18-9346

App. No. 18A859

In the Supreme Court of the United States

ORIGINAL

DR. LAKSHMI ARUNACHALAM,

Petitioner,

v.

FREMONT BANCORPORATION, *ET AL*,

Respondents,

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

PETITION FOR WRIT OF CERTIORARI

DR. LAKSHMI ARUNACHALAM,
PETITIONER PRO SE
222 Stanford Avenue
Menlo Park, CA 94025
(650) 690-0995
(650) 854-3393 (FAX)
laks22002@yahoo.com

May 15, 2019

QUESTIONS PRESENTED

PREAMBLE # I.
Collateral Estoppel Effect Must Be Denied In Cases of Particularized Unfairness to the Precluded Party, Where the Overriding Concern of the System Should be that It Refuses to Sacrifice Fairness for Efficiency, To Avoid the Illogic and Unfairness of Wooden Application of the Doctrine.

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1. Whether preclusive effect should not be given to agency/court determination where a financially conflicted agency/court lacked jurisdiction to adjudicate.

2. Whether Collateral Estoppel must be denied where a litigant was *disparately* denied due process of a notice and hearing consistently by all the courts.

3. Whether Collateral Estoppel must be denied when the lower courts failed to examine the record to determine what, exactly, was adjudicated in the earlier court or agency proceeding.

4. Whether a change in circumstances is unsuited for Collateral Estoppel effect.

5. Whether denial of Collateral Estoppel effect to the original determination is appropriate because of rapid accumulation of knowledge or the presentation of additional information, or if additional cogent and compelling information presented in subsequent action.

6. Whether Collateral Estoppel must be denied when a court ruling is not supported by detailed opinion containing "thorough findings of facts, conclusions of law, and a cogent legal analysis applying the relevant facts" entitled to preclusive effect.

7. Whether the lower court rulings must be reversed because the District Court erred in not considering Patent Prosecution History when claims are unambiguous in view of intrinsic evidence.

8. Whether the lower courts' rulings are bills of attainder or *ex post facto* laws passed or laws impairing the obligation of contracts, violating the Contract Clause, Art. I, §10, clause 1 and Art. I, §§9 & 10, in dismissing the case for a false claim of Collateral Estoppel against the Government and private citizens after the Judge lost jurisdiction, *prima facie* evidence of which is the Judge himself admitted in writing he bought direct stock in a litigant.

9. Whether the District Court Orders are void as repugnant to the Constitution in denying access to the courts to Petitioner/inventor, a competent witness, to give testimony on claim construction and explain the invention and what was intended to be conveyed by the specification and Patent Prosecution History and covered by the claims.

10. Whether the lower courts denying Petitioner due process — a Hearing and a neutral Judge, voids their Orders.

11. Whether courts must deny Collateral Estoppel effect, absent certain essential procedures where a hearing must allow parties to present live witnesses and to cross-examine in a proceeding that turned on retaliatory motive, adjudication must meet the procedures required by the due process clause.

12. Whether Collateral Estoppel did not preclude inquiry into all issues, when the earlier court was concerned with one issue, and a subsequent civil action involved a different issue.

13. Whether Collateral Estoppel effect should be denied because the agency/court participated in prejudicial *ex parte* communications, and allowed one party to prepare findings of fact and rulings of law for the court in support of that party's own position without allowing the opposing party's participation.

14. Whether due process requires that a party have the opportunity to contest fully a particular resolution of an issue in the original proceeding if that resolution will bind the party in the future.

15. Whether the lower court proved itself to be a tribunal of competent jurisdiction to finally determine an issue essential to judgment in the case before it, so that that issue is conclusively determined for all future actions.

16. Whether the lower court Judge followed procedures that provide the litigant her "full and fair opportunity" to participate in the adjudicatory process.

17. Whether Petitioner was given a meaningful opportunity to participate in governmental action affecting individual, private rights, to be deemed fairness.

18. Whether Collateral Estoppel will not apply, where the procedural requirements are not met, and litigation will focus on facts and substantive law rather than on the potential application of Collateral Estoppel.

19. Whether the primary quality of an adjudicator must be impartiality, for bias or prejudgment by the decision maker would seriously undercut, if not obliterate, both the rational and the participatory aspects of adjudication.

20. Whether the lower court denied Petitioner proper procedure which entails right to present evidence, right to cross-examine witnesses, substantial discovery, an impartial tribunal, decision made on "the entirety of the record", and judicial review for errors of fact or law.

21. Whether Collateral Estoppel cannot apply from a void Order by a Judge lacking jurisdiction by his own admission of direct stock holding in a litigant during the pendency of the case, of false invalidity of patent claims and false indefiniteness of claim terms without considering Patent Prosecution History, disparately denying an inventor's protected rights to Federal Circuit's *Aqua Products*[1] Reversal of all Orders that did not consider "the entirety of the record"— Patent Prosecution History — and to her constitutional rights to the Law of the Land that a Patent Grant is a Contract, comforting Corporate Infringers in violating anti-trust laws, denying the inventor access to justice, due process, an impartial tribunal, vacating Hearings, so as not to hear her case, to avoid adjudicating *the Constitutional Challenge*, induced by the Defendant's Solicitation that failed to furnish the burden of proof of "clear and convincing evidence" of patent invalidity, required by Patent Statute 35 USC § 282, has threatened the security of the nation and created a constitutional emergency requiring this Court to overrule *Oil States*[2] to stop the waste, fraud and abuse of Government resources by Corporate infringers who *knowingly and intentionally* made false claims to and defrauded the United States Government of trillions of dollars — the biggest contract fraud, theft and heist of intellectual property in the history of the United States; that they had ownership of the technology, intellectual property and Web applications, induced the U.S. Government to buy defective goods and procured contracts from every Department of the United States, when in fact it was offered without the permission of the inventor and without paying a license fee to the Petitioner/inventor.

