

No. _____

In the Supreme Court of the United States

HENRYK OLEKSY,

Petitioner,

v.

GENERAL ELECTRIC COMPANY,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The date on which a district court judgment becomes final is critical to the federal appellate process. A number of critical deadlines for filings and submissions are computed from the date a district court's judgment is final. Recognizing the importance of defining whether a judgment is a final judgment, this Court set forth specific criteria for making this determination. In *United States v. F. & M. Schaefer Brewing Co.*, 356 U.S. 227 (1958), this Court held that the use of specific words is not required for a judgment to be final. The circumstances must show that the district court had an intention to terminate the case. Following this precedent, the Court of Appeals for the Federal Circuit held that in patent cases for a judgment to be final a dismissal of an invalidity counterclaim need not be express. A district court can effectively dismiss a counterclaim. However, in the present case, a judgment was held not be final because an invalidity counterclaim was not expressly dismissed. It is therefore important that this Court grant the petition to review the following questions:

1. Whether this Court should exercise its supervisory power to assure that precedents are followed and reverse a decision that the district court judgment was not final because a counterclaim was not EXPRESSLY dismissed even though this counterclaim was effectively and necessarily dismissed by the district court?
2. Whether Due Process Rights of the Petitioner Were Violated When the Federal Circuit Court of Appeals affirmed Without Opinion District Court's Decision That Was Clearly Inconsistent with Precedents?

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties. Henryk Oleksy, an individual, was the plaintiff in the district court and appellant in the Federal Circuit Court of Appeals..

Respondent, General Electric Company, was the defendant in the district court and appellee in the Federal Circuit Court of Appeals

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OPINIONS BELOW

The pertinent opinions of the district court and the Federal Circuit Court of Appeals are not reported. They are reproduced in appendices.

JURISDICTION

The Federal Circuit Court of Appeals entered its order denying panel rehearing and rehearing *en banc* on July 8, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1).

The Federal Circuit Court of Appeals had jurisdiction under 28 U.S.C. § 1295(a)(1).

The District Court had jurisdiction under 28 U.S.C. § 1338 (a).

CONSTITUTIONAL, STATUTORY AND RULE PROVISIONS

U. S. Const. amend. V.

No person shall be deprived of life, liberty or property, without due process...

28 U.S.C. § 1338(a)

(a)

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights. For purposes of this subsection, the term "State" includes any State of the United

States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

28 U.S.C. § 1295(a)(1)

(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1)

of an appeal from a final decision of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court of the Northern Mariana Islands, in any civil action arising under, or in any civil action in which a party has asserted a compulsory counterclaim arising under, any Act of Congress relating to patents or plant variety protection

Local Rule 54.1(a)

(a) Time to File. Within 30 days of the entry of a judgment allowing costs, the prevailing party shall file a bill of costs with the clerk and serve a copy of the bill on each adverse party. If the bill of costs is not filed within 30 days, costs other than those of the clerk, taxable pursuant to 28 U.S.C. § 1920, shall be deemed waived. The court may, on motion filed within the time provided for the filing of the bill of costs, extend the time for filing the bill.

STATEMENT OF THE CASE

I. Introduction

This petition seeks a review of Federal Circuit's affirmance of a district court's decision that September 29, 2015 judgment which granted GE's motion for summary judgment of non-infringement, denied Oleksy's motion for infringement, dismissed all other pending motions as moot and terminated the case was not a final judgment. This ruling is inconsistent with this Court's and Federal Circuit's precedents. The ruling undermines the determination as to when a judgment is a final judgment, which is critical to appellate practice. Many critical deadlines are determined from the date of the final judgment.

II. The District Court Granted GE's Motion GE's Summary Judgment Motion, Dismissed All Other Motions As Being Moot and Terminated the Case

On September 29, 2015, the District Court entered a Memorandum and Order that granted GE's summary judgment motion for non-infringement, denied Oleksy's motion for summary judgment of infringement and dismissed as moot the parties' remaining motions:

For the reasons stated herein, the Court grants GE's motion for summary judgment (Dkt. 605), denies Oleksy's motion for summary judgment of infringement (Dkt. No. 601), and **dismisses as moot the parties' remaining motions.**

Appx22 (emphasis added). See also Appx2 at n.2. The motions dismissed by the District Court included three motions for partial summary judgment seeking defeat

parts of GE's invalidity counterclaim, which alleged invalidity based on sections 101, 102, 103 and 112. Appx203-205, Appx208-210, Appx211-213 and Appx215-217.

