

No. 19-

IN THE SUPREME COURT OF THE UNITED STATES

KANEKA CORPORATION, a Japanese Corporation,

Petitioner,

v.

**XIAMEN KINGDOMWAY GROUP COMPANY, a Chinese Corporation,
PACIFIC RAINBOW INTERNATIONAL INC., a
California Corporation,**

Respondents.

ON APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

To the Honorable Justice John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Pursuant to Rules 13.5, 21, 22, and 30.2 of this Court, Petitioner Kaneka Corporation respectfully requests that its time to file a Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit be extended for 60 days, to and including January 10, 2020.

The Court of Appeals for the Federal Circuit issued an opinion on May 13, 2019 (see Appendix A) and denied Petitioner's Petition for panel rehearing and rehearing *en banc* on August 12, 2019 (see Appendix B). Petitioner is filing this application at least ten days prior to the current due date of November 11, 2020. *See* S. Ct. R. 30.2. This Court would have jurisdiction over the judgment pursuant to 28 U.S.C. § 1254(1).

BACKGROUND

Petitioner is a Japanese corporation that holds a patent that claims industrial processes for producing oxidized coenzyme Q10, a molecular compound used in various health supplements. A jury determined the patent not to be invalid in a related action in the United States District Court For The Southern District Of Texas.

In the action below, the Central District of California granted respondents' partial summary judgment motion based on alternative holdings which changed the Federal Circuit's prior construction of the claims of the patent. Instead of proceeding to trial, Kaneka stipulated to final judgment of non-infringement based on the changed claim construction. On appeal, a Federal Circuit panel questioned during oral argument whether the District Court had changed the claim construction, yet the panel still affirmed final judgment under Federal Circuit Rule 36. The Petition for a Writ of Certiorari will ask the Supreme Court to determine, *inter alia*, whether the Federal Circuit's affirmance of judgments under Rule 36 without opinion on claim construction issues, combined with a Circuit split on the issue of collateral estoppel, can improperly preclude patent holders from enforcing their valid patents in violation of the Fifth and Seventh Amendments and Article I, Section 8, Clause 8 of the Constitution.

REASONS FOR GRANTING AN EXTENSION OF TIME

Petitioner's time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. The record in this case is large and includes prior decisions in a proceeding in the United States International Trade Commission, two parallel litigations respectively in the United States District Courts for the Central District Of California and the Southern District Of Texas, and four appeals in the United

States Court Of Appeals for The Federal Circuit. Petitioner needs additional time to file its Petition so that the undersigned counsel can fully examine and study the record in this case.

2. Petitioner is a corporation located in Osaka, Japan. The Petitioner's corporate officers who are responsible for the Petition work in Osaka, Japan. Some of these corporate officers do not read or speak English. The undersigned counsel works in New York, New York. Petitioner needs additional time to file the Petition so that the undersigned counsel can properly advise Kaneka's executives on the Petition, which will be prolonged because of the time difference between New York and Osaka and language differences.

3. Petitioner and the undersigned counsel are also seeking professional counsel and advice from a co-author of "Supreme Court Practice, Tenth Edition" with the preparation of the Petition. The undersigned counsel has scheduled an initial meeting with the co-author during the first week of October, which was his earliest available date. Petitioner needs additional time to file the Petition so that the undersigned counsel can obtain assistance and advice from the co-author.

4. The undersigned counsel will also be seeking other companies interested in filing amicus Petitions for Certiorari on this important issue which can prevent a patent holder from enforcing its valid patent. Petitioner needs additional

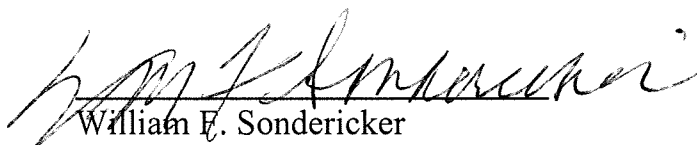
time to file the Petition so that undersigned counsel can contact interested parties and those parties can prepare an amicus Petition.

5. The mandate from the Federal Circuit has already been issued in this case. Consequently, the requested 60-day extension would not delay the issuance of the mandate.

CONCLUSION

For the reasons stated above, Petitioner Kaneka Corporation respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended by 60 days, from November 11, 2019, through and including January 10, 2020.

Respectfully submitted,



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