No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, _____

Dr. Lakshmi Arunachalam,
Petitioner

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
SAP AMERICA, INC.,
JPMORGAN CHASE & CO.,
Respondents

On Petition for a Writ of Mandamus to the United States Court of Appeals For the Federal Circuit
Case No. 20-1493

EMERGENCY PETITION FOR WRIT OF MANDAMUS
APPENDICES 1a, 2a, 3a, 4a, 4a, 5a

Dr. Lakshmi Arunachalam
Self-Represented Petitioner
222 Stanford Avenue
Menlo Park, CA 94025
(650) 690-0995
laks22002@yahoo.com

March 25, 2021

App. 1a

Federal Circuit Orders **ECF 63 (2/26/21)** and **ECF65 (3/1/21)**

02/26/2021	63	ORDER filed denying Dr. Arunachalam's motion [62] for leave to file documents. By: Merits Panel (Per Curiam). Service as of this date by the Clerk of Court. [758992] [MJL] [Entered: 02/26/2021 03:28 PM]
03/01/2021	65	JUDGMENT. AFFIRMED. Terminated on the merits after submission on the briefs. COSTS: Costs to IBM, SAP and JPMorgan. Mandate to issue in due course. For information regarding costs, petitions for rehearing, and petitions for writs of certiorari click here. [759145] [JCP] [Entered: 03/01/2021 10:16 AM]

65

United States Court of Appeals for the Federal Circuit

LAKSHMI ARUNACHALAM,
Plaintiff-Appellant

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION, SAP AMERICA, INC., JPMORGAN CHASE & CO.,
Defendants-Appellees

DOES 1-100,
Defendant

2020-1493

Appeal from the United States District Court for the District of Delaware in No. 1:16-cv-00281-RGA, Judge Richard G. Andrews.

JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

ENTERED BY ORDER OF THE COURT

March 1, 2021

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

App. 2a
Federal Circuit Order **ECF64**
(3/1/21)

03/01/2021	64	OPINION filed for the court by Lourie, Circuit Judge; Wallach, Circuit Judge and Chen, Circuit Judge. Precedential Per Curiam Opinion.; Striking in part [20] Appellant's Opening Brief . [759144] [JCP] [Entered: 03/01/2021 10:13 AM]

United States Court of Appeals for the Federal Circuit

LAKSHMI ARUNACHALAM,
Plaintiff-Appellant

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION, SAP AMERICA, INC., JPMORGAN CHASE & CO.,
Defendants-Appellees

DOES 1-100,
Defendant

2020-1493

Appeal from the United States District Court for the District of Delaware in No. 1:16-cv-00281-RGA, Judge Richard G. Andrews.

Decided: March 1, 2021

LAKSHMI ARUNACHALAM, Menlo Park, CA, pro se.

MARK J. ABATE, Goodwin Procter LLP, New York, NY, for defendant-appellee International Business Machines Corporation. Also represented by CALVIN E. WINGFIELD, JR.; KEVIN J. CULLIGAN, JOHN P. HANISH, Maynard, Cooper & Gale, PC, New York, NY.

THARAN GREGORY LANIER, Jones Day, Palo Alto, CA, for defendant-appellee SAP America, Inc. Also represented by JOSEPH BEAUCHAMP, Houston, TX.

DOUGLAS R. NEMEC, Skadden, Arps, Slate, Meagher & Flom LLP, New York, NY, for defendant-appellee JPMorgan Chase & Co. Also represented by EDWARD TULIN.

Before LOURIE, WALLACH, and CHEN, *Circuit Judges*.

PER CURIAM.

Appellant, Dr. Lakshmi Arunachalam, appeals from three decisions of the U.S. District Court for the District of Delaware ("District Court"): two granting-in-part and denying-in-part attorneys' fees to Appellees, SAP America, Inc. ("SAP"), JPMorgan Chase & Co. ("JPMorgan"), and International Business Machines Corp. ("IBM"), *see Arunachalam v. Int'l Bus. Machines Corp. (Arunachalam I)*, No. CV 16-281-RGA, 2019 WL 1388625, at *2 (D. Del. Mar. 27, 2019) (Memorandum); C.A. 11 (Order); *Arunachalam v. Int'l Bus. Machines Corp. (Arunachalam II)*, No. CV 16-281-RGA, 2019 WL 5896544, at *3 (D. Del. Nov. 12, 2019) (Memorandum); C.A. 3–4 (Order); and one denying two of Dr. Arunachalam's additional motions, C.A. 1–2 (Order Denying Motions to 'Enforce the Mandated Prohibition' and to Vacate Its 'Unconstitutional Order').[1] The District Court explained that Dr. Arunachalam's "abusive" litigation conduct warranted monetary sanctions, *Arunachalam I*, 2019 WL 1388625, at *2; *see Arunachalam II*, 2019 WL 5896544, at *1, and that her two later-filed motions were

---

[1] "A.A." refers to the appendix attached to Dr. Arunachalam's opening brief, and "C.A." refers to the corrected appendix attached to Appellees' response brief.

baseless and untimely, C.A. 2. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(1). We affirm.

BACKGROUND

The relevant facts are numerous and colorful. In April 2016, Dr. Arunachalam filed suit in the District Court against IBM and "Does 1-100," alleging infringement of U.S. Patent No. 7,340,506 ("the '506 patent") and violations of the Racketeer Influenced and Corrupt Organizations Act ("the RICO Act"), 18 U.S.C. § 1962, *et. seq.* C.A. 46; *see* C.A. 45–68 (Original Complaint).[2] The case was assigned to Judge Richard G. Andrews. C.A. 22; *see* C.A. 19–44 (Civil Docket).

In May 2016, Dr. Arunachalam filed an amended complaint, adding SAP, JPMorgan, and Judge Andrews as defendants. C.A. 83; *see* C.A. 83–100 (Amended Complaint). In the Amended Complaint, Dr. Arunachalam repeated her allegation of infringement of the '506 patent by IBM (Count I), C.A. 93, and further alleged that all the defendants had engaged in "[c]ivil [r]acketeering," (Count II), C.A. 96; violated the RICO statute (Count III), C.A. 98, and conspired "to engage in a pattern of racketeering activity," (Count IV), C.A. 99 (capitalization normalized); *see* C.A. 96 (accusing IBM, SAP, JPMorgan, and Judge Andrews of "RICO [p]redicate [a]cts"); 18 U.S.C § 1961(1) (listing predicate "racketeering activit[ies]" under the RICO Act, including "any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in

---

[2] The RICO Act provides, in relevant part, that "[i]t shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." 18 U.S.C. § 1962(b).

obscene matter, or dealing in a controlled substance or listed chemical").

Appellees moved to dismiss Counts II–IV of the Amended Complaint pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6). C.A. 22; *see* C.A. 110 (SAP arguing that Dr. Arunachalam's patent infringement allegations did not qualify as "predicate acts" under the RICO Act), 112 (IBM contending the same and asking the District Court "to exercise its inherent power and enter an appropriate sanction against [Dr. Arunachalam] for filing spurious RICO claims"). Dr. Arunachalam opposed Appellees' motion to dismiss, C.A. 27, and Appellees filed reply briefs, C.A. 27–28. Dr. Arunachalam also filed a motion to recuse Judge Andrews from the case, C.A. 26, and a motion for entry of default judgment against Judge Andrews, C.A. 27.[3]

The Government filed a Statement of Interest on behalf of Judge Andrews, C.A. 115, which the District Court "construed as a motion to dismiss" the claims against Judge Andrews, C.A. 25–26; *see* C.A. 115 (Statement of Interest) (requesting that the District Court "dismiss with prejudice" the claims against Judge Andrews). At Judge Andrews's request, the District Court referred ruling on the Government's Statement of Interest and motion to dismiss to Chief Judge Leonard P. Stark. C.A. 28, 116. Dr. Arunachalam then moved to recuse Chief Judge Stark. C.A. 28.

In a September 2016 order, Chief Judge Stark denied Dr. Arunachalam's motion to recuse him. C.A. 116; *see* C.A. 116–120 (September 2016 Order). Chief Judge Stark also dismissed the claims against Judge Andrews and dismissed him as a defendant. C.A. 119–20; C.A. 119

---

[3] The Clerk of the District Court denied Dr. Arunachalam's motion for entry of default judgment. C.A. 27.

(explaining that "[n]ot only are the allegations raised against Judge Andrews conclusory, they also speak to actions taken by him in performance of his judicial duties," and thus "seek[] relief barred by the well-established doctrine of judicial immunity"). In February 2017, Judge Andrews denied Dr. Arunachalam's motion to recuse him. C.A. 30–31.

In March 2017, the District Court granted Appellees' motion to dismiss Counts II–IV of the Amended Complaint, C.A. 122 (Order Dismissing Counts II–IV), explaining that because "[p]atent infringement is not a crime," it is "not on the extensive list of crimes that can be a racketeering [predicate] act," C.A. 121 (Memorandum Regarding Motions to Dismiss) (citing 18 U.S.C § 1961(1)). Though Dr. Arunachalam had alleged "a laundry list of federal crimes," the District Court found that her "[A]mended [C]omplaint makes no plausible factual allegations to support any of them." C.A. 121.[4] The District Court also granted Dr. Arunachalam "leave to file a motion to amend complying with [the District Court's Local Rule] 15.1," and dismissed SAP and IBM's requests for sanctions "without prejudice to later renewal." C.A. 122.

---

[4] Despite the District Court's dismissal of Dr. Arunachalam's RICO claims against IBM, SAP, and JPMorgan, Dr. Arunachalam reasserted these claims in a later action filed in the U.S. District Court for the Northern District of California. *See Arunachalam v. Apple, Inc.* (*Arunachalam N.D. Cal.*), No. 5:18-CV-01250-EJD, 2018 WL 5023378, at *3–4, *4 n.2 (N.D. Cal. Oct. 16, 2018), *aff'd*, 806 F. App'x 977 (Fed. Cir. 2020) (dismissing Dr. Arunachalam's "confusing" and "disorganized" claims of, inter alia, "RICO violations" against IBM, SAP, and JPMorgan, as well as ten other defendants, and noting that the claims were "identical to the RICO claims brought against IBM, SAP, and JPMorgan . . . in the District of Delaware").

Dr. Arunachalam next filed a motion to vacate the District Court's dismissal of Counts II–IV of the Amended Complaint, and another motion to recuse Judge Andrews. C.A. 31.[5] Dr. Arunachalam then filed a motion for leave to amend her pleadings, C.A. 31–32, which the District Court denied in January 2018, explaining that Dr. Arunachalam's 102-page proposed second amended complaint violated the District Court's Local Rule 15.1, C.A. 124–25. As Dr. Arunachalam had been "explicitly told to comply with the rule," the District Court found that her failure to do so was "willful and in bad faith." C.A. 124. The District Court also prohibited "[a]ny further attempt to amend . . . without leave of court," and stated that "[t]he case will proceed" as to the sole remaining claim in the Amended Complaint, Count I, alleging infringement of claims 20 and 21 of the '506 patent. C.A. 124.[6]

Meanwhile, in December 2017, the U.S. Patent & Trademark Office's Patent Trial & Appeal Board ("PTAB") issued a Final Written Decision ("the PTAB Decision") finding that "claims 20 and 21 of the '506 Patent are unpatentable" and denying Dr. Arunachalam's motion to amend to add proposed new claims 22–49. *SAP Am., Inc. v. Arunachalam*, No. CBM2016-00081, 2017 WL 6551158, at *23 (P.T.A.B. Dec. 21, 2017).[7] After the period for an appeal of

---

[5] In June 2017, Dr. Arunachalam filed a third motion to recuse Judge Andrews, while her second motion was still pending. C.A. 32.

[6] The District Court also denied Dr. Arunachalam's motion to vacate its order dismissing Counts II–IV of the Amended Complaint, as well as Dr. Arunachalam's second and third motions to recuse Judge Andrews. C.A. 32.

[7] Previously, in an inter partes reexamination, the Patent Examiner rejected claims 1–19 of the '506 patent, which the PTAB affirmed. *Microsoft Corp. v. WebXchange,*

the PTAB Decision had expired without an appeal by Dr. Arunachalam, IBM moved to dismiss Count I of the Amended Complaint. C.A. 126. IBM argued that because Dr. Arunachalam "has not timely appealed from the PTAB's [D]ecision," the PTAB would "issue a certificate of cancellation of claims 20 and 21 of the '506 patent—the only remaining claims in the patent-in-suit," and thus "[a] dismissal with prejudice is . . . appropriate." C.A. 126. Dr. Arunachalam opposed dismissal of Count I, arguing that "[t]here [was] no need for [her] to appeal the PTAB's ultra vires unconstitutional and hence void decision 'invalidating' the '506 patent, because the PTAB Judges" lacked "jurisdiction and immunity." C.A. 127; *see* C.A. 127 (Dr. Arunachalam arguing that "the lawless misconduct and Constitutional public breach and fraud by the PTAB and the Federal Circuit . . . voids their rulings and cause[s] them to lose their jurisdiction" and that we had "refused to uphold" our own precedent "in a blatant civil rights discrimination against [her]").

In May 2018, the District Court granted IBM's motion to dismiss Count I with prejudice, concluding that the PTAB Decision "mean[s] there are no valid claims in the '506 patent to assert." C.A. 129–30; *see* C.A. 129–31 (Dismissal Order).[8] Dr. Arunachalam then filed a motion for

---

Inc., No. 2013-008997, 2014 WL 2968085, at *23 (P.T.A.B. June 27, 2014).

[8] The District Court also dismissed Dr. Arunachalam's motion for leave to file a sur-reply to IBM's motion to dismiss, as well as a motion "for this court to give a statement of decision on whether contract law applies to patents," C.A. 34 (capitalization normalized), which the District Court construed as "essentially a request that [the court] find the PTAB system allowing for the invalidation of issued patents to be unconstitutional," C.A. 130. The District Court found "no basis for declaring the [Covered

reconsideration, styled as a "Motion to Alter or Amend a Judgment Pursuant to FRCP . . . 59(e), and Motion for Relief From a Judgment or Order Pursuant to [FRCPs] 60(b)(2), 60(b)(3), 60(b)(4), 60(b)(5), 60(b)(6), 60(d)(1) and 60(d)(3)." C.A. 34.[9] Appellees opposed Dr. Arunachalam's motion for reconsideration, C.A. 34, and SAP and IBM again sought sanctions, C.A. 132–33 (SAP "renew[ing] its request for sanctions," as "[n]otwithstanding th[e] [District] Court's dismissal of [Dr. Arunachalam's] RICO claims against SAP, [she] re-asserted her RICO cause of action against SAP in a subsequent lawsuit in N.D. California" and "is now seeking reconsideration of the [District] Court's dismissal of [her] RICO causes of action for the second time" (emphasis omitted)), 134 (IBM arguing that Dr. Arunachalam's motion for reconsideration "is the latest in a long line of frivolous motions and pleadings in an action that can only be characterized as vexatious" and renewing its request for sanctions).

In June 2018, the District Court denied Dr. Arunachalam's motion for reconsideration on all grounds. C.A. 138–39; *see* C.A. 137–39 (Order Denying Reconsideration). The District Court found that none of Dr. Arunachalam's cited "points and authorities" qualified "as a possible basis for reconsideration" under FRCP 59(e). C.A. 138 (citing *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010) ("A proper [FRCP] 59(e) motion therefore must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or prevent manifest injustice.")). The District Court also found that Dr. Arunachalam's "arguments citing various subsections of [FRCP] 60" were

---

Business Method] procedure to be unconstitutional." C.A. 131.

[9] Dr. Arunachalam's motion for reconsideration is not in the record. *See generally* A.A.; C.A.

similarly meritless. C.A. 138; *see, e.g.*, C.A. 138 (explaining that Dr. Arunachalam sought "relief under [FRCP] 60(b)(3) claiming fraud, but she does not allege any fraud in this case").[10] The District Court then stated that though "SAP

---

[10] In July 2018, Dr. Arunachalam appealed virtually all of the District Court's orders to the Federal Circuit. C.A. 35. In January 2019, we affirmed "the [D]istrict [C]ourt's dismissal of the patent infringement claim against IBM, dismissal of all RICO claims against all defendants, denial of the motion for leave to file a second amended complaint, denials of motions to recuse, and all other district court rulings challenged by Dr. Arunachalam in this appeal." *Arunachalam v. Int'l Bus. Machines Corp.* (*Arunachalam III*), 759 F. App'x 927, 934 (Fed. Cir. 2019), *cert. denied*, 140 S. Ct. 249 (2019), *reh'g denied*, 140 S. Ct. 578 (2019). We explained that the District Court "correctly dismissed the RICO claims for failure to state a claim" because "patent infringement is not a recognized predicate 'racketeering activity' for a RICO claim . . . [n]or do the rest of the pleadings sufficiently support any of the other alleged predicate acts." *Id.* at 931. We found that the District Court "did not abuse its discretion in denying Dr. Arunachalam leave to amend the complaint for a second time," because her proposed second amended complaint "still lack[ed] factual allegations to support a cognizable predicate act for RICO." *Id.* at 932. We also found that because Dr. Arunachalam did not timely appeal the PTAB Decision invalidating claims 20 and 21 of the '506 patent, the PTAB Decision "is final and may not be collaterally attacked through a separate litigation," thus mooting Count I's allegation of patent infringement. *Id.* at 933. Finally, we found that the District Court did not abuse its discretion in denying recusal of Judge Andrews and Chief Judge Stark, as Dr. Arunachalam had not

and IBM express an interest in attorneys' fees and/or other sanctions," any parties seeking attorneys' fees should file such requests "by separate motion." C.A. 139.

In July 2018, Appellees individually moved for sanctions in the form of attorneys' fees, as well as injunctions against further filings by Dr. Arunachalam. C.A. 36. After the motions for sanctions and pre-filing injunctions were fully briefed, Dr. Arunachalam moved for leave to file a surreply, which necessitated responsive briefing by Appellees. C.A. 38. The District Court granted Dr. Arunachalam leave to file a surreply, which she did not file. C.A. 39.

In March 2019, the District Court granted SAP and JPMorgan's motion for attorneys' fees for "defending against a baseless racketeering lawsuit," *Arunachalam I*, 2019 WL 1388625, at *2–3, and granted-in-part IBM's motion, *id.* at *3; *see id.* (awarding IBM attorneys' fees only for "two . . . pleadings," as Dr. Arunachalam's ownership of the '506 patent and history with IBM "made her racketeering suit against them a little more plausible [than against SAP and JPMorgan] if nevertheless still not even close to stating a colorable complaint"). The District Court did not rule on the specific fee amounts and ordered Appellees to submit further documentation. *Id.* at *4.[11]

Appellees then filed new motions for attorneys' fees with supporting materials. C.A. 39–40. In May 2019, Dr. Arunachalam filed her opposition, as well as a list of

---

contested the factual bases supporting the denials. *Id.* at 933–34.

[11] The District Court denied Appellees' motions for pre-filing injunctions, finding that SAP and IBM's proposed injunctions were not "narrowly tailored" and stating that "the imposition of monetary sanctions might be as effective in discouraging improper behavior." *Arunachalam I*, 2019 WL 1388625, at *1.

questions, styled as "Interrogatories Propounded to Defendants, their Counsel of Record and Hon. Judge Andrews." C.A. 41; *see* C.A. 140–41 (Interrogatories). This necessitated a responsive filing by Appellees. C.A. 41. Dr. Arunachalam then filed two motions requesting that Judge Andrews and "attorneys of record" produce to Dr. Arunachalam a copy of their oaths of office, "foreign registration statements," as well as "bond" and "insurance information." C.A. 41 (capitalization normalized). These motions also necessitated a responsive filing by Appellees. C.A 42.

In November 2019, the District Court granted JPMorgan and SAP's motions for attorneys' fees and granted-in-part IBM's motion for attorneys' fees. *Arunachalam II*, 2019 WL 5896544, at *3. The District Court awarded $57,190.40 to JPMorgan, $51,772.09 to SAP; and $40,000 to IBM. *Id.* at *2–3. The District Court also denied Dr. Arunachalam's two "frivolous" motions seeking oaths of office and additional information from Judge Andrews and "attorneys of record," another motion seeking to recuse Judge Andrews, and a motion seeking to recuse both Judge Andrews and Chief Judge Stark. *Id.* at *1.

