Petition to the CAFC for Rehearing En Banc in the ‘453 case, 09.06.2014*).
 - [84] CAFC’s Order as to denial [83], 14.07.2014*).
 - [85] CAFC: “At Three Decades”, DC, 2012.
 - [86] Sigram Schindler Foundation: “Transatlantic Coop. for Growth and Security”, DC, 2011.
 - [87] DPMA: “Recent Developments and Trends in US Patent Law“, Munich, 2012.
 - [88] FCBA: “Innovation, Trade and Fiscal Reality”, Colorado Springs, 2013.
 - [89] LESI: GTIF, Geneva, 2014.
 - [90] FCBA: “Sharpening Case Management”, Asheville, North Carolina, 2014
 - [91] B. Wegner, S. Schindler: "A Math. KR Model for Refined Claim Construction, II", in prep.
 - [92] SSBG’s Petition for Writ of Certiorari to the Supreme Court in the ‘453 case, xx.10.2014.
 - [93] E. Morris: “What is ‘Technology?’”, IU I.N.*)
 - [94] E. Morris: “Alice, Artifice, and Action – and Ultramercial”, IU I.N., 08.07.2014*).
 - [95] S. Schindler, ArAcPEP-MEMO: “Artifice, Action, and the Patent-Eligibility Problem”, 2014*).
 - [96] A. Chopra: “Deer in the Headlights. Response of Incumbent Firms to Profit Destroying Inno-

- vation”, School of Management, Fribourg, 2014*).
- [97] S. Schindler, DisInTech-MEMO: “Patent Technology: Efficiency and Safety Boosting, Research Horizons Opening, Innovations Accelerating””, in prep., 2014.
 - [98] G. Boolos, J. Burgess, R. Jeffrey: “Computability and Logic”, Cambridge UP, 2007.
 - [99] A. Hirshfeld, Alexandria, PTO, 22.07.2014*).
 - [100] C. Chun: “PTO’s Scrutiny on Software Patents Paying Off”, Law360, N.Y., 22.07.2014*).
 - [101] P. Michel, Keynote, Alexandria, PTO, 22.07.2014.
 - [102] D. Jones, Alexandria, PTO, 22.07.2014.
 - [103] R. Gomulkiewicz, Seattle, CASRIP, 25.07.2014.
 - [104] M. Lemley, Seattle, CASRIP, 25.07.2014.
 - [105] D. Jones, Seattle, CASRIP, 25.07.2014.
 - [106] B. LaMarca, Seattle, CASRIP, 25.07.2014.
 - [107] J. Duffy, Seattle, CASRIP, 25.07.2014.
 - [108] J. Pagenberg, Seattle, CASRIP, 25.07.2014.
 - [109] M. Adelman, Seattle, CASRIP, 25.07.2014.
 - [110] B. Stoll, Seattle, CASRIP, 25.07.2014.
 - [111] R. Rader, Seattle, CASRIP, 25.07.2014.
 - [112] E. Bowen, C. Yates: “Justices Should Back Off Patent Eligibility, ...”, L360, 25.07.2014*).
 - [113] S. Schindler: “The CAFC’s Rebellion is Over – The Supreme Court, by *Mayo/Biosig/Alice*, Provides Clear Guidance as to Patenting Emerging Technology Inventions”, 05.08.2014, Berlin, submitted for publication*).
 - [114] S. Elliott: “The USPTO Patent Subj. Matter Eligi. Guidance TRIPS Over Treaty Requirements”, 30.07.2014*).

- [115] W. Zheng: “Exhausting Patents”, Berkeley, IPSC, 08.08.2014*).
- [116] R. Merges: “Independent Invention: A Limited Defense of Absolute Infringement Liability in Patent Law”, Berkeley, IPSC, 08.08.2014*).
- [117] J. Sarnoff, Berkeley, IPSC, 08.08.2014.
- [118] H. Surden: “Principles of Problematic Patents”, Berkeley, IPSC, 08.08.2014*).
- [119] <http://www.zeit.de/2013/33/multiple-sklerose-medikament-tecfidera/seite-2>*).
- [120] J. Merkley, M. Warner, M. Begich, M. Heinrich, T. Udal: “Letter to Hon. Penny Pritzker, Secretary of Commerce”, DC, 06.08.2014*).
- [121] SSBG’s Petition for Writ of Certiorari to the Supreme Court in the ‘902 case, 25.08.2014*).
- [122] D. Parnas, see Wikipedia.
- [123] E. Dijkstra, see Wikipedia.

*) available at www.fstp-expert-system.com

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals is provided in the attached appendix (App. 1a-27a), just as the opinion of the PTO's Board of Patent Appeals (App. 28a-77a).

JURISDICTION

The judgment of the court of appeals was entered on February 21, 2014. SSBG's timely petition for rehearing en banc was filed on April 18, 2014. The Court of Appeals for the Federal Circuit rejected it on May 27, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Sections 101, 102, 103, and 112 of the Patent Act, 35 U.S.C. §§ 101, 102, 103, 112 are provided in the attached appendix. (App. 80a-86a).

I. STATEMENT OF THE CASE

This petition presents to the Supreme Court the need to clarify that its *Mayo/Biosig/Alice* decisions terminated in the National Patent System (NPS) an anomaly as to 35 USC §§ 101/102/103/112 (abbr.: Substantive Patent Law, SPL). It arose over the years, and its final state is outlined as follows.

Normally, district courts, ITC, CAFC, and the PTO are supposed to apply the Supreme Court’s interpretation of the U.S.C.

Yet, uncertainty exists among the community of patent practitioners – also of these authorities – as to this Court’s above 3 decisions:

- Are they part of this above scheme “US authorities consistently practice this Court’s such interpretations of the U.S.C.”, or
- are they just views of ‘generalists’ on SPL [81], ‘not providing much help’ [99], from which the other authorities may derive claim constructions as needed by their specific businesses – thus encouraging these other authorities to strive on their own¹¹⁾¹⁴⁾¹⁵⁾ for their own SPL precedents.

This anomaly has a cause^ω: It started as a “Broadest Reasonable Interpretation, BRI” Schism. But then it developed an additional and even worse “ClaimConstruction” Schism^{8.a)}.

I.e., there are two key annoyances: The BRI Schism between CAFC and PTO, and the ClaimConstruction Schism between this Court and the CAFC (and PTO) – and both ignore this Court’s requirement statement by *Mayo* to improve the protection of “emerging technology inventions” by SPL precedents.

In principle – but see Section VII – this Court now terminated this untenable situation with both institutions as follows: The CAFC applies to claims

- either the broadest reasonable interpretation, BRI, of the PTO.

Biosig (i.e., *Nautilus*) now qualified this BRI as contradicting 35 USC. This ends the BRI Schism and ruins all CAFC decisions based on this “BRI^{pto}” (see Sections IV/VI),

- or its own classical claim interpretation, the “BRI^{phi}”.

Alice now qualifies also this claim interpretation as not yet satisfying *Mayo* (which requires further refining it for handling patent-eligibility exceptions^{8.a)}) – thus ending the ClaimConstruction Schism and ruining all CAFC decisions based on its claim construction BRI^{phi} (see Sections V/VI).

The following presents these hitherto vastly ignored SPL precedents refining consequences of the Supreme Court’s 3 decisions and the broad concurrent desire [98] to increase claim ‘clarity’ [100] for

emerging technology inventions, i.e. of this new – as refined – understanding of claim construction.

Hence

- I. identifies the two key problems in today’s NPS.
- II. provides a survey about the BRI Schism, the Supreme Court’s stepping in by its *Mayo* decision, and the resulting ClaimConstruction Schism.
- III. shows: The “scope(CI)” of a “claim(ed invention), CI”, depends on CI’s BRI^{pto}/BRI^{phi}/BRI^{mayo=BLI}.
- IV. explains why *Biosig* ruins all BRI^{pto} based CIs – so ending the BRI Schism.
- V. explains why *Alice* ruins all BRI^{phi} based CIs – so ending the BRI & ClaimConstruction Schisms.
- VI. explains how these decisions affect the ‘902 case.
- VII. shows why there is no clear indication that the *Mayo/Biosig/Alice* decisions are really accepted by the CAFC and the PTO – not just “in principle”.

