

No. 18-52

In The
Supreme Court of the United States

PAUL ANDREW LEITNER-WISE,

Petitioner,

v.

LWRC INTERNATIONAL, LLC,
and SIG SAUER, INC.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Federal Circuit**

**BRIEF OF LWRC INTERNATIONAL, LLC IN
OPPOSITION TO PETITION FOR CERTIORARI**

BENNETT L. COHEN*
POLSINELLI PC
1401 Lawrence Street,
Ste. 2300
Denver, CO 80202
303-572-9300
bcohen@polsinelli.com
**Counsel of Record*

NOAM B. FISCHMAN, ESQ.
PHILIP G. FEIGEN, ESQ.
POLSINELLI PC
1401 I Street, N.W.,
Ste. 800
Washington, DC 20005

*Counsel for Respondent
LWRC International, LLC*

**RULE 29.6 CORPORATE
DISCLOSURE STATEMENT**

Respondent LWRC International, LLC has no parent companies, and no publicly held company owns 10% or more of its stock or membership interests.

TABLE OF CONTENTS

	Page
RULE 29.6 CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iii
I. SUMMARY.....	1
II. COUNTERSTATEMENT OF THE CASE ...	2
A. Mr. Leitner-Wise sells the '581 patent...	4
B. Subsequent events regarding the '581 patent did not resurrect rights that Mr. Leitner-Wise had long since sold	7
C. Proceedings below	9
III. REASONS FOR DENYING THE WRIT	11
A. 35 U.S.C. § 100 does not provide an inventor with standing to sue after the inventor sells a patent <i>in toto</i>	12
B. Mr. Leitner-Wise did not retain any royalty rights	14
C. The 2008 assignment from LWRC to LWRC International did not and could not impact the property rights Mr. Leitner-Wise sold in 2006	16
D. The Federal Circuit's summary affirmation of the District Court's detailed ruling was proper	17
E. The Federal Circuit could have affirmed on additional bases.....	21
IV. CONCLUSION.....	22

TABLE OF AUTHORITIES

	Page
CASES	
<i>Azure Networks, LLC v. CSR PLC</i> , 771 F.3d 1336 (Fed. Cir. 2014)	13
<i>Gaia Techs., Inc. v. Reconversion Techs., Inc.</i> , 93 F.3d 774 (Fed. Cir. 1996), <i>amended on reh'g on</i> <i>different grounds</i> , 104 F.3d 1296 (Fed. Cir. 1996)	12
<i>Goldstein v. Riggs Nat'l Bank</i> , 459 F.2d 1161 (D.C. Cir. 1972)	18
<i>Groendyke Transport, Inc. v. Davis</i> , 406 F.2d 1158 (5th Cir. 1969).....	18, 20
<i>Horace Mann Ins. Co. v. GEICO</i> , 344 S.E.2d 906 (Va. 1986).....	15
<i>Jaffke v. Dunham</i> , 352 U.S. 280 (1957)	21
<i>James A. Merritt and Sons v. Marsh</i> , 791 F.2d 328 (4th Cir. 1986).....	18
<i>Joshua v. United States</i> , 17 F.3d 378 (Fed. Cir. 1994)	18
<i>Leigh v. Gaffney</i> , 432 F.2d 923 (10th Cir. 1970)	18
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992).....	12
<i>Medlin & Son Constr. Co. v. Matthews Grp., Inc.</i> , No. 160050, 2016 WL 7031843 (Va. Nov. 23, 2016)	14
<i>Morrow v. Microsoft Corp.</i> , 499 F.3d 1332 (Fed. Cir. 2007)	13

