

App. No. 18-

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

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**DR. LAKSHMI ARUNACHALAM,**

**Petitioner,**

**v.**

**APPLE, INC, *ET AL*,**

**Respondents,**

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

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Whether the District Court and Circuit Court Judges have a duty to abide by the Constitution and rule per the Law of the Case and Law of the Land.

### I.

2. Whether the (decades long) concerted use of *the* Re-examination process (excluding the targeted invention's (contractually induced) 'Patent Prosecution History Estoppel' provision) without legislative authority by the USPTO, its certified Patent Attorneys, its Appeals Board (herein, "the Executive Agency"), and the Federal Circuit Courts (herein, "the Judiciary") rescinding Government-issued patent contract grants prior to legislative enactment of America Invents Act of 2011 and thereafter (herein, "the Legislature") knew (*or should have known*) of J. Marshall's *res judicata* finding that 'Grants are Contracts' and *stare decisis* '*First Impression* Mandated Prohibition' against rescinding government-issued contract grants. If not,

- A. Whether the (decades long) concerted use of *the* Re-examination process (excluding the targeted invention's (contractually induced) 'Patent Prosecution History Estoppel' provision) without legislative authority by the USPTO, its certified Patent Attorneys, its Appeals Board knew (*or should have known*) that — failing to consider an invention's (contractually induced) 'Patent Prosecution History Estoppel' provision constituted an overt breach of contract. If not,
- B. Whether the (decades long) concerted use of *the* Re-examination process (excluding the targeted invention's (contractually induced) 'Patent Prosecution History Estoppel' provision) without legislative authority by the USPTO, its certified Patent Attorneys, its Appeals Board knew (*or should have known*) that — rescinding the contract grant constituted an erroneously unauthorized adjudicative taking of substantive and fundamental 'due process' rights and remedies relied upon by the inventor; a process normally reserved for the Judiciary to so adjudicate. If not,
- C. Whether the (decades long) concerted use of *the* Re-examination process (excluding the targeted invention's (contractually induced) 'Patent Prosecution History Estoppel' provision) without legislative authority by the USPTO, its certified Patent Attorneys, its Appeals Board knew (*or should have known*) that — reexamining a patent contract grant without considering the

targeted invention's (contractually induced) 'Patent Prosecution History Estoppel' is no reexamination at all or a fraudulent one at best; on venue constituted 'fraud on the Federal Circuit Court' inducing it to entertain an unauthorized and questionably re-examined breached contract grant.

## II.

3. Whether the Legislature knew (or should have known) of J. Marshall's '*First Impression Mandated Prohibition*' and the Executive Agency's (decades long) mal-administration of the 'Reexamination Process' (void of targeted 'Patent Prosecution History Estoppel' consideration) at the time it provisioned the Executive Agency's (colorful) 'authorization to continue-in-concert with the Judiciary' without considering targeted 'Patent Prosecution History Estoppel.' [Reference *Aqua Products.*]. If not,
  - A. Whether the Legislature knew (or should have known) that the Legislature's 2011 America Invents Act ("AIA") 'Provisional Act' authorizing the Executive Agency to continue its (decades long) mal-administration of the 'Reexamination Process' (void of targeted 'Patent Prosecution History Estoppel' consideration) — was an 'artificially (corrupt) distinction, not an authorization' — used to color the decades long unauthorized (breach of contract grants) abrogated adjudications in concert with the Judiciary. If not,
  - B. Whether the Legislature knew (or should have known) that the Legislature's 2011 America Invents Act ("AIA") 'Provisional Act' authorizing the Executive Agency to continue its (decades long) mal-administration of the 'Reexamination Process' (void of targeted 'Patent Prosecution History Estoppel' consideration) — constituted simultaneously an adjudicative taking of substantive and fundamental 'rights and remedies' relied upon by the inventor warranting constitutional redress. If not,
  - C. Whether the Legislature knew (or should have known) that the Legislature's 2011 America Invents Act ("AIA") 'Provisional Act' authorizing the Executive Agency to continue its (decades long) mal-administration of the 'Reexamination Process' (void of targeted 'Patent Prosecution History Estoppel' consideration) — constituted a (severely) wanton Mission Breach of Public Trust and Judicial Confidence in Protecting the Constitution respecting contractual obligations and associated laws of the land.

## III.

4. Whether the Judiciary (District and Appellate Courts and this Court) knew (or *should have known*) of J. Marshall's '*First Impression* Mandated Prohibition' against rescinding government-issued contract grants, and the Executive Agency's (decades long) mal-administration of the 'Reexamination Process' being in want of considering the targeted invention's 'Patent Prosecution History,' to accomplish that which is prohibited (enforced without legislative authorization and in breach of contract grant) concertedly with the Federal Circuit's rescinding adjudications, and the Legislature's America Invents Act colorful authorization of the decades long mal-administered Re-examination process unauthorized (breach of contract grant) prior to this Court's *Oil States*<sup>1</sup> ruling legitimizing the mal-administrations of patent law, and legalizing the America Invents Act ("AIA") impairing the obligation of contracts violating the prohibition of the Constitution — the "Action." If not,
  - A. Whether said Action created a constitutional conflict by reversing J. Marshall's *res judicata* finding that 'Grants are Contracts' and this Court's own *stare decisis* '*First Impression* Mandated Prohibition' against rescinding government-issued contract grants and this Court's subsequent affirmations thereof. If not,
  - B. Whether said Action colored USPTO's re-examinations of granted patents by neglecting to consider Patent Prosecution History as affirmed in *Aqua Products*<sup>2</sup> opting out reversal. If not,
  - C. Whether said Action breached the patent contract with the Inventor, expressly contained in the Constitution, affirmed multiple times<sup>3</sup> by this Court as inviolate, and usurped the Constitutional Amendment Process with all its inherent protections against unlawful search and seizure at least without due compensation. If not,
  - D. Whether said Action comforted the District and Appellate Courts and USPTO concertedly neglecting to consider Patent Prosecution History as affirmed by the Federal Circuit's *Aqua Products* opting-out reversal which only surfaced after decades upon the instant

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<sup>1</sup> *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 584 U.S. 16-712 (2018).

<sup>2</sup> *Aqua Products, Inc. v. Matal*, Fed. Cir. 15-1177 (2017) reversing all Orders in Courts and USPTO that did not consider "the entirety of the record" — Patent Prosecution History.