In total, the Supreme Court is asked to confirm the framework for SPL precedents, it set forth by its *KSR/Bilski/Mayo/Myriad/Biosig/Alice* decisions^{a)}.

^{a)} Notwithstanding¹³⁻¹⁵⁾, the PTO is on the way of reconciling its decision making with this *Mayo* framework, but still feels unsafe as to using the decisive notions the Supreme Court requires to be used in claim interpretation (see Section VII).

SSBG hopes that the scientific insights provided here, achieved by AIT research performed by SSBG on problems ET CIs do cause for classical claim interpretation – since *KSR*, as evidently expected by the Supreme Court’s decisions^{7,a)} – would help bringing the PTO onto the top of the state of the specific KR science⁹⁾ developed for supporting invention driven processes. The PTO thus would dramatically increase the innovativity of the US economy.

All relevant information here only referred to, especially [113], is available on www.fstp-expert-system.com.

II. BRI SCHISM & ClaimConstruction SCHISM

The important SPL term/notion “claim interpretation”^{8.a)2.c)} of a CI is subject to the below outlined two schisms.

First scientifically: This term’s compound meaning is depending on the properties of two interdependent tools indispensable for interpreting a CI:

- The CI’s scope/reach oriented “elements’ semantics association basis” for this CI’s “claim terms”^{5.c)} resp. “inventive concepts”^{1.c)} alias “elements”^{1.c)}; it is subject to the “BRI Schism”.
- The CI’s qualities oriented “holistic semantics association basis” for CI as a whole⁹⁾, subject to the “ClaimConstruction Schism” – which the CAFC launched due to the refined interpretation of §§ 101/102/103/112 by *Mayo*.

Now practically: In the second half of the 20th century, the BRI schism arose incidentally, stimulated by the PTO, and tolerated by the CAFC as a minor issue. But, with the advent of emerging technology (“**ET**”) inventions, the sloppiness of the BRI blocked noticing that their properties require a description of a much higher degree of preciseness and completeness than needed before.

⁶⁾ For preserving the integrity of legal argument chains, the “patent technique” kinds of explanations are put into ftns. This applies especially to an ET CI enabling several interpretations – for consistency often called CI’s “TT.Os”^{8.b)} [5,6].

Instead, controversies arose in the CAFC, e.g. in *Funk Bros./.../KSR/ Bilski/Mayo/...*, as this fundamental requirement was mistaken as a simple lack of consensus about the meanings of the established terms ‘obviousness’, ‘patent-eligibility’, and ‘definiteness’.

Therefore, this Court refined by *Mayo*, its earlier interpretation of 35 USC §§ 101/102/103/ 112 such that this new requirement of ET claim(ed invention)s (“CIs”), abbr.: “ET CIs”^{1.a)}, are met in a way enabling ET CIs’ SPL testing. “ET CI needs” didn’t exist for “ClassicT” CIs.

The CAFC’s such uncertainty – caused by ET CIs – increased, when this Court asked it to reconsider some of its ET CI decisions *in the light of Mayo*. *Mayo* had provided guidance for refining the classical claim construction for identifying its patent-eligible inventive concepts – for recognizing, what of a CI is patent-eligible (and potentially patentable).

Insisting that *Mayo* deals solely with patent-eligibility and nothing else, both authorities ignored *Mayo’s* such guidance – and that *Mayo* unmistakably explained that a CI is patent-eligible if and only if it embodies a nontrivial patent-eligible inventive concept^{1.a)}.

¹ .a) This Court expected⁷⁾ (scientific) clarification of the evidently only existing way of stating that a CI, supposed to meet all SPL requirements, actually does meet them or not.

In a first and the logically simplest step, this statement may be presented declaratively (“non-operationally”) as a

logic expression over logic functions, evaluating to T/F – just as most initial statements about anything are declarative.

In a second step, this declaration may always easily be broken down alias “refined” – due to^{3.b)} – into a procedural (“operational”) statement, i.e. an algorithm using these logic functions. Often this initial declaration is refined into a mixture of logic expression and algorithm, the latter always implementing a part of this first step’s declaration.

Any such statement may be evaluated to T/F. If it is declarative its evaluation is called ‘correctness proof’, if it is refined already to an algorithm its evaluation is called ‘test’.

Evaluating a declarative statement by a correctness proof – eventually to be put as a legal argument chain – is highly error prone, i.e. not trustworthy. By contrast, evaluating it by a test – i.e. presenting this first step declaration in a second step as algorithm, and then deriving a legal argument chain tightly from this algorithm – has proven to be much less error prone, i.e. as trustworthy. Hence, the strong desire, in SPL precedents, for algorithmic evaluations of statements as to CIs’ meetings SPL requirements.

Biosig’s definition of a CIs’ definiteness is declarative (i.e. not operational). A classical claim construction is partly operational^{8.a)}, just as *Mayo’s* refined claim construction (though much more complete). The latter represented fully operationally is the FSTP-algorithm, casually: FSTP-Test^{8.b)}.

.b) *Mayo*, in *Alice* explication, proceeds in its refined claim construction^{8.a)} for a given CI, the other way around as the FSTP-Test^{8.b)}. In a first step, *Alice* determines this CIs’ at least one “patent-ineligible building block of human ingenuity”, before asking in a second step, for its “patent-eligible **inventive** concept(s)”. If one exists, this **legally** “transforms the CI” into a patent-eligible “application of the patent-ineligible building block(s)” – potentially patentable.

.c) There is a logical/notional *Mayo/Alice* implication^{2.a)}, implemented by the FSTP-Test: The necessity to disaggregate CIs’ “compound” building block(s) and inventive concept(s), each into conjunction(s) of “elementary” ones. I.e., *Mayo/Alice* initially consider both these notions to be represented (“instantiated”/“incarnated”) by compounds. Yet, the

Now, this is confirmed by *Alice* – telling both authorities that this Court requires their classical claim construction^{8.a)} to be refined accordingly.

But, at that time, CAFC and PTO preserved their claim interpretation doctrines as they were: In spite of repeated advice, by SSBG, that AIT [2] sees this Court on the track of leveraging on the amenability of SPL precedents to scientification, and hence that its *Mayo's* thinking will prevail^{8.a)}. By contrast, classical claim construction, just as any alike thinking elsewhere worldwide, is notional too deficient to survive. [113] reports that, by now, this insight of this Court's *Mayo* decision is accepted by many heavy weight opinion leaders as to this

analysis of these instantiations' intricacies as to their meeting SPL requirements shows: such statements are logically impossible without disaggregating the incarnations/instantiations of both notions into their elements^{2.a)}.

Alice indicates this need – in SPL testing a CI on the elementary level of notional resolution [5-8] – by identifying “elements” of claims^{2.a)}. Their “ordered combination(s)” are compound(s) alias building block(s) and inventive concept(s), needed for preserving it(them) over this disaggregation^{2.a)}, as it(they) contribute to a CI's inventivity [^{7**}1)-4),18,19].

In other words: *Mayo's/Alice's* refined claim construction terminology is used “a priori”, when declaratively^{1.a)} starting analyzing a CI by its building block(s), in the first step of the *Mayo/Alice* framework. For its second step – refining this declarative statement into an algorithm/test – this at least one building block may be still too complex for using it this way [6,7]. I.e.: This second step comprises its (their) disaggregation into (combinations of) elements, being precisely definable – as implied by this framework – and representing CI's “a posteriori” notional clarity for its refined claim construction^{2.a)}. Thereby it is evident that both steps would be performed iteratively^{8.b)} [92].

fundamental question of SPL precedents. But then CAFC and PTO undertook absolutely nothing for refining their claim interpretations accordingly – establishing the “**Claim Construction Schism**” ²₃.