TABLE OF AUTHORITIES – Continued

	Page
<i>National Labor Relations Bd. v. Playskool, Inc.</i> , 431 F.2d 518 (7th Cir. 1970).....	18
<i>Orion Tech., Inc. v. United States</i> , 704 F.3d 1344 (Fed. Cir. 2013)	21
<i>RAD Data Communications, Inc. v. Patton Elec-</i> <i>tronics, Inc.</i> , 882 F. Supp. 351 (S.D.N.Y. 1995)	12
<i>United States v. Dura-Lux Int’l Corp.</i> , 529 F.2d 659 (8th Cir. 1976).....	18
<i>Warren v. Goodrich</i> , 133 Va. 366, 112 S.E. 687 (1922).....	14
 STATUTES	
28 U.S.C. § 2106	17
35 U.S.C. § 100	12
35 U.S.C. § 261	12
 OTHER AUTHORITIES	
Fed. Cir. R. 36.....	11, 19, 20
First Cir. R. 27.0(c).....	19
Third Cir. R. 27.4	19
Eighth Cir. R. 47A.....	19
Ninth Cir. R. 3.6(b)	19
Eleventh Cir. R. 42-4	19
Fed. R. Civ. P. 2.....	18

In The
Supreme Court of the United States

—————◆—————
PAUL ANDREW LEITNER-WISE,

Petitioner,

v.

LWRC INTERNATIONAL, LLC,
and SIG SAUER, INC.,

Respondents.

—————◆—————
**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Federal Circuit**

—————◆—————
**BRIEF OF LWRC INTERNATIONAL, LLC IN
OPPOSITION TO PETITION FOR CERTIORARI**

I. SUMMARY

Petitioner, Mr. Leitner-Wise, may be a capable inventor, but he was not able to capitalize on his invention. Like many patentees, Mr. Leitner-Wise formed a company to market his invention. When those efforts failed, in April 2005, he solicited investors and sold them a majority interest in his company in exchange for an employment contract and a royalty interest in the '581 patent. Shortly thereafter, it became clear that Mr. Leitner-Wise could not get along with new

management. In October 2006, they collectively negotiated a business divorce in which Mr. Leitner-Wise transferred all of his intellectual property (including whatever remaining rights he had in the '581 patent and any royalty payments related to that patent) to the company and sold his remaining interest in the company to an investor in exchange for about \$96,000 and a release from his non-compete agreement.

In his Petition, Mr. Leitner-Wise deliberately avoids acknowledging these transactions, which divested him of any interest in the '581 patent, including royalties. But all of these transactions were thoroughly documented. In the District Court, Respondent LWRC International offered authenticated copies of six exit agreements that Mr. Leitner-Wise signed, which amply confirmed how Mr. Leitner-Wise sold his patent in exchange for the consideration he had bargained for and received. Mr. Leitner-Wise did not contest these well-documented transactions, which foreclosed his meritless legal claims. The District Court correctly dismissed his claims in a thorough and well-reasoned opinion. The result was so obvious and clearly correct that the Federal Circuit summarily affirmed the dismissal.

The lower courts' correct resolution of this meritless lawsuit gives rise to no certworthy issues.

II. COUNTERSTATEMENT OF THE CASE

Petitioner Paul Leitner-Wise's claims failed below, and do not merit certiorari review, because he sold the

'581 patent for money and other consideration in October 2006. Because he tries to dance around this fatal fact, Mr. Leitner-Wise's statement of the case is incomplete, confusing, and false.

The District Court's opinion dismissing Mr. Leitner-Wise's claims reviewed the relevant transactions through which Mr. Leitner-Wise sold his patent. App. 6a-9a.¹ The District Court's opinion includes citations to the documents in its ECF record. Mr. Leitner-Wise should have included these dispositive transactional documents in the appendix to his certiorari petition. But, he did not. The documents can nonetheless be viewed via PACER or the District Court's ECF system.

To the extent the Court may wish to review the documents that debunk Mr. Leitner-Wise's claims, Respondent LWRC International provides additional citations to the corrected appendix filed in the Court of Appeals for the Federal Circuit (ECF no. 47 in case no. 17-1852), which contains in one PDF document all of the relevant agreements and transactional documents through which Mr. Leitner-Wise sold the '581 patent in a deal that he may now regret, but cannot undo. Citations to this one-stop repository of the underlying documents are to "Fed.Cir.App."

¹ The underlying transactions are somewhat more complex than indicated in the District Court's opinion and discussed here because, *e.g.*, they involved various intermediate companies that are not relevant to this discussion. A complete picture of the underlying transactions is provided in Respondent LWRC International's briefs in the lower courts.