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[1] *Aqua Products, Inc. v. Matal*, Fed. Cir. Case 15-1177; October 2017 reversed all Orders that failed to consider "the entirety of the record"— Patent Prosecution History.

[2] *Oil States Energy Services, LLC v. Greene's Energy Group, LLC,* 584 U.S. 16-712 (2018).

PREAMBLE # II.
A Patent Grant is A Contract.
***Oil States* failed to consider *Fletcher*[3], *Dartmouth College* and this Court's precedential rulings[4].**

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1. Whether this Court's precedential ruling as declared by Chief Justice Marshall in *Fletcher v. Peck*, 10 U.S. 87 (1810) that a Grant is a Contract, governs patent law.

2. Whether *Oil States* must be overruled in view of *Fletcher*.

3. Whether patent rights receive protection pursuant to contracts between inventors and the federal government, requiring Judges to enforce this patent grant contract — the Law of the Land— and the lower court rulings must be overruled, leaving nothing for the lower courts to act upon, in view of this Court's precedential rulings.

4. Whether the contract basis for intellectual property rights heightens the federal government's obligations to protect those rights.

5. Whether this Court's *Oil States'* ruling must be overruled, in view of this Court's precedential rulings establishing the sanctity of legal contracts.

6. Whether the District and Appellate Court rulings must be reversed as unconstitutional for failing to consider the Law of the Land that a Grant is a Contract.

7. Whether Contracts between the government and inventors are established under federal law, as declared by Justice Samuel Miller in this Court's ruling in *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884), and *Oil States* and the lower court rulings must be overruled in view of this Court's precedential rulings.

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[3] *Fletcher v. Peck*, 10 U.S. 87 (1810).

[4] This Court's rulings in *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819) reaffirmed the sanctity of legal contracts that "**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*," *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); *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).

8. Whether the lower court rulings must be reversed because the District Court failed to consider that the patent claim terms and claims are unambiguous in view of intrinsic evidence.

9. Whether the lower courts' rulings and this Court's *Oil States* ruling are not a "faithful execution of the solemn promise made by the United States" to inventors and hence must be reversed.

10. Whether "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."

11. Whether this Court must declare the lower courts' rulings null and void, as violating the prohibition of the Constitution, as it is patent by the face of the statute that it does impair the obligation of contracts.

12. Whether without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct.

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 Fremont Bancorporation and Fremont Bank and Judge Elizabeth D. Laporte 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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III.

TABLE OF AUTHORITIES

Other Authorities:

U.S. Constitution, Federal Rules of Civil Procedure, Judicial Canons and Statutes:

PETITION FOR WRIT OF CERTIORARI

Petitioner/inventor Dr. Lakshmi Arunachalam ("Dr. 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. 18-72557, which is an Appeal from Case No. 15-00023-EDL (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 December 18, 2018, (App.1a). Justice Kagan extended the time in which to file a petition for writ of certiorari to and including May 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...constitute the supreme law of the land."

Separation of Powers Clause, Arts. I, II & III; "The separation of powers ...the Legislative, Executive, and Judicial branches of the United States government are kept distinct in order to prevent abuse of power."

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..., 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. ...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; "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." "...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..."

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.*** **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 attainder 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[1] thereafter, that a Grant is a Contract, and the Mandated Prohibition from rescinding Government-issued Patent Contract Grants by the most absolute power, in accord with the Constitution. This is

[1] *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); *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).

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.

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*[2] 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 patent infringement case 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 Laporte ignored, even disdained the

[2] *Oil States Energy Services, LLC v. Greene's Energy Group, LLC,* 584 U.S. 16-712 (2018).

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 continuing thereafter, delineated in the Federal Circuit's *Aqua Products* 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[3] as inviolate, and usurped the Constitutional Amendment Process with all its inherent protections against unlawful search and seizure at least without due compensation. The said "Action" imposes a duty to reverse the lower courts' 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":**

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[3] *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).

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*."

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 in Petitioner/Inventor's patent cases. Lower courts failed to apply Federal Circuit's *Aqua Products* ruling which reversed all Orders in cases that failed to consider Patent Prosecution History.

> "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 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 Judges Andrews and Laporte in the District Courts and by Appellate courts, without considering Patent Prosecution History, a key contract term between the inventor and the Government, in breach of contract with the inventor. *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.")

Judges Andrews' and Laporte's Orders are void as repugnant to the Constitution.

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 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); that ***a Grant is a Contract*** and applies to Patent Grants and 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. 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*, 358 U.S. 1 (1958).[4]

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." 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

[4] *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."

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. **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 5th 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.

2. **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. Dr. Arunachalam is the inventor of the Internet of Things (IoT) — Web Applications displayed on a Web browser —— her dozen patents have a priority date of 1995, when two-way real-time Web transactions from Web applications were non-existent.

