18-9386

App. No. 18A856

ORIGINAL

In the Supreme Court of the United States

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the lower courts denying a citizen due process — a Hearing and an unbiased Judge, voids their Orders and no preclusive effect attaches.

2. Whether a Judge must be subject to judicial inquiry when the Judge's exertion of power has overridden private rights secured by the Constitution.

3. Whether a Judge's use of the U.S. Marshall to intimidate a witness constitutes a transgression subject to judicial inquiry.

4. Whether it is the duty of the Court to maintain and enforce the inventor's right by the law of the contract without any unreasonable delay.

5. Whether this Court's obligation to defend the Constitution by solemn oath requires that *Oil States*[1] be judged by the standards of the Constitution and be overruled, as impairing the obligation of the Patent Grant contract between the inventor and the Federal Government, and denying due process to inventors because there can be no rights without remedies.

6. Whether this Court's obligation to defend the Constitution by solemn oath requires that this Court's precedential rulings[2] that a Grant is a Contract and applies to Patent Grant contracts, be judged by the standards of the Constitution.

7. Whether this Court's obligation to defend the Constitution by solemn oath requires that America Invents Act ("AIA") be judged by the standards of the Constitution and be declared unconstitutional as impairing the obligation of the Patent Grant contract between the inventor and the Federal Government.

8. Whether Judges being oath-bound to defend the Constitution requires that *Fletcher*[3] be judged by the standards of the Constitution.

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

[2] *Fletcher v. Peck*, 10 U.S. 87 (1810); *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819); *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).

[3] *Fletcher v. Peck*, 10 U.S. 87 (1810), Chief Justice Marshall declared that a Grant is a Contract.

9. Whether the lower courts' decisions, based on a premise that a Grant is ***not*** a Contract, violate an inventor's protected civil and constitutional rights to equal access to justice and full and fair opportunity to be heard; to Patent Statutes that requires the Corporate Infringers to provide the burden of proof of "clear and convincing evidence" of patent invalidity; to Patent Prosecution History; to Federal Circuit's *Aqua Products*'[4] reversal of Orders that failed to consider "the entirety of the record" — Patent Prosecution History— and this Court's precedential rulings[5] that a Grant is a Contract and applies to Patent Grant contracts.

10. Whether the lower courts are obligated by their solemn oaths of office to enforce the law of the land declared in this Court's precedential rulings that a Grant is a Contract and applies to Patent Grant contracts.

11. Whether the lower court Judge Davila relating every one of Petitioner's cases in the Northern District of California even from Judge Alsup, whose specialty is Antitrust, to Judge Davila's court, and vacating the hearing and dismissing each and every one of Petitioner/inventor's cases, is a Solicitation to Corporate Infringers to come to his Court to dismiss all of Petitioner's cases, and is *prima facie* evidence of bias against Petitioner/inventor's race, color, gender, age, disability, in violation of 42U.S.C. § 1983 Civil Rights Act and an appearance of impropriety, if not outright impropriety.

12. Whether the lower court comforting the Defendants in anti-trust violations, arbitrarily ordering Petitioner/inventor to amend her complaint and the Judge acting as attorney to Defendants ordering them not to answer the amended complaint, vacating hearings and dismissing the case, and the lower District and Appellate Court Judges themselves breaching their solemn oaths of office and not upholding the law of the land declared by Chief Justice Marshall in this Court's precedential rulings that a Grant is a Contract and applies to Patent Grant contracts, violates the Equal Protection of the Laws Clause of the 14th Amendment, §1; Due Process Clause of the 5th and 14th Amendments; 1st Amendment — Right to Petition the Government for a Redress of Grievances; and Vol. XII, Constitutional Law, Chapter 7, Sec. 141. Denying or Hindering Access to the Courts upon the Question of Due Process Itself.