A. Mr. Leitner-Wise sells the '581 patent.

Mr. Leitner-Wise started Leitner-Wise Rifle Company, Inc. (LWRC) in 1999. In 2004, Mr. Leitner-Wise invented a piston operating system for firearms which became the '581 patent. Pet. 3. But, Mr. Leitner-Wise was unable to use this invention to make money for LWRC and the business needed an infusion of capital.

In 2005, Mr. Leitner-Wise sold a controlling interest (including management control) of LWRC to a group of investors. In return, Mr. Leitner-Wise received a salaried executive position at the company and a royalty payment of one-half of one percent of net sales generated from the '581 patent. The royalty was created in Mr. Leitner-Wise's April 11, 2005 Employment Agreement with the company. Pet. 3; App. 6a-7a; Fed.Cir.App. 53-63, *esp.* 54 (salary of \$125,000/year and 60 (.05% royalty for '581 patent sales).²

Mr. Leitner-Wise and the new management team did not work well together. In October 2006, roughly

² Mr. Leitner-Wise's bizarre assertions about the 2005 Employment Agreement being lost or stolen, and then found years later, are irrelevant. *See* Pet. 3-4, 7. There was no dispute below about the 2005 Employment Agreement or its contents. None of Mr. Leitner-Wise's claims below or in this Court are predicated on any alleged theft of paper copies of the 2005 Employment Agreement, which Mr. Leitner-Wise could have maintained however and wherever he wished, including in digital form. Moreover, there is no allegation in this case (or evidence to support an allegation that) Mr. Leitner-Wise ever requested these documents from, or was denied access by, LWRC International. There is no evidence in this case that Mr. Leitner-Wise ever asked LWRC International to provide him with his exit agreements.

eighteen months after executing the Employment Agreement, Mr. Leitner-Wise obtained a complete business divorce from his former company and business partners through a series of interconnected exit agreements.

The key part of this business divorce is Mr. Leitner-Wise's assignment of the then-pending '581 patent to LWRC. Pet. 3; App. 7a; Fed.Cir.App. 64-65. The assignment was clear and all-encompassing: it covered the "entire right, title, and interest . . . in the invention known as the SELF CLEANING GAS OPERATING SYSTEM FOR A FIREARM for which application for patent in the United States of America has been executed by the undersigned on October 24, 2006." *Id.*

On the same day, Mr. Leitner-Wise also assigned all of his patents and other intellectual property to LWRC in a comprehensive Intellectual Property Assignment Agreement. App. 8a, Fed.Cir.App. 148-55. The then-pending '581 patent was included in the schedule of intellectual property being assigned. Fed.Cir.App. 154 (at bottom).

On the same day, Mr. Leitner-Wise sold his remaining interest in LWRC to one of the investors he had solicited in 2005 through an Equities Purchase Agreement. App. 9a; Fed.Cir.App. 156-63. Mr. Leitner-Wise received \$96,002.82 for his interest in LWRC. Fed.Cir.App. 156. That \$96,000 and related consideration (such as a release from his non-compete agreement) was the consideration that Mr. Leitner-Wise

bargained for and received in exchange for assigning the '581 patent to LWRC.

Mr. Leitner-Wise acknowledges that he assigned the '581 patent to LWRC, but asserts that “[s]uch assignment was made solely in furtherance of the royalty agreement” contained in his 2005 Employment Agreement, and this future royalty stream was the consideration for the assignment. Pet. 3. That claim is false. Every one of the exit agreements that comprise the October 2006 business divorce between Leitner-Wise and LWRC confirm that Leitner-Wise bargained for and received cash on the barrelhead for the '581 patent, which he assigned *in toto*, with no retention of any royalty. For instance:

- The assignment itself states its consideration as “the sum of One Dollar (\$1.00) and other good and valuable consideration,” for which Mr. Leitner-Wise assigned his “entire right, title, and interest” in the '581 patent. App. 7a; Fed.Cir.App. 64. There is no mention of any retained royalty in the assignment, or any suggestion that the assignment is anything less than a full transfer of the entire bundle of rights that constitutes the '581 patent.
- Next, Mr. Leitner-Wise contemporaneously signed a termination of his 2005 Employment Agreement which included a release of all claims, obligations, or sums of money owed to him which arose from the 2005 Employment Agreement. Pet. 3, App. 8a; Fed.Cir.App. 141-44. Because Mr. Leitner-Wise’s entitlement to any royalty arose exclusively from the