Corporate infringers and the Government have benefited by trillions of dollars from Petitioner's patents — exemplified in Apple's iPhone App Store with 2M+ Web apps (pre-packaged in China before imported into the United States), Google Play, Web banking Web apps, Facebook's social networking Web app. JPMorgan's website states it has over 7000 Web applications in use in just ***one*** Business Unit.

2. Proceedings of the District Court and Ninth Circuit

The District Court rendered seven Orders between 4/23/15 and 3/15/2017 denying due process to Dr. Arunachalam. Judge Laporte warred against the Constitution in treasonous breach of her solemn Oath of Office, not enforcing the Supreme Law(s) of the Land Mandated Prohibition declared by Chief Justice Marshall in *Fletcher* against rescinding Government-Issued Patent Contract Grants by the highest authority, reaffirmed by the Supreme Court; lost her jurisdiction and immunity. Respondents and the Ninth Circuit have not proven an Exemption from the Mandated Prohibition. The 'Laws of The Land' on Petitioner's side, Judge Laporte dismissed the Constitution without a hearing. Judge Laporte disparately failed to consider Patent Prosecution History and the Federal Circuit's *Aqua Products* reversal of all Orders that failed to consider Patent Prosecution History. Her Orders are void. The Ninth Circuit panel dismissed the Appeal on December 18, 2018.

Dr. Arunachalam was denied individual liberty and property outside the sanction of law and without due process of law. This Court stated, on Government officials non-exempt from absolute judicial immunity, see *Sterling v. Constantin*, 287 U. S. 397 (1932).

This Court has stated on numerous occasions that where an individual is facing a deprivation of life, liberty, or property, procedural due process mandates that he or she is entitled to adequate notice, a hearing, and a neutral judge.

Dr. Arunachalam has been deprived of her fundamental rights that are "implicit in the concept of ordered liberty," *Palko v. Connecticut*, 302 U.S. 319 (1937); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Baldwin v. Missouri*, 281 U.S. 586, 595 (1930).

Indeed, this case was dismissed, in contravention of the Due Process Clause of the Fifth, Seventh, Eighth and Fourteenth Amendments.

The District and Appellate Courts' 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 Laporte breached her solemn oath of office and lost her jurisdiction and immunity. She is 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, financially conflicted 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) Judge Andrews is financially conflicted and his Orders are void. There can be no collateral estoppel from void Orders.

(ii) Patent Prosecution History estops all other estoppels, as proven *prima facie* that Petitioner has been right all along by

(iii) the Federal Circuit's *Aqua Products'* reversal of Orders that failed to consider "the entirety of the record" —Patent Prosecution History (*which the District Court failed to apply in my case*); and

(iv) the this Court's precedential '*First Impression*' Constitutional *Res Judicata* Mandated Prohibition from rescinding Government-Issued Contract Patent Grants declared by Chief Justice Marshall himself in *Fletcher* that **a Grant is a Contract** and reaffirmed by himself in *Dartmouth College* (1819), *Grant v. Raymond* (1832), *Ogden v. Saunders* (1927), and *U.S. v. AT&T* (1897).

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*' reversal of all Orders that did not consider Patent Prosecution History, and failed to address the "*Fletcher* Challenge." In not enforcing the U.S. Constitution as declared by Chief Justice Marshall in *Fletcher v. Peck*, *Dartmouth College, Grant v. Raymond, Ogden v. Saunders, U.S. v. AT&T*, 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. *See Cooper v. Aaron,* 358 U.S. 1 (1958). Judge Laporte is ***not alone*** in warring against the Constitution. Judge Laporte *collusively* adjudicated along with Judge Andrews, and 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 declared in *Fletcher, Dartmouth College, Grant v. Raymond, U.S. v. AT&T*, upholding the sanctity of contracts.

The District and Appellate Courts *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 must uphold Petitioner's protected rights to the Constitution, *Fletcher*, *Aqua Products* and Patent Prosecution History.

Judge Laporte failed to enforce the Constitution, she breached her solemn oath of office and lost her jurisdiction and immunity; obstructing justice, avoiding the significant Constitutional issues Judge Laporte failed to address, 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 Laporte refused to reverse her 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 Laporte deny Petitioner due process — a Hearing?

The Ninth Circuit is guilty of the same as Judge Laporte. 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.

Petitioner will continue to defend the Constitution. These are not "scurrilous attacks" on the Judiciary.

The Law of the Case, the Law of the Land and facts are on Petitioner's side, which Judge Laporte and the Ninth Circuit ignored.

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 — 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.

1. FALSE CLAIM OF COLLATERAL ESTOPPEL FROM VOID ORDERS BY JUDGE ANDREWS, WHO ADMITTED BUYING DIRECT STOCK IN JPMORGAN DURING THE PENDENCY OF THAT CASE 12-282-RGA

(D.Del.) AND PTAB JUDGES MCNAMARA AND SIU, WHOSE FINANCIAL DISCLOSURES EVIDENCE DIRECT STOCK IN MICROSOFT AND IBM, AND REFUSED TO RECUSE, AND RETALIATED AGAINST DR. ARUNACHALAM. ORDERS ARE VOID.