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- ² .a) The FSTP-Test also systemizes the terminology by denoting the patent-ineligible building blocks as “patent-ineligible (inventive) concepts”, as *Alice*. *Alice* decision, p.10. Any *Mayo/Biosig/Alice* Test (and the FSTP-Test) thus identifies of a CI all its elementary inventive concepts (“**inCs**”), i.e. the patent-eligible just as -ineligible inCs^{8.b}.

This disaggregation/refinement of a compound into *Biosig’s* elements cannot be driven ad infinitum as it ends in *posc* or a non-disaggregatable non-eligible inC. Disaggregation may also stop above *posc*^{8.a}: Namely, before generating depending of each other refined “inCs”^{8.b}. The FSTP-Test filters away generative sets comprising dependent “inCs”.

Finally, there is an extremely important remark that must be understood for understanding *ftn*¹: Initially, when beginning to analyze a CI the *Mayo/Alice* way, of its immediately recognizable building block(s) it may be unclear, whether it(they) represent(s) an abstract idea only or solely a natural phenomenon. If it (they) is(are) elementary already (i.e. not further refinable, as just explained), it(these) would often be qualifiable as patent-(in)eligible inventive concepts [92-95,118]. Otherwise, it needs not be immediately clear, whether it is part of an abstract idea only or a compound of only patent-ineligible elements or its CI is non-preemptive and/or comprises one patent-eligible element [92]. This can be clarified only, if CI⁸ is disaggregated as far as possible into elementary inventive concepts alias elements.

- .b) In its *Alice* decision this Court turned explicit – by its elaborations on the requirements stated by *Mayo* to be met by a CI – its in *Mayo* still implicit §§ 101/102/103/112 requirements to be met by a CI in the claim construction for it.

Thus, by *Alice* this Court confirmed, what it had implied already by *Mayo*: The classical §§ 101/102/103/112 interpretation is too coarse for basing on it a broad consent how to test precisely/completely ET CIs under these 4 §§ –

while this classical interpretation today underlies all such decisions of district courts, hence not enabling them to proceed, therein, in a commonly accepted way, about which their judges repeatedly complained, e.g. [85] – and that this Court hence refined already by *Mayo* its classical interpretation of these 4 §§ such that it provides to district courts this missing way for SPL testing of ET CIs.

.c) Claim interpretation is not an issue, here, “while its examination during patent application is still in progress”. Applying, within these initial phases of examining a patent application the BRIP^{to} is reasonable – although the BRIP^{to} is “heretic”, because deviating from the by the CAFC ordered BRIP^{hi}, but then not “schismatic” – as then not the CI per se is at issue, but the applicant’s improvement of a claim’s wording, for thus excluding its false interpretation by the posc.

- 3 .a) The mathematical definition of the notion “inventive concept”, discussed in detail in [5-7], is a simplification of the powerful notion of “concept” in DL/KR [2-4]. The former is customized for modeling Highest Courts’ SPL precedents, nothing else, while the DL/KR notion of “concept” serves for general purpose recursive modeling compound concepts by means of simpler ones.

By contrast, SPL precedents proceed the opposite way, for achieving these elements¹⁾²⁾ of a CI are defined definite, useful, independent^{8.b)} – logically impossible with compound elements^{1.c)}, by SPL precedents today not yet really noticed 5.d) [92].

.b) Three preconditions are recognized and assumed as fulfilled by the CI to be tested, the first one also by the NPS. It got to be ●) of FFOL type (“finite first order logic”) [98], ●) non-pathological [59], ●) specified consistent to its application/problem^{8.b)} [5,64.74,91,92].

.c) The *Mayo* framework is, as to ET CIs needs, logically complete – unlike the classical claim construction [64,74,91,92] – and it requires that its key notions are scalable [5-9,95]. By using Kant/Russell/Wittgenstein-like thinking [7**)-4)], the German *Demonstrationsschrank* and US *KSR/Bilski/Mayo* decisions lead to a metric for the amount of (non)patent-eligible inventivity embodied by a CI’s TT.0 [5],

III. A CI's SCOPE DEPENDS ON ITS "BRI"

For a CI, the meaning of the term "scope(CI)" is crucial: Another invention namely may violate CI's patent right iff it belongs to scope(CI). Whether this holds requires determining first this CI's meaning precisely – by construing its refined claim construction^{8.a)}, e.g. based on *Mayo's* inventive concepts, i.e. CI's post *Mayo* presentation as of the FSTP-Test^{8.b)}.

By its *Biosig* decision this Court defined by constitution, for a CI and its pre- and post *Mayo* presentations, what the relation is between the meanings of the terms "scope(CI)" and "CI is definite".

SSBG's Amicus Brief [58] had analyzed both notions already, if based on *Mayo's* inCs^{8.b)}, defining a post-*Mayo* notion of scope^{8.b)} identical to that of *Biosig/Alice*, i.e. avoiding preemptive CIs^{4)5.b)8.b)}.

counting elementary "creative thoughts" [6,7] mathematically modeled by binary elementary disclosed ("BED") crCs resp. inCs^{8.b)}.

This cognition of separable thoughts increases the scientificity of SPL precedents, as it enables replacing indefinite terms, e.g. "enough", by numbers – as any metric does. Here, in indicating a CI's patent-eligibility [18,19] and patentability^{8.b)}. Thus, for a CI's TT.0^{8.b)} – defined over posc and prior art by a generative set of inCs^{8.b)} – any court could decide objectively, based on an unquestionable quantification: TT.0 is **a)** not an abstract idea, **b)** patent-eligible, and **c)** patentable **iff of these inCs** is enabled for (e.g.): **a)** the whole set, for **b)** 1 inC of it, and **c)** if (TT.0's anticipation is attempted by 1 TT.i) then 1 inC else then 2 of it – **c)** as in the German decision.

⁴ A blockbuster preemption: The chemical compound Dimethylfumarat was originally developed and patented as niche drug for a skin problem. Recently it has been detected as re-

To begin with: The usually assumed notion of the term “scope(CI)” is very intuitive but fuzzy, as defining: “For a CI, its scope(CI) is the set of all inventions it comprises”. The usual meaning of the term “comprise” namely is vague and with it that of scope(CI). And it is not trivial to determine, what “comprising an invention” exactly means, i.e. an invention being within the scope(CI) or not^{5.a)6.a)8.b)}.

ducing also impacts of the widespread Multiple Sclerosis (product name: “Tecfidera”) and protected by a new patent for this new usefulness and some alleged refinement [119].

- 5 .a) Any claim interpretation trivially is a broadest one. But, the BRI of a CI yields several different inventions, if used with different reasonablenesses [58,64,74,91] – for simplicity skipped here).
- .b) Defining the notion of “preemption” precisely in detail is discussed elsewhere [5,58,64,74,91,92].
- .c) The precedential *Phillips* decision is omitted here. As it explains best the emerging of this BRI Schism, it is elaborated on in [78.p.5-6]. There is shown: The wordings of all post-*Phillips* versions of the PTO’s BRI guideline [14] vastly misrepresent *Phillips* as almost totally ignoring its key limitation over the BRI^{pto} – namely *Phillips*’ “claim term interpretation limitation”^{5.d)8.a)} – and moreover keeping pretending, the BRI^{pto} were precedential.
- .d) For the very dogmatic thinking of some professors in patent law, by the *Phillips* decision the CAFC deviates from the US case law doctrine [117] – the more the Supreme Court by *KSR/Bilski/Mayo/Myriad/Biosig/Alice* – as all these decisions reduce, for a CI, the interpretation of its claim terms to the meanings disclosed for the posc^{8.a)} by this CI’s specification (as of CI’s interpretation in its prosecution history), and as 35 USC and early Supreme Court decisions allegedly exclude such reductions in claim interpretations, i.e. allegedly require these meanings to be those the posc^{8.a)} knows – often broader than those the CI uses.

