

No. 18-577

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

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DAVID NETZER, CONSULTING ENGINEER,

*Petitioner,*

v.

SHELL OIL COMPANY, SHELL CHEMICAL LP  
AND SHELL OIL PRODUCTS COMPANY LLC,

*Respondents.*

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

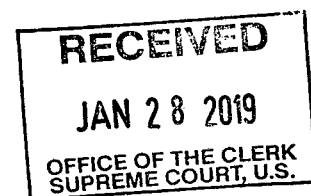
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**PETITION FOR REHEARING**

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## INTRODUCTION

This petition to the United States Supreme Court is for rehearing Netzer v. Shell for alleged infringement of US patent 6,677,496, as addressed in certiorari petition, case 18-577. The certiorari petition was denied by the Supreme Court on January 7, 2019 and portions of the legal foundations of this petition for reconsideration are described in the below argument no-1.

## QUESTIONS PRESENTED

Questions as presented in this brief for reconsideration are continuations to questions as presented in prior recent certiorari petition to United States Supreme Court, case 18-577 as docketed by US Supreme Court on November 2, 2018 and denied on January 7, 2019.

1. **Premise of the question:** After the US court of appeals for federal circuit (CAFC) affirmed summary judgment by District Court of Southern Texas and in favor of defendants, by the same order CAFC ordered the following (see appendix No-1):
  - a. All other pending Motions are **denied** and moot
  - b. Each side to bear its own **costs**

The above means that CAFC **dismissed** pending Post Judgment Motions to district court that were brought in **before** CAFC, mandated it and relieved plaintiff from legal fees and costs other than his own.

## INTRODUCTION – Continued

After issuance of Mandate, the District Judge continues to issue new orders for defendant's legal fees for defendants (see appendices 2&3). **Question:** Does such actions by district court (aside from probably acting out of jurisdiction) provide evidence of the district court's bias and hostility toward plaintiff? Does it also bring into question the entire legal process to which Plaintiff has been subjected since the beginning of litigation? Does such treatment undermine public confidence in the judiciary? Further, does the granting of a Motion for legal fees, as requested by defendant, without defendant presenting invoices or any proof of cost and let alone **avoidance** of any hearing on legal fee, present further skepticism about the objectivity and the motivation of a Federal Judge?

2. **Premise of the question:** Refer to district court case 3:18-cv-75 docket entry (1) **appendices K & L** of March 13 2018. **Question:** Do these patterns of judicial actions on multiple legal cases undermine public trust in the judiciary and warrant appropriate attention of US Supreme Court? Does it present an issue of public interest?
3. **Premise of the question:** A legal case was heard as a petition for a new trial based on **new evidence** and in Galveston **division**, away from the original Houston division, but at the same Southern Texas district. Change of the division from Houston to Galveston was requested by the plaintiff and **accepted** by the Federal Judge in Galveston division. The new judge issued an order on the

## INTRODUCTION – Continued

case, ordering the plaintiff to re-file the case (appendix 7) in 14 days. The next day the plaintiff learned that the Galveston Judge changed his own order and transferred the case to the original Houston's Judge who is the subject of this petition. Netzer realizes that judges have the right to change their mind, presumably for a good cause. **Question:** Does this change of mind create the **appearance of impropriety** under rule 455 (a)? And does this change of mind call for vacating? Can the plaintiff dismiss suspicion of hidden Motion by the defendants? Does it undermine public confidence in the judiciary and warrants hearing by US Supreme Court?

4. **Premise of the question:** It is well known that many, perhaps most legal issues are falling in a "gray area" including claimed abuse of discretion. Legal research shows statistical evidences that appellate courts are siding with the District Judges as long as no laws are judged to be violated. **Question:** Is consistent hostility of the federal judge in Houston toward plaintiff as introduced to the "gray area" zone affecting the ruling of appellate courts and obstructing the ability of the plaintiff to prevail.
5. **Question:** Can a complex method patent of highly technical issues in the field of chemical engineering, be resolved by judges and their Law Clerks who have demonstrated a total lack of appropriate technical understanding and background. For example, district court case 3:18-cv-75 Doc.(1) appendix-J, the summary judgment of district court

## INTRODUCTION – Continued

August 26 2015 was grossly in error that had to be corrected by CAFC followed by six, mistakes of CAFC in their rulings presented in cert petition 18-577 ? All rulings were made without **the benefits of** expert advice in this highly technical case.