<sup>3</sup> *Fletcher v. Peck*, 10 U.S. 87 (1810); *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819); *Ogden v. Saunders*, 25 U.S. 213 (1827); *Grant v. Raymond*, 31 U.S. 218 (1832); *U.S. v. American Bell Telephone Company*, 167 U.S. 224 (1897); *Shaw v. Cooper*, 32 U.S. 292 (1833); *Seymour v. Osborne*, 78 U.S. 516 (1870); *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884); *U.S. v. Dubilier Condenser Corp.*, 289 U.S. 178 (1933); *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141 (1989);

*Fletcher* challenge — which is the Law of the Case, the law of all, and the Law of the Land. If not,

- E. Whether said Action denying inventors equal benefit of all laws and proceedings for the security of person and property violates the rule of law designed by the framers of the Constitution as a *bulwark against oppression* limiting the exercise of power and making the agents of the people accountable for revising the Constitution in accordance with their own predilections. If not,
- F. Whether said Action by this Court, the District and Appellate Courts, USPTO and Legislature, tortuously destroyed an inventors' vested rights and remedies, governing patent contract grants, giving superior bargaining power to Corporate Infringers (*having no reason to tender royalties owed*), denying access to an impartial court upon the question of due process itself by making it difficult, expensive, or hazardous, contravening the ordinary principles of justice, itself warranting constitutional redress. If not,
- G. Whether said Action is constitutionally insane for causing inventors to lose their patents when all the laws — Law of the Case, which J. Marshall declared is the law of all, and is the Law of the Land — are on the inventor's side. If not,
- H. Whether said Action impairing the obligation of contracts violating the prohibition of the Constitution mandated by this Court against rescinding government-issued contract grants usurped the Law of the Land in violation of the Separation of Powers Clause and the 14th Amendment, §3. If not,
- I. Whether said Action impairing the obligation of contracts violating the prohibition of the Constitution and failing to ensure the federal government's faithful execution of the solemn promise made by the United States to protect the contract basis for intellectual property rights *crystallized the quagmire of Constitutional redress* a citizen is entitled to but denied, with the Law of the Case and Law of the Land on the Inventor's side. If not,
- J. Whether the USPTO/PTAB (the “Agency”) and Federal Circuit were aware of the prohibition of the Constitution mandated by this Court<sup>4</sup>

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<sup>4</sup> *Fletcher v. Peck*, 10 U.S. 87 (1810); *Ogden v. Saunders*, 25 U.S. 213 (1827); apply the logic of sanctity of contracts and vested rights directly to federal grants of patents under the IP Clause. By entering into public contracts with inventors, the federal government must ensure what Chief Justice Marshall described in *Grant v. Raymond*, 31 U.S. 218 (1832) as a “*faithful execution of the solemn promise made*

against rescinding Government-issued contract grants prior to the enactment of the America Invents Act.

K. Whether this Court has taken at the bar ‘the distinction between the obligation of a contract and the remedy given by the legislature to enforce that obligation’ so that without impairing the obligation of contracts, ‘the remedy may certainly be modified as the wisdom of ‘a magnanimous and just Government’ ‘shall direct’ to ‘never exercise the right of possessing itself of the property vested in the individual’ — the inventor — ‘when necessary for public uses’ ‘without amply indemnifying the individual’ — the inventor — by declaring the America Invents Act reexamination provision null and void, as violating the prohibition of the Constitution, and reinstating all granted patents invalidated by said mal-administered re-examination process, and ordering Corporate Infringers to pay the royalties rightfully owed to the inventor, ‘without impairing the obligation of the contract,’ wherein ‘the remedy may certainly be modified as the wisdom of the nation shall direct.’ If not,

L. Whether said Action now requires this Court to provide the remedy, and amply indemnify the inventor and order just compensation by the Corporate Infringers, whether it reverses itself or not and continues with the mal-administration by the USPTO.

#### IV.

5. Whether the USPTO, Judiciary and Legislature knew (*or should have known*) of J. Marshall’s *res judicata* finding that ‘Grants are Contracts’ and *stare decisis* ‘First Impression Mandated Prohibition’ against rescinding government-issued contract grants and failed to enforce it in this Court’s *Oil States* ruling legalizing the America Invents Act (“AIA”) authorizing the decades-long re-examination of granted patents prior to the enactment of the AIA and continuing thereafter without considering ‘*Patent Prosecution History*’ contract provision after the Circuit Court opted out and reversed itself in *Aqua Products* — the “Action.”

6. Whether the Judiciary, Legislature and USPTO collusively committed insurrection or rebellion against the United States Constitution (the “Action”) by this Court’s *Oil States* ruling ostensibly legalizing the America Invents Act

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by the United States.” In *U.S. v. American Bell Telephone Company*, 167 U.S. 224 (1897), Justice Brewer declared: “*the contract basis for intellectual property rights heightens the federal government’s obligations to protect those rights. ...give the federal government “higher rights” to cancel land patents than to cancel patents for inventions.*” In *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819), Chief Justice Marshall declared the “Law of this Case is the Law of all.”

impairing the obligation of contracts violating the prohibition of the Constitution.

7. Why did the Supreme Court legitimize AIA authorizing the decades-long mal-administered re-examination of granted patents without considering Patent Prosecution History by the USPTO in its *Oil States* ruling after the Circuit Court opted out and reversed itself in *Aqua Products* — creating a constitutional conflict by reversing J. Marshall's *res judicata* finding that 'Grants are Contracts' and this Court's own *stare decisis* 'First Impression Mandated Prohibition' against rescinding government-issued contract grants and this Court's affirmations thereof? Because the courts and USPTO had stock in the Corporations.

## **PARTIES TO THE PROCEEDINGS BELOW**

Petitioner, Dr. Lakshmi Arunachalam, the inventor and sole assignee of the patent(s)-in-suit was the Appellant in the court below. Dr. Lakshmi Arunachalam is the sole Petitioner in this Court. Respondents Apple, Inc., Samsung Electronics America, Inc., Facebook, Inc., Alphabet, Inc., Microsoft Corporation, International Business Machines Corporation, SAP America, Inc., JPMorgan Chase And Company, Fiserv, Inc., Wells Fargo Bank, Citigroup, Citibank, Fulton Financial Corporation, Eclipse Foundation, Inc., and Judge Davila were the Appellees/Respondents in the court below.

## **RULE 29.6 STATEMENT**

Pursuant to this Court's Rule 29.6, Dr. Lakshmi Arunachalam is an individual and has no parent company and no publicly held company owns 10% or more of its stock.

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## **PETITION FOR WRIT OF CERTIORARI**

Petitioner/inventor Dr. Lakshmi Arunachalam respectfully submits this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

### **OPINIONS BELOW**

The Order of the Ninth Circuit Court of Appeals entering judgment without opinion in Petitioner's Writ of Mandamus Case No. 18-71335, which is an Appeal from Case No. 18-1250-EJD (N.D. CA) in the U.S. District Court for the Northern District of California is reproduced at App. 1a. The Order of the U.S. District Court for the Northern District of California is reproduced at App. 2a. The above Orders are not published.

### **JURISDICTION**

The Court of Appeals for the Ninth Circuit entered judgment without opinion in Petitioner's Writ of Mandamus on September 20, 2018, (App.1a). Justice Kagan extended the time in which to file a petition for writ of certiorari to and including February 17, 2019. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS, JUDICIAL CANONS AND JUDICIAL RULES OF PROCEDURE INVOLVED**

#### **U.S. Const.:**

**The Supremacy Clause** of the United States Constitution (Article VI, clause 2) establishes that “the Constitution, federal laws made pursuant to it, and treaties made under its authority, constitute the supreme law of the land.”

**Separation of Powers Clause, Arts. I, II & III;** “The framers shied away from giving any branch of the new government too much power. The separation of powers provides a system of shared power known as Checks and Balances. Three branches are created in the Constitution” “according to which the Legislative, Executive, and Judicial branches of the United States government are kept distinct in order to prevent abuse of power. This United States form of separation of powers is associated with a system of checks and balances.”

**Contract Clause, Art. I, §10, clause 1; Art. I, §§9 & 10;** “No bill of attainder or ex post facto Law shall be passed or law impairing the obligation of contracts.”

**IP Clause, Art. I, §8, clause 8;** “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

**Public Interest/Welfare Clause, Art. I, §8;** “The concern of the government for the health, peace, morality, and safety of its citizens. Providing for the welfare of the general public is a basic goal of government. The preamble to the U.S. Constitution cites promotion of the general welfare as a primary reason for the creation of the Constitution.”