Dr. Arunachalam then filed two additional motions, the first styled as "M[otion] And Notice to Enforce the Mandated Prohibition from Repudiating Government-Issued Contract Grants of Any Kind as Declared by Chief Justice Marshall in Fletcher [v]. Peck (1810) and Trustees of Dartmouth College [v]. Woodward (1819) Which Have Never Been Repudiated and Stand as the Law of the Land and Case, of Which this Courts Solemn Oath Duty Compels this Court to Enforce above All Else, with All Due Respect," C.A. 42 (Motion to Enforce the Mandated Prohibition), and the second as "M[otion] for the Court to Vacate Its Unconstitutional Order . . . and Enter a New and Different Order," C.A. 43 (Motion for the Court to Vacate Its

Unconstitutional Order).[12] In January 2020, the District Court dismissed these two motions, explaining that Dr. Arunachalam had filed the first motion "in eight different cases," without reference "as to why it was filed in this case," and "cit[ing] no rules as to why it could possibly be timely." C.A. 2. The District Court construed the second motion "as a motion for reconsideration," but found that it "does not meet the standard for reconsideration because . . . what it is really challenging is the underlying decision that was affirmed by the Court of Appeals for the Federal Circuit"—i.e., the dismissal of Counts I–IV of the Amended Complaint—and "it is too late to move to reconsider that decision[.]" C.A. 2.

DISCUSSION

I. The Court's Inherent Power to Impose Sanctions

A. Standard of Review and Legal Standard

"We review a court's imposition of sanctions under its inherent power for abuse of discretion." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 55 (1991); *see Amsted Indus. Inc. v. Buckeye Steel Castings Co.*, 23 F.3d 374, 379 (Fed. Cir. 1994) ("This court reviews the lower court's use of its inherent power to impose sanctions under the abuse of discretion standard." (citing *Chambers*, 501 U.S. at 54–55)). "An abuse of discretion occurs when a district court's decision commits legal error or is based on a clearly erroneous assessment of the evidence." *Univ. of Utah v. Max-Planck-Gesellschaft zur Foerderung der Wissenschaften e.V.*, 851 F.3d 1317, 1322 (Fed. Cir. 2017).

"Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to

---

[12] The full text of these motions is not in the record. *See generally* A.A.; C.A.

their lawful mandates." *Chambers*, 501 U.S. at 43 (internal quotation marks and citation omitted). "These powers are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Id.* (internal quotation marks and citation omitted). Specifically, federal courts "may assess attorney[s'] fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* at 45–46 (internal quotation marks and citation omitted); *see Pickholtz v. Rainbow Techs., Inc.*, 284 F.3d 1365, 1378 (Fed. Cir. 2002) (holding that "the inherent power can be used to shift attorney[s'] fees when there has been . . . conduct that is in bad faith, vexatious, wanton, or for oppressive reasons"). "The imposition of sanctions" under a court's inherent power serves "the dual purpose of vindicating judicial authority without resort to the more drastic sanctions available for contempt of court and making the prevailing party whole for expenses caused by his opponent's obstinacy." *Chambers*, 501 U.S. at 46 (internal quotation marks, citation, and alterations omitted).

B. The District Court Did Not Abuse Its Discretion in Imposing Sanctions Against Dr. Arunachalam

The District Court, exercising its inherent authority, concluded that "monetary sanctions" were "a reasonable response to [Dr. Arunachalam's] conduct." *Arunachalam I*, 2019 WL 1388625, at *3. The District Court explained that Dr. Arunachalam was an "abusive" and "prodigious litigant," who forced Appellees to defend "a baseless racketeering lawsuit" and to respond to numerous meritless motions and oppositions, "willful[ly] and in bad faith" failed to comply with the District Court's Local Rules and instructions, filed "repetitive motions for recusal" lacking a "valid basis," and otherwise engaged in "vexatious conduct." *Id.* at *2–3. The District Court subsequently awarded $57,190.40 in attorneys' fees to JPMorgan, $51,772.09 to SAP, and $40,000 to IBM. *Arunachalam II*, 2019 WL

5896544, at *2–3. Dr. Arunachalam argues that we cannot "affirm the District Court's sanctions and attorneys' fees without offending the Constitution." Appellant's Br. 55 (capitalization normalized). We disagree with Dr. Arunachalam.

The District Court did not abuse its discretion in imposing monetary sanctions. The record amply demonstrates Dr. Arunachalam's vexatious and wanton litigation conduct. For example, Counts II–IV of the Amended Complaint accuse SAP and JPMorgan of three RICO violations, C.A. 96–100, yet the only factual allegations against them concern: the District Court's personal jurisdiction over them, C.A. 87–88; their alleged use of "[Dr. Arunachalam's] patented Web applications on a Web browser," C.A. 87; and their lack of a license "under the '506 patent," C.A. 91. As of the date of the issuance of this opinion, these allegations have embroiled SAP and JPMorgan in baseless litigation for over four and a half years. C.A. 22 (showing a filing date of May 2016 for the Amended Complaint). Even after the dismissal of her RICO claims against Appellees in the District Court, Dr. Arunachalam reasserted those same claims against Appellees in another action in the U.S. District Court for the Northern District of California, further evidencing her vexatious and bad faith conduct. *See Arunachalam N.D. Cal.*, 2018 WL 5023378, at *4, *4 n.2.

During litigation, Dr. Arunachalam forced Appellees and the District Court to expend resources responding to her repetitive, frivolous, and often bizarre oppositions and motions. C.A. 26–44 (showing a total of seven motions filed by Dr. Arunachalam to recuse Judge Andrews and two to recuse Chief Judge Stark), 34 (Dr. Arunachalam moving for reconsideration of the District Court's dismissal of Count I), 34 (Dr. Arunachalam moving for "a Statement of Decision on Whether Contract Law Applies to Patents"), 34–42 (detailing Appellees' responsive filings), 38 (Dr. Arunachalam moving for leave to file a surreply to Appellees' motions for sanctions, which she did not file after the

District Court's grant of leave), 41 (Dr. Arunachalam's two motions requesting that Judge Andrews and "attorneys of record" produce to her their oaths of office, "foreign registration statements," and insurance information), 127 (Dr. Arunachalam opposing dismissal of Count I of the Amended Complaint even after the PTAB had invalidated the relevant, and indeed, only remaining, claims of the '506 patent), 141 (Dr. Arunachalam asking in her "Interrogatories," filed after dismissal of all counts of the Amended Complaint, whether any of the Appellees, their counsel of record, or Judge Andrews had ever associated with, inter alia, "the Defense Advanced Research Projects Agency (DARPA)," and claiming that "Defendants have colluded with Judge Andrews and brazenly devised schemes to evade the Government and the laws of the United States"). Dr. Arunachalam also willfully failed to comply with the District Court's specific instructions regarding the filing of a second amended complaint. C.A. 122 (the District Court granting Dr. Arunachalam leave to file a motion to amend the Amended Complaint "complying with [the District Court's Local Rule] 15.1"), 124 (the District Court explaining that Dr. Arunachalam's 102-page proposed second amended complaint did not comply with its Local Rule 15.1).

Finally, the District Court awarded reasonable attorneys' fees. The District Court applied the "lodestar" approach, calculating attorneys' fees by "multiplying the amount of time reasonably expended by reasonable hourly rates[.]" *Arunachalam II*, 2019 WL 5896544, at *2 (quoting *Parallel Iron LLC v. NetApp, Inc.*, 84 F. Supp. 3d 352, 356 (D. Del. 2015)); *see Bywaters v. United States*, 670 F.3d 1221, 1225–26 (Fed. Cir. 2012) (explaining that "the amount of attorneys' fees to be awarded under the 'lodestar' approach" is calculated "by multiplying the number of hours reasonably expended by a reasonable hourly rate"). For SAP and JPMorgan, the District Court "reviewed the documentary support in relation to the actual billings," the

hourly rates charged, and the pleadings produced during the relevant periods. *Arunachalam II*, 2019 WL 5896544, at *3.[13] The District Court concluded that the claimed hours and rates were "reasonable," and awarded SAP and JPMorgan their requested amounts of fees. *Id.*; *see id.* (awarding $51,772.09 to SAP and $57,190.40 to JPMorgan). The District Court performed the same analysis for IBM's requested $57,034.38 in fees, and found that though the rates and hours were reasonable, "the filings . . . appear to involve some billing for duplication of effort[.]" *Id.* at *2. Thus, the District Court awarded IBM fees in the reduced amount of $40,000. *Id.* Accordingly, the District Court did not abuse its discretion in imposing sanctions for Dr. Arunachalam's vexatious litigation conduct. *See Chambers*, 501 U.S. at 45–46.

Dr. Arunachalam's counterargument is unpersuasive. Dr. Arunachalam contends, without offering more, that we cannot "affirm the District Court's sanctions and attorneys' fees without offending the Constitution," Appellant's Br. 55, specifically, her rights under the First, Fifth, Eighth, and Fourteenth Amendments, *id.* at. 2–3. Dr. Arunachalam's assertions are insufficiently developed. "In order for this court to reach the merits of an issue on appeal, it must be adequately developed." *Monsanto Co. v. Scruggs*, 459 F.3d 1328, 1341 (Fed. Cir. 2006); *see id.* (holding that undeveloped arguments are "deemed waived"); *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("A skeletal 'argument', really nothing more than an assertion, does not preserve a claim."). This argument is, accordingly, waived.

---

[13] Dr. Arunachalam opposed Appellees' requested fees, arguing that "[n]ot one dollar is reasonable," "Defendants plagiarized each other," and took "less than [fifteen] minutes to write their briefs." *Arunachalam II*, 2019 WL 5896544, at *3.

C. The Scandalous and Irrelevant Statements in Dr. Arunachalam's Briefs Are Stricken

Dr. Arunachalam's briefing before us is replete with scandalous and baseless allegations similar to those she made below, all presented without a semblance of factual support.[14] Dr. Arunachalam alleges that Appellees and

---

[14] "The court may," acting "on its own," "strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter." FED. R. CIV. P. 12(f)(1). Courts have applied several definitions for what constitutes "scandalous matter." Courts may, for example, strike as "clearly . . . scandalous" a plaintiff's brief "contain[ing] many allegations wholly aside from the charges made in [the] complaint, and bearing reproachfully upon the moral character of individuals," *Green v. Elbert*, 137 U.S. 615, 624 (1891), or allegations "bear[ing] no possible relation to the controversy or [that] may cause the objecting party prejudice," *Talbot v. Robert Matthews Distrib. Co.*, 961 F.2d 654, 664 (7th Cir. 1992); *see Alvarado-Morales v. Digital Equip. Corp.*, 843 F.2d 613, 617–18 (1st Cir. 1988) (describing as scandalous "matter which impugned the character of defendants"); *Cobell v. Norton*, 224 F.R.D. 1, 5 (D.D.C. 2004) (stating that "scandalous" statements are those which "unnecessarily reflect[] on the moral character of an individual or state[] anything in repulsive language that detracts from the dignity of the court" (internal quotation marks and citation omitted)). Further, courts have struck "scandalous matter" in a variety of contexts, such as when plaintiffs, without a factual basis, alleged the defendants had intentionally caused a salmonella outbreak at a dairy producer, *Talbot*, 961 F.2d at 664, and where a pro se plaintiff alleged, inter alia, "a world-wide religious inquisition" and "illegal wiretapping by the U.S. Government," *Atraqchi v. Williams*, 220 F.R.D. 1, 3 (D.D.C. 2004); *see id.* (describing the allegations as "immaterial, scandalous and frankly

"all counsel" have "collusively engaged in obstruction of justice, aided and abetted by Judges Stark and Andrews," Appellant's Br. 6, have "knowingly, willfully, intentionally, recklessly, [and] negligently ma[de] False Official Statements, causing damage to [Dr. Arunachalam's] patents and her pristine character/reputation," and have "us[ed] the courts as a vehicle to propagate libel," *id.* at 4–5; *see id.* at 2 (stating that Appellees, their counsel, and the PTAB have colluded "in a corrupt criminal enterprise"). She claims Appellees' counsel "have violated their solemn oaths of office," "must be disbarred and sanctioned," and that their "willful misrepresentations . . . constitute fraud on the [c]ourt." *Id.* at 16–17 (capitalization normalized). She alleges that "Appellees' attorneys engaged in a false propaganda of collateral estoppel from void Orders by financially-conflicted judges," *id.* at 11, and that the District Court "ke[pt] her gagged so as to prevent her from speaking to defend herself," *id.* at 8.

Further, Dr. Arunachalam makes multiple demonstrably false statements of fact in her briefing. For example, in her opening brief, Dr. Arunachalam states that "[n]o Federal Court [has] ruled that [her] Claims 1–21 of [her] '506 patent are invalid," Appellant's Br. 13, and that "the PTAB never reached the patent case" as to the validity of the '506 patent, *id.* at 16 (emphasis omitted). However, as noted above, the PTAB affirmed the Patent Examiner's cancellation of claims 1–19 of the '506 patent, *see Microsoft*, 2014

---

delusional"); *Collura v. City of Philadelphia*, 590 F. App'x 180, 185 (3d Cir. 2014) (affirming the district court's dismissal of a pro se complaint "replete with abusive language and ad hominem attacks" under FRCP 12(f)); *c.f. Chou v. Univ. of Chicago*, 254 F.3d 1347, 1366 (Fed. Cir. 2001) (finding the district court did not abuse its discretion in striking plaintiff's "redundant and immaterial" allegations of academic theft and fraud under FRCP 12(f)).

WL 2968085, at *23, and issued a Final Written Decision finding claims 20 and 21 of the '506 patent unpatentable and denying Dr. Arunachalam's motion to amend to add proposed new claims 22–49, *SAP*, 2017 WL 6551158, at *1; *see id.* at *23 (finding that "the subject matter of claims 20 and 21 of the '506 [p]atent are directed to ineligible subject matter under 35 U.S.C. § 101" and obvious over the prior art). The District Court dismissed Dr. Arunachalam's claim of infringement of claims 20 and 21 of the '506 patent, noting that "[c]laims 1–19 had been cancelled earlier" and "[t]hus, the PTAB decision meant there [we]re no valid claims in the '506 patent to assert." C.A. 129. We affirmed the District Court's dismissal. *See Arunachalam III*, 759 F. App'x at 934.

Dr. Arunachalam's bizarre and scandalous statements extend to this court, the Judiciary, and indeed the Government as a whole. She alleges that we have colluded with the District Court, the PTAB, and Appellees in a "collateral estoppel farce propagated against multiple [c]ourts," Appellant's Br. 13, and that we have "committed treason," *id.* at 18; *see id.* (claiming that "[t]his [c]ourt needs to have a criminal investigation started against all the Constitutional tortfeasors," and "the Judges, [the] PTAB Administrative Judges[,] and lawyers who breached their solemn oaths of office . . . must be arrested"). Dr. Arunachalam states that we have "failed to apply Governing Supreme Court Precedents," as well as our own precedent, to her case, and that our "rulings are all void." *Id.* at 13. She claims that "the Courts and [the PTAB]" "injured" her "through a treasonous breach of solemn oaths of office by Judges and officers of the court and the corruption of fraud of the court and the [PTAB]." *Id.* at 17. Dr. Arunachalam also alleges that "the Judiciary[,] the Executive Branch . . . and [the] Legislative Branch . . . violat[ed] the Contract Clause and the Separation of Powers Clauses of the Constitution[.]" *Id.* at 12–13. This is far from an exhaustive

list of Dr. Arunachalam's allegations. *See generally id.* 1–58; Reply Br. 1–27.

Further, Dr. Arunachalam's scandalous and unsupported statements are largely irrelevant to the issues on appeal and take up the vast majority of her briefing, hindering our ability to review her pertinent arguments, if any. Despite acknowledging that her appeal "stems from the District Court's [orders] granting Defendants-Appellees' Motion for Attorneys' Fees[,]" Appellant's Br. 7, Dr. Arunachalam's briefing is almost entirely comprised of accusations pertaining to the PTAB's cancellation of the '506 patent and the District Court's dismissal of her Amended Complaint, s*ee generally id.* 1–58; Reply Br. 1–27, matters on which we have already ruled and which are not at issue on appeal, *see Arunachalam III*, 759 F. App'x at 933–34 (affirming the District Court's dismissal of all counts of the Amended Complaint and explaining that Dr. Arunachalam's failure to appeal the PTAB Decision makes its decision "final" and not subject to collateral attack "through a separate litigation"). Thus, Dr. Arunachalam's scandalous and irrelevant statements impede meaningful review of her arguments. *See SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006) ("'Judges are not like pigs, hunting for truffles buried in briefs.'" (quoting *Dunkel*, 927 F.2d at 956)).[15]

---

[15] Additionally, Dr. Arunachalam's briefing contains no citations to the record, despite making numerous factual allegations. *See generally* Appellant's Br. 1–58; Reply Br. 1–27; FED. R. APP. P. 28(a)(6) ("The appellant's brief must contain . . . a concise statement of the case setting out the facts relevant to the issues submitted for review . . . with appropriate references to the record[.]"), 28(a)(8)(A) (stating that an appellant's brief must include an argument containing the "appellant's contentions . . . with

The scandalous and irrelevant statements in Dr. Arunachalam's briefing raise the judicial management concerns the Supreme Court identified in *Chambers*. *See* 501 U.S. at 43 (describing the courts' need "to achieve the orderly and expeditious disposition of cases" (internal quotation marks and citation omitted)); *Finch v. Hughes Aircraft Co.*, 926 F.2d 1574, 1578 (Fed. Cir. 1991) ("[A]ppellate courts must consider the importance of conserving scarce judicial resources."). To this end, courts are "vested, by their very creation," with "certain implied powers." *Chambers*, 501 U.S. at 43 (internal alterations, quotation marks, and citation omitted); *see Micron Tech., Inc. v. Rambus Inc.*, 645 F.3d 1311, 1326 (Fed. Cir. 2011) (stating that "courts have the inherent power to control litigation by imposing sanctions appropriate to rectify improper conduct by litigants" (internal quotation marks and citation omitted)). These powers are wide-ranging. *See Chambers*, 501 U.S. at 43 ("[A] federal court has the power to control admission to its bar and to discipline attorneys who appear before it."); *id.* at 44 (holding that courts may punish for contempt those who are "disobedien[t] to the orders of the Judiciary"); *id.* 44–46 (holding that courts "may bar from the courtroom a criminal defendant who disrupts a trial[,]" may "assess attorney[s'] fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons," and "may act *sua sponte* to dismiss a suit for failure to prosecute" (internal quotation marks and citation omitted)).

Particularly relevant here, while these "inherent powers must be exercised with restraint and discretion," "[a] primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Id.* at 44–45; *cf.* FED. R. APP. P. 38 (providing that this court may impose sanctions if we "determine[] that an

---

citations to . . . [the] parts of the record on which the appellant relies").

appeal is frivolous"); *Nat'l Org. of Veterans Advocates, Inc. v. Sec'y of Veterans Affs.*, 710 F.3d 1328, 1335 (Fed. Cir. 2013) ("[W]hile sanctions must be fashioned with restraint and discretion, courts of justice can fashion appropriate monetary and nonmonetary sanctions to rectify misbehavior.").

Even according Dr. Arunachalam wider latitude in view of her pro se status, her baseless, outlandish, and irrelevant invective degrades the dignity and decorum of the court and hampers "the orderly and expeditious disposition of cases." *Chambers*, 501 U.S. at 43 (internal quotation marks and citation omitted). Sanctions are appropriate to address and discourage such abusive conduct. *See Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1554 (Fed. Cir. 1983) (imposing sanctions and explaining that "we are duty-bound to guard our segment of the judicial process against abuse"). We have considered the range of sanctions discussed above. *See Chambers*, 501 U.S. at 43–46. In view of the fact that monetary sanctions have already been assessed in the underlying case, as well as the form of Dr. Arunachalam's misconduct, we conclude that a lesser sanction is appropriate.[16] Accordingly, the scandalous and irrelevant statements in Dr. Arunachalam's briefs alleging, inter alia, "obstruction of justice," "a corrupt criminal enterprise," "libel," "willful misrepresentations," and "fraud" by the District Court, Judges Stark and Andrews, and Appellees' counsel, Appellant's Br. 2–17, as well as "treason," collusion in a "collateral estoppel farce," and "fraud" by the PTAB, this Court and its Judges, and "the Courts" generally, *id.* at 13–17, are stricken.

---

[16] In addition to the assessments of costs, further submissions of a similar character would raise the possibility of monetary sanctions from this Court. *See Chambers*, 501 U.S. at 44–45.

CONCLUSION

We have considered Dr. Arunachalam's remaining arguments and find them unpersuasive.[17] Accordingly, the Judgment of the U.S. District Court for the District of Delaware is

AFFIRMED

COSTS

Costs to IBM, SAP, and JPMorgan.