6. **Premise of the question:** The plaintiff, a small entity, a Consulting Engineer and inventor is in litigation with a huge multi-national company. The multi-national company has a long **documented** history of business frauds, theft of intellectual properties and multiple litigations in US courts, mostly as defendants. **Question:** Although not of legal significance in judging the merit of the instant case, is the exposed legal practice of the defendant, is of a significant **public interest**. Can this documented legal and business practices of the defendant be a factor in Supreme Court decision of whether or not to grant a cert petition to the plaintiff?
7. **Premise of the question:** In recent years there is and has been a major concern by US Government and the public in general about abuse and theft of intellectual property by foreign entities; **Question:** Is it time for the US Supreme Court to consider the **theft** of intellectual property by domestic US entities, and more so theft from **real US inventors**, not patent trolls, as an issue of a major public concern and interest?

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## APPENDICES

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3. Order docket entry (52) by district court denying reconsideration .....	App. 6
4. Motion docket entry (32) to CAFC seeking enforcement of order (28).....	App. 7
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7. Early order May 30 2018 by district Judge George Hanks in Galveston Division .....	App. 12

TABLE OF AUTHORITIES

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ENFORCEMENT BLOG:

<http://floridaappellatelawblog.shutts.com/2017/01/mandate-enforcement/#sthash.97z6RKNC.dpbs>

CASES:

*Fla. Peninsula Ins. Co. v. Cespedes*, No. 2D12-4575 (Fla. 2d DCA Oct. 14, 2016)

*State v. Miyasoto*, 805 So. 2d 818 (Fla. 2d DCA 2001)

## ARGUMENTS

1. The legal history of Federal Judge Lynn Hughes especially his legal history with Shell, Judicial finding by Fifth Circuit in year 2015 is addressed in prior Motions to district Court, see case 3:18-cv-75 (1). This judicial finding **undermining confidence** of the public in the judicial system thus of a keen public interest This case is almost literally **America v. Shell**.

On September 25, 2018 The Court of Appeals for Federal Circuit (CAFC), case 18-2129 has affirmed an order of Southern Texas District Court which denied David Netzer, Consulting Engineer petition for a new trial and based on the **merit**. The petition for new trial was based on new evidence. Nevertheless, CAFC in the same order that was mandated on November 1, 2018 (see appendix 1 page 4) has **dismissed** Post Judgment Motion for legal fee that was pending **before** CAFC at the time.

On December 28, 2018 while certiorari petition of Netzer No 18-577 was pending before US Supreme Court and Post Judgment Motion was **already dismissed** by CAFC, then district Judge granted the Post Judgment Motion for legal fee to Shell? On December 31, 2018 Netzer has filed a Motion (51) advised the District Court about the **conflicts** between orders of District Court and Court of appeals. On same day, December 31, 2018 (52), District Court reaffirmed the order of granting Post Judgment Motion to Shell. On January 7, 2019 the certiorari petition of David Netzer to Supreme Court was denied.



On January 8, 2019 Netzer filed a Motion to CAFC (appendix 4) pleading to enforce the **dismissal** ruling of Post Judgment Motion, but CAFC has declined the acceptance of the Motion under the reasoning “the case is closed” (appendix 5). This conflicting decisions between CAFC and District Court has created **legal confusion**. All the above issues of legal fee (as being appealed to CAFC) are presented in case laws and blog on page iv are providing incontrovertible evidence as to the **extreme bias** of the federal judge and further enforces Netzer petition for rehearing.

2. Further, one way or the other all these judicial actions by District Court are **migrating** to appellate courts, serving as reference points to appellate courts, CAFC in instant case.
3. In context of the above it is worth noting that out of 47 patent litigation cases since year 2000 as presided over by Judge Hughes; **none** has ended in Jury trial. One can’t dismiss the suspicion that personal ideology of the Judge regarding intellectual property is a factor playing a role in judicial decisions.
4. In case of Netzer vs. Shell **no expert witnesses** have been invoked. Based on transcript (3:18-cv-75 (1) appendix J) the technical acumen of the Judge Hughes is very limited and making decision on technical issues all this without expert advice represent a total insult to US Judicial system and American public.
5. Since the argument about “expert witness” was raised in the above argument point No-4, then **appendix no-6**, a note from legal department of

ExxonMobil, a leader in the disputed technology is relevant. ExxonMobil technical and legal staffs have reviewed the patent from legal and technical aspects.