Judge Andrews admitted himself in the Court records three years into Dr. Arunachalam's JPMorgan Case 12-282-RGA (D.Del.) that he bought direct stock in JPMorgan Chase & Co. He lost subject matter jurisdiction in all of Dr. Arunachalam's cases he presided over and yet failed to recuse. **His Orders are void in all of Dr. Arunachalam's cases:** the *Fulton Financial Corporation* Case No. 14-490-RGA (D.Del.), the *IBM* RICO Case No. 16-281-RGA (D.Del.), *George Pazuniak* Case 15-259-RGA (D.Del.), the *Wells Fargo Bank* and *CitiBank* cases, the *Citizens' Financial* Case No. 12-355-RGA (D.Del.) and other cases Judge Andrews presided over. PTAB Judge McNamara's direct stock in Microsoft and PTAB Judge Stephen Siu's financial conflicts of interest with Microsoft and IBM and failing to recuse makes all Orders void in all the 15 IPR/CBM re-exams and 3 CRU re-exams in Dr. Arunachalam's cases at the USPTO/PTAB. Their Financial Disclosure Statements disclose they owned direct stock in Microsoft and IBM respectively and are material *prima facie* evidence the District Court Judge Andrews and PTAB Judges McNamara and Siu **lost jurisdiction;** yet failed to recuse and engaged in obstruction of justice and harassed Dr. Arunachalam in *Fulton Financial Corporation* Case 14-490-RGA (D.Del.) on Dr. Arunachalam's virgin, unadjudicated Patent, her U.S. Patent No. 8,271,339 ("the '339 patent") and in the PTAB IPR/CBM Reviews and CRU re-exams of Dr. Arunachalam's patents. **Those Orders are NULLITIES and ANY and ALL Orders DERIVING from those NULL and VOID Orders are themselves NULLITIES.** Judges and lawyers repeatedly made False Claims of *collateral estoppel from void Orders* and made a false propaganda and disseminated the False Claim of *collateral estoppel from void Orders* to every District and Appellate Court. Appellee is perpetrating the fraud committed by all the other Corporate Infringers, started by JPMorgan Chase & Company, carried on to the *Fulton Court* 14-490-RGA (D.Del.), and thereafter to every District and Circuit Court, and to the lower Court in this Fremont Bank case and precipitating the Constitutional crisis/emergency, described *infra.*

2. SUPREME COURT'S *OIL STATES* RULING IS AN AFFRONT TO PUBLIC MORALS, TRIGGERING LAWYERS AND JUDGES TO OBSTRUCT JUSTICE. COURTS ARE RUNNING FROM *THE FLETCHER CHALLENGE* LIKE EBOLA, WOULD RATHER DENY DR. ARUNACHALAM DUE PROCESS AND KEEP HER GAGGED, THAN ADJUDICATE THE CONSTITUTIONAL CHALLENGE.

Dr. Arunachalam is a constitutional warrior and **PATRIOT**. This Court must address security concerns raised by victim and witness Dr. Arunachalam who has been threatened by Judges Hixsom, Donato, Laporte, Hamilton, Davila of the

Northern District of California and Judge Andrews of the Delaware District Courts and Corporate Infringers, as a result of her participation in her case(s), and defending her Constitutional rights. Judges, lawyers and Corporate Infringers have abused and harassed Dr. Arunachalam to no end, libeled and defamed her and denied her due process, for being a whistleblower, defending the Constitution. **The Judiciary in the District Courts in California and Delaware and Circuit Courts are adversely dominated by their own corruption and breached their solemn oaths of office in not enforcing the Constitution** – the Law of the Land – that **a Grant is a Contract** that cannot be rescinded by the highest authority (and without compensating the inventor) – as declared in this Court's precedential rulings. 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... and applies to contracts of any description..."); all reaffirming *Fletcher v. Peck*, 10 U.S. 87 (1810) in which Chief Justice Marshall declared: A Grant is a Contract. The entire Judiciary in the Northern District of California; District of Delaware; U.S. Courts of Appeal for the Third, Ninth and Federal Circuits and six Supreme Court Justices, [except Justices Kavanaugh, Gorsuch, and Chief Justice Roberts, the latter two correctly dissented in *Oil States Energy Services, LLC v. Greene's Energy Group, LLC,* 584 U.S. 16-712 (2018)], USPTO/PTAB and Legislature's AIA failed to enforce the Law of the Land and adjudicate the constitutional conflict the Supreme Court failed to consider in its *Oil States* ruling over precedential Supreme Court rulings in *Fletcher v. Peck* — "*The Constitutional Challenge*" — "*The Fletcher Challenge*."

The Northern District of California and the District of Delaware are an adverse domination judiciary system that denied due process to Dr. Arunachalam and aided and abetted the theft of Dr. Arunachalam's significant inventions and intellectual property, from which Corporate Infringers benefited by trillions of dollars; the despicable display of judicial fraud, perpetrating anti-trust, in a cover-up of judges' own misconduct. Judges Hixsom, Donato, Laporte, Hamilton, Davila and Andrews have not complied with the law nor have they served the public interest.