---

[17] In her Notice of Appeal, Dr. Arunachalam stated that, in addition to the District Court's grant of monetary sanctions, she was also appealing the denials of her Motion to Enforce the Mandated Prohibition and Motion for the Court to Vacate Its Unconstitutional Orders. Notice of Appeal 1–2, ECF No. 1. Yet, Dr. Arunachalam's briefs did not address the reasons for the District Court's denial of these motions—namely, that she had filed the first motion "in eight different cases," without explaining its relevance or untimeliness, and that the second motion was an attempt to re-challenge the dismissal of her Amended Complaint, which we had already affirmed. C.A. 2; *see Arunachalam III*, 759 F. App'x at 934; *see generally* Appellant's Br. 1–58; Reply Br. 1–27. Accordingly, these issues are waived. *See SmithKline Beecham Corp.* 439 F.3d at 1320.

App. 3a:

Petitioner Dr. Lakshmi Arunachalam's combined petition for panel rehearing and petition for *en banc* rehearing **(3/11/21)**

2020- 1493

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Dr. Lakshmi Arunachalam,
a woman,

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
SAP AMERICA, INC.,
JPMORGAN CHASE & CO.,
Defendants-Appellees,

DOES 1-100,
Defendants,

Appeal from the United States District Court for the District of Delaware
in Case No. 1:16-cv-281-RGA, Judge Richard G. Andrews

Dr. Lakshmi Arunachalam's COMBINED PETITION FOR PANEL REHEARING AND PETITION FOR *EN BANC* REHEARING

March 11, 2021

Dr. Lakshmi Arunachalam, a woman,
222 Stanford Ave, Menlo Park, CA 94025
Tel: 650.690.0995; Laks22002@yahoo.com

Dr. Lakshmi Arunachalam, a woman,
Self-Represented Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

STATEMENT OF *SELF-REPRESENTED*
Dr. Lakshmi Arunachalam FOR *EN BANC* PETITION

I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance:

1. Confronted with the particularly egregious facts of this case, whether any reasonable officer should have realized that elder victim's conditions of denial of access to the court offended the Constitution.

2. Whether it is unconstitutional for the Court to punish an elder, Dr. Arunachalam for the exercise of a constitutional right.

3. Whether the Appellate Court entertaining an Order from a District Court Judge without jurisdiction in a case where there was NO Defendant, NO answer to the Complaint, NO case, NO trial, NO hearing and affirming the District Court's award of attorneys' fees violated clearly established statutory and constitutional rights of a citizen to due process and a fair hearing.

4. Where the conduct of a Government officer violated clearly established statutory and constitutional rights of a citizen to due process and a fair hearing, by direct denial of access to the courts upon the question of due process by hindering access to the courts or making resort to the courts upon it difficult, expensive, hazardous, injuring an elder, disabled woman of color, took her property without due process, entitles the elder to constitutional redress.

5. Whether the Appellate Court can make a decision, after failing to prove jurisdiction upon breach of oaths of office, in violation of Supreme Court precedent that once jurisdiction is challenged, a judge cannot move one step further without proving jurisdiction.

6. Whether the District Court can make a decision, after failing to prove jurisdiction, after admitting to direct stock ownership in a litigant in the case and breaching his oath of office.

RES ACCENDENT LUMINA REBUS
ONE THING THROWS LIGHT UPON OTHERS

7. If not, whether any reasonable person would conclude that the Appellate Court entertaining a void Order without a hearing from a District Court judge without

jurisdiction, who failed to prove jurisdiction upon notice, in a case where *the ONE THING is there is NO Defendant, NO Answer to the Complaint, NO hearing, NO trial, only a Judge's Order without a hearing from a judge without jurisdiction*, and the District Court's award of attorneys' fees to the victim's opponents who failed to file an Answer, is not erroneous and fraudulent and is not proof of Conspiracy Against Rights in violation of 18 USC §241 to injure, threaten, or intimidate a person in any state, territory, or district in the free exercise or enjoyment of any right or privilege secured to the individual by the U.S. Constitution or the laws of the U.S. and does not constitute denial of due process and fair hearing to a 73-year old disabled elder woman of color, entitling her to Constitutional redress.

8. Whether a finding of 8th Amendment deliberate indifference is inconsistent with a finding of qualified immunity, where the citizen's right to due process and a fair hearing, and access to the court upon the question of due process itself was clearly established at the time of officers' misconduct and damage to citizen's property.

9. Whether this Court must sanction the Government officers for violating the Constitution and maligning an elder to cover up their own misfeasance, malfeasance, nonfeasance and breaching their oaths of office and violating hate crime laws, and committing obstruction of justice and aiding and abetting anti-trust and conspiring to deprive the citizen of her property and have them pay monetary damages to Dr. Arunachalam as a remedy against government workers who violate the Constitution, where "this exact remedy has coexisted with our constitutional system since the dawn of the Republic."

10. Where Defendants failed to answer the Complaint, and the Appellate Court's void Order without jurisdiction is *defacto* the Answer to the Complaint making it the *defacto* Defendant, any reasonable officer confronted with the particularly egregious facts of this case, should have realized that victim's conditions of denial of access to the court offended the Constitution, requiring this Court to strike it's void Orders that maligned the elder for fighting for her constitutional rights and property rights.

11. Whether the Federal Circuit in deceiving the Supreme Court by its material omissions that there was never a trial nor a hearing, no Defendant, no Answer to the Complaint, in this case since 2016, makes its Order on appeal void and must be stricken, as the Appellate brief is a surprise, the Federal Circuit's Order is the *defacto* answer, the Federal Circuit turned into the *defacto* Defendant.

12. Whether it is inconsistent with the standards of the Supreme Court, where two or more Government officials conspired to and injured, threatened, and intimidated an elder woman of color with disabilities in the free exercise or enjoyment of her right or privilege secured to her by the U.S. Constitution to due process and a fair hearing and hate crime laws of the U.S.

13. Whether violating the constitutional rights to due process and fair hearing of an elder woman of color with disabilities by direct denial of access to the courts upon the question of due process itself, affecting interstate commerce, through threats, intimidation, defamation, False Official Statements, tampering with evidence, and excessive force in violation of the 8th Amendment by inflicting hate crimes upon the elder in violation of 18 U.S.C. §§241, 249; 42 U.S.C. §1983 and 18 U.S.C. §242, both enacted as part of the Civil Rights Act of 1871, injuring the elder physically, depriving the elder of her property without due process, and by breach of oaths of office by Government officials, entitle the elder to Constitutional redress.

14. Whether this Court obstructing the elder from her right to Constitutional redress, and hiding behind qualified immunity, depriving the elder of a remedy for her protected rights to the obligation of Contract which cannot be impaired by the Supreme Law of the Land, is inconsistent with the standard of the United States Supreme Court and warrants damages as not only an appropriate remedy against government workers who violate the Constitution, but that "this exact remedy has coexisted with our constitutional system since the dawn of the Republic."

15. Whether Government officials with no jurisdiction must be sanctioned for conspiring to violate and violating the constitutional rights to due process and fair hearing of an elder woman of color with disabilities by direct denial of access to the courts upon the question of due process itself, affecting interstate commerce, through threats, intimidation, defamation, excessive force in violation of the 8th Amendment by inflicting hate crimes upon her, affecting interstate commerce in violation of 18 U.S.C. §§241, 249; 42 U.S.C. §1983 and 18 U.S.C. §242, the Civil Rights Act, and injuring her physically and depriving her of her property without due process, hiding behind qualified immunity, when there can be no right without a remedy, and entitle her to Constitutional redress.

16. Where the conduct of a Government officer inflicting retaliatory exaction in dishonor and without jurisdiction, violated:
    i. The 8th Amendment Cruel and Unusual Punishment Clause and inflicted excessive force on an elder, disabled, female citizen of color;
    ii. 42 U.S.C. §1983; 18 U.S.C. §242, the Civil Rights Act;
    iii. the First Amendment; and
    iv. clearly established statutory and constitutional rights of an elderly, disabled female citizen of color, to due process and a fair hearing, a neutral judge without stock in the defendant; and
    v. her property was taken without due process;
    vi. she was deprived her of liberty without due process;
    vii. citizen injured through the corruption or fraud of the court or other administrative body disposing of her case, and she is entitled to Constitutional redress;
    viii. they made final decisions upon the ultimate question of due process which cannot be conclusively codified to any non-judicial tribunal, by direct denial of access to the courts upon this question of due process by hindering access to the courts or making resort to the courts upon it difficult, expensive, hazardous, all alike violate the Constitutional provision;
    ix. called her names with no evidence of any misconduct on the part of the elder disabled female citizen complying with all the rules of court;
    x. sadistically and maliciously applied for the very purpose of causing harm and caused harm to the elder;
    xi. that in the light of pre-existing law, the unlawfulness is apparent and where the state of the law at the time of the conduct gave the Government Officer fair warning that their conduct was unconstitutional;
    xii. for fabrication of evidence, where reasonable officers should have known that they certainly could not fabricate inculpatory evidence;
    xiii. and that "citizens are to have a meaningful opportunity to be heard as to their rights before they are finally deprived of possession of property;"
    xiv. suppression of evidence;
    xv. tampering with evidence;
    xvi. tampering with the record;
    xvii. and that the officer's "curbside courtroom, in which he decided who was entitled to possession, is precisely the situation and deprivation of rights to be avoided;"
    xviii. where the federal constitutional right claimed by the citizen was clearly established;
    xix. where the officer was not reasonably mistaken about the state of the law;

xx. of which a reasonable person would have known;
xxi. where a 'reasonable public official' would have known that his or her actions violated clearly established law;
xxii. where the Court's standard "would not allow the official who actually knows that he was violating the law to escape liability for his actions;"
xxiii. where the Government official's conduct in fact violated clearly established law and the immunity defense fails;
xxiv. where a reasonably competent public official should know the law governing his conduct;
xxv. this Court acted with a motive to **suppress** citizen's speech;
xxvi. where the subjective element required to establish constitutional tort is so extreme that every conceivable set of circumstances in which this constitutional violation occurs is clearly established to be a violation of the Constitution;
xxvii. where the citizen has provided a showing of subjective deliberate indifference necessary to establish an Eighth Amendment conditions-of-confinement/restrictions/restraints claim, which necessarily negates the officer's claim to qualified immunity;
xxviii. where the Government official had actual knowledge or awareness and remained in deliberate indifference;
xxix. where the conduct at issue violated a clearly established constitutional right;
xxx. The Government official is not entitled to qualified immunity, on the ground that case law should have made it obvious to a reasonable official that the conduct was unconstitutional;
xxxi. Where a finding of Eighth Amendment deliberate indifference is inconsistent with a finding of qualified immunity; *and,*
xxxii. Where the citizen's right to *access to the Court and due process* was clearly established at the time of officers' misconduct and damage to citizen's property.

I believe the panel decision is contrary to the following decisions of the Supreme Court of the United States or precedents of this Court:

Taylor v. Riojas, 592 U.S. __ (2020) in U.S. Supreme Court Case No. 19-1261;
Tanzin v. Tanvir, U.S. Supreme Court Case No. 19-71, 592 U.S. __ (2020);
Central Land Company v. Laidley, 150 U.S. 103 (1895);
Jordan v. Mass., 225 U.S. 167 (1912);
Falls Brook Irrigation District v. Bradley, 164 U.S. 167-70 (1896);

Louisville & Nashville Railway Co. v. Kentucky, 183 U.S. 516 (1902);
C.B. & Q. Railway v. Babcock, 204 U.S. 585 (1907);
Rhode Island v. Massachusetts, 37 U.S. 657, 718 (1838);
Festo Corp. v Shoketsu Kinzoku Kogyo Kabushiki Co., 535 U.S. 722 (2002);
Kumar v. Ovonic Battery Co., Inc. And Energy Conversion Devices, Inc., Fed. Cir. 02-1551, -1574, 03-1091 (2003); 351 F.3d 1364, 1368, 69. (2004);
Elliott v. Piersol, 26 U.S. 328, 240 (1828);
Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974);
Cooper v. Aaron, 358 U.S. 1 (1958);
U.S. v. Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L. Ed. 2d. 392, 406 (1980);
Cohens v. Virginia, 19 US. 264 (1821);
Brooks v. Yawkey, 200 F. 2d 633 (1953);
Stanard v. Olesen, 74 S. Ct. 768 (1954);
Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819);
Grant v. Raymond, 31 U.S. 218 (1832);
U.S. v. American Bell Telephone Company, 167 U.S. 224 (1897);
Fletcher v. Peck, 10 U.S. 87 (1810);
Arunachalam v. Lyft, 19-8029, voiding all Orders in **all** of Appellant's Supreme Court cases, for want of jurisdiction;
Ableman v. Booth, 62 U.S. 524 (1859);
Sterling v. Constantin, 287 U.S. 397 (1932);
U.S. v. Burr, 25 F. Cas. 55, 161 (CCD, Va. No. 14693);
Aqua Products Inc. v. Matal, Fed Cir. Case 15-1177, October 4, 2017;
Arthrex, Inc. v. Smith & Nephew, Inc., No. 2018-2140, slip op. (Fed. Cir. Oct. 31, 2019);
Virnetx Inc. v. Cisco Systems and USPTO (intervenor) (Fed. Cir. 5/13/2020);
Cherrington v. Erie Ins. Property and Cas. Co., 75 S.E. 2d. 508, 513 (W. Va, 2013);
Brown v. Culpepper, 559 F.2d 274, 278 (5th Cir. 1977);
Bradley v. Richmond School Board, 416 U.S. 696, 723 (1974);
Hensley v. Eckerhart, 461 U.S. 424, 433 (1983);
Texas State Teachers Association v. Garland Independent School District, 489 U.S. 782, 791 (1989);
Farrar v. Hobby, 506 U.S. 103 (1992);
Blum v. Stenson, 465 U.S. 886, 898-900 (1984);
Fleischmann v. Maier Brewing Co., 386 U.S. 714, 718 (1967);
Pence v Langdon, 99 US 578 (1878);
Waters-Pierce Oil Co. v. Texas, 212 U.S. 86 (1909);
State Farm v. Campbell, 538 U.S. 408 (2003);
Furman v. Georgia, 408 U.S. 238 (1972);

Solem v. Helm, 463 U.S. 277 (1983);
Weems v. United States, 217 U.S. 349 (1910);
Robinson v. California, 370 U.S. 660 (1962);
First, Fifth, Seventh, Eighth and Fourteenth Amendments.

Lakshmi Arunachalam

March 11, 2021
222 Stanford Avenue,
Menlo Park, CA 94025
Tel: 650.690.0995

Self-Represented Plaintiff-Appellant,
Dr. Lakshmi Arunachalam

PRELIMINARY STATEMENT

Self-Represented Plaintiff-Appellant, Dr. Lakshmi Arunachalam ("Dr. Arunachalam"), hereby, files the combined petition for panel rehearing and petition for *en banc* rehearing, which are respectfully requested, for good cause showing, requiring this Court to strike its defamatory Orders **ECF64** and **ECF65**. The Court rushed to issue its unconstitutional and void Orders, knowing it was required to stay this case while Dr. Arunachalam's Petition for Writ of Mandamus in Supreme Court Case 20-1145 is still pending.

RES ACCENDENT LUMINA REBUS
ONE THING THROWS LIGHT UPON OTHERS

I. THIS COURT CALLING A DISABLED ELDER WOMAN OF COLOR, NAMES IN ITS ECF64 ORDER DOES NOT DETRACT FROM THIS COURT'S *MATERIAL OMISSIONS* OF *THE LEGAL AND FACTUAL BASIS OF THE CASE*, NAMELY:

1. Respondents IBM, SAP and JPMorgan Chase & Co. were in *Default*. They did not file an answer to Dr. Arunachalam's Complaint filed in 2016 in 16-281-RGA (D.Del.).

This case never had a Defendant. *There was never a trial*. The Complaint is still waiting for an Answer in the District Court.

The *ONE THING* here is there is NO Defendant, NO Answer, NO Hearing, NO trial, only a Judge's Order without a Hearing from a Judge without jurisdiction who held direct stock in a litigant in the case and breached his solemn oath of office, who failed to prove jurisdiction upon notice.

2. **Respondents *untimely* moved for attorneys' fees upon District Court Judge Andrews' retaliatory Solicitation, two years *after* the case had been up to the Federal Circuit (18-2105) and the U.S. Supreme Court (Case 19-5033):**

The District Court **Case** 16-281-RGA (D.Del.) is **now under second Appeal** in Federal Circuit Case No. 20-1493, five years after the Complaint was filed in 2016, for $148K in attorneys' fees *for Respondents not filing an answer to Dr. Arunachalam's Complaint*, awarded to Respondents by the District Court without a Hearing and affirmed by the Appellate Court which breached its solemn oath of office and failed to prove jurisdiction upon notice, both courts' void Orders are answers to the Complaint, making both courts *defacto* Defendants in this Case with NO Defendant, NO Answer, NO Hearing, only the Judges' void Orders without a Hearing, after denying Dr. Arunachalam access to the courts.

3. **This Court did not find sanctionable the elder Dr. Arunachalam fighting for her property rights and Constitutional rights in the earlier Appeal Case 18-2105.**

This court did not sanction Dr. Arunachalam for her challenges to the courts' standing and jurisdiction, not proven to date, after its breach of oaths of office. *Why now* in Case 20-1493?

4. **This Court failed to take Judicial Notice of its own precedent that it denied Appellee Presidio Bank's Motion for sanctions and attorneys' fees in ECF36 in Dr. Arunachalam's Appeal in Case 19-1223 on 11/19/19:**

for challenges to the courts' jurisdiction, after its breach of oaths of office.

5. **The conduct of Government officers, officials and employees violated Dr. Arunachalam's clearly established statutory and constitutional rights:**

to due process and a fair hearing, by direct denial of access to the courts upon the question of due process by hindering access to the courts or making resort to the courts upon it difficult, expensive, hazardous, injuring an elder, disabled woman of color, took her property without due process, entitling Dr. Arunachalam to constitutional redress. *See* ALP, Vol 12, **CONST. LAW, CH. VII, SEC. 1, § 140. Erroneous and Fraudulent Decisions**; and **§ 141. With respect to Fundamental, Substantive, and Due Process Itself.**

6. **Two or more Government officials conspired to and injured, threatened, intimidated and baselessly defamed Dr. Arunachalam, a 73-year old disable elder woman of color, in the free exercise or enjoyment of her right or privilege secured to her by the U.S. Constitution**

to due process and a fair hearing and protection from hate crime per hate crime laws of the U.S. They perpetuated falsehoods that the elder's credit cards do not work without even trying to put the transaction through, **in deliberate indifference**, when she provided proof the cards worked. They **maligned the elder** through False Official Statements, False Claims, False Propaganda, fabrication of evidence, where reasonable officers should have known that they certainly could not fabricate inculpatory evidence and that "citizens are to have a meaningful opportunity to be heard as to their rights before they are finally deprived of possession of property;" suppression of evidence, tampering with the record, tampering with evidence in violation of 18 USC §§1503, 1512; and inflicting excessive force on a disabled elder female citizen of color in violation of the 8th

Amendment by inflicting Cruel and Unusual Punishment and hate crimes upon the elder, sadistically and maliciously applied for the very purpose of causing harm and caused harm, caused the elder emotional duress, physical injury, and took her property without due process, causing the elder financial damage of at least a trillion dollars, that in the light of pre-existing law, the unlawfulness is apparent and where the state of the law at the time of the conduct gave the Government Officers fair warning that their conduct was unconstitutional, blocking her from the phone system of the Federal Circuit, from ECF filing, and from emails, requiring her to get leave of court to file anything at all and only by paper via Fedex making it expensive for a disabled elder living on Social Security income to go to Fedex during COVID, and not docketing her paper filings, striking off the docket her Memo in Lieu of Oral Argument and material evidence and expert Opinions from Stanford University's Dr. Markus Covert and Dr. Jay Tenenbaum, and *amicus curiae* briefs of testimonies by Daniel Brune and Fred Garcia of breach of oaths of office by the Government officials, not even acknowledging receipt of Fred Garcia's *amicus curiae* brief, and not docketing it; the Appellate Court failed to docket the elder's Appeal Briefs for over 5 weeks, whereas they gave Respondents 4 attempts to correct their Appendix to remove the elder's name from their alleged Joint Appendix which the elder did not authorize; called the elder names with no evidence of any misconduct of the citizen complying with all the

rules of court; all in violation of 18 U.S.C. §§241, 249; 42 U.S.C. §1983, 18 U.S.C. §242, the Civil Rights Act, injuring the elder physically, depriving the elder of her property without due process, and by breach of oaths of office by Government officials, leaving her with rights and no remedy, entitling the elder to Constitutional redress. The Government officers' deliberate indifference in a "curbside courtroom, in which he decided who was entitled to possession, is precisely the situation and deprivation of rights to be avoided," where the federal constitutional right claimed by the citizen was clearly established, where the officers were not reasonably mistaken about the state of the law, of which a reasonable person would have known, if a 'reasonable public official' would have known that his or her actions violated clearly established law," the U.S. Supreme Court's standard "would not allow the official who actually knows that he was violating the law to escape liability for his actions, the clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes, in which the Government Officers' conduct in fact violated clearly established law: Where the law was clearly established as here in Dr. Arunachalam's landmark case, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. The Government Officers acted with a motive to suppress citizen's speech; and the subjective element required to establish constitutional tort is so extreme that every

conceivable set of circumstances in which this constitutional violation occurs is clearly established to be a violation of the Constitution, that the elder has already shown subjective deliberate indifference necessary to establish an 8th Amendment conditions-of-confinement/restrictions/restraints claim, necessarily negates the officers' claim to qualified immunity, deliberate indifference requirement has been shown by the elder, that the Government officials had actual knowledge or awareness, that the conduct at issue violated a clearly established constitutional right, not entitled to qualified immunity, on the ground that case law should have made it obvious to a reasonable official that the conduct was unconstitutional. Dr. Arunachalam's showing of 8th Amendment deliberate indifference automatically negates a Government officer's claim of qualified immunity; The citizen's right to due process and fair hearing was clearly established at the time of the officers' misconduct and damage to citizen's property. A unanimous Supreme Court in December 2020 said in *Tanzin v. Tanvir*, that it is not its business to do policy and held that damages are not only an appropriate remedy against government workers who violate the Constitution, but that "this exact remedy has coexisted with our constitutional system since the dawn of the Republic." The Supreme Court in *Taylor v. Riojas* ruled against the Appellate court's decision on qualified immunity. The Government officers hiding behind qualified immunity, and obstructing justice and denying the elder access to the court in over a decade at the

very beginning of a case without a hearing, has prevented a remedy to Dr. Arunachalam's rights deprived in this Landmark Case for more than a decade, more significant than *Marbury v. Madison* and *Brown v. Board of Education.*

7. **Judge Andrews admitted in the Court docket Respondents had the elder's software in the Eclipse Foundation code they distributed, without paying her. This admission by the District Court Judge is an admission of a RICO enterprise, yet he unlawfully dismissed the case without a hearing.**

The Supreme Court ruled that violation of a federal right makes it unconstitutional to invoke local rules to deny the elder access to the court. He adjudicated erroneously and fraudulently without considering *prima facie* material evidence and without applying Supreme Court precedents and without jurisdiction.

