

No. 19A-

In the
SUPREME COURT OF THE UNITED STATES

October Term 2019

INTEL CORPORATION, IBIDEN U.S.A. CORPORATION, AND
IBIDEN COMPANY LIMITED,
Applicants / Petitioners,

v.

CONTINENTAL CIRCUITS LLC,
Respondent.

**Application for an Extension of Time Within
Which to File a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit**

**APPLICATION TO THE HONORABLE CHIEF JUSTICE
JOHN G. ROBERTS, JR. AS CIRCUIT JUSTICE**

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CORPORATE DISCLOSURE STATEMENT

Intel Corporation has no parent corporation and there are no publicly held companies that hold 10% or more of Intel's stock.

Ibiden Co. Ltd. is the parent of Ibiden U.S.A. Corp. and is publicly traded on the Nikkei Index. Ibiden Co. Ltd. has no parent corporation and there are no publicly held companies that hold 10% or more of Ibiden Co. Ltd.'s stock.

APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicants Intel Corporation, Ibiden U.S.A. Corporation, and Ibiden Company Limited request a 46-day extension of time within which to file a petition for a writ of certiorari, up to and including Monday, October 28, 2019.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *Continental Circuits LLC v. Intel Corporation*, No. 18-1076 (Feb. 8, 2019) (attached as Exhibit 1). The United States Court of Appeals for the Federal Circuit denied Applicants' motion for panel rehearing and rehearing en banc on June 14, 2019 (attached as Exhibit 2).

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari is due to be filed on or before September 12, 2019. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

This case involves claim construction, a fundamental step in patent cases that determines the boundaries of a disputed patent. The Patent Act requires every patent to include a "specification" containing "a written description of the invention, and of the manner and process of making and using it." 35 U.S.C. § 112 (2006). This Court has long held that "it is fundamental that claims are to be construed in the light of the specification[] and both are to be read with a view to ascertaining the

invention.” *United States v. Adams*, 383 U.S. 39, 49 (1966). In order to obtain a patent, an inventor must often explain in the specification how the purported invention represents an improvement over, or is distinguished from, the prior art. In such cases, the patent’s claims should be construed in light of the specification, to exclude the prior art that the inventor has distinguished. Yet the Federal Circuit in this case applied a heightened, “exacting” standard for when it will find that the written description “disclaim[s], or disavow[s], ... claim scope.” Slip Op. 11-12, 15. Under this “exacting” standard, the Federal Circuit will find a “disavowal of claim scope” only when “the specification [includes] expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.” *Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1366 (Fed. Cir. 2012) (quoting *Teleflex, Inc. v. Ficoso N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002)). As a result, the Federal Circuit construed the claims at issue here to be *broader* than the invention described in the written description, and to include the very prior art feature that the patentee had expressly criticized and purported to improve upon.

The Federal Circuit’s decision deepens a disagreement within the Federal Circuit with respect to the proper standard for evaluating disavowals of claim scope. The Federal Circuit’s inconsistency on this fundamental aspect of patent litigation creates significant uncertainty, undermines the public’s ability to discern the scope of a patent by reading the specification, and allows patentees to claim monopoly protection broader than the invention actually disclosed to the public. This case represents an

ideal opportunity to resolve the confusion surrounding the proper standard for construing claims in light of the specification.

Applicants respectfully request a 46-day extension of time within which to file a petition for a writ of certiorari seeking review of the complex issues raised by the decision of the Federal Circuit in this case, up to and including Monday, October 28, 2019. The reasons for Applicants' request are as follows:

1. Applicants newly retained Munger, Tolles & Olson LLP in early August. An extension of time is necessary to permit new counsel to familiarize themselves with the record in the case and to prepare and file the certiorari petition.

2. The extension of time is also necessary because of the press of other business. Mr. Verrilli, Ms. Anders, and Mr. Segall are also counsel for the Financial Oversight and Management Board for Puerto Rico in *Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC*, Nos. 18-1334, -1475, -1496, -1512, and -1514, which is currently being briefed on an expedited schedule. The Board's combined response and reply brief in that matter is due on September 19, one week after the certiorari petition is currently due in this matter. Mr. Verrilli will present oral argument for the Board on October 15, 2019.

In addition, Ms. Anders is counsel for the plaintiff-appellant in *Johnson v. Precythe*, a capital appeal pending before the Court of Appeals for the Eighth Circuit (No. 17-2222). The appellant's reply brief is due on September 3, and Ms. Anders will present oral argument for Mr. Johnson during the week of September 20.

A 46-day extension for the Applicants would allow their counsel the necessary amount of time to contribute to these open matters effectively without impairing their ability to research and draft this petition for certiorari.

CONCLUSION

For the foregoing reasons, Applicants respectfully request that this Court grant an extension of 46 days, up to and including October 28, 2019, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,



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AUGUST 27, 2019