

No. _____

In The
Supreme Court of the United States

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DOMINICK THERESA,

Petitioner,

v.

THE UNITED STATES PATENT AND TRADEMARK OFFICE,
PATENT TRIAL AND APPEAL BOARD,

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 WRIT OF CERTIORARI

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Dominick Theresa, Pro Se
214 Rivendell Way
Edison, NJ 08817
908-208-1960

QUESTION PRESENTED

The lower courts deprived the Pro Se, Petitioner of Due Process and the disregard to address the limitations within the patent Claims as well as the validity of each Claim. These deprived matters upon the Pro Se, Petitioner involves an unusually important of legal principles as well as Due Process is an importance to the general public when filing patents Pro Se.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PROOF OF SERVICE

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

~~The opinion of the United States district court appears at Appendix _____ to the petition and is~~

- ~~☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.~~

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

~~The opinion of the _____ court appears at Appendix _____ to the petition and is~~

- ~~☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.~~

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 17, 2018 (App. B).

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 12, 2018, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT

STATEMENT OF THE CASE

The Petitioner has always been Pro Se and my patent case have been going on now for 10 years. Due to the years as this Statement will mention facts with dates and cite the letters to the Appendix.

The Provisional patent was first filed with the USPTO on **September 29, 2008**. On **December 12, 2010** the Examiner, Shin H. Kim issued the first response an non-final rejection and of all of the claims.

On **December 29, 2010** the Petitioner, Pro Se had called and spoke with the Examiner about the rejected claims and asked that all the limitations of the Claims was not reviewed as well as I stated that references does not teach the Claims and immediately the Examiner stated: "I don't like dealing with pro se people go get a lawyer" and from that point on as the Petitioner, Pro Se was never treated fairly of Due Process under the Fourteenth Amendments of the United States Constitution and with the Claims. Note: All what I am about to mention as well as the stated names has been in the records below for years and even as recently on **February 27, 2018** during the Rehearing En Banc Brief (**App. F actual page #7 of section D**). Over the years as the Petitioner, Pro Se mentioned multiple times in writings, briefs and even spoken to USPTO supervisors, Lesley D. Morris, Paul N. Dickson as well as USPTO associate council Mary L. Kelly about the Examiner of not treating the Petitioner, Pro Se and Claims fairly of Due Process. But the more I politely mentioned about things as the worse matters got.

Because I was the Petitioner and I witnessed first-hand that being Pro Se my Due Process rights were quickly violated as well as the disregard of the limitations of my Claims as all lower court levels continued in suit. So as a Pro Se, Petitioner as I am asking this court to grant this Writ of Certiorari.

After the **December 29, 2010** phone call with the Examiner on **March 13, 2011** the Petitioner files a response to all of the rejected Claims from either amending, some staying the same to canceling some Claims. On **October 7, 2011** the Examiner issued a Final Action and again rejected all Claims. On **February 7, 2012** the Petitioner, Pro Se filed another

response to the rejected Claims from either amending, some staying the same, canceling and some new Claims that would be fully supported by the original specifications and included no new matters. On **February 28, 2012** the Examiner issued a non-final rejection of all of the claims again. On **June 28, 2012** the Petitioner, Pro Se again files a response either amending, some staying the same to canceling some Claims and after this response as the petitioner Claims going forward was never changed again. On **August 1, 2012** the Examiner issued a final action and again rejected all Claims by issuing and using only 2 references.

On **October 31, 2012** the Petitioner, Pro Se filed a Notice of Appeal with the PTO Board and on **April 5, 2013** filed a 24 page Appeal Brief with strong arguments why all Claims should be granted. On **June 17, 2013 (App. E)** the Examiner purposely now "Reopened Prosecution" and placed 2 additional references now totaling 4 references and also added about Claim 25 the words of "a first label" as indefinite (**App. E of page 3**) . Ironically, none of the 4 references technically has any teaching to reject any of the Pro Se Petitioner Claims. On **September 17, 2013** the Petitioner, Pro Se filed a 2nd Notice of Appeal with the PTO Board and on **November 18, 2013** filed a 46 page 2nd appeal brief, with strong arguments again to why all Claims should be granted on appeal to Board. On **February 20, 2014** the Examiner files Answer Brief. On **February 24, 2014** the Petitioner files a Reply Brief. On **August 31, 2016** The Patent Board issued the Decision and denied all Claims (**App. D**). On **October 31, 2016** the Petitioner, Pro Se filed a "Request for Rehearing of Appeal Decision". On **February 17, 2017** the Patent Board Reconsideration Decision again denied all Claims (**App. C**) but stated: *"the Decision (on 8/31/17 of 10 straight pages) misinterpreted the word "symbols" and "The Decision agrees with the Appellants" (App. C page 3)* but still denied all Claims (**App. F page #5-6 of section B**).