8. **Administrative Judges McNamara and Siu had direct stock in a litigant, by their own Disclosures.**

They denied the elder access to the court and harassed her. Their Orders are void.

9. **This court punished Dr. Arunachalam for fighting for her constitutional and property rights. Such inhumane prejudice is wholly unacceptable to a reasonable person.**

The panel imposed an excessive penalty and punishment "so grossly excessive as to amount to a deprivation of property without due process of law" as the Supreme Court held in *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86 (1909). The panel violated the Eighth Amendment, which prohibits the federal government from imposing "cruel and unusual punishments, including torture," which the panel inflicted upon Dr. Arunachalam, misapprehending her medical needs. The panel has been unduly harsh to Dr. Arunachalam and has inflicted irreparable injury to

Dr. Arunachalam. The panel used administrative procedures to harass or otherwise discourage Dr. Arunachalam with legitimate claims.

10. No basis in law or fact to affirm: The panel did not apply any statute in arriving at its decision to affirm. The panel's defamatory Order damages the patents-in-suit, the elder's reputation without legal or factual justification, her health and caused emotional duress and physical and financial damage. The panel did not take cognizance, as it must, of the valid constitutional and civil rights of Dr. Arunachalam and her right to file an appeal is her most "fundamental ... right, because... preservative of all rights." The panel failed to provide Dr. Arunachalam an effective remedy in striking off the docket her memorandum in lieu of oral argument. The panel inflicted damages on Dr. Arunachalam, in evident violation of the Due Process Clause of the Fourteenth Amendment, *State Farm v. Campbell*, 538 U.S. 408 (2003). The panel subjected Dr. Arunachalam to a severe punishment, especially "torture," given that Dr. Arunachalam has a serious medical condition, causing her to go into a medical crisis by working long hours. The Court violated the 7th Amendment in depriving Dr. Arunachalam of a jury trial. The panel has improperly affirmed, in violation of many U.S. laws. Therefore, the panel's decision cannot stand. The panel damaged such a large amount of property without following an established set of rules created by the legislature.

11.Panel rehearing or *en banc* re-hearing is the only manifest justice:

The panel did not adhere to the four principles by which is determined whether a particular punishment is cruel and unusual, as in *Furman v. Georgia*, 408 U.S. 238 (1972). The panel must re-consider its affirmation and the appeal must be re-instated and its Orders **ECF63, ECF64, ECF65** must be stricken. Finally, *en banc* review is required if a first hearing is not reinstated or a panel rehearing is denied because the panel's decision, if followed, would conflict with Supreme Court precedent with respect to its findings. *En banc* review is also required because the panel's decision is contrary to this Court's precedent, as listed *supra*.

The panel subjected Dr. Arunachalam to a severe punishment for fighting for her constitutional and property rights, that is obviously inflicted in a wholly arbitrary fashion, and that is patently unnecessary. The Court's draconian action is overbearing, and its own misfeasance, malfeasance and non-feasance have been horrific for a decade in Dr. Arunachalam's cases, denying her access to court in a 100 cases.

The panel imposed an Order affirming tantamount to an excessive sentence, and failed to consider the key factor the Supreme Court outlined that were to be considered in determining if the sentence is excessive: "the gravity of the offense and the harshness of the penalty," as in *Solem v. Helm*, 463 U.S. 277 (1983), in which the Supreme Court held that in the circumstances of the case before it and

the factors to be considered, even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold."

The panel inflicted a punishment on Dr. Arunachalam, prohibited by the Constitution, namely, punishing her for exercising her constitutional rights.

II. PANEL REHEARING IS APPROPRIATE BECAUSE THE PANEL MISAPPREHENDED THE FACTS AND INCORRECTLY USED THOSE FACTS TO THE DECISION TO AFFIRM.

The panel misapprehended at least four essential issues that led to a manifest injustice.

First, the panel misapprehended that Dr. Arunachalam's **Petition for Writ of Mandamus in Supreme Court Case 20-1145 is still pending, knowing that the Court was required to stay the case**, instead rushed to rule, requiring this Court to strike its defamatory, unconstitutional, void Orders **ECF63, ECF64** and **ECF65**.

Second, the panel misapprehended the individual circumstances surrounding the totality of facts, and then misconstrued the facts and made **material omissions of the legal and factual basis of the case**, regarding the **Default** by Respondents in the District Court and concluded incorrectly and unconstitutionally that the Plaintiff-Appellant should be sanctioned for fighting for her constitutional and property rights, in this case where there was NO Answer, No Defendant, NO Trial, NO hearing, only a Judge's Order without jurisdiction.

Third, the panel misapprehended and misapplied the facts. These misapprehensions are grounded in the Court's material omissions of the legal and factual basis of the case, and its deliberate indifference and its blocking access to the courts for the elder.

Fourth, the Panel overlooked recent Supreme Court rulings in *Tanzin v. Tanvir* and *Taylor v. Riojas*, that Government Officials are not protected by absolute immunity when they violate the Constitution.

The Court's **omissions** in **ECF64** are unfounded in fact or the law, causing the panel to misapprehend and misperceive the totality of facts surrounding Plaintiff-Appellant's individual circumstances, and misconstruing Dr. Arunachalam's concerted effort to defend her constitutional and property rights. The panel is silent, evidently unsympathetic to her verified medical needs, and in deliberate indifference.

A. The Panel Misapprehended that the Petition for Writ of Mandamus in Supreme Court Case 20-1145 is still pending, knowing that the Court was required to stay the case, instead rushed to rule, requiring this Court to strike its defamatory, unconstitutional, void Orders ECF63, ECF64 and ECF65.

A fundamental misapprehension of the panel was that the Court rushed to affirm, when it was required to stay the Case when the Mandamus is pending in the Supreme Court in Case 20-1145. Despite the Court's *material omissions of the legal and factual basis of the case*, the Court wrote an Answer for the Respondents under color of an Order **ECF64** and argued a fabricated circumstance based solely

on material omissions. The panel affirmed the unsubstantiated fabrication by itself and by the District Court. As to this outcome, Dr. Arunachalam argued the totality of circumstances. The panel never reconciled this fundamental contradiction. As such, hearing or rehearing is required to reconcile the panel's misapprehension regarding Dr. Arunachalam's totality of circumstances and context findings of fact. Affirmation must be reversed, the Order stricken and the appeal reinstated.

B. The Panel Misapprehended and Misconstrued and Materially Omitted the Fact that Respondents were in Default in the District Court.

The panel did not appreciate the factual predicate, and the issues involved in the case when the panel overlooked Dr. Arunachalam is the "prevailing party" even by the District Court's procedurally foul process.

C. The Panel Did Not Rely on the Totality of Circumstances and Facts, in deliberate indifference, and blocked access to the Court to the elder inventor of the Internet of Things (IoT) – Web Apps displayed on a Web browser, from which the Government and Respondents unjustly enriched themselves in the order of trillions of dollars, without paying.

The Federal Circuit oppressed the disabled elder woman of color, by blocking the court's phone system from the elder, taking away ECF filing, no emails to the court, requiring her to get leave of court to file anything at all and only by paper via Fedex making it expensive for a disabled elder living on Social Security income to go to Fedex during COVID, and not docketing her paper filings, striking off the docket her Memo in Lieu of Oral Argument and material evidence and expert Opinions from Stanford University's Dr. Markus Covert and Dr. Jay

Tenenbaum, and *amicus curiae* briefs of testimonies by Daniel Brune and Fred Garcia of breach of oaths of office by the Government officials, not even acknowledging receipt of Fred Garcia's *amicus curiae* brief, and not docketing it; the Appellate Court failed to docket the elder's Appeal Briefs for over 5 weeks, whereas they gave Respondents 4 attempts to correct their Appendix to remove the elder's name from their alleged Joint Appendix which the elder did not authorize; called the elder names with no evidence of any misconduct on the citizen complying with all the rules of court; all in violation of 18 U.S.C. §§241, 249; 42 U.S.C. §1983, 18 U.S.C. §242, the Civil Rights Act, injuring the elder physically, depriving the elder of her property without due process, and by breach of oaths of office by Government officials, leaving her with rights and no remedy, entitling the elder to Constitutional redress. The Government officers' **deliberate indifference** in a "curbside courtroom, in which he decided who was entitled to possession, is precisely the situation and deprivation of rights to be avoided," where the federal constitutional right claimed by the citizen was clearly established, where the officers were not reasonably mistaken about the state of the law, of which a reasonable person would have known, if a 'reasonable public official' would have known that his or her actions violated clearly established law," the U.S. Supreme Court's standard "would not allow the official who actually knows that he was violating the law to escape liability for his actions, the

clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes, in which the Government Officers' conduct in fact violated clearly established law: Where the law was clearly established as here in Dr. Arunachalam's landmark case, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct.

D. The Panel Misapprehended and overlooked recent Supreme Court rulings in *Tanzin v. Tanvir* and *Taylor v. Riojas*, that Government Officials are not protected by absolute immunity when they violate the Constitution.

Recent Supreme Court rulings in *Taylor v. Riojas*, 592 U.S. __ (2020) in U.S. Supreme Court Case No. 19-1261; and *Tanzin v. Tanvir*, U.S. Supreme Court Case No. 19-71, 592 U.S. __ (2020), the Supreme Court held that damages are not only an appropriate remedy against government workers who violate the Constitution, but that "this exact remedy has coexisted with our constitutional system since the dawn of the Republic." The case has disturbing facts that this Court affirmed the District Court's Order granting attorneys' fees of $148K to Respondents for being in Default and punishing a disabled elder for the Courts' own malfeasance, misfeasance and non-feasance. All of which warrant that this Court strike its defamatory, unconstitutional void Orders **ECF63, ECF64** and **ECF65**.

III. *EN BANC* REVIEW IS NECESSARY TO RECONCILE THE PANEL DECISION'S CONFLICT WITH SUPREME COURT DECISIONS AND THIS COURT PRECEDENT.

En banc review is required if panel hearing or rehearing is denied because the panel's decision, if followed, will conflict with the Supreme Court's precedent:

As discussed *supra*, the panel's decision is *arbitrary* and unconstitutional, permitting it to distort to whatever theory it deems desirable would promote abuse of process and unjust results, in violation of Supreme Court precedent. The panel exceeded its limit in inflicting the unusual and cruel punishment under the specific context of the situation, violating the "cruel and unusual punishments" clause. The panel's "infliction of cruel and unusual punishment [is] in violation of the Eighth and Fourteenth Amendments," as the Supreme Court held in *Robinson v. California*, 370 U.S. 660 (1962). The panel violated the standard set by the U. S. Supreme Court "that a punishment would be cruel and unusual [,if] it was too severe for the alleged violation" of ..., [if] it was arbitrary, if it offended society's sense of justice, or if it was not more effective than a less severe penalty. *Furman v. Georgia*, *supra*; *Weems v. United States*, *supra*; *Solem v. Helm*, *supra.*

1. It Is The Elder's Fundamental Right To Challenge Jurisdiction, When The Court Had Lost It By Breaching Its Oath Of Office.

Fundamental guarantees apply to rights as well as procedure; and, they apply to all departments of government.

CONCLUSION: For at least the above reasons, the Court must grant the combined petition for panel re-hearing and petition for *en banc* rehearing; strike its defamatory Orders **ECF63, ECF64** and **ECF65**; re-instate the appeal; grant Dr. Arunachalam access to the court; reinstate her patents; and sanction those Officers who have violated the Constitution and injured Dr. Arunachalam by hate crime and defamation.

March 11, 2021

Respectfully submitted,

Lakshmi Arunachalam

222 Stanford Avenue,
Menlo Park, CA 94025
650.690.0995, laks22002@yahoo.com

Self-Represented Plaintiff-Appellant,
Dr. Lakshmi Arunachalam

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, a woman
Self-Represented Appellant

Executed on March 11, 2021

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

CERTIFICATE OF COMPLIANCE WITH FRAP 32(a)(7)(B), 32(g)

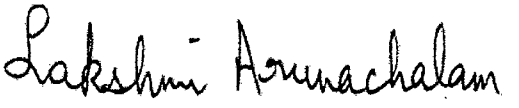
The undersigned hereby certifies that this brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32(a)(7)(B), 32(g).

1. The brief contains 3747 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii), 32(g).

2. The brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

March 11, 2021

Respectfully submitted,



Dr. Lakshmi Arunachalam, a woman,
222 Stanford Avenue, Menlo Park, CA 94025
Tel: 650.690.0995;Email: laks22002@yahoo.com

Dr. Lakshmi Arunachalam, a woman,
Self-represented Appellant

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Dr. Lakshmi Arunachalam
v.
INTERNATIONAL BUSINESS MACHINES CORPORATION,
SAP AMERICA, INC.,
JPMORGAN CHASE & CO.,
No. 2020-1493

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 11, 2021, an original and three copies of "Dr. Lakshmi Arunachalam's Combined Petition For Panel Rehearing And Petition For *En Banc* Rehearing" and Addendum of Court Orders, Verification, and Certificate of Compliance were submitted to Fedex to deliver the package on the morning of March 12, 2021 for filing to:

Clerk of Court, United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W., Washington, DC 20439.

On the same date, the foregoing was served upon counsel for Defendant-Appellees, by depositing two copies of the Brief and Exhibits with the U.S. Post Office via First Class and/or via email to the party's Counsel as follows:

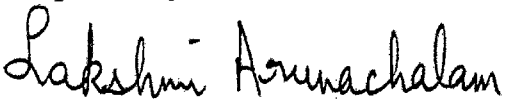
SAP America, Inc.;
Joseph M Beauchamp, Jones Day,
717 Texas Ave, Ste 3300, Houston, TX 77002;
832-239-3939; jbeauchamp@jonesday.com.
Counsel for SAP America, Inc.;

JPMorgan Chase and Company;
Doug Nemec, Skadden Arps Slate Meagher and Flom, LLP,
Four Times Square, New York, NY 10036;
(212) 735-2419; Douglas.Nemec@skadden.com;
Counsel for JPMorgan Chase & Co;

IBM;
Kevin James Culligan, Maynard, Cooper & Gale, P.C.; 551 Fifth Avenue, Suite 2000; New York, NY 10176;
646-609-9282; kculligan@maynardcooper.com;
Counsel for IBM.

March 11, 2021

Respectfully submitted,



Dr. Lakshmi Arunachalam, a woman,
222 Stanford Avenue, Menlo Park, CA 94025
Tel: 650.690.0995;Email: laks22002@yahoo.com

Dr. Lakshmi Arunachalam, a woman,
Self-Represented Appellant

ADDENDUM: Court Orders ECF64 and ECF 65

App. 4a:
Petitioner Dr. Lakshmi Arunachalam's Motion to
Strike Defamatory Orders **ECF 64**, **ECF 65** **(3/11/21)**

2020- 1493

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Dr. Lakshmi Arunachalam,
a woman,

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
SAP AMERICA, INC.,
JPMORGAN CHASE & CO.,
Defendants-Appellees,

DOES 1-100,
Defendants,

Appeal from the United States District Court for the District of Delaware
in Case No. 1:16-cv-281-RGA, Judge Richard G. Andrews

Dr. Lakshmi Arunachalam's MOTION TO STRIKE ECFs 63, 64, 65, 55, 53, AND OTHERS AND ALL OF APPELLEES' FILINGS, AND TO CORRECT THE TAMPERED RECORD/EVIDENCE.

March 11, 2021

Dr. Lakshmi Arunachalam, a woman,
222 Stanford Ave, Menlo Park, CA 94025
Tel: 650.690.0995; Laks22002@yahoo.com

Dr. Lakshmi Arunachalam, a woman,
Self-Represented Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

MOTION TO STRIKE ECFs 63, 64, 65, 55, 53, AND ALL OF APPELLEES' FILINGS, AND TO CORRECT THE TAMPERED RECORD/EVIDENCE

Self-Represented Plaintiff-Appellant, Dr. Lakshmi Arunachalam ("Dr. Arunachalam"), hereby, files this Motion to Strike **ECFs 64, 65, 63, 53, 55, 61, 59, 24, 25, 28, 30, 31, 32, 34, 46, 35, 36, 37** and **39**; and to correct the tampered record/evidence — to reinstate the Court-stricken **ECFs 20** (which is Dr. Arunachalam's Opening Appeal Brief and Reply Brief and Appendix), **60, 62**; and to reinstate the original titles of Dr. Arunachalam's filings in the improperly captioned docket entries **ECFs 41, 42, 43, 44, 45, 48, 54** and Reinstate the Modified Entries **ECFs 57, 58** which are respectfully requested, for good cause showing.

1. **The Court <u>rushed</u> to issue Orders ECF64 and ECF65, knowing it was required to stay this case while Dr. Arunachalam's Petition for Writ of Mandamus in Supreme Court Case 20-1145 from the instant case 20-1493 is still pending.**

This Court must immediately strike its defamatory, unconstitutional and void Orders **ECF64** and **ECF65**.

2. **Both the District Court and this Court have No Proven Jurisdiction.**

This Court was put on notice to prove jurisdiction in 2017, after it lost its jurisdiction upon breaching its oaths of office, and has failed to prove jurisdiction. It has no jurisdiction to rule, and all of this Court's Orders in this case are void and

must be stricken. This Court must strike its Order **ECF 64** and enter a new and different Order.

3. Judge Andrews voluntarily admitted buying stock in a litigant in the case and also breached his solemn oath of office.

Judge Andrews was put on notice to prove jurisdiction at least as early as 2014, and he failed to do so, even after his voluntary admission that he bought direct stock in Appellee, JPMorgan Chase & Co. during the pendency of that case 12-282-RGA (D.Del.) and lost subject matter jurisdiction in ***ALL*** of Dr. Arunachalam's cases. He was again put on notice to prove jurisdiction when he breached his oath of office. He repeatedly failed to prove jurisdiction. All his Orders are void in Dr. Arunachalam's cases. The Appellate Court must strike all of Judge Andrews' Orders in the District Court.

4. Appellees have no status to respond to the Appeal, after being in *default* in the District Court. Hence all of Appellees' filings in this Appeal must be stricken.