13. Whether it is the duty of the Court to overrule *Oil States* as it fosters Government contract fraud and sale of defective products to the Government by Corporate Infringers, not paying the inventor the royalties, comforted in

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[4] *Aqua Products, Inc. v. Matal*, Case No. 15-1177, October 4, 2017 reversed all Orders which failed to consider "the entirety of the record" — Patent Prosecution History.

antitrust violations and the theft of valuable inventions and patents by judicial misfeasance and malfeasance as in the lower District and Appellate courts in this case, and depriving inventors of their significant inventions.

14. Whether this Court is obligated to end the Constitutional crisis/emergency by adjudicating that *Fletcher* is the law of the land that a Grant is a Contract and governs Patent contract grants, and overruling *Oil States*.

15. Whether this Court has a duty to reverse the lower court rulings because the District Court erred in failing to consider that Petitioner's patent claims are unambiguous in view of intrinsic evidence — Patent Prosecution History.

16. Whether the District Court Orders are void as repugnant to the Constitution in denying the Petitioner/inventor access to the courts to give testimony on claim construction, as 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.

17. 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.

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 & Co., Fiserv, Inc., Wells Fargo Bank, N.A., Citigroup, Inc., Citibank, N.A., Fulton Financial Corporation, Eclipse Foundation, Inc.; and Judge James Edward J. 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 ("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. 18-72572, which is an Appeal from Case No. 18-01250-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 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 ...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 this Court's significant *'First Impression'* Constitutional *Res Judicata* precedential ruling in *Fletcher v. Peck*, 10 U.S. 87 (1810) and reaffirmed in this Court's rulings[1] 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 this

[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); 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).

Court's other 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

This is an antitrust case against Respondents Apple, Inc. *et al.* This Petition relates to judicial misfeasance by Judge Davila, in utter lawlessness, displaying his bias against Petitioner Dr. Arunachalam.

Judge Davila harassed and induced Judge Donato to harass Dr. Arunachalam, a 71-year old, disabled female inventor of the Internet of Things —Web applications displayed on a Web browser — by sending two U. S. Marshalls to Petitioner Dr. Arunachalam's home very early in the morning when she was asleep and to accost Dr. Arunachalam at public events at Stanford Law School to intimidate a witness. Judge Davila violated the 8th Amendment in an abuse of power under the color of authority because Dr. Arunachalam is a Patriot defending the Constitution, while Judge Davila breached his solemn oath of office in not enforcing the Law of the Land and comforting the Respondents Apple, Inc. *et al* in antitrust violations.

Judge Davila vacated hearings and *arbitrarily* dismissed many of the claims in Petitioner's antitrust complaint, where Judge Davila was culpable. Judge Davila arbitrarily ordered Petitioner to file an amended complaint and ordered the Respondents to not answer Petitioner's amended complaint and acted as attorney to Respondents. After Petitioner filed her amended complaint, Judge Davila vacated the hearing, and sua sponte dismissed Dr. Arunachalam's amended complaint for

manufactured reasons.

Judge Davila made a false claim and related every case that Dr. Arunachalam filed back to his Court and took Petitioner's Anti-trust case away from Judge Alsup, who specializes in antitrust, because Judge Davila is so biased against Dr. Arunachalam against her race, gender, color, age, disability, and has engaged in a spree of hate crime, killing all of Petitioner's cases. Judge Davila's bias is real, not just an appearance of impropriety, but he engaged in real impropriety against Dr. Arunachalam, so much so any Defendant Dr. Arunachalam files a suit against has ex parte communication with Judge Davila and gets their cases transferred or related back to Judge Davila's Court, knowing him to be the go-to hatchet man to kill my patents and cases, for no valid rhyme or reason, as he is so extremely prejudiced against Dr. Arunachalam.

Judge Davila failed to follow procedures that would have provided the litigant, Dr. Arunachalam, her "full and fair opportunity" to participate in the adjudicatory process. Judge Davila's Orders do not comply with even the minimum procedural requirements of the due process clause — notice and hearing.