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### REASON FOR GRANTING REHEARING

The entire above arguments represent **extremely rare** legal situation, but also an extremely powerful and of compelling public interest. The resolution of this case is likely to affect other legal proceedings and conform to **Rule 10**. The above arguments and questions warrant the attention of US Supreme Court.

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### CONCLUSIONS

1. Netzer is requesting the US Supreme Court for reconsideration and vacate the denial of certiorari petition 18-577 that was based on the merit.
2. The requested vacating will lead to a trial based on evidence as presented to District Court on April 27, 2017 and to be presided over by a new judge.

Respectfully submitted,

DAVID NETZER, Consulting Engineer  
acting *Pro Se*

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**CERTIFICATE OF GOOD FAITH**

David Netzer, Consulting engineer, the petitioner and acting as *Pro Se*, submits to Rule 44 of the US Supreme Court and hereby to certify that this petition for rehearing is restricted to the grounds as specified in Rule 44 paragraph -2, rules of the Supreme Court and is presented for good faith and not for avoiding or delaying any legal proceeding. The legal foundation of this petition is described in argument No-1.

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DAVID NETZER, Consulting Engineer  
acting *Pro Se*

App. 1

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**DAVID NETZER,**  
*Plaintiff-Appellant*

**v.**

**SHELL CHEMICAL LP, SHELL OIL COMPANY,  
SHELL OIL PRODUCTS COMPANY,**  
*Defendants-Appellees*

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2018-2129

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Appeal from the United States District Court for  
the Southern District of Texas in No. 3:18-cv-00075,  
Judge Lynn N. Hughes.

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**ON MOTION**

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PER CURIAM.

**ORDER**

(Filed Sep. 25, 2018)

Shell Chemical LP, Shell Oil Company, and Shell  
Oil Products Company LLC (collectively, “Shell”) move  
to dismiss this appeal. David Netzer opposes the mo-  
tion.

## App. 2

In 2014, Mr. Netzer, through counsel, filed a suit at the United States District Court for the Southern District of Texas, alleging Shell infringed his U.S. Patent No. 6,667,496. The district court granted summary judgment of noninfringement. Mr. Netzer appealed. We reviewed the district court's summary judgment decision *de novo* and affirmed. See *David Netzer Consulting Eng'r LLC v. Shell Oil Co.*, 824 F.3d 989 (Fed. Cir. 2016).

In April 2017, Mr. Netzer moved for reconsideration of the summary judgment under Federal Rule of Civil Procedure 60(b), arguing that he obtained new testimonial evidence by James Storm, a former technical expert of Shell. In May 2017, the district court denied the motion because "it was not filed within one year of final judgment." The district court judge further noted that "[t]he report prepared by Netzer's technician after final judgment is not newly discovered evidence. It is an opinion about existing data." Mr. Netzer attempted to appeal that decision to this court, but that appeal was dismissed as untimely. *David Netzer Consulting Eng'r LLC v. Shell Oil Co.*, No. 2017-2419 (Fed. Cir. Oct. 25, 2017).

In March 2018, Mr. Netzer, now acting pro se, filed a submission at the Southern District of Texas. In that submission and his subsequent motions, Mr. Netzer alleged that the district court should have recused in his prior suit against Shell under 28 U.S.C. § 455(a) because the district court judge was a member of the World Affairs Council of Houston and a significant donor, Shell was a sponsor of the Council, and officials

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from Shell and an attorney from the firm representing Shell were also members of the Council during the prior litigation. Mr. Netzer further argued that the trial judge made a “highly biased and prejudicial statement” in referring to Mr. Storm as “Netzer’s technician.” Mr. Netzer also moved again for reconsideration under Rule 60(b).

The district court denied Mr. Netzer’s motion to recuse and motion for reconsideration. Mr. Netzer appealed to this court. Shell now moves to dismiss as frivolous. Shell argues that any assertion of error for the same alleged infringement as raised in the prior complaint is barred under the doctrine of res judicata. Shell also argues that Mr. Netzer’s motion for reconsideration from the prior judgment was untimely and presents no appealable issue. Shell further argues that Mr. Netzer’s motion for recusal is so factually and legally insufficient that his appeal should be deemed frivolous. Mr. Netzer responds that the district court committed several errors in previously granting summary judgment and reiterates his arguments that the trial judge should have recused.