But this thinking is irrational. It namely clings to the originally ill-defined notion of $\text{posc}^{8.a}$. It is ill-defined as this posc 's knowledge is defined by an “all quantor” on an innumerable set. This posc 's statements hence are inherently “undecidable” – this term having the usual meaning, being easily formalizeable by a Turing machine,

In the above decisions this “undecidability deficiency” of the original notion of a posc is eliminated – more precisely: reduced to a commonly/practically accepted degree, just as done also in axiomatic mathematics, separating its exact ‘object language’ from its notionally sometimes blurring ‘meta language’ being a natural language – by limiting posc 's knowledge to what is disclosed by the CI's specification read in the light of its prosecution history at its priority date. I.e.: These decisions limit a CI's “elements’ semantics allocation basis” – see Section V – to this CI's inventive concepts [18,19]¹⁾²⁾, clearly limited to the finitely many meanings this CI uses^{8.b}. Note: Rationality accepts the unavailability of the above semantically blurring ‘meta language’, which makes become obsolete the otherwise prevailing question “How would you eventually become decidable?” [117].

Proceeding this way, the FSTP-Test's NAIO test^{8.b} also avoids a CI's ‘over-claiming’⁴/preemptivity – to distinguish from concurring ‘independent CIs’ [116], unavoidable in NPSes based on “freedom of creating patentable inventions”.

- 6 .a) fuzzy, as the term “comprise” has different meanings, depending on the different meanings of the term “BRI”.
- .b) The extent of this “BRI difference” – between the meanings or scopes of a CI caused by such limitations, if existing anyway “ruining” any decision using the BRI^{pto} / BRI^{phi} – is depending on whether this CI deals with a CT or ET CI. For CT CIs it often doesn't exist as its elements' properties are physical/visualizeable, while for ET CIs many of their elements' properties are invisible/intangible/non-physical, implying their description and/or understanding often is imprecise and/or incomplete, hence said differences potentially being tremendous. For classical claim interpretation, i.e. of CT CIs – being totally tangibility/visibility of their elements based – this cognitive problem never occurred.

III.A The 2 Pre-*Mayo* Fuzzy/Deficient Notions of “scope(CI)”

Since *Phillips*^{5.c)}, the above BRI Schism allocates to a CI two different meanings (and hence different scope(CI)s), depending on the authority – the PTO or the CAFC, each interpreting the CI by means of its authority specific BRI (see Section II):

- The PTO determines by [14] the scope^{BRI_{pto}}(CI) by its PTO specific BRI of a CI, called “**BRI_{pto}**”.
- The CAFC defines in *Phillips* a refined meaning of the BRI_{pto}, called “**BRI_{phi}**”, thus determining a tighter scope^{BRI_{phi}}(CI) \subseteq scope^{BRI_{pto}}(CI) \forall CI.

I.e.: The term “reasonable” in both BRIs is given a different meaning by both parties:

- One reasonableness is ‘since ever’ defined by the PTO’s BRI guideline [14], App. 180a. But, this alleged reasonableness massively oversimplifies claim interpretation of ET CIs and totally decouples it from its testing under SPL. Nevertheless, the PTO clings to its misleading BRI guideline [14] and takes it as the basis of any other §§ 101/102/103/112 PTO guideline¹³⁾⁻¹⁵⁾.
- The CAFC had early recognized this intolerable deficiency of the BRI_{pto}, e.g. if a CI’s specification or even the wording of its claim uses a term, which outside of the CI has a further meaning, differing from the one used by this CI, e.g. a broader one – what often occurs with ET CIs. Then the BRI_{pto} guideline encourages/insinuates (why explains [78.p.5-6]) to take into account this ‘extrinsic’ claim term’s meaning, too, even if – as

the posc recognizes – the CI doesn’t work at all with the extrinsic meaning¹¹⁾.

By *Phillips* the CAFC increased the BRI^{pto}’s reasonableness: It requires a CI’s claim term interpretation to be limited to the meanings the CI uses.

Yet, due to the high reputation of the PTO it succeeded to establish against the CAFC^{6.c)}, in the US NPS, this anomaly alias “**BRI Schism**” as to the competence of legally determining the meanings of the 35 USC SPL (implied) term “claim interpretation”. Circuit Judge K. O’Malley commented on this BRI Schism by asking the PTO directly/publicly [21]:

“[D]oes it really make sense to have different tribunals considering patent litigation yet not have them all operating under the same standards for claim construction? Would it not make sense to have the PTO use the actual construction of the claims of an issued patent during re-exam – as do the courts and ITC – rather than a hypothetical “broadest reasonable” construction? It certainly would make it easier for us as a reviewing court to be able to apply one set of standards to all these IP tribunals.”¹¹⁾.

But, even applying the BRI^{phi} to an ET CI still leaves serious questions unanswered. In particular, the BRI^{phi} does not – and *Phillips* reasons such that the BRI^{phi} logically cannot – provide a rationale for deciding whether a CI is patent-eligible or not.

The constitutionally foreseen reaction of this Court by its unanimous *Mayo* decision – on this into-

lerable anomaly in SPL precedents, threatening the wealth of the US society – requires to take the only thinkable [74.a)] way alias rationale for overcoming, for ET CIs, this specific claim interpretation deficiency of the BRI^{phi} : Namely, to define for ET CIs a further refined claim construction, excluding this deficiency, the way hinted at by *Mayo*^D.

For the resulting “ BRI^{mayo} ” – perhaps more telling: “**broadest legal interpretation, BLI**”, instead of the unfortunate BRI – holds, by definition of the notion “inventive concepts” of a CI (as to the *Phillips* notion of a “claim term” it is a substantial refinement [6,78]):

$$\text{scope}^{\text{BLI}}(\text{CI}) = \text{scope}^{\text{BRI}^{\text{mayo}}}(\text{CI}) \subseteq \text{scope}^{\text{BRI}^{\text{phi}}}(\text{CI}) \quad \forall \text{CI}.$$

⁷ .a) see [69], e.g. p. 28, JUSTICE BREYER:

„.... But I think it's pretty easy to say that Archimedes can't just go to a boat builder and say, apply my idea. ... Now we take that word 'apply' and give content to it.

And what I suspect, in my opinion, Mayo did and Bilski and the other cases is sketch an outer shell of the content, hoping that the experts, you and the other lawyers, and the -- circuit court, could fill in a little better than we done the content of that shell. ...

Now, will you at some point in the next few minutes give me your impression of, if it were necessary to go further, what could the right words or example be?”^{7.b)}

.b) [79⁹⁾] explains, why this hope^{7.a)} – manifesting itself in all decisions *KSR*/... /*Alice* of this Court – could not be fulfilled by its “exclusively legal” environment, yet by SSBG with its strong AIT background, principally [e.g. 79^{3.b)}, 74.a)], 2, 59,64,74,91,92] and practically [e.g. 6,7,11,43,59,60] – strangely worldwide the only party familiar with SPL precedents and its epistemological^{3.e)} amenability to scientification.

Yet: *Mayo* didn't explicitly define an operational "*Mayo*-Test"^{1.a)}, as indispensable for determining for a given CI its refined claim construction. With the classical claim construction – based on the BRI^{pto} or the BRI^{phi} of this CI – intuition insinuates, without letting us know, that such a test algorithm is negligible/immaterial, as the classical claim construction based on it may be easily construed in free-style (using the well-known table on the lines of which the CI's 'claim limitations' are noted).