The lower courts *disparately* ***only*** in Dr. Arunachalam's cases failed to consider Patent Prosecution History, Federal Circuit's *Aqua Products* reversal of all Orders that failed to consider "the entirety of the record" — Patent Prosecution History, or abide by Patent Statutes or the Constitution as declared by Chief Justice Marshall that a Grant is a Contract and applies to Granted Patent Contracts. The lower courts *disparately* violated Dr. Arunachalam's protected rights to equal justice and full and fair opportunity to be heard, as guaranteed by the Constitution and 42U.S.C. § 1983 Civil Rights Act.

Dr. Arunachalam filed a Petition for a writ of mandamus in the Ninth Circuit requesting that Judge Davila be disqualified and be required to comply with the Law of the Land and to enforce the Constitution as declared by this Court in *Fletcher* that a Grant is a Contract and affirmed by this Court's precedential rulings that a Patent Grant is a Contract that cannot be rescinded, without compensating the inventor. The Ninth Circuit *sua sponte* dismissed Dr. Arunachalam's Petition, without giving any reasons.

Petitioner was not given a meaningful opportunity to participate in governmental action affecting individual, private rights, to be deemed fairness.

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 antitrust complaint and patent infringement case and ordering Dr. Arunachalam to amend her complaint and vacating the hearing and ordering the Respondents to not answer her amended complaint, the Judge essentially acting as attorney to the Respondents and then *sua sponte* dismissing Dr. Arunachalam's case for no valid rhyme or reason 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 this Court's unconstitutional *Oil States* ruling. They neglected to consider Patent Prosecution History, in a unilateral breach of contract by the Agency with the inventor, prior to AIA 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 this 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.

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

[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) "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) 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.*"

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 Respondents (*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" and is *not* nullified by *Oil States*:**

> 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*."

Chief Justice Marshall declared in this Court's significant '*First Impression*' Constitutional *Res Judicata* precedential ruling in *Fletcher v. Peck*, 10 U.S. 87 (1810) and reaffirmed in this Court in *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); 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'. 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

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[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."

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 Government representing the public at large." Madison in Federalist No. 44: "Patent rights receive protection pursuant to ...contracts between inventors and the federal government."

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.

> "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."
>
> JPMorgan and its expert witness concealed Patent Prosecution History, *prima facie* evidence 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, 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**.)

3. **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.

4. **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, ... 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... Judges would sit to execute legislative judgments ..., 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.

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

All courts should subsequently follow this Court's *Fletcher* ruling rather than this Court's own new unconstitutional *Oil States* decision, the law of this 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.

I.
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.

2. Proceedings of the District Court and Ninth Circuit

The District Court rendered an Order (D.I. 211) vacating the Case Management Conference on 7/13/18 denying due process to Petitioner and an Order on 4/27/18 on the disqualification of District Court Judge Edward J. Davila ("Davila") to preside over the case, despite the fact that Judge Davila warred against the Constitution in treasonous[5] breach of his 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 this Court; lost his 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 Davila dismissed the Constitution, in three of Petitioner's prior cases, 16-6591-EJD (N.D. Ca), 17-3383-EJD (N.D. Ca) and 17-3325-EJD (N.D. Ca), without a hearing. Judge Davila failed to recuse, *prima facie* evidence he lost subject matter jurisdiction in all of Petitioner's cases he presides over; he disparately failed to consider Patent Prosecution History and the Federal Circuit's *Aqua Products, Inc. v. Matal* ruling of October 4, 2017, reversing all Orders that failed to consider Patent Prosecution History. His 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

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[5] *Cooper v. Aaron*, 358 U.S. 1 (1958). *Marbury v. Madison*, 5 U.S. 137, 177 (1803); *Ableman v. Booth*, 62 U. S. 524 (1859); *Sterling v. Constantin*, 287 U. S. 397 (1932);

law and without due process of law. This Court stated, on Government officials non-exempt from absolute judicial immunity, that "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." *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); an individual's right to some kind of a hearing ("the right to support his allegations by arguments however brief and, if need be, by proof however informal."); *Baldwin v. Missouri*, 281 U.S. 586, 595 (1930).