On **April 12, 2017** the Petitioner, Pro Se filed Notice of Appeal to U.S. Court of Appeals for the Federal Circuit. On **June 16, 2017** the Petitioner, Pro Se filed Informal Brief. On **August 30, 2017** the PTO Board filed Answer Brief. On **September 15, 2017** the Petitioner, Pro Se filed Reply Brief. On **January 17, 2018** Federal Circuit issued the Opinion and denied all Claims (**App. B**). On **February 27, 2018** the Petitioner, Pro Se filed Rehearing En Banc Brief (**App. E**). On **April 12, 2018** Federal Circuit issued Order that Rehearing En Banc was denied (**App. A**). On **July 6, 2018** the Petitioner, Pro Se now filed said Petition for Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

The lower courts all failed to provide Due Process to the Pro Se, Petitioner and purposely ignored the limitations within all the Claims which violated Pro Se rights to a fair and impartial hearings upon all of the Claims and below the Petitioner will show is just in Claim 1, why this court should grant this Writ of Certiorari.

The lower court opinion (**App. B page 2-3**) shows the Petitioner Claim 1 in full. Speaking just about Claim 1 as the following can also be said for all of the other claims as well. But if the Petitioner, Pro Se truly had received Due Process and fairness upon viewing all the limitations of Claim 1 as one would clearly see that Claims 1 produces significant technical advancement and improved different invention from all of the 4 references cited of record, either alone or in combination (**App. F of page #1**).

To further see how this opinion disregarded all the limitations in Claim 1. After reading this please do read Claim 1 (**App. B page 2-3**) and then read the Opinion (**App. B**) as the Opinion would not match to the limitations within Claim 1. Before you begin reading note that the petitioner purposely used the wording within Claim 1 knowing that other references does not teach these words. Also, I'll show just 6 words below within Claim 1 that also forms the Petitioner heart and soul of the patent invention. *Note:* None of these 6 words ARE NOT EVEN mentioned within this Opinion (**App. B**) as well as all 4 references are also silent of these 6 words too.

- 1) - The word "**Matching**" is used 3x in Claim 1
- 2) - The word "**Juxtaposition**" is used 1x in Claim 1
- 3) - The word "**First color**" is used 7x in Claim 1
- 4) - The word of "**Symbols**" is used 1x in Claim 1
- 5) - The word of "**Pre-set**" is used 2x in Claim 1
- 6) - The word of "**Content Category**" is used 6x in Claim 1

The Petitioner invention is a "**Color Coded Marking System**" for all Formats of USB Flash Drives and SD Memory Cards. These 6 words and all other words in Claim 1 are needed for a "Color Coded Marking System".

Using words like "matching" and "Juxtaposition" (**App. F of page #2-3**) within Claim 1 as one needs to specifically teach "color". Since the Appellant invention is 100% all about the

teaching of "color" as these said words along with the "color" teaching help forms a "marking system" for the Petitioner 3 components mentioned in **Claim 1** the label, attachment member (ring) and wristband. It is noted however, that **Claim 1** includes that the color of the attachment member and a wristband match that of the label. The 4 interrelated references clearly shows no background knowledge possessed by a person having ordinary skill in the art to have come to the conclusions of the Appellant invention as well as the extensive levels and forms of color the Petitioner teaching for a "marking system" for "matching" and "Juxtaposition" with it's 3 components the label, attachment member and wristband all match the same. Accordingly, none of the 4 cited references disclosed the the word or use of "symbols" (**App. F page #5-6 of section B**).

The Pettitioner invention teach intensively all about the multiple levels and forms of "color coded" for the "Marking System" (**App. F of page #4**) and all of the following words actually written is taught throughtout all of the Claims as well as in the Specification and they are: "Color of background, color foreground, multi-mixed colors, color write-on labels, color pre-set words, color pre-set symbols, color pre-set numbers, color decorative images, color decorative design, color motivational and color character design labels". The 4 references shows no structure of into "color' teaching.