**Equal Protection of the Laws Clause, Amend. XIV, §1;** “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

**Due Process Clause, Amends. V & XIV;** “The Due Process Clause of the Fourteenth Amendment applies only against the states, but it is otherwise textually identical to the Due Process Clause of the Fifth Amendment, which applies against the federal government; both clauses have been interpreted to encompass identical doctrines of procedural due process and substantive due process. Procedural due process is the guarantee of a fair legal process when the government tries to interfere with a person's protected interests in life, liberty, or property.” “When the government seeks to burden a person's protected liberty interest or property interest, the Supreme Court has held that procedural due process requires that, at a minimum, the government provide the person notice, an opportunity to be heard at an oral hearing, and a decision by a neutral decision maker. The Court has also ruled that the Due Process Clause requires judges to recuse themselves in cases where the judge has a conflict of interest. ... *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). Substantive due process is the guarantee that the fundamental rights of citizens will not be encroached on by government. The Due Process Clause of the Fourteenth Amendment also incorporates most of the provisions in the Bill of Rights, which were originally applied against only the federal government, and applies them against the states.”

**Vol. XII, Constitutional Law, Chapter 7. Sec. 140. Erroneous and Fraudulent Decisions. Due Process and Equal Protection of Law:** Procedure. Sec. 1. Due Process of Law.

**Vol. XII, Constitutional Law, Chapter 7; Sec. 141. Denying or Hindering Access to the Courts upon the Question of Due Process Itself.**

**Amend. I;** “Right to Petition the Government for a Redress of Grievances.”

**42U.S.C. § 1983 Civil Rights Act;**

**JUDICIAL CANONS 2, 2A, 3, 3(A)(4);**

**FRCP Rule 60(b) (1-4 & 6);**

**The Legislature's 2011 America Invents Act (AIA) Re-examination Provision** is a bill of attainer that took away Petitioner/inventor's rights and remedies. There can be no rights without a remedy. See *infra*.

Chief Justice Marshall declared in the Supreme Court's significant '*First Impression*' Constitutional *Res Judicata* precedential ruling in *Fletcher v. Peck*, 10 U.S. 87 (1810) and reaffirmed in numerous Supreme Court rulings<sup>1</sup> thereafter, the Mandated Prohibition from rescinding Government-issued Patent Contract Grants by the most absolute power, in accord with the Constitution. This is the 'Law of the Land.'

*Fletcher v. Peck*, 10 U.S. 87 (1810); *Ogden v. Saunders*, 25 U.S. 213 (1827) and other Supreme Court rulings listed *infra* apply the logic of sanctity of contracts and vested rights directly to federal grants of patents under the IP Clause. By entering into public contracts with inventors, the federal government must ensure what Chief Justice Marshall described in *Grant v. Raymond*, 31 U.S. 218 (1832) as a "faithful execution of the solemn promise made by the United States."

In *U.S. v. American Bell Telephone Company*, 167 U.S. 224 (1897), Justice Brewer declared: "the contract basis for intellectual property rights heightens the federal government's obligations to protect those rights. ...give the federal government "higher rights" to cancel land patents than to cancel patents for inventions."

To uphold Patent Prosecution History is a key contract term between the inventor and the Federal Government/USPTO. The claim construction of claim terms agreed to between the inventor and the Original Examiner at the USPTO before the patent was granted is cast in stone and cannot be changed by the USPTO, Courts or the patentee. Federal Circuit's *Aqua Products, Inc. v. Matal*, Case No. 15-1177, October 4, 2017 has affirmed that Petitioner has *been* pleading correctly all along and has been rebuffed by collusive adjudications by Courts and USPTO/PTAB, induced by Corporate Infringers' and their attorneys' Solicitations, without considering Patent Prosecution History, in breach of contract with inventors. Federal Circuit ruled in *Aqua Products* that Orders by Courts and USPTO/PTAB that did not consider the "entirety of the record"— Patent Prosecution History — are void and reversed.

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<sup>1</sup> *Grant v. Raymond*, 31 U.S. 218 (1832); *Ogden v. Saunders*, 25 U.S. 213 (1827); *U.S. v. American Bell Telephone Company*, 167 U.S. 224 (1897); *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819); Justice McLean in *Shaw v. Cooper*, 32 U.S. 292 (1833); *Seymour v. Osborne*, 78 U.S. 516 (1870); *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884); *U.S. v. Dubilier Condenser Corp.*, 289 U.S. 178 (1933); *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141 (1989).

## STATEMENT OF THE CASE

Federal courts must enforce the Constitution. Repeated violations of the Constitution do not make them constitutional but compound the evil. The District Court failed to consider the “Law of the Case” and “Law of the Land.” Non-compliance by the Courts with procedural rules is unlawful command influence. *Oil States*<sup>2</sup> legitimizing corrupt process disorder constitutes prejudice of good order and justice and discredits the Judiciary by advocating treason against the law of the land and promoting obstruction of justice by the District Court *sua sponte* dismissing Petitioner’s RICO and patent infringement cases in unfettered judicial misfeasance to the prejudice of ensuring a fair and proper administration of justice. Judges are oath-bound to defend the Constitution. “This obligation requires that congressional enactments be judged by the standards of the Constitution.”

The Law of the Case, the Law of the Land, the Constitution and the facts are on Petitioner’s side. Judges Andrews and Davila ignored, even disdained the concreteness of this mere fact. In the words of Samuel Johnson: “the most obdurate incredulity may be shamed or silenced by facts.”

An intellectual property patent grant contract is protected by the Constitution of the United States from legislative alteration coloring decades-long unilateral breach of contract by the Agency, legalized by judicial review annulling vested rights to property, and destroying remedies by denying access to the courts.

The Judiciary, Legislature and USPTO collusively committed insurrection or rebellion against the United States Constitution (the “Action”) by the Supreme Court’s *Oil States* ruling legalizing the America Invents Act Reexamination provision, corruptly usurping the Law of the Land by impairing the obligation of contracts violating the prohibition of the Constitution and the Supreme Court’s mandated prohibition against rescinding Government-issued contract grants by remaining silent thereof, while encroaching upon the Separation of Powers Clause, coloring the USPTO’s corrupt decades-long re-examination process of rescinding Government-issued contract granted patents by neglecting to consider Patent Prosecution History, in a unilateral breach of contract by the Agency with the inventor, prior to America Invents Act and thereafter continuing, delineated in the Federal Circuit’s *Aqua Products*<sup>3</sup> opting out reversal. The said “Action” breached the patent contract with the Inventor, expressly contained in the Constitution, affirmed multiple times by the Supreme Court<sup>4</sup> as inviolate, and usurped the Constitutional Amendment Process

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<sup>2</sup> *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 584 U.S. 16-712 (2018).

<sup>3</sup> *Aqua Products, Inc. v. Matal*, Fed. Cir. Case 15-1177 (2017) reversed all Orders that failed to consider the entirety of the record — Patent Prosecution History.