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 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 Petitioner's patents-in-suit in her JPMorgan case 12-282-RGA (D.Del.) 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 and George Pazuniak fraudulently concealed from the Court that Patent Prosecution History was not considered by the *JPMorgan* or *Fulton Courts* and propagated to all tribunals a false theory of Collateral Estoppel, which is moot because:

(i) **Judge Andrews himself admitted in writing in the court docket that he bought direct stock in JPMorgan during the pendency of that case 12-282-RGA (D.Del.) 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 ruling in *Aqua Products* reversal of Orders that failed to consider "the entirety of the record" —Patent Prosecution History (*which the District Court disparately failed to apply in my case*); and

(iv) 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 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 a 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 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 Justices Marshall, in *Fletcher, 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 this 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. *Cooper v. Aaron,* 358 U.S. 1 (1958).

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) 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*, 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 Davila failed to enforce 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 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**, by breaching their solemn oaths of office and violating the Constitution — the "*Fletcher* Challenge," which must be addressed.

Petitioner continuing to defend the Constitution are ***not*** "scurrilous attacks" on Judge Davila, as misunderstood by Judge Davila.

The Law of the Case, the Law of the Land and facts are on Petitioner's side, which Judge Davila 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"; ***inciting,*** the Corporate Infringers to continue *'Non-payment of Royalties'* owed to Petitioner.

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, REFUSED TO RECUSE, RETALIATED AGAINST PETITIONER. ORDERS ARE VOID.**

Judge Andrews admitted himself in the Court records three years into Petitioner'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 Petitioner's cases he presided over and yet failed to recuse. **His Orders are void in all of Petitioner's cases:** *Fulton Financial Corporation* Case No. 14-490-RGA (D.Del.), *IBM* RICO Case No. 16-281-RGA (D.Del.), *George Pazuniak* Case 15-259-RGA (D.Del.), *Wells Fargo Bank* and *CitiBank* cases, *Citizens' Financial* Case No. 12-355-RGA (D.Del.). PTAB Judge McNamara's direct stock in Microsoft and PTAB Judge Stephen Siu's financial conflicts of interest with Microsoft and IBM, per their Financial Disclosure Statements, 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. These 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. Respondents have perpetrated the fraud started by JPMorgan, 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 Dr. Arunachalam's antitrust 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 Judge Davila of the Northern District of California and Judge Andrews of the Delaware District Courts**, 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 (and without compensating the inventor) – as declared in this Court's precedential rulings in *Fletcher, Dartmouth College*. 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*], 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 this Court's precedential 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. Judge Davila has not complied with the law nor has he served the public interest.

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 follow 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.**

Respondents 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 her. 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 Respondents 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.

Petitioner's valuable trade secrets were stolen starting in 1995 by IBM, Microsoft and SAP. The USPTO issued her a dozen patent grant contracts. The federal government used and distributed these inventions to countless billions of individuals and organizations without compensating Petitioner.

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 Petitioner access to the court because they refused to acknowledge *Fletcher*. They defamed/libeled Petitioner, sanctioned her for false, manufactured reasons, took her money, allowed the theft of Petitioner'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 Petitioner's patents and inventions and intellectual property by Corporate Infringers without paying her royalties, made it expensive, hazardous and burdensome for her 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 Petitioner 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.

Respondents made a false claim that Petitioner'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 Petitioner's patent claims are ***not*** invalid and that the claim terms are ***not*** indefinite, as *knowingly and intentionally* falsely claimed by Respondents, who defrauded our courts and the Government. Yet Respondents *disparately* concealed in their Solicitations and the courts failed to consider Patent Prosecution History in Petitioner'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 Respondents disparately denied Petitioner her protected rights to Patent Prosecution History, and the reversal in *Aqua Products.*

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

Respondents *knowingly and intentionally* made false claims of prior art to defraud the Government and engaged in waste, fraud and abuse of Government resources. Respondents IBM, Microsoft and SAP America, Inc. signed NDAs with Petitioner in 1995 and 2003. Microsoft's CTO and IBM employees interviewed with

Petitioner to work for her company in 1995, 1996. They agreed there was ***no prior art*** then, that the claim terms were enabled, had full written description and ***not indefinite*** and that the claims were valid; and offered to buy Petitioner'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.