Those courts failed to apply *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 581 U.S. 16-341 (1917), 137 S. Ct. 1514 in which this Court ruled against the Federal Circuit not abiding by this Court's precedential rulings in *Fourco Glass Co. v. Transmirra Products Corp.* 353 U.S. 222–226 (1957) for almost a century. **District and Appellate Courts *disparately* denied Dr. Arunachalam her protected rights to a neutral judge with no financial conflicts of interest in her opponent**, to Patent Prosecution History and the Federal Circuit's *Aqua Products*' reversal of all Orders that failed to consider "the entirety of the record" — Patent Prosecution History — and failed to apply Patent Statutes. In those Courts, Corporate Infringers, attorneys and the Judiciary made false claims to the Government of collateral estoppel from Orders that are NULLITIES and VOID, when Judge Andrews admitted himself he bought direct stock in JPMorgan during the

pendency of that case 12-282-RGA (D.Del.) and Judge Robinson recused due to her own conflicts of interests along with Jan Horbaly of the Federal Circuit, and furthermore, without those Courts considering *prima facie* material evidence of Patent Prosecution History. Corporate Infringers *knowingly and intentionally* made false claims to and defrauded the United States Government of trillions of dollars — **the biggest contract fraud, theft and heist of intellectual property in the history of the United States.**

Corporate Infringers made false claims that they had ownership of the technology, intellectual property and Web applications, induced the U.S. Government to buy defective goods and procured contracts from every Department of the United States, when in fact it was offered without the permission of the inventor Dr. Arunachalam and without paying a license fee to Dr. Arunachalam. The Judges and attorneys in the California and Delaware District Courts were complicit in improperly and illegally promoting, fomenting, and legitimizing the erroneous idea that these Corporate Infringers had ownership or standing to sell this stolen technology to the U.S. Government.

3. CITIZEN PROPERTY RIGHTS MUST BE PROTECTED FROM ABUSES OF GOVERNMENT POWER:

California and Delaware District Courts essentially treated Dr. Arunachalam not as an American inventor with Constitutional rights to her inventions, but as an enemy combatant whose intellectual property the government had some superior right to confiscate without compensation—much in the same way that President Roosevelt confiscated over 50,000 patents in World War II, and much in the same way we see the British company SERCO overseeing (stealing) patents at the U.S. Patent Office today.

Dr. Arunachalam's valuable trade secrets were stolen starting in 1995 by IBM, Microsoft and SAP. The USPTO issued a dozen patent grant contracts subsequently — Dr. Arunachalam invented the Internet of Things — Web applications displayed on a Web browser in 1995. The federal government used and distributed these inventions to countless billions of individuals and organizations without compensating Dr. Arunachalam.

4. CALIFORNIA AND DELAWARE DISTRICT COURTS, CIRCUIT COURTS AND U.S. SUPREME COURT — THE JUDICIARY CREATED A CONSTITUTIONAL CRISIS/EMERGENCY.

The judiciary and PTAB failed to uphold the Law of the Land. They would rather violate Dr. Arunachalam/inventor's rights than acknowledge *Fletcher* and adjudicate. They denied Dr. Arunachalam access to the court because they refused to acknowledge *Fletcher*. They defamed/libeled Dr. Arunachalam, sanctioned her for false, manufactured reasons, took her money, allowed the theft of Dr. Arunachalam's

monies by lawyers held in Client IOLTA account (*See* Dr. Arunachalam's Petition for Writ of Certiorari in Supreme Court Case 18-9115) for 6 years not returned to date and theft of Dr. Arunachalam's patents and inventions and intellectual property by Corporate Infringers without paying Dr. Arunachalam royalties, made it expensive, hazardous and burdensome for Dr. Arunachalam to have access to justice.

Dr. Arunachalam is a 71-year old, single, disabled, female inventor of significant inventions. Why would they all do this, when the facts and the Law of the Case and Law of the Land are on her side? They know they are wrong, and they do not want anyone to find out they are wrong. Why this outrageous obstruction of justice in a corrupt judicial organization? They are retaliating against Dr. Arunachalam for being the whistleblower about the *Constitutional challenge*, defending the Constitution.

5. FALSE CLAIM OF COLLATERAL ESTOPPEL FROM VOID ORDERS, FURTHER WITHOUT CONSIDERING PATENT PROSECUTION HISTORY.

All defendants, including Appellees, made a false claim that Dr. Arunachalam's JPMorgan Case 12-282-RGA (D.Del.) rulings on her '500, '492 and '158 patents collaterally estop her Fulton Financial Corporation Case No. 14-490-RGA (D.Del.) on the unadjudicated '339 patent and concealed from the Government that the *JPMorgan Court* and *Fulton Court* failed to consider Patent Prosecution History.

6. FALSE CLAIM THAT PATENT PROSECUTION HISTORY NEED NOT BE CONSIDERED *ONLY* IN DR. ARUNACHALAM'S CASES.

Patent Prosecution History is material *prima facie* evidence that Dr. Arunachalam's patent claims are ***not*** invalid and that the claim terms are ***not*** indefinite, as *knowingly and intentionally* falsely claimed by Appellees, plagiarizing all the other defendants who have defrauded our Courts and the Government. Yet Corporate Infringers, including Appellees, *disparately* concealed in their Solicitations and the courts failed to consider Patent Prosecution History in Dr. Arunachalam's cases.

7. FALSE CLAIM THAT FEDERAL CIRCUIT'S *AQUA PRODUCTS* REVERSAL OF ALL ORDERS THAT DID NOT CONSIDER "THE ENTIRETY OF THE RECORD"— PATENT PROSECUTION HISTORY— DOES NOT APPLY *ONLY* TO DR. ARUNACHALAM.