But patent practitioners – using Breyer's metaphor^{7.a)} – approached by Archimedes, didn't know how to proceed^{7.b)}: I.e., how to translate "*my idea*"^{7.a)} (i.e. his water displacement theorem, here the *Mayo* framework^{1.a)}, a declarative invariant over all boats) into an algorithm^{1.a)} building a boat implementing Archimedes' idea.

This encouraged most patent practitioners to jump to the conclusion that the *Mayo* requirements are incomprehensible and hence may be considered as non-existent, just as a *Mayo*-Test – and the *Biosig/Alice* decisions to be of no help, too [81,99]. But all such rumor is totally wrong! Section III.B, completely devoted to the operational FSTP-Test, shows that passing it is necessary and sufficient for resolving all the above identified problems, as to ET CIs, with the classical claim construction – by *Mayo*'s refined claim construction eliminated.

III.B The Post-*Mayo* Precise Notion of “scope(CI)”

Biosig/Alice im-/explicitly back-up the FSTP-Test^{8.b)} – to be the allegedly nonexistent *Mayo*-Test.

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- ⁸ .a) Construing, for a CI described by its inCs¹⁾²⁾ [58], identified in CI’s specification as understood by the “**posc**”^{5.d)} ([person of] pertinent ordinary skill and creativity, *KSR*, [57]), by
- the refined claim construction – i.e. testing CI under §§ 112/101/102/103 as interpreted by *Mayo* – is performed by executing on CI the FSTP-Test, which determines why CI meets the **MINIMAL SET** of **ALL** requirements stated by these 4 §§ or why not – while construing for this CI
 - the classical claim construction by testing it only under a small part of § 112 yields a statement why CI meets some of all the requirements stated by these 4 §§ or not. Then remains to be shown that CI passes also the remaining requirements stated by the 4 §§ [19,25,36,58] – hitherto never done completely. I.e.: The classical claim construction suffers from a whole series of logical “blind spots”!

This Court never explicitly addressed this deficiency of the classical claim construction. But, it is not its business to identify/fix in detail a problem, but just to indicate it and how to remove it, both principally only! That is what this Court clearly did by *Mayo*⁷⁾. I.e.: In *Mayo* it clearly indicated the legal incompleteness of the classical claim construction and how to remove its problem for ET CIs. This implies refining it finer than *Phillips* already did^{6.b)} – see Section III.A.

.b) The below “**FSTP-Test**” of a CI has the minimal, yet all by SPL needed^{5.d) 8.a)}, “reasonableness limitations” for CI’s inventive concepts, “**inCs**”, of a CI interpretation/TT.0 [58,91].

It decides^{3.b)}, whether an invention $I^* \in \text{scope}^{\text{BRIfstp}}(\text{CI})$ or not, as required by *Biosig*. Hence (interpretation/TT.0 wise):
 $\text{scope}^{\text{BLI}}(\text{CI}) = \text{scope}^{\text{BRIfstp}}(\text{CI}) ::= \{ \forall I^* \mid \{ \text{inC}^* \} \leq_{\text{RT}} \{ \text{inC} \} \}$,
 meaning that any “realization tuple inC^* ” of I^* also is one of CI, explained in [91,92] – being operationally checkable^{3.b)}.

Hence: “FSTP-Test=*Mayo*-Test=*Alice*-Test=*Biosig*-Test”.

The FSTP-Test’s subtle questions need not be discussed, here [91]. Yet, it shows that a refined claim construction is much more complete – and hence complex – than a

classical one. This is overcompensated by its automatic guiding its user. Its “patent logic carrying semantic, pls” is CI independent: It comprises the set of all algorithms (modulo “redundancy”) deciding whether CI meets all *Mayo/Bio-sig/Alice* requirements – simplification impossible^{3.b}). Having this total set greatly supports practical optimizations [7,43]. **It is executed**, for a CI interpretation/TT.0⁰ wise, TT.0 selected in 1)(b) and processed in 10 steps, unless a step cannot be executed (see the end of the next paragraph).

S⁰, defined to be a generative set alias interpretation alias TT.0 of CI, is established by step 1 – via a set of N {BAD-crC} – as a set of K⁰ {BED-crC}, which by step 2 becomes a set of K⁰ {BED-inC}. Thereby any justof (= “justification of”) input may comprise several nonredundant inputs, which the FSTP-Test may manage separately. Its logic “ \wedge ”s shall indicate that it implements a FFOLE expression^{1.a)3.b}), i.e. the 10 FSTP-test.o may be executed in any order. A simple – often sub-optimal – sequence of executing the FSTP-Test is to input, on any prompt, all correct information, as this avoids any backtracking; this is the only such strategy.

- 1) **The FSTP-Test** prompts the user to input
 - (a) $\forall \text{TT.i} \wedge 0 \leq i \leq I = |RS| \wedge 1 \leq n \leq N = N(\text{TT.0}): \text{BAD}^{\text{TT.i-crC}} \text{in};$
 - (b) $\forall \text{TT.0} \wedge 1 \leq n \leq N$ justof: **BAD^{TT.0-crC0n}** is **definite**;
 - (c) $S^0 ::= \{\text{BED}^0\text{-crC0nk} \mid 1 \leq k \leq K^{0n}\} \forall 1 \leq n \leq N:$
 $\text{BAD}^0\text{-crC0n} = \bigwedge_{1 \leq k \leq K^{0n}} \text{BED}^0\text{-crC0nk} \wedge K^0 ::= \sum_{1 \leq n \leq N} K^{0n};$
 - (d) $\forall 1 \leq k \leq K^{0n} \wedge 1 \leq n \leq N$ justof: **BED^{0-crC0nk}** is **definite**;
- 2) $\wedge \forall \in S^0$ for justof: their **lawful disclosure**;
- 3) $\wedge \forall \in S^0$ for justof: their **definiteness** under § 112.6;
- 4) $\wedge \forall \in S^0$ for justof: their **joint enablement**;
- 5) $\wedge \forall \in S^0$ for justof: their **independence**;
- 6) $\wedge \forall \in S^0$ for justof: their **KSR-nonequivalence^{**}**:
 $\text{BED}^{0*}\text{-inCik} ::= N \quad \forall 1 \leq k \leq K^{0n} \wedge 0 \leq i \leq I;$
 $\text{BED}^{0*}\text{-inC0k} ::= A \quad \text{if } \text{BED}^0\text{-inC0k} \in \text{KSR posc};$
 $\text{BED}^{0*}\text{-inCik} ::= A \quad \text{BED}^0\text{-inCik} = \text{KSR } \text{BED}^0\text{-inC0k},$
 $1 \leq i \leq I;$
- 7) \wedge for justof: by NAI0^{*}) TT.0 is **not an abstract idea only**;
- 8) \wedge for justof: TT.0 is **not a set of solely natural phenomena**;
- 9) \wedge for justof: by NANO^{**}) TT.0 is **not anticipated** \wedge **nonobvious**
 on $(S^0, \{\text{BED}^{0*}\text{-inCik} \mid 1 \leq k \leq K^0, 0 \leq i \leq |RS|\})$;
- 10) \wedge for justof: by NANO^{**}) TT.0 is **patentable** on $S^{0\text{pat-el}} \subseteq S^0$.

-
- *) The **"Not Abstract Idea Only, NAI0"** test prompts the user
- 1) for input&justof: the CI specification discloses a problem, P, to be solved by TT.0 of CI;
 - 2) for input&justof: S⁰ alias TT.0 solves P;
 - 3) for input&justof: P is not solved, if in S⁰ a BED⁰-inC0k is relaxed (i.e. the truth set of a BED⁰-inC0k is enlarged);
- If 1)-3) apply, then <CI,S⁰> is "not an abstract idea only".