2005 Employment Agreement, the termination agreement ended the .05% royalty.

- And, the Intellectual Property Assignment Agreement that Mr. Leitner-Wise contemporaneously signed states that Mr. Leitner-Wise's consideration for the assignment of all his intellectual property to LWRC, including the '581 patent, was the \$96,000 he received through the contemporaneous Equities Purchase Agreement. App. 9a; Fed.Cir.App. 150. The Intellectual Property Assignment Agreement expressly states that there is "no further consideration *or royalty payable*" to Mr. Leitner-Wise for the '581 patent or any other intellectual property that he had assigned to LWRC. *Id.* (emphasis in District Court's opinion).

Mr. Leitner-Wise thus sold the '581 patent *in toto* for cash money that he received as part of a thoroughly-documented business divorce. Mr. Leitner-Wise's certiorari petition does not mention these facts because, as the lower courts correctly ruled, they are fatal to his claims. These facts also explain how the lower courts disposed of his case so quickly and easily, and why his certiorari petition is meritless.

B. Subsequent events regarding the '581 patent did not resurrect rights that Mr. Leitner-Wise had long since sold.

From 2005, when Mr. Leitner-Wise sold a majority interest of his company to investors, through the beginning of 2008, the company did business as some

variation of Leitner-Wise Rifle Company, Land Warfare Rifle Company, and/or LWRC. In 2008, the investors that purchased LWRC from Mr. Leitner-Wise in 2005 sold substantially all of the assets of that company to another, newly-formed and separately-owned entity, which is the Respondent LWRC International, LLC. App. 9a. As part of that transaction, LWRC International purchased, among other things, LWRC's interest in the '581 patent.

Due to a scrivener's error, the 2008 assignment identified LWRC as the inventor of the patent instead of identifying Mr. Leitner-Wise as the inventor. Pet. 4, App. 9a; Fed.Cir.App. 65. Of course, LWRC was *not* the inventor – it was the owner of the patent. But, as the District Court correctly noted, this scrivener's error had no impact on Mr. Leitner-Wise because he had sold the '581 patent a year and a half earlier and did not retain any rights to the patent.³ Put another way, a scrivener's error in 2008 does not nullify Mr. Leitner-Wise's decision to sell all of his rights in the '581 patent two years earlier.

In 2011, LWRC International sued Respondent SIG Sauer Inc. for infringing the '581 patent. Pet. 4-7. Mr. Leitner-Wise attempts to argue that this patent infringement lawsuit involved some kind of conspiracy between competitors to avoid paying royalties to Mr. Leitner-Wise. Pet. 4-7. Mr. Leitner-Wise does not and

³ The PTO's records correctly list Mr. Leitner-Wise as the inventor of the '581 patent, and LWRC International as the current owner of the patent. No one challenges Mr. Leitner-Wise's status as the inventor.

cannot coherently explain his theory because, again, he had sold the patent *in toto* – including all royalty rights – in 2006.

C. Proceedings below.

Mr. Leitner-Wise sued Respondents LWRC International and SIG Sauer in 2016 with claims for patent infringement, breach of contract and unjust enrichment. Pet. 7; App. 10a.

LWRC International and SIG Sauer responded with motions to dismiss under Rule 12(b)(1) for lack of standing (because Mr. Leitner-Wise no longer owned the '581 patent) and under 12(b)(6) for failure to state cognizable claims. LWRC International also filed a motion to dismiss or, in the alternative, for summary judgment. It did so because Mr. Leitner-Wise had failed to acknowledge in this Complaint the existence of the various exit agreements briefly described above. Consequently, LWRC International appended authenticated copies of the exit agreements to its District Court motion, establishing a complete picture of the transactional history between Mr. Leitner-Wise and LWRC between 2005 and 2006. App. 10a.