Judges, lawyers and Corporate Infringers disparately denied Plaintiff her protected rights to Patent Prosecution History, and the reversal in *Aqua Products.*

8. FALSE CLAIMS OF PRIOR ART BY CORPORATE DEFENDANTS TO FILE AND INSTITUTE SERIAL 18 IPR/CBM/CRU RE-EXAMS IN USPTO/PTAB.

Corporate Infringers *knowingly and intentionally* made false claims of prior art to defraud the Government and engaged in waste, fraud and abuse of Government resources. Corporate Infringers IBM, Microsoft and SAP America, Inc. signed NDAs with Dr. Arunachalam in 1995 and 2003. Microsoft's CTO and IBM employees interviewed with Dr. Arunachalam to work for her company in 1995, 1996. They agreed there was ***no prior art*** then, and that the claim terms were enabled, had full written description and ***not indefinite*** and that the claims were valid; and offered to buy Dr. Arunachalam's patents in 2003-2006. SAP offered $100M in 2003. How could there have been prior art in 2008-2018, if there was no prior art in 1995?

9. FALSE CLAIM OF INVALIDITY OF PATENT CLAIMS AND INDEFINITENESS BY FAILING TO CONSIDER PATENT PROSECUTION HISTORY.

Presidio, collusively with other Corporate Infringers, *knowingly and intentionally* made false claims of invalidity of patent claims and indefiniteness, knowing full well that the Patent Prosecution History (which this Court must take Judicial Notice of) of Dr. Arunachalam's patents has cast in stone the construction of claim terms in Dr. Arunachalam's granted patents, and that claims and claim terms are not indefinite nor invalid nor *not* enabled.

10. FALSE CLAIMS THAT SUPREME COURT PRECEDENTIAL RULINGS BY CHIEF JUSTICE MARSHALL THAT A GRANT IS A CONTRACT AND CANNOT BE RESCINDED BY THE HIGHEST AUTHORITY — THE LAW OF THE LAND — DO NOT APPLY.

Appellees, in collusive conspiracy with other Corporate Infringers, *knowingly and intentionally* made false claims that the Law of the Land does not apply to Dr. Arunachalam's patents.

11. FALSE CLAIM THAT AIA/REEXAMS DO NOT VIOLATE SEPARATION OF POWERS AND CONTRACT CLAUSE OF THE CONSTITUTION.

Appellees, in collusive conspiracy with other Corporate Infringers, *knowingly and intentionally* made false claims that AIA/PTAB rescinding patent contract grants is constitutional, whereas in fact *Oil States*/AIA/reexams violate the Separation of Powers clause (*prima facie* evidence is Justice Gorsuch and Chief Justice Roberts correctly dissented in *Oil States*) and the Contract clause of the Constitution — hence unconstitutional and void.

12. BIG PICTURE POINTS TO A SERIOUS PROBLEM: OBSTRUCTION OF JUSTICE, OVERT CONSPIRACY, ANTITRUST

Microsoft and SAP America, Inc. filed approximately 18 re-exams and IPR/CBM reviews against Dr. Arunachalam and made false claims to the Government in an egregious waste, fraud and abuse of Government resources. Corporate Infringers cannot claim prior art, when they found none in 1995 when they signed NDAs with Dr. Arunachalam. They concealed material *prima facie* evidence of Patent Prosecution History and defrauded the courts with false claims. Even after the Federal Circuit's *Aqua Products'* reversal, the courts failed to adjudicate *the Constitutional challenge.* Judges had stock in the Corporate Infringers, failed to recuse, lost jurisdiction, their Orders are void. Judges and PTAB restricted inventor Dr. Arunachalam and took away her rights, comforting antitrust violations by Corporate Infringers. The Judiciary, PTAB and Corporate Infringers' overt conspiracy against Dr. Arunachalam's rights has had a devastating effect on the public. The Judiciary's and PTAB's and Corporate Infringers' overt and covert war on the Constitution has killed the entire patent system. Judge Andrews and PTAB Judge McNamara admitted direct stock holdings in JPMorgan Chase & Co. and Microsoft. Lawyers and judges breached their solemn oaths of office in warring against the Constitution. They engaged in taking retaliatory action and going out of the way to discriminate against Dr. Arunachalam for being a **Patriot** defending the Constitution, continuing unabated with no signs of fairness or remedy — and made willful false claims *knowingly and intentionally* and defrauded the Government, in a collusive conspiracy with the USPTO/PTAB, the Legislature and Corporate Infringers. The Judiciary represented Corporate Infringers, comforting them in violating anti-trust laws. The Judiciary warred against the Constitution and denied Dr. Arunachalam access to justice, so as not to hear her case, to avoid adjudicating the *Constitutional* challenge, described *supra.*

13. JUDICIARY AND PTAB DENIED DR. ARUNACHALAM ACCESS TO THE COURTS.

The Judiciary – Judges Hixsom, Hamilton, Laporte, Donato, Davila and Andrews represented the Corporate Infringers by acting as their attorney and ordered all defendants to not answer Dr. Arunachalam's complaint(s), vacated the Hearing(s), dismissed her cases for false, manufactured reasons and ordered the Corporate Infringers to move for attorneys' fees and sanctions against Dr. Arunachalam for being a **Patriot** defending the Constitution, falsely dubbing her a "vexatious litigant" for crimes committed by the defendants. The California and Delaware District court Judges, and USPTO/PTAB Administrative Judges McNamara, Siu and Turner and Corporate Infringers *intimidated and harassed* Dr. Arunachalam, *a 71-year old, single, disabled female,* the genuine inventor of the Internet of Things (IoT) — Web applications displayed on a Web browser.