The NAI0 test invites questions requiring further SPL precedents, determining which of the mathematical alternatives are reasonable [91]. Yet, three notes are in place here, already. **i)** If $P ::= \bigwedge \text{BED}^0\text{-inC0k} \text{S}^0 \text{BED}^0\text{-crC0k}$ is implied by § 101, the NAI0 test shrinks to step 3). **ii)** Any refinement of this NAI0 test would avoid ftn⁴ occurrences, without avoiding [116]. **iii)** Any generalization of this NAI0 test requires P and 2)/3) to be a 'logically' consistent [113.Section VI] for excluding the CI's preemptivity [91,92].

- **) The **"Not Anticipated And Not Obvious, NANO"** test checks of RS all its "anticipation combinations, AC⁰s" as to S⁰ [5,6]:
- 1) It starts from the 'anticipation(A⁰)/non-anticipation(N⁰)' matrix of FSTP-test.6, any one of the I+1 lines of which shows, by its K⁰ column entries, for $i = 1, 2, \dots, I$, which of the peer TT.0 entries is anticipated/non-anticipated by a former one, and for $i=0$ is anted/non-anted by posc.
 - 2) It automatically derives from the AN⁰ matrix the set of all {AC⁰} with the minimal number, Q^{plcs/0}, of "N" entries.

Q^{plcs/0}, determined by FSTP-test.9, represents the creativity TT.0 minimally embodies, measured by the number of independent/creative thoughts the inventor of TT.0 minimally had to create for finding TT.0, when starting from the knowledge provided by posc and prior art – without considering, which of these independent thoughts represent patent-eligible or -ineligible subject matter. Q^{plcs/0} hence is the "semantic height of TT.0 over RS", while FSTP-test.10 determines its "pragmatic height over RS" [5,6,7].

Thereby the NANO test also embodies questions requiring further SPL precedents. E.g.: Just construing "prima facie ACs" – for showing a granted ET CI is obvious – unreasonably over-simplifies inventing it over posc and prior art, as any AC ignores many FSTP-test.o's, i.e. this ET CI's pragmatically much higher over posc+pa than its Q^{pmgp} value.

IV. *Biosig* RUINS ANY BRI^{pto} BASED LEGAL DECISION, HENCE ENDS THE BRI SCHISM¹⁰

Biosig shows: PTO's claim interpretation by BRI^{pto} contradicts 35 USC – see below – thus ending the BRI Schism (not the ClaimConstruction Schism, see Section V).

In *Biosig* this Court starts from explicitly confirming its “pro inventor” attitude in claim interpretation, as required by *Mayo* already, and therefore bans in clear and unmistakable words PTO's permanent “incapacitation of the inventor” of a CI by the BRI^{pto} in two independent ways, shown next, on both ways assuming a CI in post-*Mayo* presentation, first.

I.e., by *Biosig* this Court

- 1.) emphasizes – referring to §112 – that a patent specification's claims are “...*the subject matter which the applicant regards as [the] invention*”. *Biosig* at 3818.

It thus quite directly reminds the CAFC and District Courts that they are not entitled to change a claim interpretation clearly disclosed by the specification, as it is “*the written specification that represent[ed] the key to the patent*”. *Markman 517 U.S. at 379* (*Biosig* at 2125) and “*Markman, 517 U.S., at 389 (claim construction calls for the necessarily sophisticated analysis of the*

whole document,’ and may turn on evaluations of expert testimony)”. Biosig at 2130.

and confirms this interpretation of 35 U.S.C. – by clarifying that it evidently also is an immediate consequence of the definiteness requirement that a CI must meet for satisfying SPL – i.e.

- 2.) drastically states: *“It cannot be sufficient that a court can ascribe some meaning to a patent’s claims; the definiteness inquiry trains on the understanding of a skilled artisan at the time of the patent application, not that of a court viewing matters post hoc.” Biosig at 2130.*

It thus also here states: By the Constitution, a District Court or the CAFC must not apply the BRI^{pto}, as the latter may determine – what the BRI^{pto} guideline [14] frankly concedes to be its objective – *“some meaning”* of a claim, i.e. a meaning the inventor has not thought of at the priority date, unless the specification provides a hint at it. This holds especially, if this meaning does not provide the CI’s disclosed usefulness, which § 101 requires – or even contradicts CI¹¹).

A CI satisfying SPL in a post-*Mayo* representation satisfies SPL in a pre-*Mayo* one, too – as Section V explains. Hence^{3.b)}, the preceding two justifications for this Court’s interpretation of 35 U.S.C. by its Biosig decision hold \forall CIs satisfying SPL.

V. *Alice* RUINS ANY BRI^{phi} BASED LEGAL
DECISION, HENCE ENDS THE
ClaimConstruction SCHISM¹⁰)

Sections II/III/IV told about the notion “CI”:

- A CI’s meaning is based on two tools – interdependent on each other – indispensable for interpreting/testing it under SPL:
 - Its “elements’ semantics association basis” for interpreting CI’s individual terms resp. inventive concepts, subject to the “BRI Schism”.
 - Its “CI holistic semantics association basis” for interpreting this CI as a whole, subject to the “ClaimConstruction Schism”.

Thus:

- pre-*Mayo*, a CI’s elements’ semantics association basis was fuzzy, due to the schisms about it between the CAFC and the PTO (BRI^{pto}/BRI^{phi} Schism), and its holistic semantics association basis was defined by the classical claim interpretation by BRI^{phi}, i.e. was very incomplete (of which then no awareness existed, as today recognized, in hindsight). I.e., pre-*Mayo* no “holistic claim interpretation” schism existed, yet, just broad frustration among all clearly thinking patent practitioners about the lack of predictability of the outcome of patent applications/reexaminations/litigations due to uncertainty about what the meaning of the term “claim as a whole” exactly is.

- post-*Mayo* – using both above claim interpretation tools⁹ and due to *KSR* – the problems of classical claim construction with ET CIs, i.e. of an ET CI’s SPL test, principally vastly disappeared [1].

Thus: While CI’s SPL test – being a TT.0^{8.b}) test – is executed,

-) the same both bases and
-) only one complete set of inventive concepts generating TT.0 (i.e. generating the same interpretation of this ET CI)

must permanently be used. Thereby, for a CI [91,92], this “generative set” very often is not unique, especially not with ET CIs [58].

In classical claim construction, the logical need of this “cross over checking” – between TT.0’s inventive concepts and its claim as a whole – in testing it for its satisfying SPL, was never clearly recogniz-

⁹ Its 2. basis associates, to a CI’s “SPL quality symbols”, i.e. to the representatives of the society’s concerns as to the patent law – as identified/defined by 35 USC and its interpretation by this Court for a CI, e.g. its usefulness, patent-eligibility, nonpreemptivity [113⁹]. This explains, why any CI interpretation necessarily has two quite different semantics association bases – not yet recognized by *Phillips*. *Phillips*’ single semantics association basis recognized only the meanings to be associated to a CI’s terms by CI’s ‘technical’ needs, not yet those to be associated to them and to CI as a whole for satisfying its “patent law carrying semantics, ples” – not to speak of having recognized the “patent monopoly granting pragmatics, pmgp” [5,6].

ed and hence never performed. This evidently is a deep legal error of classical claim construction (of which is unknown, how many patents have been granted due to having committed it) – even if CI has only a single TT.0, with complex or ET CIs being very unlikely [58].

Instead of fixing these classical BRI^{pto}/BRI^{phi} based deficiencies and thus substantially increasing the quality of patents granted, the BRI Schism was not removed and the ClaimConstruction Schism arose about *Mayo's* inventive concepts between this Court and the CAFC and (silently) also the PTO, both totally refusing using this fundamental and enormous helpful new notion – showing the way eliminating the classically unavoidable troubles with ET CIs⁽¹³⁻¹⁵⁾.

Finalizing Sections IV/V, the political dimension of these 3 Supreme Court decisions is addressed¹⁰⁾.