In response, Mr. Leitner-Wise ***did not*** contest any aspect of the underlying business divorce. He ***did not*** argue that the exit agreements were forgeries, or were unsigned, or meant something other than what their plain language indicated. Nor, as the District Court noted, did Mr. Leitner-Wise ask to take discovery to respond to summary judgment under Rule 56(f). Rather,

Mr. Leitner-Wise opposed summary judgment *only* on the basis that the exit agreements were not authenticated. App. 10a. However, Mr. Leitner-Wise was mistaken. In fact, the exit agreements were authenticated by LWRC International's custodian of records, and would therefore be admissible at trial as ordinary business records. *Id.*; Fed.Cir.App. 220-21. The District Court properly considered those exit agreements in resolving this case. App. 14a-15a.

In a thorough opinion, the District Court dispensed with Mr. Leitner-Wise's claim for patent infringement due to lack of standing. The District Court correctly found that Mr. Leitner-Wise had sold his patent. App. 17a-20a. The District Court also rejected Mr. Leitner-Wise's claim that LWRC International had breached the royalty provision of the 2005 Employment Agreement. The District Court correctly found that Mr. Leitner-Wise "signed away his rights to royalty payments in 2006 when he left his employment with LWRC." App. 20a-26a (quote at 22a).

Separately, the District Court also rejected Mr. Leitner-Wise's unjust enrichment claim against both LWRC International and SIG Sauer because neither company received any benefit from the '581 patent before October 2006, when Mr. Leitner-Wise sold it. App. 26a-28a.

And, finally, the District Court declined to impose Rule 11 sanctions against Mr. Leitner-Wise. But, in so declining, the District Court noted that Mr. Leitner-Wise's meritless claims were being disposed of "promptly,

prior to the time and expense of discovery proceedings.” App. 31a. Critically, at every stage of this proceeding, Mr. Leitner-Wise continues to ignore the existence of agreements he signed more than a decade ago, which eviscerated any right he may have had to the royalties upon which he now seeks to collect.

Mr. Leitner-Wise appealed. After briefing and oral argument, the Federal Circuit affirmed the District Court’s thorough and well-reasoned decision in a summary order under Federal Circuit Rule 36. That Rule permits summary affirmance when either “the record supports summary judgment, directed verdict, or judgment on the pleadings” or when “a judgment or decision has been entered without an error of law.” Both criteria were plainly met here.

III. REASONS FOR DENYING THE WRIT

Mr. Leitner-Wise cannot advance (and has not advanced) any argument that the lower courts erred, or that this case merits certiorari review. Instead, Mr. Leitner-Wise merely repeats in his Petition the meritless arguments that the District Court thoroughly considered and correctly rejected, and that the Federal Circuit summarily rejected again.

A. 35 U.S.C. § 100 does not provide an inventor with standing to sue after the inventor sells a patent *in toto*.

Under the Patent Act of 1952, infringement claims may be brought by a “patentee,” which is defined to include both inventors and their “successors in title.” 35 U.S.C. § 100. Mr. Leitner-Wise argues that because he is the inventor of the ’581 patent, he has standing to sue for infringement of that patent. Pet. 8-10.

Mr. Leitner-Wise is mistaken. The lower courts properly rejected this meritless argument because patents are assignable. 35 U.S.C. § 261. Mr. Leitner-Wise indisputably assigned the ’581 patent to LWRC *in toto* in an unqualified written assignment. Mr. Leitner-Wise could not suffer any injury in fact from infringement of the ’581 patent after he sold and assigned it. *E.g., RAD Data Communications, Inc. v. Patton Electronics, Inc.*, 882 F. Supp. 351, 353 (S.D.N.Y. 1995) (to establish standing to bring a suit for patent infringement, a “plaintiff must have legal title to the patent in suit”); *Gaia Techs., Inc. v. Reconversion Techs., Inc.*, 93 F.3d 774, 778 (Fed. Cir. 1996) (dismissing patent and trademark infringement claims for lack of standing because of plaintiff’s “inability to prove that it was the owner of the Intellectual Property at the time the suit was filed”), *amended on reh’g on different grounds*, 104 F.3d 1296 (Fed. Cir. 1996); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (discussing basic requirements of standing, including injury in fact). As a result, Mr. Leitner-Wise has no standing to sue for infringement of the ’581 patent. As successor in title to and

current owner of the '581 patent, LWRC International now is the sole entity with standing to sue for infringement of the '581 patent. *Id.*; App. 18a, citing *Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336, 1342 (Fed. Cir. 2014); *Morrow v. Microsoft Corp.*, 499 F.3d 1332, 1340 (Fed. Cir. 2007).