The Appellees were in *default* in the District Court — failed to file an Answer to Dr. Arunachalam's Complaint, and have no status to respond to the Appeal\. All of Appellees' filings in this case must, hence, be stricken. Why did Judge Andrews Order the Appellees to default without following proper procedure? The Appellees and Judge Andrews knew that if they do not answer the Complaint, they are in *default*. Dr. Arunachalam is the prevailing party. Appellees defaulted, so they lost in the District Court Case 16-281-RGA (D.Del.). This

Appellate Court affirming the District Court's Order granting Appellees the untimely Motion for Attorneys' fees of $148K after being in *default*, upon retaliatory Solicitation by Judge Andrews, **is abnormal and prejudicial to Dr. Arunachalam's rights**.

5. **The Court's Orders ECF 53 and 55 requiring Dr. Arunachalam to file a motion for leave to file any paper is against the law and violates Dr. Arunachalam's Constitutional right to access to the Court upon the question of due process itself and frustrates the proceedings and must be stricken.**

Orders **ECFs 53** and **55** are Orders requiring Dr. Arunachalam to file a Motion for Leave to File any paper, are unlawful, frustrate the proceedings and are void and must be stricken. The Court's Orders are all void, as the Court has not proven jurisdiction upon challenge.

6. **Legal Chicanery by the Court in Deliberate Indifference, tampering with the record.**

This Appellate Court first docketed Dr. Arunachalam's **ECF60** Memorandum in Lieu of Oral Argument, which the Court had authorized Dr. Arunachalam to file in its Order **ECF56** and then had **ECF60** stricken without giving it to the Ruling Panel for consideration before the Panel affirmed the District Court's award of Attorneys' fees of $148K to Appellees for being in default. Dr. Arunachalam filed it again and moved in **ECF62** to docket her Memorandum in Lieu of Oral Argument. The Court, in legal chicanery, issued Order **ECF63** which denied her Motion to re-docket Dr. Arunachalam's Memorandum in Lieu of Oral Argument

which it had earlier authorized in **ECF56** and suppressed *material* evidence in Expert Opinions by Stanford University's Dr. Markus Covert, and by Dr. Jay Tenenbaum, and *Amicus Curiae* briefs by Daniel Brune and by Fred Garcia providing witness testimonies of breach of oaths of office by Government officers. The Court even failed to acknowledge receipt of Fred Garcia's *Amicus Curiae* brief and failed to docket it. Fedex has provided proof that Fred Garcia's *Amicus Curiae* brief was delivered to the Federal Circuit. See Exhibits of all 5 documents.

7. **The Court's Orders ECF64 and ECF65 are collaterally estopped by this Court's own precedents not awarding attorneys' fees or sanctions in the earlier Appeal 18-2105 and denying Appellee Presidio Bank's Motion for Sanctions and Attorneys' Fees in Case 19-1223 in this Court. The Court did not find nor could it prove any misconduct on the part of Dr. Arunachalam for fighting for her property rights and Constitutional rights.**

But affirmed the award of attorneys' fees of $148K falsely alleging misconduct on the part of Dr. Arunachalam providing no evidence of such, for fighting for her property and constitutional rights. The Court affirmed, covering up their own and the District Court's misconduct, malfeasance, misfeasance and non-feasance and breach of oaths of office and violation of civil and criminal laws and not applying the *Mandated Prohibition* declared by Chief Justice Marshall in *Dartmouth College* and *Fletcher v. Peck* that a patent grant is a contract that cannot be repudiated by the highest authority. The Court's Orders **ECF64 and ECF65** are repugnant to the Constitution and impairs the obligation of Contract with Dr. Arunachalam, the inventor of the Internet of Things (IoT)- Web Apps displayed on

a Web browser and violates the Contract Clause, Separation of Powers and Appointments Clauses of the Constitution.

8. Why is the Court doing this and engaging in hate crime against an elder disabled female inventor of color?

The Court knows why? The State of the Union is to acknowledge *Dartmouth College* and *Fletcher* is to admit to the decades' long fraud perpetrated by the USPTO and this Court in a criminal enterprise against inventors.

9. Relief Sought:

i. This Court must strike its Orders **ECF64** and **ECF65, ECF53** and **ECF55** and ***all*** its Orders, as the Court has not proven jurisdiction upon notice, after breaching its oath of office, and correct the tampered record by reinstating the titles of the documents as filed by Dr. Arunachalam and reinstate the Court-stricken ECFs 20, 60, 62.

ii. The Appellees are not entitled to fees or costs from the District Court Case nor this Appeal.

iii. The Court must enforce *Dartmouth College* and *Fletcher.*

iv. The Court must re-instate all of Dr. Arunachalam's patents.

v. The Court must Order the Appellees to pay the royalties from the use of Dr. Arunachalam's patents from which they have unjustly enriched themselves, and injured Dr. Arunachalam, financially, physically and subjected her to emotional duress, aided and abetted the hate crime by Government officers.

RES ACCENDENT LUMINA REBUS
ONE THING THROWS LIGHT UPON OTHERS

I. THIS COURT CALLING A DISABLED ELDER WOMAN OF COLOR, NAMES IN ITS ECF64 ORDER DOES NOT DETRACT FROM THIS COURT'S *MATERIAL OMISSIONS* OF *THE LEGAL AND FACTUAL BASIS OF THE CASE*, NAMELY:

1. Respondents IBM, SAP and JPMorgan Chase & Co. were in *Default*. They did not file an answer to Dr. Arunachalam's Complaint filed in 2016 in 16-281-RGA (D.Del.).

This case never had a Defendant. There was never a trial. The Complaint is still waiting for an Answer in the District Court.

The ***ONE THING*** here is ***there is NO Defendant, NO Answer, NO Hearing, NO trial, only a Judge's Order without a Hearing from a Judge without jurisdiction who held direct stock in a litigant in the case*** and breached his solemn oath of office, who failed to prove jurisdiction upon notice.

2. Respondents *untimely* moved for attorneys' fees upon District Court Judge Andrews' retaliatory Solicitation, two years *after* the case had been up to the Federal Circuit 18-2105 and U.S. Supreme Court 19-5033):

The District Court Case 16-281-RGA (D.Del.) is now under second Appeal in Federal Circuit Case No. 20-1493, five years after the Complaint was filed in 2016, for $148K in attorneys' fees *for Respondents not filing an answer to Dr. Arunachalam's Complaint*, awarded to Respondents by the District Court without a Hearing and affirmed by the Appellate Court which breached its solemn oath of office and failed to prove jurisdiction upon notice, both courts' void Orders are answers to the Complaint, making both courts *defacto* Defendants in this Case with

NO Defendant, NO Answer, NO Hearing, only the Judges' void Orders without a Hearing, after denying Dr. Arunachalam access to the courts.

3. **This Court did not find sanctionable the elder Dr. Arunachalam fighting for her property rights and Constitutional rights in the earlier Appeal Case 18-2105.**

This court did not sanction Dr. Arunachalam for her challenges to the courts' standing and jurisdiction, not proven to date, after its breach of oaths of office. *Why now* in Case 20-1493?

4. **This Court's Erroneous and Fraudulent and Void Orders are Collaterally Estopped by its own precedent that it denied Appellee Presidio Bank's Motion for sanctions and attorneys' fees in ECF36 in Dr. Arunachalam's Appeal in Case 19-1223 on 11/19/19:**

for challenges to the courts' jurisdiction, after its breach of oaths of office.

5. **The conduct of Government officers, officials and employees violated Dr. Arunachalam's clearly established statutory and constitutional rights:**

to due process and a fair hearing, by direct denial of access to the courts upon the question of due process by hindering access to the courts or making resort to the courts upon it difficult, expensive, hazardous, injuring an elder, disabled woman of color, took her property without due process, entitling Dr. Arunachalam to constitutional redress. *See* ALP, Vol 12, **CONST. LAW, CH. VII, SEC. 1, § 140. Erroneous and Fraudulent Decisions**; and **§141. With respect to Fundamental, Substantive, and Due Process Itself.**

6. **Two or more Government officials conspired to and injured, threatened, intimidated and baselessly defamed Dr. Arunachalam, a 73-year old**

disable elder woman of color, in the free exercise or enjoyment of her right or privilege secured to her by the U.S. Constitution

to due process and a fair hearing and protection from hate crime per hate crime laws of the U.S. They perpetuated falsehoods that the elder's credit cards do not work without even trying to put the transaction through, **in deliberate indifference**, when she provided proof the cards worked. They **maligned the elder** through False Official Statements, False Claims, False Propaganda, fabrication of evidence, where reasonable officers should have known that they certainly could not fabricate inculpatory evidence and that "citizens are to have a meaningful opportunity to be heard as to their rights before they are finally deprived of possession of property;" suppression of evidence, tampering with the record, tampering with evidence in violation of 18 USC §§1503, 1512; and inflicting excessive force on a disabled elder female citizen of color in violation of the 8th Amendment by inflicting Cruel and Unusual Punishment and hate crimes upon the elder, sadistically and maliciously applied for the very purpose of causing harm and caused harm, caused the elder emotional duress, physical injury, and took her property without due process, causing the elder financial damage of at least a trillion dollars, that in the light of pre-existing law, the unlawfulness is apparent and where the state of the law at the time of the conduct gave the Government Officers fair warning that their conduct was unconstitutional, blocking her from the phone system of the Federal Circuit, from ECF filing, and from emails,

requiring her to get leave of court to file anything at all and only by paper via Fedex making it expensive for a disabled elder living on Social Security income to go to Fedex during COVID, and not docketing her paper filings, striking off the docket her Memo in Lieu of Oral Argument and material evidence and expert Opinions from Stanford University's Dr. Markus Covert and Dr. Jay Tenenbaum, and *amicus curiae* briefs of testimonies by Daniel Brune and Fred Garcia of breach of oaths of office by the Government officials, not even acknowledging receipt of Fred Garcia's *amicus curiae* brief, and not docketing it; the Appellate Court failed to docket the elder's Appeal Briefs for over 5 weeks, whereas they gave Respondents 4 attempts to correct their Appendix to remove the elder's name from their alleged Joint Appendix which the elder did not authorize; called the elder names with no evidence of any misconduct of the citizen complying with all the rules of court; all in violation of 18 U.S.C. §§241, 249; 42 U.S.C. §1983, 18 U.S.C. §242, the Civil Rights Act, injuring the elder physically, depriving the elder of her property without due process, and by breach of oaths of office by Government officials, leaving her with rights and no remedy, entitling the elder to Constitutional redress. The Government officers' deliberate indifference in a "curbside courtroom, in which he decided who was entitled to possession, is precisely the situation and deprivation of rights to be avoided," where the federal constitutional right claimed by the citizen was clearly established, where the

officers were not reasonably mistaken about the state of the law, of which a reasonable person would have known, if a 'reasonable public official' would have known that his or her actions violated clearly established law," the U.S. Supreme Court's standard "would not allow the official who actually knows that he was violating the law to escape liability for his actions, the clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes, in which the Government Officers' conduct in fact violated clearly established law: Where the law was clearly established as here in Dr. Arunachalam's landmark case, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. The Government Officers acted with a motive to suppress citizen's speech; and the subjective element required to establish constitutional tort is so extreme that every conceivable set of circumstances in which this constitutional violation occurs is clearly established to be a violation of the Constitution, that the elder has already shown subjective deliberate indifference necessary to establish an 8th Amendment conditions-of-confinement/restrictions/restraints claim, necessarily negates the officers' claim to qualified immunity, deliberate indifference requirement has been shown by the elder, that the Government officials had actual knowledge or awareness, that the conduct at issue violated a clearly established constitutional right, not entitled to qualified immunity, on the ground that case law should have

made it obvious to a reasonable official that the conduct was unconstitutional. Dr. Arunachalam's showing of 8th Amendment deliberate indifference automatically negates a Government officer's claim of qualified immunity; The citizen's right to due process and fair hearing was clearly established at the time of the officers' misconduct and damage to citizen's property. A unanimous Supreme Court in December 2020 said in *Tanzin v. Tanvir*, that it is not its business to do policy and held that damages are not only an appropriate remedy against government workers who violate the Constitution, but that "this exact remedy has coexisted with our constitutional system since the dawn of the Republic." The Supreme Court in *Taylor v. Riojas* ruled against the Appellate court's decision on qualified immunity. The Government officers hiding behind qualified immunity, and obstructing justice and denying the elder access to the court in over a decade at the very beginning of a case without a hearing, has prevented a remedy to Dr. Arunachalam's rights deprived in this Landmark Case for more than a decade, more significant than *Marbury v. Madison* and *Brown v. Board of Education*.

7. Judge Andrews admitted in the Court docket Respondents had the elder's software in the Eclipse Foundation code they distributed, without paying her. This admission by the District Court Judge is an admission of a RICO enterprise, yet he unlawfully dismissed the case without a hearing.

The Supreme Court ruled that violation of a federal right makes it unconstitutional to invoke local rules to deny the elder access to the court. He adjudicated

erroneously and fraudulently without considering *prima facie* material evidence and without applying Supreme Court precedents and without jurisdiction.

8. **Administrative Judges McNamara and Siu had direct stock in a litigant, by their own Disclosures.**

They denied the elder access to the court and harassed her. Their Orders are void.

9. **This court punished Dr. Arunachalam for fighting for her constitutional and property rights. Such inhumane prejudice is wholly unacceptable to a reasonable person.**

The panel imposed an excessive penalty and punishment "so grossly excessive as to amount to a deprivation of property without due process of law" as the Supreme Court held in *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86 (1909). The panel violated the Eighth Amendment, which prohibits the federal government from imposing "cruel and unusual punishments, including torture," which the panel inflicted upon Dr. Arunachalam, misapprehending her medical needs. The panel has been unduly harsh to Dr. Arunachalam and has inflicted irreparable injury to Dr. Arunachalam. The panel used administrative procedures to harass or otherwise discourage Dr. Arunachalam with legitimate claims.

10. **No basis in law or fact to affirm:** The panel did not apply any statute in arriving at its decision to affirm. The panel's defamatory Order damages the patents-in-suit, the elder's reputation without legal or factual justification, her health and caused emotional duress and physical and financial damage. The panel did not take cognizance, as it must, of the valid constitutional and civil rights of

Dr. Arunachalam and her right to file an appeal is her most "fundamental ... right, because... preservative of all rights." The panel failed to provide Dr. Arunachalam an effective remedy in striking off the docket her memorandum in lieu of oral argument. The panel inflicted damages on Dr. Arunachalam, in evident violation of the Due Process Clause of the Fourteenth Amendment, *State Farm v. Campbell*, 538 U.S. 408 (2003). The panel subjected Dr. Arunachalam to a severe punishment, especially "torture," given that Dr. Arunachalam has a serious medical condition, causing her to go into a medical crisis by working long hours. The Court violated the 7th Amendment in depriving Dr. Arunachalam of a jury trial. The panel has improperly affirmed, in violation of many U.S. laws. Therefore, the panel's decision cannot stand. The panel damaged such a large amount of property without following an established set of rules created by the legislature.

11. The Court must Strike the defamatory Orders ECF 64, 65, 55, 53 immediately and all other Orders:

The panel did not adhere to the four principles by which is determined whether a particular punishment is cruel and unusual, as in *Furman v. Georgia*, 408 U.S. 238 (1972). The panel must re-consider its affirmation and the appeal must be re-instated and its Orders **ECF63, ECF64, ECF65** must be stricken. The panel's decision, if followed, would conflict with Supreme Court precedent with respect to its findings.

The panel subjected Dr. Arunachalam to a severe punishment for fighting for her constitutional and property rights, that is obviously inflicted in a wholly arbitrary fashion, and that is patently unnecessary. The Court's draconian action is overbearing, and its own misfeasance, malfeasance and non-feasance have been horrific for a decade in Dr. Arunachalam's cases, denying her access to court in a 100 cases. So Dr. Arunachalam has no Appellate Court. So does the Supreme Court have to become a court of original jurisdiction for Dr. Arunachalam.

The panel imposed an Order affirming tantamount to an excessive sentence, and failed to consider the key factor the Supreme Court outlined that were to be considered in determining if the sentence is excessive: "the gravity of the offense and the harshness of the penalty," as in *Solem v. Helm*, 463 U.S. 277 (1983), in which the Supreme Court held that in the circumstances of the case before it and the factors to be considered, even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold."

The panel inflicted a punishment on Dr. Arunachalam, prohibited by the Constitution, namely, punishing her for exercising her constitutional rights.

II. THE PANEL MISAPPREHENDED THE FACTS AND INCORRECTLY USED THOSE FACTS TO THE DECISION TO AFFIRM.

The panel misapprehended at least four essential issues that led to a manifest injustice.

First, the panel misapprehended that Dr. Arunachalam's **Petition for Writ of Mandamus in Supreme Court Case 20-1145 is still pending, knowing that the Court was required to stay the case**, instead rushed to rule, requiring this Court to strike its defamatory, unconstitutional, void Orders **ECF63, ECF64** and **ECF65**.

Second, the panel misapprehended the individual circumstances surrounding the totality of facts, and then misconstrued the facts and made **material omissions of the legal and factual basis of the case**, regarding the **Default** by Respondents in the District Court and concluded incorrectly and unconstitutionally that the Plaintiff-Appellant should be sanctioned for fighting for her constitutional and property rights, in this case where there was NO Answer, No Defendant, NO Trial, NO hearing, only a Judge's Order without jurisdiction.

Third, the panel misapprehended and misapplied the facts. These misapprehensions are grounded in the Court's material omissions of the legal and factual basis of the case, and its deliberate indifference and its blocking access to the court for the elder.

Fourth, the Panel overlooked recent Supreme Court rulings in *Tanzin v. Tanvir* and *Taylor v. Riojas*, that Government Officials are not protected by absolute immunity when they violate the Constitution.

The Court's **omissions** in **ECF64** are unfounded in fact or the law, causing the panel to misapprehend and misperceive the totality of facts surrounding

Plaintiff-Appellant's individual circumstances, and misconstruing Dr. Arunachalam's concerted effort to defend her constitutional and property rights. The panel is silent, evidently unsympathetic to her verified medical needs, and in deliberate indifference.

A. The Panel Misapprehended that the Petition for Writ of Mandamus in Supreme Court Case 20-1145 is still pending, knowing that the Court was required to stay the case, instead rushed to rule, requiring this Court to strike its defamatory, unconstitutional, void Orders ECF63, ECF64 and ECF65.

A fundamental misapprehension of the panel was that the Court rushed to affirm, when it was required to stay the Case when the Mandamus is pending in the Supreme Court in Case 20-1145. Despite the Court's *material omissions of the legal and factual basis of the case*, the Court wrote an Answer for the Respondents under color of an Order **ECF64** and argued a fabricated circumstance based solely on material omissions. The panel affirmed the unsubstantiated fabrication by itself and by the District Court. As to this outcome, Dr. Arunachalam argued the totality of circumstances. The panel never reconciled this fundamental contradiction. As such, hearing or rehearing is required to reconcile the panel's misapprehension regarding Dr. Arunachalam's totality of circumstances and context findings of fact. Affirmation must be reversed, the Order stricken and the appeal reinstated.

B. The Panel Misapprehended and Misconstrued and Materially Omitted the Fact that Respondents were in Default in the District Court.

The panel did not appreciate the factual predicate, and the issues involved in the case when the panel overlooked Dr. Arunachalam is the "prevailing party" even by the District Court's procedurally foul process.

C. The Panel Did Not Rely on the Totality of Circumstances and Facts, in deliberate indifference, and blocked access to the Court to the elder inventor of the Internet of Things (IoT) – Web Apps displayed on a Web browser, from which the Government and Respondents unjustly enriched themselves in the order of trillions of dollars, without paying.

The Federal Circuit oppressed the disabled elder woman of color, by blocking the court's phone system from the elder, taking away ECF filing, no emails to the court, requiring her to get leave of court to file anything at all and only by paper via Fedex making it expensive for a disabled elder living on Social Security income to go to Fedex during COVID, and not docketing her paper filings, striking off the docket her Memo in Lieu of Oral Argument and material evidence and expert Opinions from Stanford University's Dr. Markus Covert and Dr. Jay Tenenbaum, and *amicus curiae* briefs of testimonies by Daniel Brune and Fred Garcia of breach of oaths of office by the Government officials, not even acknowledging receipt of Fred Garcia's *amicus curiae* brief, and not docketing it; the Appellate Court failed to docket the elder's Appeal Briefs for over 5 weeks, whereas they gave Respondents 4 attempts to correct their Appendix to remove the elder's name from their alleged Joint Appendix which the elder did not

authorize; called the elder names with no evidence of any misconduct on the citizen complying with all the rules of court; all in violation of 18 U.S.C. §§241, 249; 42 U.S.C. §1983, 18 U.S.C. §242, the Civil Rights Act, injuring the elder physically, depriving the elder of her property without due process, and by breach of oaths of office by Government officials, leaving her with rights and no remedy, entitling the elder to Constitutional redress. The Government officers' **deliberate indifference** in a "curbside courtroom, in which he decided who was entitled to possession, is precisely the situation and deprivation of rights to be avoided," where the federal constitutional right claimed by the citizen was clearly established, where the officers were not reasonably mistaken about the state of the law, of which a reasonable person would have known, if a 'reasonable public official' would have known that his or her actions violated clearly established law," the U.S. Supreme Court's standard "would not allow the official who actually knows that he was violating the law to escape liability for his actions, the clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes, in which the Government Officers' conduct in fact violated clearly established law: Where the law was clearly established as here in Dr. Arunachalam's landmark case, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct.