¹⁰ Sections IV and V unfortunately must resp. had to report: The PTO and many US patent holders are heading towards a big problem. Although this Court's *Mayo/Biosig/Alice* decisions stopped the trend towards a medium term collapse of the US NPS caused by the current erosion of its SPL precedents – these decisions logically had no option, but to bust many ten thousands of patents granted for ET inventions.

But, these patents attracted many primarily long-term profit makers of today's economies, being the sustainability-seeking investors into them. I.e.: Loosing such patents would have drastic negative impacts on their ET investment behavior – being today's primary source of the US society's wealth by its innovativity in ETs.

Hence, the Congress would have to provide relief, by granting a second chance to so threatened patents, by allowing complementing them ex post by exposures of their CIs' patent-eligible inventivity as outlined by this Section V.

Thus, the turmoil ahead, caused by ET patents granted already but now potentially going bust and with them many non-ET patents, is politically controllable. But to this end, the credibility of the US NPS must be reestablished – which, after having been criticized long time because of its too many 'low quality' aspects [119], finally has got into jeopardy, due to its two legal schisms caused by ET CIs shaking its fundamentals by a series of clashes between its key legal players. The Supreme Court's above 3 decisions aim at achieving exactly this credibility.

The framework set forth by these decisions is well-defined. I.e., it is the straightforward refinement of classical SPL precedents indispensable for meeting the needs of ET CIs, enables the scientification of SPL precedents fully in line with Advanced IT (see Section VII), and hence will unfold healing-power reconciling and reconsolidating SPL precedents. In total, it thus substantially increases

- the quality of patents, as it enables clearly/precisely/completely determining, for a CI, the logical as well as the social information it embodies, i.e. all details of its "patent law carrying semantics, plcs"⁸⁾ and its "patent monopoly granting pragmatics, pmgp"⁹⁾, and thus
- robustly protecting ET CIs by SPL, and hence the stimulation of investments into ET R&D.

Capitol Hill and White House have fortunately recognized the need to advance this way [120,54]. But, it is not yet clear, whether the bulk of patent practitioners shares this view – or would prefer to ignore these Supreme Court decisions, hoping that they would soon be forgotten as they allegedly are simply superfluous (see Section VII). The current mood, within three trend setting in-groups as to the question of this Petition, is elaborated on in detail in [113] – yet cannot provide certainty. Hence this Petition.

VI. *Biosig/Alice* AND THE '902 DECISION

VI.A The '902 Invention

The CI at issue – dealing with Internet telephony – is comprised by U.S. Patent No. 7,145,902 (“the ‘902 Patent”), App. 87a. issued on December 5, 2006 to Sigram Schindler et al., owned then by TELES AG, and now owned by SSBG.

Internet telephony initially was not broadly accepted, despite cost advantages, as then suffering from “lack of quality” problems, which manifested itself in primarily two ways: i) establishing calls often totally failed and/or ii) established calls often encountered an unacceptably high rate of delays and jitters in the voice data transfer.

The ‘902 patent provides a then very inventive remedy against this lack of quality problem: The ‘902 CI requires to permanently monitor – in some way, then known by the *posc*^{8.a)} – the data transfer of an Internet telephone call’s communications connection (stretching between caller and callee, as known by the *posc*) and to instantly change-over with exactly this communications connection to a line-switched network – either a Public Switched Telephone Network “PSTN” or an Integrated Services Digital Network “ISDN” – as soon as this monitoring detects the bandwidth of its data transfer is understepping or exceeding a certain threshold and/or encounters a time delay when forwarding IP data packets. ‘902 patent at col.9, l.41-58.

The ‘902 invention thus substantially improved, by a compound inventive concept¹⁾²⁾ – as of *Mayo/Alice* – the then already known technique of

change-over with a data transfer between networks. E.g., none of these known change-over techniques would ●) monitor this end-to-end-connection, or ●) derive the change-over signal from monitoring this specific connection, or ●) change over with only this specific connection. The '902 invention hence provides in a then totally unknown way a substantial improvement of the prior art technique, as eliminating the above quality problems i) / ii).

Today, this '902 technology is used by virtually all Internet telephony equipment for business use. The '902 invention hence was, at its priority date, a very innovative ET CI par excellence – being THE concern of this Court's *Mayo/Alice* decisions.

VI.B The '902 Proceedings

Cisco, when told in 2007 its new telephony products infringe TELES's '902 patent, requested its *inter partes* reexamination under 35 U.S.C. §§ 311-318 and 37 C.F.R. § 1.913. No amendments were made to the claims during the reexamination. The PTO's Central Examination Unit ("CRU") nullified all but two of the challenged claims. SSBG appealed all CRU's invalidations to the PTO's Board ("BPAI"), and Cisco cross-appealed because of the two preserved claims. The BPAI's decision on March 23, 2012 affirmed the decision of the CRU as to all claims.

SSBG filed an appeal against the BPAI's decision invalidating '902 claims. Cisco appealed the decision of the BPAI as to the two claims it determined to be patentable, and SSBG cross-appealed as to Cisco's attack on these two preserved claims.

The CAFC had jurisdiction over the appeals pursuant to 35 U.S.C. § 141 and 144 and 28 U.S.C. § 1295(a)(4)(A). The CAFC’s decision [62.a] found all ‘902 claims at issue invalid, also the 2 preserved ones – as not novel¹²⁾.

SSBG asked for Rehearing en Banc [65], refused by the CAFC on May 27, 2014 [75].

VI.C *Biosig* Ruins the ‘902 Decision

By Section IV, as it uses the BRI^{pto}:

- Opinion, App. 8a: Here the CAFC approves the BPAI’s use of the BRI^{pto} in a reexamination^{2.f)}.
- Opinion, App. 10a: Here the CAFC states its use of the BRI^{pto} – thus contradicting *Phillips* 2005 by applying a 2004 decision: “*During reexaminations, claims ... are to be given their broadest reasonable interpretation ...*” – while *Phillips*¹¹⁾ does not exempt the time after examination^{2.f)5.g)} from its rule, to determine the meanings of a CI’s “claim terms” as exactly those used by it [64,78].

VI.D *Alice* Ruins the ‘902 Decision

By Section V, as it uses the BRI^{pto}:

It thus ignores the ‘902 inventive concepts, just as their cross over checks with the ‘902 invention as a whole.

VI.E Aftermath to the ‘902 Decision

The CAFC would have instantly recognized all these legal errors if it had not applied the BRI^{pto} but

at least its own BRI^{phi} – not to speak would have proceeded as required by *Mayo/Alice*. Then the absurdity of its claim construction would have become evident with any one of these legal errors, i.e. it would have been avoided¹¹).

Note: This is a convincing example showing that the *Mayo* framework does not only increase the quality of patent(application)s, but also of court decisions on them¹¹).

Finally: ftn¹²) is an amusing remark, sarcastically commenting on [62], as to its non-novelty/obviousness findings concerning the ‘902 inventions.

¹¹ The ‘902 decision, in addition to this fundamental legal error – contradicting its own *Phillips* precedents, and even Circuit Judge K. O’Malley, emphasizing that *Phillips* is legally binding all courts (see III.A), not to speak of contradicting *Mayo/Alice* – the CAFC commits further legal errors by ignoring e.g. that

-) the by it invented I* – claimed by nobody and nowhere – .) neither eliminates the problems i)/ii) described/disclosed (see VI.A/B) to be the decisive property of the ‘902 CI, .) nor works, at all, with the CAFC’s off-the-shelf multiplexers [64]

-) using the BRI^{pto} made the CAFC understanding the ‘902 claim 68 to be so broad that it scope(‘902 claim 68) comprises a data transfer technique explicitly excluded by the ‘902 specification as being prior art [63]; but, a claim interpretation evidently contradicting the claim’s specification is excluded by the BRI^{pto} (see [14], first sentence), and

-) packet-switching transmissions alias packet-switching ”channels” through a network don’t make it a packet-switching network, otherwise most PSTNs were packet-switching networks, absurdly.