Mr. Leitner-Wise's Petition cites no support for the nonsensical notion that he could somehow retain standing to sue for infringement of a patent that he had sold *in toto* years ago. Undersigned counsel could find no legal support for that proposition either. Rather, Mr. Leitner-Wise merely quotes language from cases discussing the rights of inventors and patentees who had retained some right or title to their patents, without addressing the critical distinction in this case that, although he may have once had these rights in the '581 patent, he sold them in their entirety to LWRC in 2006 for cash and other consideration.

Nor does Mr. Leitner-Wise offer any reason for this Court to consider certiorari review of this non-issue. There is no circuit split (the relevant law comes entirely from the Federal Circuit, App. 17a). There is no question or confusion regarding the obvious proposition that an inventor cannot have his cake and eat it too – that is, he cannot sell his patent *in toto* and then sue upon those sold rights at some indeterminate time in the future.

B. Mr. Leitner-Wise did not retain any royalty rights.

Mr. Leitner-Wise next acknowledges his assignment of the '581 patent, but argues that he retained the .05% royalty right under his 2005 Employment Agreement. Pet. 11-13. Ignoring the exit agreements, Mr. Leitner-Wise posits that the 2005 Employment Agreement, which provided that “[p]ayment of royalties under this section shall not be withheld or terminated regardless of any Termination of the Executive for any reason,” prevented him from selling the royalty right in the future (in the exit agreements). Pet. 12. But, the lower courts properly rejected this argument. App. 20a-26a.

The 2005 Employment Agreement expressly permitted the Agreement to be modified (and hence terminated) by a written agreement signed by the parties in the future. Fed.Cir.App. 62-63. This modification provision aligns with applicable state law (indeed all state common law), which recognizes that parties to a contract can modify those rights by a future writing. *Medlin & Son Constr. Co. v. Matthews Grp., Inc.*, No. 160050, 2016 WL 7031843, at *5 (Va. Nov. 23, 2016) (parties can modify a contract by mutual assent), citing *Warren v. Goodrich*, 133 Va. 366, 391, 112 S.E. 687, 694 (1922). The 2006 exit agreements provide Mr. Leitner-Wise consideration for the assignment of all his intellectual property to LWRC, including the '581 patent. In return, Mr. Leitner-Wise received more than \$96,000. App. 9a; Fed.Cir.App. 150. He was also released from his non-competition agreement with the company.

Fed.Cir.App. 64-65, 141-68. The Intellectual Property Assignment Agreement expressly states that there is “no further consideration or royalty payable” to Mr. Leitner-Wise for the ’581 patent or any other intellectual property that he had assigned to LWRC. These agreements were signed by the parties, including Mr. Leitner-Wise. Fed.Cir.App. 64 (’581 patent assignment), 146 (termination agreement), and 153 (Intellectual Property Assignment Agreement). As explained above, these exit agreements terminated the .05% royalty.

Mr. Leitner-Wise next contends that the exit agreements are unsupported by consideration and therefore unenforceable. Pet. 13. That argument is specious. Mr. Leitner-Wise indisputably received the consideration that he bargained for including, but not limited to, the \$96,000 payment and a release for non-competition obligations that he altogether avoids mentioning in his Petition. App. 7a-8a; Fed.Cir.App. 64-144. It is possible that, given more than a decade of hindsight, Mr. Leitner-Wise now wishes that he had negotiated for more. But, under applicable state law, courts will not intervene to revise a bargain simply because a party to that bargain wished in hindsight to have negotiated for more. *Horace Mann Ins. Co. v. GEICO*, 344 S.E.2d 906, 908 (Va. 1986) (“parties to a contract are at liberty to determine their own valuations, and courts generally will not inquire into the adequacy of consideration”). The District Court agreed.