<sup>4</sup> *Fletcher v. Peck*, 10 U.S. 87 (1810); *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819); *Ogden v. Saunders*, 25 U.S. 213 (1827); *Grant v. Raymond*, 31 U.S. 218 (1832) “By entering into public contracts with inventors, the federal government must ensure a “*faithful execution of the solemn promise made by the United States*;” *U.S. v. American Bell Telephone Company*, 167 U.S. 224 (1897)

with all its inherent protections against unlawful search and seizure at least without due compensation. The said "Action" imposes a duty to reverse the District Court rulings as unconstitutional for failing to consider the Law of the Case, which in this case is the Law of the Land. The said "Action" denied Petitioner/inventor equal benefit of all laws and proceedings for the security of person and property, constitutionally enumerated rights, violates the rule of law designed by the framers of the Constitution as a bulwark against oppression to limit the exercise of power and to make the agents of the people accountable for revising the Constitution in accordance with their own predilections. The said "Action" tortuously destroyed Petitioner's/inventor's vested contractually granted rights and remedies, giving superior bargaining power to Appellees/Corporate Infringers (having no reason to tender royalties owed), denying access to an impartial court by making it difficult, expensive, or hazardous.

**1. The sanctity of contracts expressly contained in the Constitution is both the "Law of the Case" and "Law of the Land":**

District Court rulings violate the "Law of the Land," deprived Petitioner/inventor of rights without remedies by denial of substantive and fundamental rights by procedural and substantive unconscionability on discriminating terms.

"...it is manifest that the obligation of the contract and the rights of a party under it may in effect be destroyed by denying a remedy altogether [Petitioner/inventor Dr. Arunachalam's constitutional right (**emphasis added**) to redress, a remedy *has been denied and destroyed altogether by Oil States.*]...", *Bronson v. Kinzie*, 42 U.S. 311 (1843), 1 How. 311. See Blackstone, in his Commentaries on the Laws of England, 1 vol. 55.

"Nothing can be more material to the obligation than the means of enforcement. Without the remedy, the contract may, indeed, in the sense of the law, be said not to exist... The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion. The obligation of a contract "is the law which binds the parties to perform their agreement."

...Mr. Justice Swayne: "A right without a remedy is as if it were not. For every beneficial purpose it may be said not to exist." *Von Hoffman v City of Quincy*, 71 U.S. (4 Wall.) 535, 552, 554 and 604 (1867).

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declared: "*the contract basis for intellectual property rights heightens the federal government's obligations to protect those rights. ...give the federal government "higher rights" to cancel land patents than to cancel patents for inventions.*"

2. Courts/USPTO denied Petitioner the protection from Patent Prosecution History, a key contract term between the Inventor and Government. Respondents and Judges concealed material *prima facie* evidence Dr. Arunachalam's patent claims are not invalid nor indefinite, propagated a false Collateral Estoppel Argument, which fails in light of the Constitution:

Precedential Rulings long before *Aqua Products*, see *Festo Corp. v Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722 (2002); *Kumar v. Ovonic Battery Co., Inc. And Energy Conversion Devices, Inc.*, Fed. Cir. 02-1551, -1574, 03-1091 (2003), restrain the District Court from disparately failing to consider Patent Prosecution History. Time does not change the Constitution, and only the Constitution itself should ever be the basis to judge what is constitutional.

"Precedents ought to go for absolutely nothing. The Constitution is a collection of fundamental laws, not to be departed from in practice nor altered by judicial decision... usurpation... the judge who asserts the right of judicial review ought to be prepared to maintain it on the principles of the Constitution."

3. Expert testimony on claim construction is impermissible. Expert testimony from Respondent JPMorgan concealed *prima facie* evidence of Patent Prosecution History on claim construction:

that the claim terms are not indefinite, falsely alleged by JPMorgan in 12-282-RGA (D.Del.) and collusively adjudicated by District and Appellate courts. *Bell & Howell Document Management Prods. Co. v. Altek Sys.*, 132 F. 3d 701(Fed. Cir. 1997) (citing *Vitronics* extensively and reversing district court because court erred in relying on expert testimony when claims were unambiguous in view of intrinsic evidence.)

"Trial courts generally can hear expert testimony for background and education on the technology implicated by the presented claim construction issues..." *Key Pharmaceuticals v. Hercon Laboratories Corp.*, 161 F. 3d 709, 716 (fed. Cir. 1998).

4. Inventor testimony is helpful to claim construction. District Courts and USPTO/PTAB gagged Dr. Arunachalam/inventor, ignoring the Constitution, a "bulwark against oppression":

Petitioner/inventor was denied access to the courts to give testimony on claim construction. See *Perhaps: Voice Technologies Group, Inc. v. VMC Systems, Inc.*, 164

F.3d 605, 615 (Fed. Cir. 1999) (“An inventor is a competent witness to explain the invention and what was intended to be conveyed by the specification and covered by the claims.”)

Judge Andrews’ and Judge Davila’s Orders are void as repugnant to the Constitution.

This series of Supreme Court decisions is conclusive upon this Court in settling the construction of the Constitution upon this subject. *Jones v. Crittendon*, 1 Car. Law. J. 385.

“One of the tests that a contract has been impaired is that its value has, by legislation, been diminished (as here). It is not... by the Constitution, to be impaired at all. This is not a question of degree or cause, but of encroaching in any respect on its obligation...dispensing with any part of its force.” Justice Woodbury in *Planters’ Bank v. Sharp*, 6 How. 327.

## I.

### The Sanctity of Contracts as applied to the IP Clause governs Granted Patents and is not nullified by Oil States.

Chief Justice Marshall declared<sup>5</sup> in the Supreme Court’s significant ‘First Impression’ Constitutional *Res Judicata* precedential ruling in *Fletcher v. Peck*, 10 U.S. 87 (1810) and reaffirmed in Supreme Court cases, *Grant v. Raymond*, 31 U.S. 218 (1832); *Ogden v. Saunders*, 25 U.S. 213 (1827); *U.S. v. American Bell Telephone Company*, 167 U.S. 224 (1897); *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819); Justice McLean in *Shaw v. Cooper*, 32 U.S. 292 (1833); *Seymour v. Osborne*, 78 U.S. 516 (1870); *U.S. v. Dubilier Condenser Corp.*, 289 U.S. 178 (1933); *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141 (1989), the Mandated Prohibition from rescinding patent contract grants by the most absolute power, in accord with the Constitution. This is the ‘Law of the Land’. They maintained the sanctity of contracts and declared that a grant is a contract. The Judiciary, attorneys, USPTO/PTAB, the Legislature and Corporate Infringers must abide by the Constitution and this Mandated Prohibition or stand to treason in breaching their solemn oaths of office and lose their jurisdiction and immunity. See *Cooper v. Aaron*,

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<sup>5</sup> *Fletcher v. Peck* (1810); *Ogden v. Saunders* (1827) apply the logic of sanctity of contracts and vested rights directly to federal grants of patents under the IP Clause. By entering into public contracts with inventors, the federal government must ensure what Chief Justice Marshall described in *Grant v. Raymond* as a “*faithful execution of the solemn promise made by the United States.*” In *U.S. v. American Bell Telephone Company* (1897), Justice Brewer declared: “*the contract basis for intellectual property rights heightens the federal government’s obligations to protect those rights. ...give the federal government “higher rights” to cancel land patents than to cancel patents for inventions.*”

358 U.S. 1 (1958).<sup>6</sup>

Justice Samuel Miller in *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884): “Contracts between the government and inventors are established under federal law ... The public trust is therefore pledged to ensure that the protections offered by those public contracts are enforceable in courts of law.” W. E. Simonds, USPTO Commissioner from 1891 to 1892, in the Manual of Patent Law (1874): “A Patent is a Contract between the inventor and the Government representing the public at large.” Madison in Federalist No. 44: “Patent rights receive protection pursuant to ... contracts between inventors and the federal government.”