¹² The PTO granted SSBG 3 new patents, leveraging on the ‘902 invention in various mobile (i.e. non-PSTN/ISDN) environments, all these patents having the same specification –

VII. CONCLUSIONS

This Petition should have shown that a Writ of Certiorari by this Court is urgently needed for avoiding that this Court’s groundbreaking *KSR/Bilski/Mayo/Myriad/Biosig/Alice* decisions are ‘neutralized’¹³⁾ by the PTO’s respective guidelines, e.g. [72], for several more years. This would not only further going increase the lack of trust into US SPL precedents and create additional confusion among patent practitioners already existing [113] – caused by the above explained Schisms and their impacts on the resilience of patents for ET CIs – hampering in all ET areas the innovativity of the US society, medium term putting its wealth into jeopardy.

There are, as to overcoming the unfortunate current situation of SPL precedents for ET CIs, three crucial aspects in implementing *Mayo/Biosig/Alice*:

- 1) Most urgently is to stop the hearsay broadly accepted – as insinuating simplicity, hence felt most convenient, though causing nothing else but chaos – the BRI^{pto} were approved by the CAFC for post-examination/reexamination. [79,113] reports: The today dominating opinion among many opinion-leading patent practitioners from economy and Academia is that introducing the current

although their Examiners knew about the ‘902 patent’s reexamination and litigation, as evidenced by their complete quotations on these new patents’ cover pages. By [62], the CAFC thus pretends to know better than the PTO’s BPAI/CRU/Examiners that the ‘902 invention(s) were non-novel/obvious in ‘95 – in particular the 2 “multiplexer ‘902 claims”, which the PTO preserved as patentable¹⁴⁾! By granting said 3 new SSBG patents, their Examiners clearly expressed their view of this reexamination/judicial ‘902 hoax.

drafts of these guidelines would introduce that much unpredictability into patent business that it were an enormous innovation killer. All high-tech SMEs don't have the financial power for successfully competing or only surviving in a legally that risky environment¹³⁾¹⁴⁾.

Consequently, this Court is asked by the petitioner to directly decide the SSBG's '902 case. This would reemphasize this Court's determination to take the US SPL precedents to the level of development urgently needed by ET CIs and provide to all courts the clearly desired

¹³ As long as an "exception from patent-eligibility" guideline of the PTO is based on the on the current wording [14] of its BRI^{pto} guideline as to ET CIs' claim interpretations, which indispensably must be performed first – as commented on in detail in [79p.5-6] – the outcome of the application of this exception guideline evidently enables the PTO to deliberately finding any ET CI as non-patentable by associating one of its terms with a meanings that the posc would know from outside of this ET CI but different from that therein – thus rendering this ET CI as lacking novelty or nonobviousness.

[79p.5-6] showed in detail, how the PTO by its BRI guideline's tricky wording [14] per lip service recognizes the CAFC's *Phillips* decision – confirmed by *Mayo/Biosig/Alice* as necessary but not sufficient for indicating its patentability – yet makes its examiners, the public, and the CAFC⁹⁾¹¹⁾ at least occasionally ignore *Phillips*.

I.e.: Basing the upcoming "exception from patent-eligibility" guidelines on BRI^{pto} or BRI^{phi} (see Section III.A) does not recognize *Mayo* at all (as currently) or again only by lip service (in the future) – terminating none of both Schisms.

This "double talking" – as to both Schisms – by the PTO for many years (and sometimes by the CAFC¹¹⁾) is ended only^ω by making the wording of this BRI guideline consistent to this Court's *Mayo/Biosig/Alice* decisions [113.SecVI].

fundament [113] for consistency and predictability into their SPL precedents as to ET CIs¹⁴).

¹⁴ [73.a)/.b)], just as¹³), avoid using the decisive *Mayo* term “inventive concept”, in spite of this notion in this Court’s *Alice* decision being the sole carrier of the CI’s patentable inventivity, just as in *Mayo*. Both these decisions clearly indicate: Only this term’s meaning represents “patent-eligible creativity” of this ET CI.

Avoiding this so rigorously limited term “inventive concept” from the alleged explanation [73.b)] of *Alice*’s opinion achieves the opposite – it obscures the latter.

[73.b)] thus insinuates, this term/notion “inventive concept” is superfluous or extremely error prone if not misleading, while *Mayo/Alice* require the opposite, namely exposing by it an ET CI’s “increments of its inventivity/usefulness” [18,19,113]. This “inventive concept” abstinence communicates clearly: The simple classical claim construction is sufficient for ET CIs, too – while this is definitively false.

In total: Avoiding in [73.b)] the use of the term/notion “inventive concept” just as in [14]¹³) – strictly refusing to meet this Courts requirements stated by its *Mayo/Alice* decisions – leaves the door open for any examiner and the board of the PTO to deliberately qualify, by using the BRI^{pto}, practically any such ET CI in its patent application/reexamination as not novel or obvious over prior art¹³), i.e. grants to the PTO a power evidently so big and intransparent that it puts the whole 35 USC politically into jeopardy.

What, in [73.b)], is equally unacceptable as the omission of the key notion “inventive concept” is the misuse of the notion “element”: While this Court’s *Alice* opinion strictly limits this notion to represent an elementary feature of the ET CI¹²), [14] insinuates there is no such restriction.

Just to be sure: This Court’s *Alice* syllabus/opinion used the term “inventive concept” 5 times for identifying patent-eligible “elements”¹²) representing, for an ET CI, the crucial items created by for it by its inventor, thus legally transforming this ET CI into an application of its building blocks, which the *Alice* opinion denoted as non-patent-eligible “concepts” – while [73] uses this key term 0 times!

- 2) This would provide to the PTO the firm ground it needs for its guidelines consistent to *Mayo/Biosig/Alice* as to natural phenomena and abstract idea exemptions – thus guaranteeing, to its public and examiners, a predictable policy of granting patents on ET CIs.
- 3) The question then remaining is for the benefits, this policy of granting ET CI patents provides to their holders and competing innovators – is for such patents’ clarity and robustness, implying both parties’ safety.

This safety is evident. The principle underlying this Court’s proceeding for taking SPL precedents to the level of development needed by ET CIs:

- separation of concerns (by refining the interpretation of 35 U.S.C. §§ 101/102/103/112),
- wherefrom their implementation is derived (by *Mayo/Biosig/Alice*)

is practiced in any systematic problem solving. Since the 70s, this principle underlies also ANY system design/specification technique of complex IT systems [122,123].

Moreover: While this old principle of “divide et impera” enables describing any CI in arbitrary preciseness and completeness, there is no other that powerful principle of describing anything than this key principle of rationality.

Hence, this Court’s implementation of 35 U.S.C. §§ 101/102/103/112 – in testing CT/ET CIs under SPL – embodies no risk, whatsoever.

A final remark: Rationality here speaks quite clearly. Sooner or later, this coherent thinking of *Mayo/Biosig/Alice* in SPL precedents – extendable to further §§ of 35 USC – will become an indispensable part of any textbook on patent law. Namely: SPL precedents is extremely amenable to scientification by applying this universal principle to it. This has been shown already by the now coherent thinking enabled for SPL precedents – its great increase of efficiency by using Advanced IT to be expected soon.

By the reasons provided herewith, this Petition for a Writ of Certiorari should be granted¹⁵).

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Respectfully submitted.¹⁶

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¹⁵ [84] makes questioning whether the CAFC intends to end its ClaimConstruction Schism as *Mayo/Biosig/Alice* require. Its anew decision in *Biosig* will show – unless it therein avoids confirming this Court’s finding that the BRI^{pt} contradicts the Constitution, thus prolongating both Schisms. The question initially asked by this Petition hence is very topical.

¹⁶ Prof. Sigrum Schindler, the primary inventor of the ‘902 patent, should be recognized for his significant contributions to this Petition.