The District Court's dismissal of Mr.Oleksy's motions for validity of the patent on the grounds asserted in GE's invalidity counterclaim could only be moot if the district Court had effectively adjudicated GE's counterclaim to be moot. Therefore, the District Court effectively dismissed GE's counterclaim as being moot.

On the same day, September 29, 2015, the District Court entered a document entitled "JUDGMENT IN A CIVIL CASE". Appx23. This document recited that the District Court grants GE's summary judgment motion, denies Oleksy's summary judgment of infringement and dismisses as moot the parties' remaining motions. *Id.* The judgment further specified that the case was terminated:

Civil case terminated.

Id. (emphasis added).

III. Under This Court's Precedent The September 29, 2015 Judgment Was Final

The order and the judgment demonstrate that the District Court declared its intention to dispose of the entire case. It is fundamental that no formal words are necessary to establish that a judgment is a final judgment. If a judgment and the related orders and memoranda demonstrate that the judge clearly declared his intention to dispose of the entire case, the

judgment is final. *United States v. F.& M. Schaefer Brewing Co.*, 356 U.S. 227, 232 (1958).

IV. Based on *Schaefer*, Federal Circuit’s Precedents Upheld the Finality of Judgments Where Claims Were Effectively Rather Than Expressly Dismissed

Honeywell Int’l Inc. v. Hamilton Sundstrand Corp., 370 F.3d 1131, 1139 n.6 (Fed. Cir. 2004) (“Although the district court’s judgment did not expressly dispose of Sundstrand’s counter-claims, the special verdict referred to in the court’s final judgment specifically rejects each of Sundstrand’s invalidity arguments. Since the district court’s intent was clear, we interpret the judgment to be a final rejection of the counterclaims for invalidity.”); *Pandrol US LP v. Airboss Ry. Prods., Inc.*, 320 F.3d 1354, 1362 (Fed. Cir. 2003) (By ruling that trial will be limited to damages, “the district court effectively held that the counterclaims had been waived.”).

Only if a claim “remains unadjudicated before the district court” a judgment entered by a district court is not a final judgment. *Pause Technology LLC v. Tivo, Inc.*, 401 F.3d 1290 (Fed. Cir. 2005). In *Pause*, the invalidity counterclaim was neither expressly nor effectively dismissed.

A. Since the September 29, 2015 Judgment Was Final, GE Waived Its Costs Because It Never Asked for an Extension and It Failed to Timely File Its Bill of Costs

Since GE did not file its bill of costs within 30 days of the final judgment, by operation of Local Rule 54.1(a), costs were waived. Local Rule 54.1(a) (If bill

of cost is not filed within 30 days “costs other than those of the clerk, taxable pursuant to 28 U.S.C. § 1920, shall be deemed waived”). Accordingly, since GE filed of its bill of costs outside the time limit from the September 29, 2015 final judgment, under the operation of Northern District of Illinois Local Rule 54.1, GE waived its costs.

District Court’s order of October 15, 2015 was merely a more formal restatement of the September 29, 2015 judgment. The order more formally stated what was inherent in the September 29, 2015 judgment: that GE’s invalidity counterclaim was dismissed as being moot. This clarification did not affect finality of the September 29, 2015 judgment and did not extend deadlines for filings that are based on the date of entry of the final judgment. *United States v. F. & M. Schaefer Brewing Co.*, 356 U.S. 227, 233 (1958) (“And, as correctly held by the Court of Appeals, the later filing and entry of a more formal judgment could not constitute a second final judgment in the case, nor extend the time to appeal.”)

GE filed its bill of costs on October 30, 2015, more than 30 days from entry of the September 29, 2015 of judgment. Appx359. On November 4, 2017, Oleksy filed a motion to strike GE’s bill of costs on the ground that GE’s filing was untimely and therefore costs were waived by operation of Local Rule 54.1. Appx633.