We agree with Shell at least insofar as its position “is so clearly correct” that “no substantial question regarding the outcome of the appeal exists.” *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (stating standard for summary affirmance). The summary judgment ruling and initial denial of the motion for reconsideration for newly discovered evidence in this case are final and not subject to further review. We also see no error, let alone an abuse of discretion, on the

App. 4

part of the district court judge in rejecting Mr. Netzer's recusal arguments. *See Andrade v. Chojnacki*, 338 F.3d 448, 454 (5th Cir. 2003). Mr. Netzer clearly did not show that "if a reasonable man knew of all the circumstances, he would harbor doubts about the judge's impartiality." *Travelers Ins. Co. v. Liljeberg Enters., Inc.*, 38 F.3d 1404, 1408 (5th Cir. 1994) (internal quotation marks and citation omitted). Moreover, because we reviewed the summary judgment ruling *de novo*, Mr. Netzer received a fair, impartial review of the merits of the ruling, and thus little would be gained in vacating the final summary judgment even if his claims had any merit. *See Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 485–86 (5th Cir. 2003).

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted to the extent that the judgment of the district court is summarily affirmed.
- (2) All other pending motions are denied as moot.
- (3) Each side to bear its own costs.

FOR THE COURT

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

UNITED STATES  
DISTRICT COURT

SOUTHERN DISTRICT  
OF TEXAS

David Netzer, §  
Plaintiff, §  
*versus* § Civil Action G-18-75  
Shell Chemical LP, *et al.*, §  
Defendants. §

## Order on Attorneys' Fees

(Filed Dec. 28, 2018)

David Netzer has litigated, appealed, and lost this case three times. He has been unreasonable and irascible at every turn. Shell Chemical LP, Shell Oil Company, and Shell Oil Products Company collectively take \$56,701.10 from Netzer in attorneys' fees for their work in the district court. (44)

Signed on December 28, 2018, at Houston, Texas.

/s/ Lynn N. Hughes  
Lynn N. Hughes  
United States District Judge



App. 6

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UNITED STATES  
DISTRICT COURT

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SOUTHERN DISTRICT  
OF TEXAS

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David Netzer,	§	
	§	
Plaintiff,	§	
	§	
<i>versus</i>	§	Civil Action G-18-75
	§	
Shell Chemical LP, <i>et al.</i> ,	§	
	§	
Defendants.	§	

Order Denying Reconsideration

(Filed Jan. 14, 2019)

The court of appeals said that each party would bear its own costs of the appeal. The motion for attorneys' fees for the work done in the district court was not before the court of appeals. Once the judgment was final, this court awarded attorneys' fees for the work done at the district court level. This court's award of attorneys' fees subsists.

David Netzer's motion for reconsideration is denied. (51)

Signed on December 31, 2018, at Houston, Texas.

/s/ Lynn N. Hughes  
Lynn N. Hughes  
United States District Judge

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App. 7

**CASE 18-2129 (CORRECTED)**

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**United. States Court of Appeals**

**For the Federal Circuit**

DAVID NEIZER CONSULTING ENGINEER, *PRO SE*

*Plaintiff-Appellant,*

v.

SHELL OIL COMPANY, SHELL CHEMICAL LP,  
AND SHELL OIL PRODUCT'S COMPANY LLC,

*Defendants-Appellees.*

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***Motion for enforcement of order (28) of CAFC.  
From the United States District Court for the  
Southern District of Texas in Case 3:18-cv-75  
and for Post Judgment pending Motion (4)  
District Judge Lynn N Hughes***

**1. Order of CAFC (September 25 2018 as mandated November 1 2018)**

The order (28) of CAFC as of September 25 2018 was in response to Shell's Motion to dismiss the appeal of Netzer docket entry (24) August 3 2018. The order as was mandated by CAFC November 1st 2018 (29) reads the following, (see Exhibit 1 page 4):

1. The Motion is granted to the extent that the judgment of district court is summarily affirmed.

2. **All other pending Motions are denied and mooted.**

3. Each side to bear its **own costs**.

David Netzer is here to remind CAFC that the term “**all other pending Motions**” applies to Post Judgment pending Motions docket entry (44) from district court that was brought **before** CAFC.

Further David Netzer wishes to remind CAFC that this pending Motion (44) of district court was brought before CAFC at the following docket entries:

1. Entry No. (6) of July 16, 2018 appendix 15 page 100 of the Opening Brief
2. Entry No (24) by Shell, August 3 2018, corrected Motion to dismiss the appeal of Netzer, page 15 foot note, and also in Exhibit V page 4 of 4
3. Entry (25) opposing Motion by David Netzer, August 6 2018, pages 9-10

### **Actions by District Court and Shell**

In spite of all the above, entries No-(50) (52) in district court exhibits (2) (and (3) in this Motion to enforce), District Judge is **persisting** in issuance orders which are very explicitly in **conflict** with the dismissal order (28) of pending Motions by CAFC as was mandated Nov 1 2018 (29). Further, in entry (52) (see exhibit (3) in this Motion), District Court **mistakenly** claims that Motion (44) **WAS NOT BEFORE** the court of appeal.