Notably, Mr. Leitner-Wise offers no argument suggesting that anything about this resolution could

possibly be certworthy. Where a trial court enforces a thoroughly-documented contract based on undisputed evidence (a very basic application of state common law, not federal law), and an appellate court affirms, this Court does not take certiorari to further review and confirm the correctness of these rulings.

C. The 2008 assignment from LWRC to LWRC International did not and could not impact the property rights Mr. Leitner-Wise sold in 2006.

Next, Mr. Leitner-Wise points to the 2008 assignment of the '581 patent from LWRC to LWRC International, which through a scrivener's error incorrectly listed LWRC as the "inventor" instead of the "owner." Mr. Leitner-Wise argues that this mistake voids the 2008 assignment, *and* somehow restores his royalty rights (which, as demonstrated above, he sold in 2006). Pet. 13-15.

The District Court properly rejected this unsupported claim, noting that Mr. Leitner-Wise sold all of his interest in the '581 patent, including the .05% royalty, in the 2006 exit agreements. App. 9a n.5 ("[H]aving already assigned his right to LWRC in 2006, any defects in a subsequent assignment of the patent do not support any claim Plaintiff might have to the patent."). Mr. Leitner-Wise's petition offers no further support for the baseless notion that a scrivener's error in the 2008 assignment could somehow turn back the

clock and undo his 2006 sale of his royalty rights in the '581 patent.⁴

Again, and the lower courts not only resolved this issue correctly, but Mr. Leitner-Wise offers no argument suggesting that anything about this resolution could possibly be certworthy.

D. The Federal Circuit's summary affirmance of the District Court's detailed ruling was proper.

Finally, Mr. Leitner-Wise asserts that his case presented difficult and challenging issues that merited an opinion from the Federal Circuit Court, rather than summary affirmance. Pet. 15-20. But, Mr. Leitner-Wise is once again mistaken. The District Court disposed of the case at the pleadings stage, through a Rule 12 dismissal of infringement claim and unjust enrichment claim, and by resolving the contract claim through summary judgment based on undisputed facts. The primary reason why the District Court did not sanction Mr. Leitner-Wise for his frivolous lawsuit was because the Court was able to dispose of it so quickly. App. 30a-31a.

Where, as here, a case is simple and the trial court's resolution is clearly correct, appellate courts routinely affirm summarily. 28 U.S.C. § 2106 gives

⁴ Mr. Leitner-Wise cannot even assert breach of some sort of moral right in being acknowledged as the inventor because the parties, the courts, and the PTO all acknowledge that he is the inventor.

federal appellate courts broad authority to issue rulings “as may be just under the circumstances.” That statute, along with Fed. R. Civ. P. 2, provides ample underlying authority for the summary disposition protocols that the Federal Circuit and other circuits have developed. *See, e.g., Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (summarily affirming the dismissal of a \$36 billion claim by a *pro se* prisoner), citing *James A. Merritt and Sons v. Marsh*, 791 F.2d 328, 331 (4th Cir. 1986) (court summarily reversed before full briefing in the interest of expediting a decision); *Groendyke Transport, Inc. v. Davis*, 406 F.2d 1158, 1163 (5th Cir. 1969) (court summarily reversed district court’s grant of injunction because time was of the essence and because one party’s position was clearly correct as a matter of law); *National Labor Relations Bd. v. Playskool, Inc.*, 431 F.2d 518, 519-20 (7th Cir. 1970) (court granted motion for summary affirmance because one party’s contentions were found so unsubstantial as to render the appeal frivolous and because time was of the essence); *United States v. Dura-Lux Int’l Corp.*, 529 F.2d 659, 660-62 (8th Cir. 1976) (court *sua sponte* concluded that summary disposition was appropriate because the questions presented did not require further argument and because one party’s contentions were without merit); *Leigh v. Gaffney*, 432 F.2d 923 (10th Cir. 1970) (court granted motion for summary affirmance because question presented was insubstantial and did not warrant further argument); *Goldstein v. Riggs Nat’l Bank*, 459 F.2d 1161, 1163 n.2 (D.C. Cir. 1972) (court dispensed with additional

briefing and argument because “the merits of the claim are so clear as to warrant expeditious action”).