D. The Panel Misapprehended and overlooked recent Supreme Court rulings in *Tanzin v. Tanvir* and *Taylor v. Riojas*, that Government Officials are not protected by absolute immunity when they violate the Constitution.

Recent Supreme Court rulings in *Taylor v. Riojas*, 592 U.S. __ (2020) in U.S. Supreme Court Case No. 19-1261; and *Tanzin v. Tanvir*, U.S. Supreme Court Case No. 19-71, 592 U.S. __ (2020), the Supreme Court held that damages are not only an appropriate remedy against government workers who violate the Constitution, but that "this exact remedy has coexisted with our constitutional system since the dawn of the Republic." The case has disturbing facts that this Court affirmed the District Court's Order granting attorneys' fees of $148K to Respondents for being in Default and punishing a disabled elder for the Courts' own misconduct, malfeasance, misfeasance and non-feasance. All of which warrant that this Court strike its defamatory, unconstitutional void Orders **ECF63, ECF64** and **ECF65** and **all** its Orders and Appellees' filings with no status.

III. COURT'S MISCONDUCT AND ABUSE.

As discussed *supra*, the panel's decision is *arbitrary* and unconstitutional, permitting it to distort to whatever theory it deems desirable would promote abuse of process and unjust results, in violation of Supreme Court precedent. The panel exceeded its limit in inflicting the unusual and cruel punishment under the specific context of the situation, violating the "cruel and unusual punishments" clause. The panel's "infliction of cruel and unusual punishment [is] in violation of the

Eighth and Fourteenth Amendments," as the Supreme Court held in *Robinson v. California*, 370 U.S. 660 (1962). The panel violated the standard set by the U. S. Supreme Court "that a punishment would be cruel and unusual [,if] it was too severe for the alleged violation" of ..., [if] it was arbitrary, if it offended society's sense of justice, or if it was not more effective than a less severe penalty. *Furman v. Georgia, supra*; *Weems v. United States, supra*; *Solem v. Helm, supra.*

1. **It Is The Elder's Fundamental Right To Challenge Jurisdiction, When The Court Had Lost It By Breaching Its Oath Of Office.**

Fundamental guarantees apply to rights as well as procedure; and, they apply to all departments of government.

2. **This case is more significant than *Marbury v. Madison* and *Brown v. Board* of *Education*.**

This case requires answers to questions of exceptional importance, affecting national security.

QUESTIONS PRESENTED

1. Confronted with the particularly egregious facts of this case, whether any reasonable officer should have realized that elder victim's conditions of denial of access to the court offended the Constitution.

2. Whether it is unconstitutional for the Court to punish an elder, Dr. Arunachalam for the exercise of a constitutional right.

3. Whether the Appellate Court entertaining an Order from a District Court Judge without jurisdiction in a case where there was NO Defendant, NO answer to the Complaint, NO case, NO trial, NO hearing and affirming the District Court's award of attorneys' fees violated clearly established statutory and constitutional rights of a citizen to due process and a fair hearing.

4. Where the conduct of a Government officer violated clearly established statutory and constitutional rights of a citizen to due process and a fair hearing, by direct denial of access to the courts upon the question of due process by hindering access to the courts or making resort to the courts upon it difficult, expensive, hazardous, injuring an elder, disabled woman of color, took her property without due process, entitles the elder to constitutional redress.

5. Whether the Appellate Court can make a decision, after failing to prove jurisdiction upon breach of oaths of office, in violation of Supreme Court precedent that once jurisdiction is challenged, a judge cannot move one step further without proving jurisdiction.

6. Whether the District Court can make a decision, after failing to prove jurisdiction, after admitting to direct stock ownership in a litigant in the case and breaching his oath of office.

RES ACCENDENT LUMINA REBUS
ONE THING THROWS LIGHT UPON OTHERS

7. If not, whether any reasonable person would conclude that the Appellate Court entertaining a void Order without a hearing from a District Court judge without jurisdiction, who failed to prove jurisdiction upon notice, in a case where *the ONE THING is there is NO Defendant, NO Answer to the Complaint, NO hearing, NO trial, only a Judge's Order without a hearing from a judge without jurisdiction*, and the District Court's award of attorneys' fees to the victim's opponents who failed to file an Answer, is not erroneous and fraudulent and is not proof of Conspiracy Against Rights in violation of 18 USC §241 to injure, threaten, or intimidate a person in any state, territory, or district in the free exercise or enjoyment of any right or privilege secured to the individual by the U.S. Constitution or the laws of the U.S. and does not constitute denial of due process and fair hearing to a 73-year old disabled elder woman of color, entitling her to Constitutional redress.

8. Whether a finding of 8th Amendment deliberate indifference is inconsistent with a finding of qualified immunity, where the citizen's right to due process and a fair hearing, and access to the court upon the question of due process itself was clearly established at the time of officers' misconduct and damage to citizen's property.

9. Whether this Court must sanction the Government officers for violating the Constitution and maligning an elder to cover up their own misfeasance,

malfeasance, nonfeasance and breaching their oaths of office and violating hate crime laws, and committing obstruction of justice and aiding and abetting anti-trust and conspiring to deprive the citizen of her property and have them pay monetary damages to Dr. Arunachalam as a remedy against government workers who violate the Constitution, where "this exact remedy has coexisted with our constitutional system since the dawn of the Republic."

10. Where Defendants failed to answer the Complaint, and the Appellate Court's void Order without jurisdiction is *defacto* the Answer to the Complaint making it the *defacto* Defendant, any reasonable officer confronted with the particularly egregious facts of this case, should have realized that victim's conditions of denial of access to the court offended the Constitution, requiring this Court to strike it's void Orders that maligned the elder for fighting for her constitutional rights and property rights.

11. Whether the Federal Circuit in deceiving the Supreme Court by its material omissions that there was never a trial nor a hearing, no Defendant, no Answer to the Complaint, in this case since 2016, makes its Order on appeal void and must be stricken, as the Appellate brief is a surprise, the Federal Circuit's Order is the *defacto* answer, the Federal Circuit turned into the *defacto* Defendant.

12. Whether it is inconsistent with the standards of the Supreme Court, where two or more Government officials conspired to and injured, threatened, and intimidated an elder woman of color with disabilities in the free exercise or enjoyment of her right or privilege secured to her by the U.S. Constitution to due process and a fair hearing and hate crime laws of the U.S.

13. Whether violating the constitutional rights to due process and fair hearing of an elder woman of color with disabilities by direct denial of access to the courts upon the question of due process itself, affecting interstate commerce, through threats, intimidation, defamation, False Official Statements, tampering with evidence, and excessive force in violation of the 8th Amendment by inflicting hate crimes upon the elder in violation of 18 U.S.C. §§241, 249; 42 U.S.C. §1983 and 18 U.S.C. §242, both enacted as part of the Civil Rights Act of 1871, injuring the elder physically, depriving the elder of her property without due process, and by breach of oaths of office by Government officials, entitle the elder to Constitutional redress.

14. Whether this Court obstructing the elder from her right to Constitutional redress, and hiding behind qualified immunity, depriving the elder of a remedy

for her protected rights to the obligation of Contract which cannot be impaired by the Supreme Law of the Land, is inconsistent with the standard of the United States Supreme Court and warrants damages as not only an appropriate remedy against government workers who violate the Constitution, but that "this exact remedy has coexisted with our constitutional system since the dawn of the Republic."

15. Whether Government officials with no jurisdiction must be sanctioned for conspiring to violate and violating the constitutional rights to due process and fair hearing of an elder woman of color with disabilities by direct denial of access to the courts upon the question of due process itself, affecting interstate commerce, through threats, intimidation, defamation, excessive force in violation of the 8th Amendment by inflicting hate crimes upon her, affecting interstate commerce in violation of 18 U.S.C. §§241, 249; 42 U.S.C. §1983 and 18 U.S.C. §242, the Civil Rights Act, and injuring her physically and depriving her of her property without due process, hiding behind qualified immunity, when there can be no right without a remedy, and entitle her to Constitutional redress.

16. Where the conduct of a Government officer inflicting retaliatory exaction in dishonor and without jurisdiction, violated:
    i. The 8th Amendment Cruel and Unusual Punishment Clause and inflicted excessive force on an elder, disabled, female citizen of color;
    ii. 42 U.S.C. §1983; 18 U.S.C. §242, the Civil Rights Act;
    iii. the First Amendment; and
    iv. clearly established statutory and constitutional rights of an elderly, disabled female citizen of color, to due process and a fair hearing, a neutral judge without stock in the defendant; and
    v. her property was taken without due process;
    vi. she was deprived her of liberty without due process;
    vii. citizen injured through the corruption or fraud of the court or other administrative body disposing of her case, and she is entitled to Constitutional redress;
    viii. they made final decisions upon the ultimate question of due process which cannot be conclusively codified to any non-judicial tribunal, by direct denial of access to the courts upon this question of due process by hindering access to the courts or making resort to the courts upon it difficult, expensive, hazardous, all alike violate the Constitutional provision;

ix. called her names with no evidence of any misconduct on the part of the elder disabled female citizen complying with all the rules of court;
x. sadistically and maliciously applied for the very purpose of causing harm and caused harm to the elder;
xi. that in the light of pre-existing law, the unlawfulness is apparent and where the state of the law at the time of the conduct gave the Government Officer fair warning that their conduct was unconstitutional;
xii. for fabrication of evidence, where reasonable officers should have known that they certainly could not fabricate inculpatory evidence;
xiii. and that "citizens are to have a meaningful opportunity to be heard as to their rights before they are finally deprived of possession of property;"
xiv. suppression of evidence;
xv. tampering with evidence;
xvi. tampering with the record;
xvii. and that the officer's "curbside courtroom, in which he decided who was entitled to possession, is precisely the situation and deprivation of rights to be avoided;"
xviii. where the federal constitutional right claimed by the citizen was clearly established;
xix. where the officer was not reasonably mistaken about the state of the law;
xx. of which a reasonable person would have known;
xxi. where a 'reasonable public official' would have known that his or her actions violated clearly established law;
xxii. where the Court's standard "would not allow the official who actually knows that he was violating the law to escape liability for his actions;"
xxiii. where the Government official's conduct in fact violated clearly established law and the immunity defense fails;
xxiv. where a reasonably competent public official should know the law governing his conduct;
xxv. this Court acted with a motive to **suppress** citizen's speech;
xxvi. where the subjective element required to establish constitutional tort is so extreme that every conceivable set of circumstances in which this constitutional violation occurs is clearly established to be a violation of the Constitution;
xxvii. where the citizen has provided a showing of <u>subjective deliberate indifference</u> necessary to establish an Eighth Amendment conditions-of-confinement/restrictions/restraints claim, which necessarily negates the officer's claim to qualified immunity;
xxviii. where the Government official had actual knowledge or awareness and remained in deliberate indifference;

xxix. where the conduct at issue violated a clearly established constitutional right;

xxx. The Government official is not entitled to qualified immunity, on the ground that case law should have made it obvious to a reasonable official that the conduct was unconstitutional;

xxxi. Where a finding of Eighth Amendment deliberate indifference is inconsistent with a finding of qualified immunity; *and,*

xxxii. Where the citizen's right to *access to the Court and due process* was clearly established at the time of officers' misconduct and damage to citizen's property.

The Court's Orders must be stricken immediately as they are contrary to decisions of the Supreme Court[1] of the United States or precedents of this Court.

---

[1] *Taylor v. Riojas*, 592 U.S. __ (2020) in U.S. Supreme Court Case No. 19-1261;
Tanzin v. Tanvir, U.S. Supreme Court Case No. 19-71, 592 U.S. __ (2020);
Central Land Company v. Laidley, 150 U.S. 103 (1895);
Jordan v. Mass., 225 U.S. 167 (1912);
Falls Brook Irrigation District v. Bradley, 164 U.S. 167-70 (1896);
Louisville & Nashville Railway Co. v. Kentucky, 183 U.S. 516 (1902);
C.B. & Q. Railway v. Babcock, 204 U.S. 585 (1907);
Rhode Island v. Massachusetts, 37 U.S. 657, 718 (1838);
Festo Corp. v Shoketsu Kinzoku Kogyo Kabushiki Co., 535 U.S. 722 (2002);
Kumar v. Ovonic Battery Co., Inc. And Energy Conversion Devices, Inc., Fed. Cir. 02-1551, -1574, 03-1091 (2003); 351 F.3d 1364, 1368, 69. (2004);
Elliott v. Piersol, 26 U.S. 328, 240 (1828);
Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974);
Cooper v. Aaron, 358 U.S. 1 (1958);
U.S. v. Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L. Ed. 2d. 392, 406 (1980);
Cohens v. Virginia, 19 US. 264 (1821);
Brooks v. Yawkey, 200 F. 2d 633 (1953);
Stanard v. Olesen, 74 S. Ct. 768 (1954);
Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819);
Grant v. Raymond, 31 U.S. 218 (1832);
U.S. v. American Bell Telephone Company, 167 U.S. 224 (1897);
Fletcher v. Peck, 10 U.S. 87 (1810);

CONCLUSION: ***Wherefore***, the Court must grant the Motion to Strike and to Correct the Tampered Record/Evidence; strike its defamatory Orders **ECFs 63, 64, 65, 53, 55,** *immediately*, that have injured Dr. Arunachalam by hate crime and defamation, and the Court's own misconduct; grant the Relief Sought outlined on p5 in Section 9 *supra*. Dr. Arunachalam is here to stay. No amount of intimidation

---

Arunachalam v. Lyft, 19-8029, voiding all Orders in **all** of Appellant's Supreme Court cases, for want of jurisdiction;
Ableman v. Booth, 62 U.S. 524 (1859);
Sterling v. Constantin, 287 U.S. 397 (1932);
U.S. v. Burr, 25 F. Cas. 55, 161 (CCD, Va. No. 14693);
Aqua Products Inc. v. Matal, Fed Cir. Case 15-1177, October 4, 2017;
Arthrex, Inc. v. Smith & Nephew, Inc., No. 2018-2140, slip op. (Fed. Cir. Oct. 31, 2019);
Virnetx Inc. v. Cisco Systems and USPTO (intervenor) (Fed. Cir. 5/13/2020);
Cherrington v. Erie Ins. Property and Cas. Co., 75 S.E. 2d. 508, 513 (W. Va, 2013);
Brown v. Culpepper, 559 F.2d 274, 278 (5th Cir. 1977);
Bradley v. Richmond School Board, 416 U.S. 696, 723 (1974);
Hensley v. Eckerhart, 461 U.S. 424, 433 (1983);
Texas State Teachers Association v. Garland Independent School District, 489 U.S. 782, 791 (1989);
Farrar v. Hobby, 506 U.S. 103 (1992);
Blum v. Stenson, 465 U.S. 886, 898-900 (1984);
Fleischmann v. Maier Brewing Co., 386 U.S. 714, 718 (1967);
Pence v Langdon, 99 US 578 (1878);
Waters-Pierce Oil Co. v. Texas, 212 U.S. 86 (1909);
State Farm v. Campbell, 538 U.S. 408 (2003);
Furman v. Georgia, 408 U.S. 238 (1972);
Solem v. Helm, 463 U.S. 277 (1983);
Weems v. United States, 217 U.S. 349 (1910);
Robinson v. California, 370 U.S. 660 (1962).

and hate crime will deter her from fighting for her constitutional and property rights.

March 11, 2021

Respectfully submitted,

Lakshmi Arunachalam

222 Stanford Avenue,
Menlo Park, CA 94025
650.690.0995, laks22002@yahoo.com

Self-Represented Plaintiff-Appellant,
Dr. Lakshmi Arunachalam

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, a woman
Self-Represented Appellant

Executed on March 11, 2021

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

CERTIFICATE OF COMPLIANCE WITH FRAP 32(a)(7)(B), 32(g)

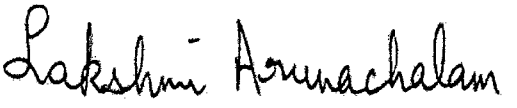
The undersigned hereby certifies that this brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32(a)(7)(B), 32(g).

1. The brief contains 7129 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii), 32(g).

2. The brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

March 11, 2021

Respectfully submitted,



Dr. Lakshmi Arunachalam, a woman,
222 Stanford Avenue, Menlo Park, CA 94025
Tel: 650.690.0995;Email: laks22002@yahoo.com

Dr. Lakshmi Arunachalam, a woman,
Self-represented Appellant

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Dr. Lakshmi Arunachalam
v.
INTERNATIONAL BUSINESS MACHINES CORPORATION,
SAP AMERICA, INC.,
JPMORGAN CHASE & CO.,
No. 2020-1493

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 11, 2021, an original and three copies of the aforementioned Motion and Exhibits, Verification, and Certificate of Compliance were submitted to Fedex to deliver the package on the morning of March 12, 2021 for filing to:

Clerk of Court, United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W., Washington, DC 20439.

On the same date, the foregoing was served upon counsel for Defendant-Appellees, by depositing two copies of the Brief and Exhibits with the U.S. Post Office via First Class and/or via email to the party's Counsel as follows:

SAP America, Inc.;
Joseph M Beauchamp, Jones Day,
717 Texas Ave, Ste 3300, Houston, TX 77002;
832-239-3939; jbeauchamp@jonesday.com.
Counsel for SAP America, Inc.;

JPMorgan Chase and Company;
Doug Nemec, Skadden Arps Slate Meagher and Flom, LLP,
Four Times Square, New York, NY 10036;
(212) 735-2419; Douglas.Nemec@skadden.com;
Counsel for JPMorgan Chase & Co;

IBM;
Kevin James Culligan, Maynard, Cooper & Gale, P.C.; 551 Fifth Avenue, Suite 2000; New York, NY 10176;
646-609-9282; kculligan@maynardcooper.com;
Counsel for IBM.

March 11, 2021 Respectfully submitted,

Lakshmi Arunachalam

Dr. Lakshmi Arunachalam, a woman,
222 Stanford Avenue, Menlo Park, CA 94025
Tel: 650.690.0995;Email: laks22002@yahoo.com

Dr. Lakshmi Arunachalam, a woman,
Self-Represented Appellant

EXHIBITS

App. 5a:
Dr. Markus Covert's and Dr. Jay Tenenbaum's Expert Opinions, and Daniel Brune's *Amicus Curiae* Brief

IN THE PATENT AND TRADEMARK OFFICE

In re Patent No. 6,212,556	)	
	)	
Patent Owner: WebXchange, Inc.	)	Art Unit: 3992
	)	
REEXAM Control NO: 90/010,417	)	Examiner: Z. Cabrera
	)	
Re-exam filing date: 2/23/2009	)	
	)	
Patent issue date: 04/03/2001	)	
	)	
Title: CONFIGURABLE VALUE- ADDED NETWORK (VAN) SWITCHING	)	

DECLARATION OF DR. MARKUS W. COVERT

1. My name is Dr. Markus W. Covert of 804 Clark Way, Palo Alto, CA 94304. I have been retained to offer opinions with respect to prior art references cited in this reexamination. I base these opinions on my education and training in informatics, described below.

2. I am currently an Assistant Professor of Bioengineering at Stanford University and teach and do research in computational biology and bioinformatics. My hourly rate in consulting is $250.

3. For three years starting in January 2004, I was a postdoctoral fellow at the California Institute of Technology, working with the Nobel Prize winner and then-President of Caltech, David Baltimore. During that time, I was awarded a highly competitive Damon Runyon postdoctoral fellowship, as well as a fellowship from the National Institutes of Health, for my work in understanding complex biological systems.

I hold a Ph.D. degree in Bioengineering and Bioinformatics from the University of California, San Diego, and was the first graduate of this competitive program.

4. My resume is attached as an exhibit at the end of this declaration. I have published several papers on computational biology and bioinformatics, including in such journals as *Science* and *Nature.* I also have taught a class at Stanford on computational methods for studying biology for three years now.