**1. Courts and USPTO/PTAB, in breach of contract, denied Petitioner/Inventor the protection from Patent Prosecution History Estoppel, a key contract term between the Inventor and Government:**

Precedential Rulings by the Supreme Court and Federal Circuit long before *Aqua Products* include at least *Festo Corp. v Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722 (2002); *Kumar v. Ovonic Battery Co., Inc. And Energy Conversion Devices, Inc.*, Fed. Cir. 02-1551, -1574, 03-1091 (2003); 351 F.3d 1364, 1368, 69. (2004). Yet, District and Appellate Courts disparately failed to consider Patent Prosecution History in Petitioner/Inventor’s patent cases and failed to apply Federal Circuit’s *Aqua Products* ruling which reversed all Orders in cases that failed to consider Patent Prosecution History.

**2. Expert testimony on claim construction is impermissible. Expert testimony from Respondent JPMorgan concealed *prima facie* evidence of Patent Prosecution History on claim construction.**

JPMorgan introduced false unsworn expert testimony on claim construction, concealing *prima facie* evidence of Patent Prosecution History that the claim terms are not indefinite, as falsely alleged by JPMorgan in Petitioner’s patent case 12-282-RGA (D.Del.) and collusively adjudicated by Judge Davila in the District court, without considering Patent Prosecution History, a key contract term between the inventor and the Government, in breach of contract with the inventor. See *Bell& Howell Document Management Prods. Co. v. Altek Sys.*, 132 F. 3d 701(Fed. Cir. 1997) (citing *Vitronics* extensively and reversing district court because court erred in relying on expert testimony when claims were unambiguous in view of intrinsic evidence.)

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<sup>6</sup> *Marbury v. Madison*, 5 U.S. 137, 177, 180 (1803); *Ableman v. Booth*, 62 U.S. 524 (1859); *Sterling v. Constantin*, 287 U.S. 397 (1932) on Government officials non-exempt from absolute judicial immunity: “no avenue of escape from the paramount authority of the...Constitution...when ...exertion of...power... has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry...against...individuals charged with the transgression.”

**3. Inventor testimony is helpful to claim construction. District Courts and USPTO/PTAB gagged Petitioner/inventor:**

The District Court denied Petitioner/inventor access to the courts to give testimony on claim construction. See *Perhaps: Voice Technologies Group, Inc. v. VMC Systems, Inc.*, 164 F.3d 605, 615 (Fed. Cir. 1999) (“An inventor is a competent witness to explain the invention and what was intended to be conveyed by the specification and covered by the claims.”). See *Milton D. Goldenberg and Immunomedics, Inc., v. Cytogen, Inc., and C.R. Bard, Inc.*, Fed. Cir. 03-1409 (2004).

**4. The sanctity of contracts expressly contained in the Constitution is both the “Law of the Case” and “Law of the Land”:**

Chief Justice Marshall declared: “The law of this case is the law of all... Lower courts ...have nothing to act upon...” “... applicable to contracts of every description... vested in the individual; ...right...of possessing itself of the property of the individual, when necessary for public uses; a right which a magnanimous and just government will never exercise without amply indemnifying the individual.” District and Appellate Court rulings, the Legislature’s America Invents Act reexamination provision and the Supreme Court’s *Oil States* ruling violate the “Law of the Land.” They deprived Petitioner/Inventor of her rights without a remedy.

**5. AIA Reexamination provision, Oil States, and District and Circuit Court rulings are *ex-post facto* laws, bills of attainder, violate Separation of Powers, Supremacy and Contract Clauses of the Constitution and are unconstitutional:**

AIA Reexamination provision passed under the form of an enactment is not therefore to be considered the “Law of the Land.”

“If this were so, acts of attainder, bill of pains and penalties, acts of confiscation, acts reversing judgments, and *acts directly transferring one man’s estate to another, (without just compensation to citizens under the takings clause of the 5<sup>th</sup> Amendment and eminent domain)*, legislative judgments, decrees and forfeitures, in all possible forms would be the *law of the land. Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void.* It directly established the union of all powers in the legislature. There would be no general permanent law for courts to administer or men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees, not to declare the law or administer the justice of the country.” Webster’s works Vol V., p 487; *Dartmouth College* (1819).

AIA Reexamination provision, which declared inventors deprived, must be held to be void as being a bill of attainder. *State v. Cummings*, 36 Missouri 263. *People v. Hawker*, 14 App. Div. 188, 43 N.Y. S. 516.

U.S. Const., Art. I, §§9 and 10, furnish to individual liberty, ample protection against the exercise of arbitrary power, prohibit the enactment of *ex post facto* laws by Congress and by State legislatures. Such deprivations of citizens' property by legislative acts having a retrospective operation are unconstitutional. It was not inserted to secure citizens in their private rights of either property or contracts. The U.S. Constitution prohibits the passing of any law impairing the obligation of contracts and was applied by the Supreme Court in 1810 and reaffirmed subsequently to secure private rights. The restriction not to pass any *ex post facto* law was to secure citizens from injury or punishment, in consequence of the law.

**6. The Supreme Court erroneously announced a rule contrary to the Constitution in its Oil States ruling and the first opinion of the Supreme Court in *Fletcher* and re-affirmations thereof:**

All courts should subsequently follow the Supreme Court's *Fletcher* ruling rather than the Supreme Court's own new unconstitutional *Oil States* decision, the law of the Supreme Court in *Fletcher* being *per se* justice. The *Fletcher* ruling in accord with the Constitution is the controlling authority and reigns supreme as the Law of the Land, not the unconstitutional *Oil States* ruling in violation of the Separation of Powers, Supremacy and Contract Clauses.

**II.**  
**BACKGROUND**

**1. Petitioner invented the Internet of Things (IoT) — Web Applications displayed on a Web browser prior to 1995, when two-way real-time Web transactions from Web applications were non-existent.**

Petitioner, Dr. Lakshmi Arunachalam ("Dr. Arunachalam"), based in Menlo Park, California, is the inventor and assignee of a portfolio of a dozen earliest Internet patents on the Internet of Things (IoT) — Web Applications displayed on a Web browser — and IoT devices, with a priority date of 11/13/1995, the date of filing of her provisional patent application with S/N 60/006,634.

Dr. Arunachalam created the domestic industry whose current value far exceeds trillions of dollars and the proliferation of IoT devices, and the millennial generation. Dr. Arunachalam's IoT machines are exemplified in Apple's iPhone App Store which has 2M+ Web apps (pre-packaged in Shenzhen, China by Foxconn, before it is imported into the United States), Google Play, Web banking Web apps, Facebook's social networking Web app, Stanford Health Care's My Health Web

application, to name a few. Respondent JPMorgan's website states it has over 7000 Web applications in use in just one Business Unit.

The CEO of Stanford Health Care, David Entwistle's talk in 2017 in Medicine X (See [https://www.youtube.com/watch?v=iS\\_y4uEZxO0](https://www.youtube.com/watch?v=iS_y4uEZxO0)) on the Internet of Hospital Things, contains *prima facie* evidence of Stanford Health Care using Dr. Arunachalam's patents, that Stanford Health Care uses Epic Web applications for a wide variety of functions at the Hospital, namely, electronic medical records (EMR) accessible on the iPhone, precision health Web apps, and Web apps for use by patients, nurses and doctors; for scheduling; emergency room (ER), patient check-in, and more, using Epic's MyChart and renamed it MyHealth at Stanford, that it is working in partnership with Google and Apple in deploying Web apps. Google, Apple and Epic Systems have sold stolen technologies and products to Stanford, without paying royalties to Petitioner for the use of her patents and patented technologies. David Entwistle's Tweet on 3/29/18 is *prima facie* evidence of Stanford Health Care's use of Plaintiff's patent(s):

"Stanford Health Care

Beginning today, patients at @StanfordHealth and numerous other hospitals and clinics can access their secure medical records right from their iPhone.