V. Since The September 29, 2015 Judgment Was Final, GE's Motion to Clarify Did Not Qualify as A Rule 59(e) Motion Did Not Extend GE's Time to Respond

GE's motion for clarification cannot be treated as a Rule 59(e) motion to suspend the finality of September 29 judgment because the motion is directed changes of the wording of the judgment rather than a decision on the merits. *Buchanan v. Stanships, Inc.*, 485 U.S. 265, 268 (1988) (A motion that "does not involve reconsideration of any aspect of the decision on the merits" cannot be considered to be a Rule 59(e) motion); *White v. New Hampshire Dept. of Employment Security*, 455 U.S. 445, 451 (1982) ("The federal courts generally have involved Rule 59(e) only to support reconsideration of matters properly encompassed in a decision on the merits.").

ARGUMENT FOR ALLOWANCE OF THE WRIT

I. THE DECISION IS INCONSISTENT WITH THIS COURT'S AND FEDERAL CIRCUIT'S COURT OF APPEALS PRECEDENTS

The Federal Circuit affirmed (without an opinion) District court's ruling that is directly inconsistent with this Court's holding in *Schaefer*. Reasonable minds cannot disagree that September 29, 2015 judgment was a final judgment under the principles set forth in *Schaefer*. The District Court's ruling that it was not a final judgment contradicts *Schaefer* which holds that no specific words have to be used but one must consider the totality of the circumstances to determine if the district court judge was determined to dispose of the case. The ruling also defies logic. If all claims have to

be expressly dismissed for the judgment to be final, then the district court's subsequent clarifying judgment would not be a final judgment. The clarifying judgment did not expressly dismiss Oleksy's infringement claims. Accordingly, if the district courts' ruling requiring express dismissal stands, then there is no final judgment in the liability phase of this case and the Federal Circuit lacked subject matter jurisdiction to decide the liability phase of the case or the present appeal.

The ruling that for a judgment to be final, all claims must be expressly dismissed is also inconsistent with at least two federal Circuit decisions. In *Honeywell* and in *Pandrol*, the Federal Circuit held that express dismissal of a counterclaim is not necessary for finality of a judgment, as long as the all claims are effectively dismissed.

Therefore, to assure a uniform application of the law, the petition should be granted.

II. GRANTING OF THIS PETITION IS IMPORTANT BECAUSE IT WOULD REMEDY A BLATANT ERROR THAT IMPROPERLY FAVORS A MULTI BILLION DOLLAR COMPANY AT THE EXPENSE OF AN INDIVIDUAL IMMIGRANT INVENTOR

The Federal Circuit's failure to follow both this court's and its own precedents by affirming without opinion District Court's decision that is clearly inconsistent with precedents should not be allowed to stand. The affirmance without an explanation for departing from established jurisprudence is especially egregious because the affirmance unfairly favors a

multibillion dollar company over an individual immigrant inventor. By failing issue an opinion, the Federal Circuit made it much more difficult to have the decision reviewed or reconsidered. While affirmance without an opinion may be justifiable where the district court decision clearly follows and is supported by precedents, failure to issue an opinion cannot be justified where, as here, the district court's decision clearly fails to follow precedents. As the former Chief Judge of the Federal Circuit Howard Markey noted affirmances without an opinion should be limited to cases where the district court decisions are unquestionably correct. The Seventh Annual Conference of the Court of Appeals for the Federal Circuit, 128 F.R.D. 409, 420 (May 24, 1989)(remarks of Hon. Howard T. Markey. C.J. Court of Appeals for the Federal Circuit).

III. THIS PETITION SHOULD BE GRANTED TO REMEDY DUE PROCESS VIOLATION RESULTING FROM AFFIRMANCE WITHOUT OPINION OF A DISTRICT COURT OPINION THAT IS CLEARLY INCONSISTENT WITH PRECEDENTS

Federal Circuit's affirmance of District Court's decision that clearly fails to follow precedents, violates Petitioner's due process rights. If there is an explanation for the departure from precedents, the Court of Appeals should articulate it. A decision that is clearly inconsistent with the precedents is arbitrary and in absence of an explanation, should not be allowed to stand. In this case, the Federal Circuit refused to articulate the reason for its departure from precedents on petition for panel rehearing and rehearing en banc

as well. The Federal Circuit denied these petitions without an opinion. *Pete v. Real*, 471 U.S. 491, 495 (1985) (“The touchstone of due process is freedom from arbitrary governmental action...”).

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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