14. BIAS AGAINST DR. ARUNACHALAM'S RACE

The Judiciary and PTAB denied Dr. Arunachalam even something as basic as electronic filing for no logical reason, or for that matter illogical reason, except for bias against her race. They failed to docket her filings. They removed her filings from the docket for moving to recuse Judge Andrews and PTAB Administrative Judge McNamara due to their direct stock holdings in JPMorgan Chase & Co. and Microsoft. PTAB Judge McNamara *disparately* required Dr. Arunachalam to call teleconference meetings with the PTAB and SAP America, Inc. to request that her filings be docketed.

15. **APPELLEES VIOLATED 35 USC §282:** which states:

> "A patent **shall be presumed valid.** Each claim of a patent (whether in independent, dependent, or multiple dependent form) **shall be presumed valid** independently of the validity of other claims; dependent or multiple dependent claims **shall be presumed valid** even though dependent upon an invalid claim. ...The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity." (Emphasis supplied)"

Appellees do not argue that the presumption or the assignment of the burden of persuasion on an accused infringer is unconstitutional. *See* pp. 17-18, **Roberta Morris amicus curiae brief in Supreme Court Case No. 10-290, *Microsoft v i4i*** (This Court must take Judicial Notice of Roberta Morris' brief.):

> "... In view of the growing tendency in the recent past for courts to ignore or pay little more than lip service to *the doctrine of presumption of validity, it is hoped that this positive declaration by the Congress will be of real value in* **strengthening the patent system.**" Paul A. Rose, Washington, D.C., Chairman of the Laws and Rules Committee of the American Patent Law Association (APLA), *Statement of the American Patent Law Association on H.R. 3760*, PATENT LAW CODIFICATION AND REVISION, HEARINGS ON H. R. 3760 BEFORE SUBCOMMITTEE NO. 3 OF THE HOUSE COMMITTEE ON THE JUDICIARY, 82d Cong., 1st Sess., at 46 (1951) (emphasis supplied).
>
> "The often-cited proxy for legislative history of the Patent Act of 1952, Federico's Commentaries (originally included with the printed volume of 35 United States Code Annotated; subsequently reprinted in 75 JPTOS 161 (1993)) explains § 282 as follows:
>
> "...The statement of the presumption in the statute should give it **greater dignity and effectiveness**."

See p. 17 Footnote: Roberta Morris:

> "P. J. Federico ... risen to Examiner-in-Chief by the time the Patent Act was being drafted. He worked on the codification with Congressional staff and ... Giles S. Rich. ...In 1956 Rich was appointed to the Court of Customs and Patent Appeals (CCPA) and became a member of the

Federal Circuit .... Judge Rich ... wrote articles explaining the origins of the language of the Patent Act of 1952. Judge Rich's decision in *American Hoist & Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350 (Fed. Cir. 1984), ..."

16. APPELLEES FAILED TO FURNISH THE BURDEN OF PROOF OF "CLEAR AND CONVINCING EVIDENCE" OF PATENT INVALIDITY, REQUIRED BY STATUTE, JUST AS ALL THE OTHER COURTS AND OTHER CORPORATE INFRINGERS DID NOT PROVIDE "CLEAR AND CONVINCING EVIDENCE".

The Ninth and Federal Circuits, like all the other District and Appellate Courts failed to adjudicate ***"the Constitutional Challenge"*** – *"the Fletcher challenge."* District and Appellate Court Judges denied Dr. Arunachalam due process and acted as Corporate Defendants' attorneys, manufacturing false reasons to dismiss her case in an egregious abuse of judicial power under the color of law and authority. Appellees committed acts of infringement, and falsely argued Patent invalidity "without clear and convincing evidence."

17. BY STATUTE, 35 U.S.C. § 282, A PATENT ISSUED BY THE PATENT OFFICE IS PRESUMED VALID, AND THE BURDEN OF ESTABLISHING INVALIDITY IS ON THE PARTY ASSERTING IT.

The presumption of validity is in the statute. *See* Roberta Morris, p. 22-23 "**the higher standard of proof should apply to "any issue developed in the prosecution history**." "A statutory presumption is a statutory presumption. It needs no justification as long as the presumption itself violates no Constitutional prohibition and the subject matter is within Congress' power..."[5]

18. APPELLEES' "INVALIDITY DEFENSE MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE." "STANDARDS OF PROOF ON

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[5] "... there is a basic problem: the *ex parte* examination of a patent application, resulting in the issuance of a patent, is unlike other agency actions that adversely affected parties ask courts to review. The only analogy that this amicus has identified is the issuance of drivers' or professional licenses. ... The problem is that the analogy breaks down at the litigation stage. Wrongful issuance of the driver's license is not part of the cause of action for recovery after a car accident. Rightful issuance is not an affirmative defense, either. The parties are reversed, too: the licensed person is the tortfeasor while the patent owner is the tort claimant. In any case, in tort suits nobody cares if a driver's license carries a presumption of validity. It is irrelevant to the suit."