David Entwistle 3/29/2018" @DEntwistleSHC

#### iOS 11 Home screen on iPhone 8



Cisco was Petitioner/Inventor's first Beta site. Petitioner's products are certified by First Data Corporation as being compliant with their system for Web credit card real-time two-way transactions from Web applications displayed on a Web browser. France Telecom successfully completed a pilot trial with Petitioner's products. IBM attempted to joint venture with Petitioner to take her first phase customers to the next phase and buy Petitioner's patents in 2006. SAP America, Inc. offered to buy Petitioner's patents for \$100M in 2003.

Since Petitioner's founding of her companies, Pi-Net in 1989 and WebXchange, Inc. in 1996 with venture capital, she has invested over a hundred million dollars in cash, human capital and brain power in the United States and a multitude of decades of man-years, researching and developing innovations that created IoT devices, apparatuses, machines and Web applications displayed on a Web browser, with a Web application platform protected by her patents. These market-disruptive innovations should have allowed Petitioner to grow into one of the largest technology companies in the United States, but for Respondents engaging in RICO tactics, anti-trust violations, unfair methods of competition and unfair acts in the unlawful importation into the United States, sale for importation into the United States, and/or sale within the United States after importation of certain IoT devices and components thereof (IoT, The Internet of Things — Web Applications displayed on a Web browser) — that infringe one or more claims of her patents. Each Web application is a grain of sand in the ocean of Web applications and IoT devices, all of which are Petitioner's inventions. Petitioner and her companies have been engines of business and employment creation and provided employment to engineers and customer support, sales and marketing people — and lawyers for both patent prosecution and patent litigation — ever since 1990 even during major recessions. Petitioner has made significant dollar investments of capital in plant and equipment; significant employment of labor and capital, human capital, physical capital, land; substantial exploitation of her Patents, including a variety of research and development, engineering, quality management, technical support, field training, solutions and services and developing the IP with respect to her domestic industry IoT devices/apparatuses/machines, Web applications and components, and invested substantial amounts of money, time, man-years in product development, patent prosecution and patent litigation of her patent portfolio. Petitioner has taken risks as a female entrepreneur and gave it her all — time, money and energy, including all of her life savings. Petitioner has been injured by Respondents stealing her inventions by engaging in RICO and antitrust violations and by importation of products infringing her Patents.

## **2. Proceedings of the District Court and Ninth Circuit**

The District Court's Order(s) are void, predicated upon fraudulent and erroneous renditions of the case and the law, not consistent with procedural rules and 'Law of the Case' and 'Law of the Land.' Judge Davila breached his solemn oath of

office and lost his jurisdiction and immunity. He is a Defendant and a co-conspirator.

"A decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." *Kenner v. C.I.R.*, 387 F.2d 689 (7th Cir.1968).

The courts failed to consider that the claims of the patents-in-suit falsely alleged as invalid are not invalid, because the *JPMorgan Court* 12-282-SLR/RGA (D.Del.) failed to consider Patent Prosecution History, which had already established the claim construction of the terms alleged falsely as "indefinite" by JPMorgan, as not indefinite. Based on this fraudulent and erroneous decision by the *JPMorgan Court* procured fraudulently by JPMorgan, the *Fulton Court* 14-490-RGA (D.Del.) — Opposing Counsel, Judge Andrews as well as George Pazuniak fraudulently concealed from the Court that Patent Prosecution History was not considered by the *JPMorgan Court* or the *Fulton Court* and propagated to all tribunals a false theory of Collateral Estoppel, which is moot because:

- (i) Patent Prosecution History estops all other estoppels, as proven *prima facie* that Petitioner has been right all along by
- (ii) the Federal Circuit's ruling in *Aqua Products, Inc. v. Matal*, Fed. Cir. Case No. 15-1177, October 4, 2017 that all Decisions and Orders that failed to consider Patent Prosecution History in any Federal District or Appellate Court and USPTO/PTAB are reversed (which the District Court failed to apply in my case); and
- (iii) the U.S. Supreme Court's precedential '*First Impression*' Constitutional *Res Judicata* Mandated Prohibition from rescinding Government-Issued Contract Patent Grants "by the most absolute power" declared by Chief Justice Marshall himself in *Fletcher v. Peck*, 10 U.S. 87 (1810) and reaffirmed by himself in *Dartmouth College* (1819), *Grant v. Raymond* (1832), *Ogden v. Saunders* (1927), and Justice Brewer in *U.S. v. AT&T* (1897) and other cases of the sanctity of contracts that apply to the IP Clause, and that the U.S. Government has a faithful duty to keep its promises to the Petitioner/inventor.

It is an indelible material fact that the Courts, USPTO/PTAB, Corporate Infringers, Attorneys and the Legislature have not considered the material facts and the law detailed *supra* and have *collusively* adjudicated, without considering Patent Prosecution History (a key contract term between the inventor and the USPTO), *disparately* denied Petitioner the protection of the Federal Circuit's *Aqua Products*' 10/4/17 reversal of all Orders in all Courts and the USPTO/PTAB that did not consider Patent Prosecution History, and failed to address the "*Fletcher Challenge*." In not enforcing the U.S. Constitution as delineated by Chief Justices Marshall, Brewer and others in *Fletcher v. Peck*, *Dartmouth College*, *Grant v.*

*Raymond, Ogden v. Saunders, U.S. v. AT&T* and other cases, it is a material fact that the Judiciary, USPTO, PTAB, Corporate Infringers, Attorneys and the Legislature (inserting the re-examination provision into the AIA, in breach of contract with the inventor) and the U. S. Supreme Court (except the dissenting Justices Gorsuch and Roberts, and now Justice Kavanaugh) in its *Oil States* ruling constitutionalizing the AIA re-examination provision and violating the Separation of Powers, Supremacy and Contract Clauses of the U.S. Constitution, have warred against the Constitution and have breached their solemn oaths of office and have lost their jurisdiction and immunities, as ruled by the U.S. Supreme Court in *Cooper v. Aaron*, 358 U.S. 1 (1958). Judge Davila is not alone in warring against the Constitution. Judge Davila *collusively* adjudicated along with the entire Judiciary, USPTO, PTAB, Legislature, Corporate Infringers, Attorneys and the U.S. Supreme Court, without considering Patent Prosecution History or the Federal Circuit's *Aqua Products*' ruling that they disparately failed to apply to Petitioner's cases and reverse their Orders as they failed to consider Patent Prosecution History, and without addressing the "*Fletcher Challenge*." This Court nor any of the Judiciary, Agency or Legislature is **allowed to tiptoe around the Constitution or this significant "*Fletcher Challenge*."** Chief Justice Marshall in *Marbury v. Madison* (1803) has adjudicated that Courts cannot shirk their duty from adjudicating issues, even though they present complex Constitutional challenges, as here. No Court can reverse the Constitution — as delineated in *Fletcher, Dartmouth College, Grant v. Raymond, U.S. v. AT&T* and others, upholding the sanctity of contracts.