5. I am familiar with United States patent number 6,212,556 ("the '556 patent") and the current reexamination (control number 90/010,417). In particular, I am familiar with Requester's arguments and Requester's Cited Art:

1. Payne (US 5,715,314);
2. McPartlan (US 5,822,569);
3. Kahn (US 6,135,646);
4. Shwed (US 5,835,726);
5. Braden (RFC 1122 - "Requirements for Internet Hosts – Communication Layers");
6. CORBA ("The Common Object Request Broker: Architecture and Specification Revision 2.0 July 1995, Updated July 1996");
7. Orfali ("The Essential Distributed Objects Survival Guide" - Robert Orfali, Dan Harkey, Jeri Edwards,1996 John Wiley &Sons);
8. Popp (US 6,249,291);
9. Gifford (US 5,724,424; US Ser. No. 08/168,519);
10. Ginter (US 5,910,987);
11. Crandall (US 5,159,632);

12. Elgamal (US 5,671,279);

13. Atkinson (RFC 1825 - "Security Architecture for the Internet Protocol"); and

14. Birrell (Network Objects - SRC Research Report 115, Andrew Birrell, Greg Nelson, Susan Owicki, and Edward Wobber).

6. I have found that all of these documents are missing several critical aspects found in Claims 1-30 of the '556 patent. I will begin with Payne and Gifford. Payne and Gifford are closely related to each other. Both describe a user jumping from one URL to another URL, otherwise known as Web browsing. Payne and Gifford describe a user typing in a URL and browsing the Website of a Merchant, who displays the images of products. They further describe that the Web server serves standard HTML documents (more commonly known as Web pages) to the user. The user may choose to go to another Website. In order to go to another Website, the user must leave the Merchant Website. When the user chooses to hotlink to another URL, there is only one computer system, the Web server, that he browses.

7. The merchant Web server presents a Web page with a hotlink in it. When the user clicks the hotlink, the user leaves the merchant Website. The user is no longer at the merchant Website and is now at the payment Website. In other words, the user's browsing is one-to-one – only the user and the Web server are involved, and not a second computer system. The payment Web server presents the user with a Web page with a Web form, so the user may fill out personal information and hits the submit button. The Web server strips the form and sends one field at a time to CGI using standard I/O, which then forwards it to a Back-office application. There is no Web application, nor one with a data structure in the front-end Web page. Neither Payne nor

Gifford contain any hint, mention of, or use of object-oriented programming techniques. So there is no "object", nor "object identity", nor "networked object", nor "object routing", much less on a "value-added network" atop the Web that offers a Web application as an on-line service atop the Web. There is no data structure, nor an encapsulated data structure, that is transmitted from the Web page through a Web server to the Back-office application. There is no connected Web application or a connected Back-Office application. Gifford's use of a timestamp or "nonce" does not change this. Payment Web server presents a Web page with a hotlink in it. When the user clicks the hotlink, the user leaves the payment Website. The user is no longer at the payment Website and is now at the merchant Website. Again, only the user and the Web server are involved, and not a second computer system. URLs are passed serially as the buyer opens a new account, attempts login, etc.

8. I find that the '556 patent has several aspects that are missing in Payne and Gifford. One is embodied in the mention of an "object identity" with "information entries and attributes." Another aspect missing in Payne and Gifford is the use of an "object" which is a data structure. Payne and Gifford have fields in a database, such as ID, price, etc. These fields are not "object identity" nor "attributes", as they are not related to a data structure or "object", as in the '556 patent. A related aspect that is missing in Payne and Gifford is the notion of a "networked object" that is described in the '556 patent. Payne and Gifford do not automate the flow of a Web transaction over an end-to-end channel, routing encapsulated data structures atop the Internet or Web through a Web server to, for example, a Back-office application, as in the '556 patent. Payne and Gifford are each missing "object routing".

9. "Object routing" leads to dramatic advantages of the '556 and its parent patents over any of the Requester's cited art, such as any-to-any communication, end-to-end seamless automation, n-way transactions on the Web, an intelligent overlay service network across the value-chain from user to provider, Web applications offered as online services, a powerful platform for Web applications and services-on-demand over the Web, cloud computing, and many more advantages.

10. None of the references Requester has cited, discuss the exchange of structured information between the user and transactional application executing for example, at the Back-office of a Web merchant or between the purchaser, payment service, merchant, and/or any other involved parties, nor an end-to-end channel allowing an encapsulated data structure to be transmitted atop the Web through a Web server from a Web page. None of the cited art describe an open channel dynamically created on-demand through a Web server between a Web application and a transactional application.

11. In Payne and Gifford, the application logic is not on the front-end Web page, payment application is local to the Back-office, not on the front-end Web page. Their database does not provide the correlation between front and back-end. There are also several features of the '556 patent that are significantly missing in Payne and Gifford, namely, the automation of the flow of a Web transaction in a Web application, nor is there an intelligent service network atop the Web. Payne and Gifford do not even hint at "object routing", nor do they have a "networked object".

12. Upon examination, it is clear that McPartlan has essentially nothing to do with the '556 patent, Payne, Gifford, Ginter, or Popp. McPartlan focuses on the management of a physical network of physical devices.

13. Unlike the '556 patent, McPartlan does not relate to Web applications, including Internet commerce. The physical device in McPartlan is referred to as an object, but the McPartlan object is not a data structure. Nor is it a data structure upon which methods, operations or transactions can be performed, as one might with the "object" in the '556 patent, such as making a travel reservation on the Web, etc. The McPartlan object is not even related to object-oriented programming. There is no "object routing" in McPartlan. No methods, nor operations upon McPartlan's objects, nor object routing are possible or even mentioned or alluded to in McPartlan.

14. There are also several features of the '556 patent that are significantly missing in Ginter. Ginter describes a digital rights management system, which includes a container with content (for example, a digitized film) and a code key to unlock the content for use. This container is termed an object in Ginter, but has no relationship to the "object" in the '556 patent. The Ginter container has an ID; however, this ID is a field in a database. Furthermore, the control described in Ginter is not the distributed control of the '556 patent, that includes "networked object", "object routing", automation of the flow of a Web transaction in a Web application, nor of an intelligent service network atop the Web.

15. Of all the prior art cited by the Requester, only Popp refers to object-oriented programming. Popp teaches the use of object-oriented programming to create new web pages automatically. The object-oriented programming objects described in

Popp are display elements – in other words, object-oriented programming is used to generate HTML text which can be read as web pages in browsers. Popp does not even hint at "object routing", nor does he have a "networked object". When Popp talks about control, he talks about the control of the template of a Web page, for repetitive elements on a Web page and for varying the display.

16. In November 1995, object-oriented programming was still quite controversial. The few truly object-oriented programming languages were not in widespread use. It was more common to find languages which were adapted to include some object-oriented features. "Controversial" is the antithesis of "obvious".

17. Several features of the '556 patent are missing from the cited art, and are not obvious in any way, even if the cited references were combined in different permutations or taken individually. These include, but are not necessarily limited to, "networked object", and "object routing", as described in detail above. There would have been no motivation or possibility to combine hardware monitoring and diagnostics as in McPartlan with rendering of a Web page as in Popp, or with hotlinking, Web browsing, CGI and HTML as in Payne and Gifford, or with encryption key for protecting from piracy of content as in Ginter, or with transport layer messages via the physical Internet as in CORBA and Orfali, individually or in any permutation of the above. The '556 patent, therefore, makes several substantial, non-intuitive innovative leaps beyond the state of the cited art, all together as well as separately.

18. In Dr. Arunachalam's inventions in the '556 patent, a "value-added network" is a service network atop the Web that offers a Web application connecting to a transactional application. A "value-added network" is a service network over which

real-time Web transactions can be performed from a Web application by accessing a transactional application offered as an on-line service via the Web.

19. A service network offers a service, or an on-line service atop the Web. A service is an application, as stated in the '556 and its parent patents as "a particular type of application or service". An on-line service atop the Web is a Web application. So, a "value-added network" is a service network atop the Web, that offers a Web application as an on-line service. The Web application offered over the service network atop the Web is the value-add in the value-added network.

20. In the '556 patent, a "value-added network" includes "a service network running on top of an IP-based facilities network such as the Internet, the Web ...". This distinction of:

- a service network over a physical network or IP-based facilities network, such as the Internet, the Web or email networks;
- the service network atop the Web versus the physical Internet; and
- the application layer, as in the application layer of the OSI model, as in the '556 patent versus the lower layers such as the transport layer, like TCP/IP, or link layer or network layer or MAC layer

needs to be kept in mind in distinguishing the '556 patent from the Requester's cited art. On-the-wire communication at the transport layer, such as CORBA, Orfali, Birrell, Braden, Kahn, Ginter; physical network like Shwed, Braden, McPartlan, is clearly at a lower layer versus a "value-added network", as in the 556 patent.

21. In the '556 patent, a user specifies a **real-time Web transaction from a Web application** connecting to a transactional application, as opposed to mere Web

browsing. If this were mere Web browsing as described in Payne, Gifford and Popp, one would never get past the Web server to a Back-Office transactional application. They would never make it to a Back-Office in real-time, let alone to a transactional application at the Back-Office. That is one of the reasons they end up with deferred transactions.

22. The '556 patent describes a user value-chain in which real-time Web transactions occur from a user interacting with a Web application. The user value-chain consists of:

- a user,
- a Web server,
- a Web page displaying one or more Web applications,
- a Web application including "object"(s) or data structures specific to the Web application,
- a user transaction request from a Web application,
- object router,
- an open channel over which "objects" are routed through a Web server,
- a transactional application to service the request,
- a service network connecting a Web application to a transactional application, (aka a value-added network), and
- real-time Web transaction.

23. If the Requester's cited art is considered individually or in any combination, no real-time Web transactions occur from a user interacting with a Web application. None of the cited art offers a Web application.

24. In Payne, Gifford and Popp, there is a user, a Web server, and even a Web page, but not a Web page displaying one or more Web applications. Their user value-chain does not result in real-time Web transactions from a user interacting with a Web application, for a simple reason that there is no Web application.

25. In McPartlan, Braden, Shwed, there is a physical network, but no service network and not even a user for there to be a user value chain. No real-time Web transactions occur from a user interacting with a Web application.

26. In CORBA, Orfali, Birrell, there is a transport layer, that is a lower layer than the application layer, and there is no service network. They describe objects, but no Web applications. There is no data structures specific to a Web application. There is no user transaction request from a Web application. There is no object routing. There is no service network connecting a Web application to a transactional application, (aka a value-added network). No real-time Web transactions occur from a user interacting with a Web application.

27. In Kahn, Ginter, Atkinson, Crandall, Elgamal, there is no service network and no Web application. They offer encryption and digital rights' management. Kahn and Ginter describe objects, but not objects that are data structures. Their objects are files, for example, video files, that need to be protected from piracy. Such files may be shared from a network server via a LAN, which is a physical network. There is no user transaction request from a Web application. There is no object routing. There is no service network connecting a Web application to a transactional application, (aka a value-added network). No real-time Web transactions occur from a user interacting with a Web application.

28. By combining these four groups of Requester's cited art, namely:

- the Web server group (Payne, Gifford, Popp),
- the physical network group (McPartlan, Braden, Shwed),
- the transport layer group (CORBA, Orfali, Birrell), and
- the file sharing over a physical network group (Kahn, Ginter, Atkinson, Crandall, Elgamal),

they are still missing the inventive novelty in the '556 patent, namely:

- a Web application,
- "object"(s) or data structures specific to a Web application,
- a user transaction request from a Web application,
- object routing,
- a service network connecting a Web application to a transactional application, and
- an open channel over which "objects" are routed through a Web server.

Therefore, Requester's cited art in any combination cannot re-create Patentee's inventions, namely, a configurable value-added network switch that enables real-time Web transactions on a value-added network atop the Web.

29. In addition, Patentee's inventions enable:

- n-way real-time Web transactions,
- automating a transaction from beginning to end in real-time,
- holding a transaction captive at the network entry point on the Web,
- aggregation of Web application content,
- dynamic virtual packaging,

- remote service partners,
- routing switch within the application layer of the OSI model,
- transactional application selection mechanism,
- PoSvc application list on a Web page,
- user selects a transactional application,
- "user specification from a network application",
- connected Web application,
- "transaction link between network application and transactional application,"
- "connected with the value-added network with the transactional application,"
- service network that offers a Web application,
- "service network on top of an IP-based facilities network,"
- service network control,
- usage-based services,
- enabling service management of the value-added network service, to perform OAM&P functions on the services network,
- automated state management,
- DOLSIB, and
- client-server-client server n-way in n-tier management model.

Terms such as aggregation of content, dynamic virtual packaging, value-added service-specific virtual private network of remote service partners relate to the n-way transactions and co-operating service partners, packaging and aggregating Web applications as content in Applicant's patents. Once again, Requester's cited art lack these features.

30. In the '556 patent, a value-added network switch connects a user with an on-line service in a service network atop the Web that offers a Web application connecting to a transactional application. A value-added network switch links a user with an on-line service in a service network offering a Web-enabled transactional application. A "VAN switch" provides distributed control of the flow of a Web transaction in a Web application in a service network atop the Web. A "VAN switch" is an end-to-end solution that provides the value-added network service or Web application atop the Web. A "VAN switch" includes an "OSI application layer switch in a service network atop the Web". "Exchange and Management Agent constitute a VAN switch." A VAN switch consists of boundary service, switching service, management service and application service. A VAN switch includes the Point-of-Service Web applications on a Web page, connecting through a Web server to a transactional application, executing anywhere across a service network atop the Web, utilizing object routing. A switch in a physical network, as in a Cisco switch or Cisco router in a physical network, is not what the "switch" in the '556 patent is about. Such a physical network switch operates clearly at a lower layer than the "application layer network" or "service network atop the Web", as in the '556 patent.

31. "Real-time transactions" in Applicant's patents are real-time Web transactions from a Web application. Real-time Web transactions are performed by a user accessing an on-line service in a service network offering a Web-enabled transactional application. Real-time Web transactions performed from a Web application by accessing a transactional application offered as an on-line service via the Web. In simple words, real-time Web transactions are performed over a "value-added

network" that is a service network atop the Web that offers a Web application connecting to a transactional application. There is a clear distinction between Web browsing versus **real-time Web transactions from a Web application**, as described in the '556 patent. It is noteworthy that there is an absence of a Web application in each of Requester's cited art. So, no real-time transactions are performed in Requester's cited art, because there are no real-time Web transactions from a non-existent Web application.

32. Requester's cited art may include an application local to the Back-end. It does not necessarily follow that such an application connects to a Web application at the front-end. This leaves behind a disjointed island of information not connected through a Web server to a non-existent front-end Web application.

33. In the '556 patent, for the purposes of clarification, a "transactional application" is a PoSvc application. A "transactional application selection mechanism" is a PoSvc application list on a Web page. A "network application" is a Web application connecting to a transactional application over a service network atop the Web. A "user application" is a PoSvc transactional application or a Web application. A "user specification from a network application" is a Web transaction specified by a user from a Web application connecting to a transactional application over a service network atop the Web. A "user specification from a network application" is a real-time Web transaction specified by a user, a Web transaction that a user desires to perform, to access, for example, a Web merchant's services via the Web, from a Web application connecting to a transactional application over a service network atop the Web.

34. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true.

Signature: Markus W. Covert Date: 2·12·2010

Dr. Markus W. Covert

EXHIBIT A: DR. MARKUS W. COVERT'S RESUME

Positions

2007-	Assistant Professor, Department of Bioengineering, Stanford University.
2004-2006	Postdoctoral Scholar, David Baltimore Lab, Biology Division, Caltech.
2001	Research Scientist Consultant, Genomatica, Inc.
1998-2003	Graduate Student, Palsson Lab, Department of Bioengineering, UCSD.
1997-1998	Engineer, Research and Development, Elesys, Inc.
1996-1997	Research Assistant, Chemical Engineering Department, BYU.

Honors

2007-	National Cancer Institute, Pathway to Independence Award (K99/R00).
2004-2006	Damon Runyon Cancer Research Foundation, Postdoctoral Fellowship.
2004	National Cancer Institute, Postdoctoral Fellowship, 2004 (declined).
2003	University of California, San Diego, First Graduate in Bioinformatics.
1991-1997	Brigham Young University, Ezra Taft Benson Presidential Scholarship.

Professional Societies

2002-2009	Biomedical Engineering Society
1996-2003	American Institute of Chemical Engineers

Peer-reviewed publications (in chronological order)

1. Lee TK, Denny EM, Sanghvi JC, Gaston JE, Maynard ND, and Covert MW. "A stochastic switch determines the cellular response to LPS", in revision.
2. Seok J, Xiao W, Moldawer LL, Davis RW, and Covert MW. "A dynamic network of transcription in LPS-treated human subjects", in review.
3. Hughey JJ, Lee TK, Covert MW. "Modeling Mammalian Signal Transduction Networks" In Press, Wiley Interdisciplinary Reviews: Systems Biology.
4. Terzer M, Maynard ND, Covert MW, and Stelling J."Genome-scale metabolic networks", In Press, Wiley Interdisciplinary Reviews: Systems Biology.
5. Covert MW (Corresponding Author), Xiao N, Chen TJ, and Karr JR. "Integrated Flux Balance Analysis Model of Escherichia coli" Bioinformatics. 2008. Sep15;24(18): 2044-50. PMID: 18621757
6. Covert MW, Leung TH, Gaston JE, Baltimore D. "Achieving stability of lipopolysaccharide-induced NF-κB activation" Science. 2005. 309(5742): 1854-7.
7. Covert MW. "Integrated regulatory and metabolic models" Computational Systems Biology. Academic Press, New York, 2005.
8. Herrgård MJ, Covert MW, Palsson BØ. "Reconstruction of microbial transcriptional regulatory networks" Curr Opin Biotechnol. 2004. 15(1): 70-7.
9. Covert MW, Knight EM, Reed JL, Herrgård MJ, Palsson BØ. "Integrating high-throughput and computational data elucidates bacterial networks" Nature. 2004. 429(6987): 92-6.

10. Covert MW, Palsson BØ. "Constraints-based models: regulation of gene expression reduces the steady-state solution space" J Theor Biol. 2003. 221(3): 309-25.

11. Covert MW, Famili I, Palsson BØ. "Identifying constraints that govern cell behavior: a key to converting conceptual to computational models in biology?" Biotechnol Bioeng. 2003. 84(7): 763-72.

12. Herrgård MJ, Covert MW, Palsson BØ. "Reconciling gene expression data with known genome-scale regulatory network structures" Genome Res. 2003. 13(11): 2423-34.

13. Covert MW, Palsson BØ. "Transcriptional regulation in constraints-based metabolic models of Escherichia coli" J Biol Chem. 2002. 277(31): 28058-64.

14. Schilling CH, Covert MW, Famili I, Church GM, Edwards JS, Palsson BØ. "Genome-scale metabolic model of Helicobacter pylori 26695" J Bacteriol. 2002. 184(16): 4582-93.

15. Covert MW, Schilling CH, Famili I, Edwards JS, Goryanin II, Selkov E, Palsson BØ. "Metabolic modeling of microbial strains in silico" Trends Biochem Sci. 2001. 26(3): 179-86.

16. Covert MW, Schilling CH, Palsson BØ. "Regulation of gene expression in flux balance models of metabolism" J Theor Biol. 2001. 213(1): 73-88.

17. Edwards JS, et al. "Genomic Engineering of Bacterial Metabolism" Encyclopedia of Microbiology. Academic Press, New York, 2000.

Patents

1. Bradshaw, G.L., Covert, M.W., R.Q., Sorensen, M.K., and Unter, J.E., "Radial Printing System and Method," United States Patent 6,264,295 July 2001
2. Palsson, B.O., Covert, M.W., and M.J. Herrgard, "Models and Methods for Determining Systemic Properties of Regulated Reaction Networks". Patent Pending (Application Number 20040072723)
3. Palsson, B.O., Famili, I., and Covert, M.V. and C.H. Schilling, "Human Metabolic Models and Methods," Patent Pending (Application Number 20040029149).
4. Palsson, B.O., Covert, M.W., and C.H. Schilling, "Models and Methods for Determining Systemic Properties of Regulated Reaction Networks," Patent Pending (Application Number 20030059792).

IN THE PATENT AND TRADEMARK OFFICE

In re patent No. 7,340,506	)	
	)	
Patent Owner: WebXchange, Inc.	)	Art Unit: 3992
	)	
REEXAM Control NO: 95/001,129	)	Examiner: Z. Cabrera
	)	
Reexam filing date: 12/19/2008	)	
	)	
Patent issue date: 03/04/2008	)	
	)	
Title: VALUE-ADDED NETWORK SWITCHING AND OBJECT ROUTING	)	
	)	

DECLARATION OF DR. JAY M. TENENBAUM

1. My name is Dr. Jay M. Tenenbaum. My address is 169 University Avenue, Palo Alto, CA 94301. I have been asked to offer opinions with respect to prior art references cited in this reexamination. I base these opinions on my experience as a recognized pioneer and visionary in Internet and Web technologies, and my training and education.