INVALIDITY ARE PART OF A VERY COMPLICATED CALCULUS." *See* Roberta Morris: pp. 9, 3:

"This Court stated that *in order to invalidate, the proof would have to be* "**clear, satisfactory and beyond a reasonable doubt**....The Patent Act of 1952 included, for the first time, a statutory presumption of validity and a statement on the burden of proof. 35 USC § 282. (*See* Part III.A, *infra.*)." p.6: ("Prosecution history" refers to the record, required to be in writing, 37 CFR §1.2, of the exchanges between the applicant and the USPTO. That is, the contents of the prosecution history would govern which of two standards of proof for invalidity should apply to which invalidity argument."

"... **STANDARD OF PROOF WILL REQUIRE THE TRIAL JUDGE TO ANALYZE THE PROSECUTION HISTORY**. If there are rejections based on prior art, the judge will have to determine the scope and content of that art. Claim language may need to be construed so that the claimed invention can be compared to the examiner's art, and the examiner's art compared to the accused infringer's art. Once the applicable standard of proof is determined, many of those same facts will be sifted again to determine whether invalidity has been proven. The process may seem convoluted and circular. Prior art invalidity is not, of course, the only kind of invalidity as to which the prosecution history may speak. Claims are rejected for failing to meet other requirements...§112: enablement, definiteness. *See* Part III.B, *infra.* Depending on how the dividing line is articulated and what the accused infringer argues, the same circular use of facts may occur."

p. 12: "... keep attention on the core issues: a comparison of the claimed invention to the prior art and to the patent's disclosure of how to make and use the invention. **Those inquiries would not become stepchildren to a dispute over how well or ill the Patent Office did its job**. ...participants in the patent system."

19. FRAUD AND PUBLIC CORRUPTION

This Court should investigate and prosecute this complex white collar crime involving corruption and fraud offenses committed against both the government and private citizens to enforce corruption laws as those laws apply to officials and employees of the United States government, including the USPTO. It is imperative that this Court work jointly with law enforcement task forces designed to proactively detect and deter crimes against the public trust, false claims, government contract fraud. Appellees' and the lower courts' offenses have a national impact including violations of the False Claims Act.

20. NATIONAL SECURITY

Appellees' violation of the Constitution and of the False Claims Act threatens our nation's security in killing innovation by bullying and threatening Dr Arunachalam, a key witness and inventor of significant inventions, and allowing infringing products to come into the nation manufactured in foreign countries, hurting the domestic economy.

III.
This Court must review this Case because:

The decision of the Court of Appeals, if followed, will conflict with this Court's precedent with respect to its findings on: (a) the denial of liberty and property without due process of law, and (b) this Court's *Oil States* ruling that violates the Separation of Powers, Supremacy and Contract Clauses of the U.S. Constitution and failed to consider this Court's precedential *'First Impression' Res Judicata* Mandated Prohibition declared by Chief Justice Marshall in *Fletcher* against rescinding Government-Issued Patent Contract Grants by the highest authority, reaffirmed multiple times by this Court - the Supreme Law(s) of the Land. The decision avoids *"the Fletcher challenge."*

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:**

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;" **deprived Petitioner/inventor of 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.

"...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).

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.

CONCLUSION

Appellees and the lower Courts colluded and brazenly devised schemes to evade the Government and the laws of the United States. Appellees engaged in Solicitations to induce the lower Courts to not enforce the Law of the Land.

Appellees, along with the Judiciary in the District Courts in California, Delaware, and Appellate Courts, legislature, USPTO/PTAB, have "some explaining to do — for subjecting the nation to a long, cruel ordeal named 'collusion' and 'obstruction'" against Dr. Arunachalam and the Constitution. The Judiciary in California and Delaware and the Appellate Courts and USPTO/PTAB shattered their credibility by their own merit. The errant lawyers, like Appellees' counsel of record, and judges — "the ones who peddled the most outrageous falsehoods" against Dr. Arunachalam— "want nothing more than to move on. But not so fast: There has to be some accountability for the biggest foul-ups." "It's time for the" Judiciary, USPTO/PTAB and Corporate Infringers "to fess up," as President Trump stated.

Dr. Arunachalam respectfully requests that the District and Appellate Court ruling(s) be reversed, because those rulings are unconstitutional. This case involves significant constitutional issues, making this case more significant than *Marbury v. Madison,* 5 U.S. 137, 177 (1803).

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.

May 15, 2019

Respectfully submitted,

Lakshmi Arunachalam

DR. LAKSHMI ARUNACHALAM
PETITIONER PRO SE
222 Stanford Avenue,
Menlo Park, CA 94025
(650) 690-0995; laks22002@yahoo.com

CERTIFICATE OF COUNSEL/PRO SE PETITIONER

I, Dr. Lakshmi Arunachalam, petitioner *pro se,* certify that as per the Court rules, this document contains 8996 words only, as counted by the tool available in Microsoft WORD, and is well within the 9000 word limit.

Respectfully submitted,

Lakshmi Arunachalam

DR. LAKSHMI ARUNACHALAM
PETITIONER PRO SE
222 Stanford Avenue
Menlo Park, CA 94025
(650) 690-0995
laks22002@yahoo.com

May 15, 2019

VERIFICATION

In accordance with 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

Lakshmi Arunachalam

Dr. Lakshmi Arunachalam
Pro Se Petitioner

Executed on May 15, 2019

222 Stanford Ave,
Menlo Park, CA 94025
650 690 0995
laks22002@yahoo.com