The lower courts all relied on the following 4 references which all 4 does not teach the Pro Se, Petitioner patent Claims as well as does not even suggest any form of matching and matching the color to all 3 components mentioned in **Claim 1** the label, attachment member and wristband to all match the same.

Below are the 4 references that's on record and that the lower courts been denying the Petitioner Claims from being granted. Please do a quick test, open the links for each reference and do a quick search of each of the above 6 words as these 6 words are also not founded in any of the 4 references. But see for yourself.

In further view, all 4 references also does not even teach any form of "color" or even mentions a single color by name (**App. F of page #5**). Note, when one truly teaches color the

cardinal rule is you need to mention a "color" and all 4 references does not mention any single color by name as all 4 references are silent. Do another quick search of any of the following 13 color words with all 4 references even use black and white. 1)-Blue 2)-Red 3)-Yellow 4)-Green 5)-Orange 6)-Purple 7)-Cyan 8)-Magenta 9)-Brown 10)-Pink 11)-Gray 12)-Black 13)-White.

The 4 References

U.S. Patent Publication No. 2002/0180588 to Erickson ("Erickson")
<https://docs.google.com/viewer?url=patentimages.storage.googleapis.com/pdfs/US20020180588.pdf>

U.S. Patent No. 6,763,410 to Yu ("Yu")
<https://docs.google.com/viewer?url=patentimages.storage.googleapis.com/pdfs/US6763410.pdf>

U.S. Patent Application No. 2006/0026878 ("Slater")
<https://docs.google.com/viewer?url=patentimages.storage.googleapis.com/pdfs/US20060026878.pdf>

U.S. Patent No. 3,124,286 to Dompier ("Dompier")
<https://docs.google.com/viewer?url=patentimages.storage.googleapis.com/pdfs/US3124286.pdf>

Another example that the Petitioner, Pro Se did not receive Due Process to fairness with the Claims.

All of the Petitioner Claims where denied by the Circuit Opinion (**App. B**) as obvious under **35 U.S.C. §103(a)**. Even so, **Claim 25** was rejected due to (3 words) "a first label" as indefinite under **35 U.S.C. §112(b)** by the Appeal Board (**App. D page 4 and 17**) but the Circuit Opinion (**App. B page 4 footnote**) did not care about indefinite **35 U.S.C. §112(b)** and unfairly placed **Claim 25** as obvious under **35 U.S.C. §103(a)** to deny Claim.

The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined

the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art. *KSR*, 550 U.S. at 416, 82 USPQ2d at 1395; *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282, 189 USPQ 449, 453 (1976); *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57, 62-63, 163 USPQ 673, 675 (1969); *Great Atl. & P. Tea Co. v. Supermarket Equip. Corp.*, 340 U.S. 147, 152, 87 USPQ 303, 306 (1950). "[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." *KSR*, 550 U.S. at 418, 82 USPQ2d at 1396. If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.

The opinion (**App. B**) should not have denied the claims obviousness and unpatentable under 35 U.S.C. § 103(a) because **Claim 1** teaching limitations were fully ignored by the courts. Therefore, combining known prior art elements is not sufficient to render the claimed invention obvious if the results would not have been predictable to one of ordinary skill in the art. *United States v. Adams*, 383 U.S. 39, 51-52, 148 USPQ 479, 483-84 (1966).

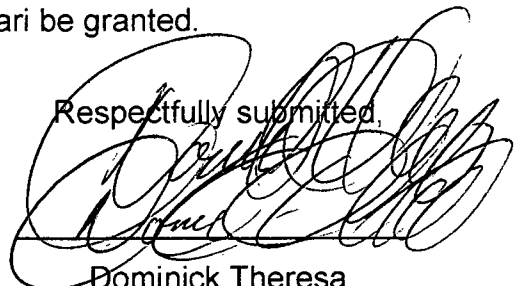
The Petitioner filed a Rehearing En Banc (**App. F**) because the opinion failed to provide Due Process to fully address the claims limitations for the Pro Se, petitioner but it was denied (**App. A**).

CONCLUSION

For reasons set forth above, as the lower courts deprived the Pro Se, Petitioner of Due Process, disregarded the limitations and validity of each Claim. For all foregoing reasons, it is respectfully requested that the Petition for a Writ of Certiorari be granted.

Date: July 6, 2018

Respectfully submitted,



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