Respondents, collusively with 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 Petitioner's patents has cast in stone the construction of claim terms in Petitioner's granted patents, and that claims and claim terms are not indefinite nor invalid nor *not* enabled.

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

Respondents *knowingly and intentionally* made false claims that the Law of the Land does not apply to Petitioner's patents.

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

Respondents *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 filed approximately 18 re-exams and IPR/CBM reviews against Petitioner 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 Respondents. The Judiciary, PTAB and Respondents' overt conspiracy against Petitioner's rights has had a devastating effect on the public. Their 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 Respondents, 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 PETITIONER ACCESS TO THE COURTS.

Judges Davila and Andrews represented the Respondents by acting as their attorney, ordered Respondents to not answer Dr. Arunachalam's complaint(s), vacated the Hearing(s), and dismissed her cases for false, manufactured reasons. Judge Andrews ordered the Respondents 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 Respondents, lawyers and Judges. The California and Delaware District court Judges, and USPTO/PTAB Administrative Judges McNamara, Siu and Turner and Respondents *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, 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 and Microsoft. PTAB Judge McNamara *disparately* required Dr. Arunachalam to call teleconference meetings with the PTAB and SAP to request her filings be docketed.

15. RESPONDENTS 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)"

Respondents 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 ...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 ...APLA,...BEFORE...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...worked on the codification with Congressional staff and ... Giles S. Rich. ... 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...*American Hoist & Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350 (Fed. Cir. 1984), ..."

16. RESPONDENTS AND CORPORATE INFRINGERS 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 Respondents' attorneys, manufacturing false reasons to dismiss her case in an egregious abuse of judicial power under the color of law and authority. Respondents committed acts of infringement, falsely argued Patent invalidity "without clear and

convincing evidence." Judge Davila acted as attorney to the Respondents in this case and ordered them not to answer Dr. Arunachalam's complaint.

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. 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..."[6]

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

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[6] "...the *ex parte* examination of a patent application, resulting in the issuance of a patent, is unlike other agency actions .... The only analogy ... is the issuance of drivers' ... licenses. ... 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."

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...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: "...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. NATIONAL SECURITY

Respondents' and the lower Courts' violations of the Constitution and of the False Claims Act threatens our nation's security in killing innovation by intimidating, bullying and threatening Dr Arunachalam, a key witness and inventor of significant inventions, and allowing infringing imports, hurting the domestic economy.

II.
This Court must review this Case because:

This case involves significant constitutional issues, making this case more significant than *Marbury v. Madison,* 5 U.S. 137, 177 (1803).

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 ruling declared by Chief Justice Marshall in *Fletcher* that **a Grant is a Contract**, 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 AIA reexamination provision, in breach of

contract with inventors of their protected rights to enjoy exclusive rights to collect royalties for a time certain, Patent Prosecution History, Federal Circuit's *Aqua Products'* reversal of Orders that failed to consider Patent Prosecution History, the Constitution and this 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, AIA and *Oil States* 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 [*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.
>
> Blackstone, in his Commentaries on the Laws of England, 1 vol. 55.
>
> "Without the remedy, the contract may, indeed, in the sense of the law, be said not to exist... 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." ...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 AIA, 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

Respondents and lower courts brazenly devised schemes to collusively evade the Government and the laws of the United States, to not enforce the Law of the Land.

They have "some explaining to do — for subjecting the nation to a long, cruel ordeal named 'collusion' and 'obstruction'" against Dr. Arunachalam and the Constitution. They shattered their credibility by their own merit. The errant lawyers 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.

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

May 17, 2019

Respectfully submitted,

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CERTIFICATE OF
COUNSEL/PRO SE PETITIONER

I, Dr. Lakshmi Arunachalam, petitioner *pro se,* certify that as per the Court rules, this document contains 8999 words only, as counted by the tool available in Microsoft WORD, and is well within the 9000 word limit.

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May 17, 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 17, 2019

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