In America, the **President** is not allowed to suspend the Constitution; and the Separation of Powers cannot be suspended by a state of emergency or declaration of war. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. Why would this Court join all the other Courts that *collusively* adjudicated in a concerted conspiracy as part of a corrupt enterprise, without considering Patent Prosecution History, *Aqua Products*' reversal, the Constitution or the "*Fletcher Challenge*"!!! The District Court and all the other tribunals failed to give Petitioner Equal Protection of the Laws and access to justice and to the Courts. This Court can reverse itself and do the right thing by Petitioner and uphold her protected rights to the Constitution, *Fletcher, Aqua Products* and Patent Prosecution History.

**U. S. Constitution, Article 3, §3** states:

**"Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."**

Any Judge or Government official violating their legally binding Oath to protect Our Constitution is, in point of Fact, working against the Nation and could be used to adhere to the enemies of Our nation by giving them aid and comfort in

protection from Our Laws. In 1868, the following was added: “the Congressional Oath of Office was, in Fact, legally binding and that any who violated it should be thrown bodily from the Capitol.”

U.S. Constitution, 14th Amendment, §3 states:

**“No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the *Constitution of the United States*, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.** But Congress may by a vote of two-thirds of each House, remove such disability.”

**“What this bit does is define Treason against the Constitution as a High Crime and mandates that any Public Official in the US who subverts, evades, or rebellion against Our Constitution be thrown from office and banned forever from service in *any* Public Office... whether they were elected or appointed.”**

**“For Government officials and judges, who have breached their solemn oaths of office, (in all of Petitioner’s cases), **there is precisely zero wiggle room here**. They are specifically bound by the Constitution and actions which attempt to “change” our Constitution *without the use of the Constitutionally mandated Amendment Process and all its inherent protections, are committing “insurrection or rebellion against the United States Constitution.”***

Judge Davila failed to uphold the Constitution and warred against the Constitution, he breached his solemn oath of office and lost his jurisdiction and immunity. This is why Petitioner moved for him to recuse, not because he ruled “adversely,” as Judge Davila alleges, obstructing justice, avoiding the significant Constitutional issues Judge Davila failed to address that he failed to enforce the Constitution, failed to consider Patent Prosecution History, *Aqua Products*’ reversal, the “*Fletcher Challenge*” and *disparately* failed to give Equal Protection of the Laws and access to justice and the Courts to Petitioner. Judge Davila engaged in cruel and unusual acts of oppression, ordered Petitioner to amend the Complaint to remove all claims where the Judge played a culpable participatory role and then ordered the Corporate Infringers not to answer Petitioner’s Complaint. He sent the U.S. Marshall to Petitioner’s home and at public events to intimidate Petitioner, a 70-year old female senior citizen inventor of color. He obstructed justice and gagged Petitioner

from raising the Constitutional challenge involving the Laws of the Land Mandated Prohibition from rescinding granted patents.

Judge Davila refused to reverse his erroneous and fraudulent decisions, Orders and Judgment and uphold the Constitution and Petitioner's protected rights to the Constitution, *Fletcher, Aqua Products* and Patent Prosecution History, and to adjudicate consistent with Procedural Rules and 'Law of the Case' and 'Law of the Land' — the '*Fletcher Challenge*.' Why would Judge Davila deny Petitioner due process — a Hearing?

The Ninth Circuit is guilty of the same as Judge Davila. It joined the *collusive* conspiracy with the Corporate Infringers whose sole object is to deprive Petitioner of her royalties to her significant patents on the Internet of Things — Web applications displayed on a Web browser — which she invented prior to 1995, by breaching their solemn oaths of office and violating the Constitution — the "*Fletcher Challenge*," which must be addressed.

"**I t ain't over till it's over.**" "... **Yogi Berra** first uttered the phrase about baseball's 1973 National League pennant race. His team was a long way behind when he **said** it and they did eventually rally to win the division title."

Petitioner will continue to defend the Constitution. These are not "scurrilous attacks" on the Judge or the Judiciary or the Agency or the Legislature, as misunderstood by Judge Davila.

The Law of the Case, the Law of the Land and facts are on Petitioner's side. Judge Davila and the Ninth Circuit ignored, even disdained the concreteness of mere fact. In the words of Samuel Johnson: "the most obdurate incredulity may be shamed or silenced by facts."

The Ninth Circuit erroneously and fraudulently ruled that Petitioner's Writ of Mandamus was not warranted, ignoring the significant Constitutional challenges raised by Petitioner. The Ninth Circuit itself is in treasonous breach of their solemn oaths of office in not enforcing the Laws of the Land.

Petitioner urges this Court to join hands with her in defending the Constitution and to void its *Oil States* ruling which violated the Constitution. Nothing is won without diligence, determination, integrity and honesty and upholding the Constitution and all that our beloved Nation, the United States of America, stands for.

**For decades**, the USPTO, its certified attorney members, and Appeal Board (**PTAB**) have been *corruptly* using (*Ultra vires*) a 'Reexamining Process-on-Request' — by Infringers, Competitors, and Others (so vested(-ly) interested in having

Petitioner's 'Government Contract Granted Patent' rescinded—in—'Breach' thereof), without, considering 'Patent Prosecution History'; concertedly, by venue to the Federal Circuit to adjudicate the PTAB's 'Invalidating Reexamination'; complained, of by Petitioner [On 'First Impression' conflicting 'Constitutional Issue' — (prohibiting) — 'Invalidating Government Issued Grants' which all Federal Courts have (*concertedly*) failed to adjudicate. In 2011, the Legislature enacted 'America Invents Act.' Authorizing, by inserted provision of the *same* 'Reexamination Process.' Subsequently, 'Constitutional[-ized]' by this Court's declaration in *Oil States*; concertedly, with the Federal Circuit's Reversal of all Orders that failed to consider Patent Prosecution History, a contract term between the inventor and the USPTO, in its *Aqua Products*' ruling; preempting, notice of the decades-long *silence (as fraud)* of the PTAB's 'Breach of Contract Grant' effectuated by the 'Corrupted Reexamining Process' [Requiring the Agency to '**Duly Consider**' the entire '**Patent Claim**' [and applying '**Patent Prosecution History**'].] — in the 'Invalidating Process.' Further, requiring the Agency to '**Redress all Reexamination Requests (fraudulently) enforced**' [One being Petitioner's; which, the 'Reversing Circuit Court' — specifically excluded from the (*entitled*) '**Reversal Redress**' — Object — to avoid adjudicating the *countervailing*: '**Mandated Prohibition**' — incidentally — comforting the abusive object of the Corporate Infringers' (18) requests to reexamine Petitioner's patent contract grant.

Excluding, Petitioner from *enjoying* the benefit of the Federal Circuit's reversal and wanton 'failures to adjudicate' the 'Mandated Prohibition' has been unduly oppressive, difficult, and very expensive [For no good public or private reason other than '**Capitalizing on their Collective Silence**'.]. Compounded, by this Court; concertedly, enjoining the Separation of Powers Clause; by, — Allowing the 'Legislative Act' to 'Adjudicative(-ly) Quasi-Reverse' the Constitution — the "Law of the Land"— and Mandated Prohibition against rescinding Government-issued contract grants, once issued; inciting, the Corporate Infringers to continue '*Non-payment of Royalties*' owed to Petitioner — Cumulatively, resulting in this Petition.