The practice of summary affirmance for appropriate appeals is so common that some circuits have developed circuit rules for summary dispositions, as the Federal Circuit has done with its Rule 36. *See* First Cir. R. 27.0(c) (allowing for summary affirmance when “no substantial question is presented”); Third Cir. R. 27.4 (same); Eighth Cir. R. 47A (permitting summary disposition when the appeal “is frivolous and entirely without merit”); Eleventh Cir. R. 42-4 (same); Ninth Cir. R. 3.6(b) (permitting summary action when “it is manifest that the questions on which the decision in the appeal depends are so insubstantial as not to justify further proceedings”).

Mr. Leitner-Wise’s meritless claims clearly warranted summary disposition on appeal. He offers no persuasive argument to the contrary. The District Court undertook a careful and deliberate approach in analyzing the facts to his case. The District Court further provided a thorough opinion, which fully supports the Federal Circuit’s summary affirmance. Nor could Mr. Leitner-Wise argue that his appeal was somehow improperly short-circuited. He filed his briefs. Mr. Leitner-Wise was heard on appeal, the transcript and oral record of which confirms that the panel understood his positions, and appreciated that they were frivolous. Based on Mr. Leitner-Wise’s fully briefed appeal, and after oral argument, the Federal Circuit panel invoked Rule 36 *sua sponte*, because there was simply no reason for the Circuit Court to spend its valuable time

writing an opinion that would only echo the thorough and well-reasoned disposition by the District Court. *See, e.g., Groendyke Transp.*, 406 F.2d at 1162–63 (an “appellate court is not compelled to sacrifice either the rights of other waiting suitors, its own irreplaceable judge-time or administrative efficiency. . . . The fact that we term this a ‘summary’ reversal does not imply that the legal question presented was not thoroughly considered on its merits.”).

Mr. Leitner-Wise contends that the Federal Circuit’s use of Rule 36 summary affirmances in appeals from the PTO has caused controversy. Pet. 18, citing two Rule 36 summary affirmances in appeals from the PTO, and a denial of *en banc* review in another PTO appeal that generated detailed opinions. Two of the cited cases are summary affirmances of PTO appeals, and the third cite is to an order denying *en banc* review in a PTO appeal, with some dissents. None of these cases suggest that a meritless and frivolous appeal from a district court, like this one, which involves no substantial questions of patent law (nor of state law, for that matter) should fall outside the Federal Circuit’s authority to invoke Rule 36. Mr. Leitner-Wise’s emphatic request to “know why” his claims failed (Pet. 19, underlining in original) was amply answered by the District Court’s thorough and correct opinion.

Accordingly, even if there could be on the fringes some concern about the Federal Circuit’s general use of Rule 36 summary affirmance for PTO appeals and that practice’s impact on the emerging law of PTO adjudication, this case does not present the sort of

concern (or facts) that would support certiorari scrutiny from this Court.

E. The Federal Circuit could have affirmed on additional bases.

Finally, LWRC International notes that it argued below additional bases to dispose of Mr. Leitner-Wise's meritless claims – *e.g.*, federal preemption of some of his state law claims, and other state law arguments such as the statute of limitations and the doctrine that express contracts preclude unjust enrichment claims. Nevertheless, the District Court disposed of Mr. Leitner-Wise's claims through the most direct analysis. In summarily affirming, the Federal Circuit agreed. Notably, the Federal Circuit could have also affirmed on any of the several additional bases offered. *See, e.g., Orion Tech., Inc. v. United States*, 704 F.3d 1344, 1350 (Fed. Cir. 2013), citing *Jaffke v. Dunham*, 352 U.S. 280, 281 (1957). The briefing in the lower courts lays out all of the additional reasons why Mr. Leitner-Wise's claims were properly dismissed including, among other issues, Mr. Leitner-Wise's failure to bring these claims within the appropriate statute of limitations.

IV. CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

BENNETT L. COHEN*
POLSINELLI PC
1401 Lawrence Street,
Ste. 2300
Denver, CO 80202
303-572-9300
bcohen@polsinelli.com
**Counsel of Record*

NOAM B. FISCHMAN, ESQ.
PHILIP G. FEIGEN, ESQ.
POLSINELLI PC
1401 I Street, N.W.,
Ste. 800
Washington, DC 20005