## App. 9

Further, on January 4 2019 Shell filed frivolous Motion, entry (54) to docket of district court for attorney fee. Netzer wishes to bring to CAFC's attention of January 7 2019 entry (55) to district court. In this entry Netzer has advised the District Court about the conflicting rulings to orders and mandate issued by CAFC. Below are supporting references and referenced case laws related to enforcements.

<http://floridaappellatelawblog.shutts.com/2017/mandate-enfoceement?#sthash.97z6RKNc.dpbs>

1. *E.g. State v. Miyasoto*, 805 So. 2d 818, 824 (Fla. 2d DCA 2001)
2. *Fla. Peninsula Ins. Co. v. Cespedes*, No. 2D12-4575 (Fla. 2d DCA Oct. 14, 2016)

### **Pleading**

Netzer is pleading CAFC to order necessary legal measures to enforce its order No (28) as was mandated by order (29) on November 1 2018.

### **Certificate of service**

David Netzer of 2900 S Gessner Rd Apt 1407 Houston Texas 77063 Tel 832 251 1271 is here to certify that Ms. Jayme Partridge of Fish & Richardson PC of Houston, Partridge@fr.com a counsel for the defendant is being served on this notice. [David Netzer January 8, 2010.]

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App. 10

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT  
717 MADISON PLACE, N.W.  
WASHINGTON, D.C. 20439**

[SEAL]

PETER R. MARKSTEINER  
CLERK OF COURT

CLERK'S OFFICE  
202-275-8000

January 9, 2019

David Netzer  
2900 S Gessner Road  
Apartment 1407  
Houston, TX 77063

**Re: 18-2129, Netzer v. Shell Chemical LP**

Dear Mr. Netzer,

This letter responds to your correspondence titled "Motion for enforcement of order (28) of CAFC" received by the Clerk's Office on January 8, 2019 in reference to Court of Appeals for the Federal Circuit. appeal No. 2018-2129. This case is closed in this court.

The above-mentioned appeal was summarily affirmed on September 25, 2018 and the mandate issued on November 1, 2018. The rules of this court do not provide for future submissions in this case now that it is closed. No action will be taken on your filing and no further filings should be made in this closed case.

Respectfully,

/s/Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

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App. 11

**From:** Phillips, Richard F-Law [mailto:richard.f-law.phillips@exxonmobil.com]

**Sent:** Thursday, May 07, 2015 12:49 PM

**To:** David Netzer

**Subject:** RE:

David—You really should have been an attorney! But then, the world would have missed a talented chemical engineer.

**Richard F. Phillips**

IP Coordinator, Law Dept., Exxon Mobil Corporation  
Chief Attorney-Technology, ExxonMobil Chemical  
Manager – Trademark and Copyright Law, Exxon  
Mobil Corporation

Exxon Mobil Corporation  
5959 Las Colinas Boulevard  
Irving, Texas 75039

ph. 281-834-5954 (Baytown); 972-444-1410 (Dallas)

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**HEARING MINUTES**

Cause No: 3:18-CV-75

Style: DAVID NETZER CONSULTING  
ENGINEER vs. SHELL CHEMICAL  
LP, *et al*

Hearing Type: Pre-Motion Conference

Appearances:

**Counsel**

**Representing**

David Netzer, pro se

David Netzer  
Consulting Engineer

Jayme Partridge  
Alex Kykta

Shell Chemical, LP; Shell  
Oil Company; Shell Oil  
Products Company

Date: May 30, 2018

ERO: Lorraine Trevino

Time: 2:29 PM – 2:52 PM

Case Manager: Susan  
Gram

At the hearing, the following rulings were made as stated on the record:

1. Pre-motion conference held regarding Defendants' request for a pre-motion conference. (Dkt [12])
2. Plaintiff to file amended complaint by **Thursday, June 14, 2018.**
3. Defendants to file their Motion to Dismiss by **Thursday, June 21, 2018.**
4. Plaintiff to file his response to Defendants' Motion to Dismiss by **Thursday, July 12, 2018.**