### III.

#### This Court must review this Case because:

1. *Oil States* injured citizens without providing a remedy by leaving them bereft of their vested rights directly to federal grants of patents under the IP Clause, Contract Clause, the Separation of Powers Clause, the Public Interest/Welfare Clause, Due Process and Equal Protections Clauses.

*Oil States* constitutionalized the America Invents Act reexamination provision, in breach of contract with inventors of their protected rights to enjoy exclusive rights to collect royalties for a time certain — 20 years, Patent Prosecution History, Federal Circuit's *Aqua Products*' reversal of Orders that failed to consider Patent Prosecution

History, the Constitution and the Supreme Court's precedential *Fletcher* ruling and reaffirmations thereof. *Oil States* is not a "faithful execution of the solemn promise made by the United States" to inventors.

## 2. Rights without Remedies:

*Aqua Products* and *Oil States* imposed upon inventors rights without remedies by denial of substantive and fundamental rights by procedural and substantive unconscionability on discriminating terms, specifically denying Petitioner the equal protection of the *Aqua Products*' reversal itself, still unresolved, not applying prevention of oppression, giving superior bargaining power to Corporate Infringers (*having no reason to tender royalties owed*) in violation of Equal Protection of the Law to inventors.

Petitioner's arguments are manifest in *Bronson v. Kinzie*, 42 U.S. 311 (1843), 1 How. 311.

"...it is manifest that the obligation of the contract and the rights of a party under it may in effect be destroyed by denying a remedy altogether [Petitioner's constitutional right (*emphasis added*) to redress, a remedy *has been denied and destroyed altogether* by *Oil States*], or may be seriously impaired by burdening the proceedings with new conditions and restrictions [*as noted in Aqua Products*], so as to make the remedy hardly worth pursuing... when this contract was made, no statute had been passed... changing the rules of law or equity in relation to a contract of this kind; and it must therefore be governed, and the rights of the parties under it measured, by the rules above stated. They were the laws of Illinois at the time...they were annexed to the contract at the time it was made, and formed a part of it; and any subsequent law (*such as Oil States or America Invents Act (AIA) re-examination provision*), impairing the rights thus acquired, impairs the obligations which the contract imposed... And *no one... would say that there is any substantial difference between a retrospective law declaring a particular contract or class of contracts to be abrogated and void and one which took away all remedy to enforce them or encumbered it with conditions that rendered it useless or impracticable to pursue it...* Yet no one doubts his right or his remedy, for, by the laws ... then in force, this right and this remedy were a part of the law of the contract, without any express agreement by the parties. [So also the rights of the inventor, as known to the laws, required no express stipulation to define or secure them.]...It appears to the Court not to act merely on the remedy, but directly upon the contract itself, and to engrave upon it new conditions injurious and unjust to [the inventor]. Any such modification of a contract by subsequent legislation, against the consent of one of the parties, unquestionably

impairs its obligations and is prohibited by the Constitution...and these new interests are directly and materially in conflict with those which [the inventor acquired when the patent grant was made].”

Blackstone, in his Commentaries on the Laws of England, 1 vol. 55, stated:

“The remedial part of the law is so necessary a consequence of the former two that laws must be very vague and imperfect without it. For in vain would rights be declared, in vain directed to be observed, if there were no method of recovering and asserting those rights when wrongfully withheld or invaded... the protection of the law... the connection of the remedy with the right... is the part of the ...law which protects the right and the obligation by which it enforces and maintains it. It is this protection which the clause in the Constitution now in question mainly intended to secure. And it would be unjust to the memory of the distinguished men who framed it to suppose that it was designed to protect a mere barren and abstract right, without any practical operation upon the business of life. It was undoubtedly adopted as a part of the Constitution for a great and useful purpose. It was to maintain the integrity of contracts and to secure their faithful execution throughout this Union by placing them under the protection of the Constitution of the United States. And it would but ill become this Court under any circumstances to depart from the plain meaning of the words used and to sanction a distinction between the right and the remedy which would render this provision illusive and nugatory ... mere words of form, affording no protection and producing no practical result... This is his right by the law of the contract, and it is the duty of the court to maintain and enforce it without any unreasonable delay.”

In the case before us, the conflict of these laws, namely, Oil States and America Invents Act Reexamination provision, with the obligations of the contract is made the more evident by Federal Circuit's *Aqua Products*' reversal of all Orders where Patent Prosecution History (a contract term between the inventor and the Original Examiner before the patent was granted) was not considered.

“Nothing can be more material to the obligation than the means of enforcement. Without the remedy, the contract may, indeed, in the sense of the law, be said not to exist, and its obligation to fall within the class of those moral and social duties which depend for their fulfillment wholly upon the will of the individual. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion. The obligation of a contract "is the law which binds the parties to perform their agreement." ... in the language of Mr. Justice Swayne, “A right without a remedy

is as if it were not. For every beneficial purpose it may be said not to exist." *Von Hoffman v City of Quincy*, 71 U.S. (4 Wall.) 535, 552, 554 and 604 (1867).

**3. The collusive adjudications are predicated upon the Judges' allegiance to the Court itself, as opposed to the Constitution.**

The Courts cannot dismiss a case without considering the Law of the Case and Law of the Land prior to adjudication. Likewise, the Federal Circuit's (*opting-out*) in its '*Aqua Products Reversal*' itself, disclosing the (*decades long*) corrupted enforcement (*by the USPTO*) of the AIA's '*Reexamining Invalidation Process*' made prior to declaring the process constitutional; warrants, reconsideration of *Oil States* in light of the Constitution and '*Fletcher Challenge*' and '*Reason for the Reversal*' itself [With all due respect!].

### **CONCLUSION**

*Oil States* and *Fletcher* cannot dwell together, just as fraud and justice cannot dwell together, without reversal of one or the other.

This series of decisions by the Supreme Court of the United States is conclusive upon this tribunal in settling the construction of the Constitution upon this subject.

"It is patent by the face of the statute that it does impair the obligation of contracts. This was settled in *Jones v. Crittendon*, 1 Car. Law. J. 385. In that case, the argument is exhausted. The Court declared the act null and void, as violating the prohibition of the Constitution. *Lapely v. Brashears*, 4 Litt. 49."

Justice Woodbury stated:

"One of the tests that a contract has been impaired is that its value has, by legislation, been diminished (as here). It is not... by the Constitution, to be impaired at all. This is not a question of degree or cause, but of encroaching in any respect on its obligation... dispensing with any part of its force." *Planters' Bank v. Sharp*, 6 How. 327. See *Curran v. State of Arkansas*, 15 How. 319.

In the case of *Sturges v. Crowninshield*, 4 Wheat. 200, the late Chief Justice declared:

"The distinction between the obligation of a contract and the remedy given by the legislature to enforce that obligation has been taken at the bar, and exists in the nature of things. Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of

*the nation shall direct."*

Petitioner seeks redress from each Respondent in the amount of \$1 Billion; and, Order of adjudicative compliance to the lower courts to enforce the Constitution and Chief Justice Marshall's decision in *Fletcher v. Peck and affirmations thereof*. Judge Davila must recuse, for procedural good cause showing *supra* in his process of adjudication and orders themselves, demonstrating unfettered judicial misfeasance to the prejudice of ensuring a fair and proper administration of justice.

**WHEREFORE**, Petitioner respectfully requests that the petition for a writ of certiorari be granted in equity and law in the interest of protecting the laws of the land, in the Public's best protective interests.

December 24, 2018

Respectfully submitted,

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