2. I am currently Chairman and Chief Scientist of CollabRx, Inc. in Palo Alto, CA. I bring to CollabRx the unique perspective of a world-renowned Internet commerce pioneer and visionary. I was Founder and CEO of Enterprise Integration Technologies, the first company to conduct a commercial Internet transaction (1992), secure Web transaction (1993) and Internet auction (1993). In 1994, I founded CommerceNet, the first industry association for Internet Commerce. In 1997, I co-founded Veo Systems, the company that pioneered the use of XML for automating business-to-business transactions. I joined Commerce One in January 1999, when it acquired Veo Systems.

As Chief Scientist of Commerce One, I was instrumental in shaping the company's business and technology strategies for the Global Trading Web. Post Commerce One, I was an officer and director of Webify Solutions, which was sold to IBM in 2006, and Medstory, which was sold to Microsoft in 2007. Earlier in my career, I was a prominent AI researcher and led AI research groups at SRI International and Schlumberger Ltd. I am a fellow and former board member of the American Association for Artificial Intelligence, and a former consulting Professor of Computer Science at Stanford. I currently serve as a director of Efficient Finance, Patients Like Me, and the Public Library of Science, and am a consulting professor of Information Technology at Carnegie Mellon's new West Coast campus. I hold B.S. and M.S. degrees in Electrical Engineering from MIT, and a Ph.D. from Stanford.

3. At CollabRx, I am applying my knowledge as a pioneer in Internet technologies to personalized genomic medicine. I am working to slash the time and cost of developing personalized therapies for those with rare and neglected diseases by creating virtual biotechs that marry advances in genomics and computational/systems biology with the efficiencies of web-based collaborative research. At CollabRx, I am aiming to transform the life sciences industry—by connecting research labs, biotechs, pharmas and their service providers into a networked ecosystem of interoperable research services that can be rapidly assembled to develop new therapies with unprecedented efficiencies and economies of scale. My mission is finding treatments for rare and orphan diseases within the lifetimes and collective means of current patients. Today there are over 6,000 such diseases identified, afflicting over 25 million people.

4. Attached as Exhibit A is my resume. I have published many papers, been awarded numerous patents, and received many honors during my career on a wide range of topics, from Internet and Web technologies to Web-based collaborative personalized genomic medicine to Internet technologies applied to computational biology and bioinformatics to AI.

5. I have been briefed by the inventor on U.S. Patent 7,340,506 titled Value-Added Network Switching and Object Routing ("'the '506 patent"), the provisional application 60/006634 ("the '634 provisional application"); and the references that have been asserted against the '506 patent in the reexamination proceeding including U.S. Patent 6,249,291 to Popp ("Popp"); U.S. Patent 5,715,314 to Payne ("Payne") and U.S. Patent 5,910,987 to Ginter ("Ginter"), U.S. Patent 5,724,424 to Gifford ("Gifford"), and a set of references directed to the Simple Network Management Protocol including "Structure and Identification of Management Information for TCP/IP-based Internets," Rose and McCloghrie, Network Working Group Requests for Comments No. 1155 ("Rose RFC 1155"), "Management Information Base for Network Management of TCP/IP based Internets: MIB-II," Network Working Group Request for Comments No. 1213 ("McCloghrie RFC 1213"), "Party MIB for version 2 of the Simple Network Management Protocol (SNMPv2)," Network Working Group Request for Comments No. 1447 ("McCloghrie RFC 1447"), and "Managing Internet works with SNMP: the definitive guide to the Simple Network Management Protocol and SNMP version 2" by Mark A. Miller ("Miller").

6. It is my understanding, based on these briefings, that the '506 patent is directed to interactive Web applications and exchange across a service network atop

the Web. More particularly, a Point of Service (PoSvc) application that encapsulates the application logic in a data structure called an "object" is provided at a Web page. This makes it a starting point for the control of the user experience and automation of the transaction flow. The application logic is specific to and associated with the business process of the on-line service offered by a provider atop the Web. The operations that may be performed upon this data structure are the transactions a user may perform in the value-added service or business process. Associating "information entries" input by a user with the "attributes" in the data structure personalizes the transaction. The instantiated data structure, called an "object identity", is transmitted/routed over an open channel across a value-added service network atop the Web. This type of communication between the personalized data structure with the transactional "object" executing in a Back-office application of a Web merchant makes it a "networked object" and is called "object routing" because the personalized data structure is transmitted over the open channel atop the Web through a Web server. The open channel is created on-demand, in real-time, so object routing can be performed when a user transacts.

7. I have been told that numerous examples of these Web applications are described in the '506 patent, such as checking account, savings account, HR applications, payroll applications, and other PoSvc applications on a Web page. These allow users to perform two-way, three-way, extended to n-way transactions and any-to-any communications on the Web, thus facilitating a large, flexible variety of robust, real-time transactions on the Web.

8. Prior to 1995, with the invention of the '506 patent, and the first public demonstrations of the Java programming environment, simple Web publishing storefronts were the norm. An application was local to the Back-office. There were no PoSvc applications on the front-end on a Web page, much less connecting to a transactional application executing, for example, at the Back-office. There was no application logic or business process logic at the front-end on a Web page. A Web form was commonly filled out by a user and submitted to a Web server, but there was no Web application on the Web page. Rather, these publishing storefronts merely automated order-taking on the Web and passed a request from a Web server. The invention in the '506 patent was a leap forward to automating interactive Web applications by creating an open channel for routing objects through a Web server across a service network atop the Web.

9. The invention in the '506 patent represents the evolution of the Web from Web publishing, Web forms, and CGI to automated Web applications and Web transactions. The invention in the '506 patent filled a need for a universal, automated, open solution for Web applications and Web transactions. Communication of structured information specific to online services over the Web provides distributed control of the value-added service network and automation of the transaction flow. Transmitting the application logic encapsulated as an "object" from a Web page to a transactional application executing at the Back-office of a Web merchant serves to connect application logic from a Web page to the Back-end. The inventor of the '506 Patent, in contrast to other approaches at that time, viewed the problem to be solved as a networking problem, advancing from the world of physical networks and lower layers of

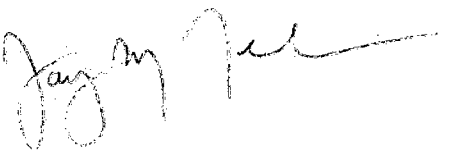
the OSI model, such as TCP/IP, to an intelligent overlay service network atop the Web through a Web server from a PoSvc application on a Web page across an open channel to the Back-office of a Web merchant.

10. I have reviewed documents relating to use of Microsoft .net by companies such as Dell ("New Dell Sales Tool Can Reduce Dell Sales Call Times by 10 Percent or More, Substantially Improve Profitability, Exhibit B); and Allstate ("Allstate Uses Web Services To Quickly Create Insurance Policy Management Solution," Exhibit C and "Allstate Connects With Countrywide Producer Network In Seven Months Using Microsoft Visual Studio .Net And The .Net Framework," Exhibit D). It my opinion based on my knowledge of Web commercial services and my review of documents such as those at Exhibits B, C, and D, that products such as Dell.com's Tax and Shipping web service, Dell.com order status web services, the Allstate Customer Care Center and accessAllstate.com, Fedex Ship Manager@FedEx.com, Fedex Global Trade Manager, and Fedex's Web Services i) have achieved commercial success and ii) have achieved that commercial success because they use concepts covered by the '506 patent. For example, they create objects that are personalized for a user (e.g., a customer) and that can be routed to an application executing on a second computer system anywhere on the network.

11. SNMP is a protocol for monitoring and managing physical devices in a network. As I understand it, SNMP has nothing to do with Web applications and the '506 patent.

12. Based on the briefing I received, it is therefore my opinion that none of the references listed in paragraph 5 disclose the invention of the '506 patent.

13. All statements made herein of my own knowledge are true and all statements made on information received via briefings are believed to be true.



Signature: _____ Date: May 31, 2009

Dr. Jay M. Tenenbaum

EXHIBIT A: DR. JAY M. TENENBAUM'S BIO

Jay M. Tenenbaum, Ph.D., Chairman and Chief Scientist, CollabRx:

Jay M. ("Marty") Tenenbaum is the founder, Chairman and Chief Scientist of CollabRx. Dr. Tenenbaum brings to CollabRx the unique perspective of a world-renowned Internet commerce pioneer and visionary. He was founder and CEO of Enterprise Integration Technologies, the first company to conduct a commercial Internet transaction (1992), secure Web transaction (1993) and Internet auction (1993). In 1994, he founded CommerceNet to accelerate business use of the Internet. In 1997, he co-founded Veo Systems, the company that pioneered the use of XML for automating business-to-business transactions. Dr. Tenenbaum joined Commerce One in January 1999, when it acquired Veo Systems. As Chief Scientist, he was instrumental in shaping the company's business and technology strategies for the Global Trading Web. Post Commerce One, Dr. Tenenbaum was an officer and director of Webify Solutions, which was sold to IBM in 2006, and Medstory, which was sold to Microsoft in 2007. Earlier in his career, Dr. Tenenbaum was a prominent AI researcher and led AI research groups at SRI International and Schlumberger Ltd. Dr. Tenenbaum is a fellow and former board member of the American Association for Artificial Intelligence, and a former consulting professor of Computer Science at Stanford. He currently serves as a director of Efficient Finance, Patients Like Me, and the Public Library of Science, and is a consulting professor of Information Technology at Carnegie Mellon's new West Coast campus. Dr. Tenenbaum holds B.S. and M.S. degrees in Electrical Engineering from MIT, and a Ph.D. from Stanford.

CollabRx is slashing the time and cost of developing personalized therapies for those with rare and neglected diseases by creating virtual biotechs that marry advances in genomics and computational/systems biology with the efficiencies of web-based collaborative research. CollabRx aims to transform the life sciences industry—by connecting research labs, biotechs, pharmas and their service providers into a networked ecosystem of interoperable research services that can be rapidly assembled to develop new therapies with unprecedented efficiencies and economies of scale. Their mission is finding treatments for rare and orphan diseases within the lifetimes and collective means of current patients. Today there are over 6,000 such diseases identified, afflicting over 25 million people. In the coming age of personalized genomic medicine, every disease will be rare and every individual's condition unique.

20-2196

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Dr. Lakshmi Arunachalam,
a woman,

v.

CITIGROUP INC.,
CITICORP,
CITIBANK N.A.,
Defendants-Appellees,

DOES 1-100,
Defendants,

Appeal from the United States District Court for the District of Delaware
in Case No. 1:14-cv-00373-RGA, Judge Richard G. Andrews

Amicus Curiae, Daniel Brune's
MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR *EN BANC* REHEARING

November 12, 2020

Daniel Brune,
1200 Via Tornasol
Aptos, CA 95003
Tel: 831.818.5950; Email:danbrune@me.com
Daniel Brune, Amicus Curiae

I, Daniel Brune, hereby move this Court for leave to file an *amicus curiae* brief in support of Petitioner, Dr. Lakshmi Arunachalam.

A: Movant's Interest:

My interest, as a movant, is in the process of justice, because it appears that this essential ingredient is blocked in all of Dr. Lakshmi Arunachalam's cases. I'm hopeful that this court may eventually achieve justice, as the Petitioner is otherwise left with protected rights and no remedy.

(B) The reason why an *amicus curiae* brief is desirable and why the matters asserted are relevant to the disposition of the case:

An *amicus curiae* brief is desirable, because there has been a denial of due process by the courts which have failed to perform their ministerial duty to uphold their solemn oaths of office to defend the Constitution. The courts have dismissed over 100 of Petitioner's cases without a hearing. It's been proven that some of the judges hearing these cases own direct stock in the Defendants. They are effectively acting as attorneys to the Defendant and ordering the Defendant to go into Default. It does not appear accidental that this has happened in over 100 cases.

The matters asserted in this case are relevant to the disposition of the case because the courts, clerks and the USPTO/PTAB failed to perform their ministerial duty to uphold their solemn oaths of office to enforce the Constitution — the Law of the Case and Law of the Land. In doing my research, I was the first to discover the

Supreme Court precedents that apply to this case and must be enforced by this Court— *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819); *Grant v. Raymond*, 31 U.S. 218 (1832); *U.S. v. American Bell Telephone Company*, 167 U.S. 224 (1897); *Ogden v. Saunders*, 25 U.S. 213 (1827) and affirmations thereof. Chief Justice Marshall declared the sanctity of patent grant contracts between the Federal Government and the inventor, in accordance with the Contract Clause, IP Clause and Separation of Powers Clause of the Constitution and ruled that any Orders that failed to uphold the obligation of contracts in accord with the Constitution are void and unconstitutional. This constitutes denial of due process. The Courts have oppressed Dr. Arunachalam, who has not had her day in court in over 100 cases.

CONSENT: Opposed.

CONCLUSION: ***Wherefore,*** I request that the Court grant my Motion.

November 12, 2020

Respectfully submitted,

Daniel Brune
1200 Via Tornasol
Aptos, CA 95003
Tel. 831-818-5950
Email: danbrune@me.com
Daniel Brune, Amicus Curiae

20-2196

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Dr. Lakshmi Arunachalam,
a woman,

v.

CITIGROUP INC.,
CITICORP,
CITIBANK N.A.,
Defendants-Appellees,

DOES 1-100,
Defendants,

Appeal from the United States District Court for the District of Delaware
in Case No. 1:14-cv-00373-RGA, Judge Richard G. Andrews

Amicus Curiae, Daniel Brune's
AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR *EN BANC* REHEARING

November 12, 2020

Daniel Brune,
1200 Via Tornasol
Aptos, CA 95003
Tel: 831.818.5950; Email:danbrune@me.com
Daniel Brune, Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

STATEMENT OF THE IDENTITY OF THE *AMICUS CURIAE*, ITS INTEREST IN THE CASE, AND THE SOURCE OF ITS AUTHORITY TO FILE

I, Daniel Brune, the *amicus curiae* in this case, live in California at 1200 Via Tornasol, Aptos, CA 95003.

I am a former U.S. Air Force Major and Senior Pilot who served over 12 years on active duty. I was awarded two Air Medals for flying potentially hazardous surveillance missions over the Middle East that were ordered by the Joint Chiefs of Staff. After an honorable discharge from the U.S. Air Force, I was hired by a major international airline, retiring in 2017. My service to this country began when I solemnly swore that I "will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God". To this day, I still abide by that oath. Likewise, I expect our judges to abide by their solemn oath to "administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as a judge under the Constitution and laws of the of the United States. So help me God." Attorneys also swear an oath to support the Constitution, which I expect them to honor as well. My question is: why is this not

happening in the cases of Dr. Lakshmi Arunachalam? Was she not to expect the same treatment of other citizens of this country? Was this elderly, disabled, female of color, who continually works night and day to convince a court to give her the same considerations as those with more money and power, somehow lesser in stature or importance in the eyes of the law? I think not, and I am appalled that this is even an issue. I cannot think of any inventor who has provided the world with such a ground-breaking invention - the actual first step to every technological thing we enjoy today - who has been so ignored by the courts. Primarily, she has not had her day in court in over 100 cases! She has been denied her due process and right to trial by jury. I was always under the impression that the courts would listen to every aspect of a case and not deny the landmark Supreme Court precedents that have endured for over two hundred years.

AMICUS CURIAE'S INTEREST IN THIS CASE: is in the process of justice, because it appears that this essential ingredient is blocked in all of Dr. Lakshmi Arunachalam's cases. It is hopeful that this court may eventually achieve justice, as the Petitioner is left with protected rights and no remedy.

SOURCE OF *AMICUS CURIAE*'S AUTHORITY TO FILE: I sent an email on November 12, 2020 to Appellees in this case for consent to file this *amicus curiae* brief. Appellees oppose. I further filed a Motion for Leave to file this *Amicus Curiae* Brief.

STATEMENT OF *AMICUS CURIAE* ON WHO AUTHORED THE BRIEF AND WHO CONTRIBUTED MONEY TO AUTHOR THE BRIEF:

1. I, Daniel Brune, declare that I authored this brief.

2. Neither Petitioner or Appellees nor their counsel authored the brief in whole or in part.

3. No party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

4. No person, - other than the *amicus curiae*, who is an individual, (there are no members, and no counsel) - contributed money that was intended to fund preparing or submitting the brief.

November 12, 2020

Respectfully submitted,

Daniel Brune,
1200 Via Tornasol
Aptos, CA 95003
Tel: 831.818.5950; Email:danbrune@me.com
Daniel Brune, Amicus Curiae

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER DR. LAKSHMI ARUNACHALAM'S PETITION FOR *EN BANC* REHEARING

I, Daniel Brune, an *amicus curiae,* hereby file this *Amicus Curiae* Brief in support of Petitioner, Dr. Lakshmi Arunachalam.

SUMMARY OF ARGUMENT: I served this country because I believe in its ideals, and the opportunities it makes available to anyone with the knowledge, skill, and determination to realize their dreams. It should go without saying that "liberty and justice" is expected to be afforded to all. I have followed Dr. Arunachalam's cases because it became increasingly obvious that she somehow didn't matter to the judiciary. When I find the number of cases where her due process has been denied her, some where the judges themselves held some type of stock ownership in the defendants, I am nearly speechless. How can this occur in the United States of America with a Constitution that has served us well for so long? This is a shameful example of how public officials have failed to perform their ministerial duties, thus denying Petitioner due process by ignoring their solemn oaths of office to defend the Constitution.

ARGUMENT: Dr. Arunachalam has done everything by the book. The Law of the Case and the Law of the Land are firmly in her favor. Ignoring Supreme Court precedents and other similar behavior should have been identified and stopped long ago, by judges who had earlier knowledge of her cases, their strength, and their veracity. This brilliant inventor, forced to act as her own attorney due to financial

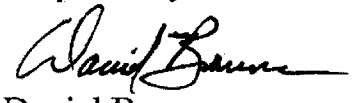
hardships caused by this apparently flawed system, deserves to have her due process restored.

This is undoubtedly an extraordinary situation, where Dr. Lakshmi Arunachalam, an American citizen, has continually been denied due process by the courts. Court officials' ministerial duties to enforce the Constitution have been ignored in over 100 cases, requiring this Court to reverse the District Court and allow Dr. Arunachalam to have her day in Court. Numerous legal precedents have also been ignored, which cannot be allowed to continue in a legal system long considered to be the best in the world.

CONCLUSION: It should be evident to all who read this brief that there is something wrong with the egregious treatment endured by Dr. Arunachalam over the course of her many cases brought before the judiciary. Please give this brilliant, gifted inventor the chance to have her "day in court" and the opportunity to present her cases completely - not ignoring the entirety of the record. I believe that if this examination is made, any reasonable person will see Dr. Arunachalam's invention is, fundamentally and foundationally, the technology which we know as the Internet of Things - Web Applications Displayed on a Web Browser. Without her technology, literally trillions of dollars of market capitalization would not exist. Dr. Arunachalam deserves to claim her rightful ownership of what she alone has created. To ignore this request to restore due process for one inventor will harm

innovation. It will be a signal to other inventors that there is no incentive to put the time, effort, and money into a potentially lifesaving or life-altering invention, due to the probability that large corporations with more money, power, and influence will take it as their own.

November 12, 2020 Respectfully submitted,



Daniel Brune
1200 Via Tornasol
Aptos, CA 95003
Tel: 831.818.5950; Email: danbrune@me.com
Daniel Brune, Amicus Curiae

CERTIFICATE OF COMPLIANCE WITH FRAP 32(g)

The undersigned hereby certifies that this brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32(g).

1. The brief contains 539 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. The brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

November 12, 2020 Respectfully submitted,

Daniel Brune
1200 Via Tornasol
Aptos, CA 95003
Tel: 831.818.5950; Email: danbrune@me.com
Daniel Brune, Amicus Curiae

CERTIFICATE OF SERVICE

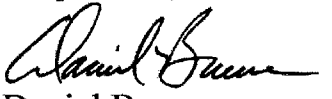
I certify that on November 12, 2020, I filed an original of the foregoing briefs, with the Clerk of the Court in the United States Court of Appeals for the Federal Circuit, via the USPS to:
The Clerk of the Court,
U.S. Court of Appeals for the Federal Circuit,
717 Madison Place NW, Washington, DC 20439

and I certify that on the same day, I served a copy on counsel of record for all Appellees, via email and/or via the U.S. Postal Service at the following address:

Citi Group, Inc., Citicorp, CitiBank, N.A.;
Nicholas Hunt Jackson, Dentons US LLP
1900 K Street NW, Washington, DC 20006
(202) 408-6463; Email: nicholas.jackson@dentons.com
Eric Sophir; Foley & Lardner LLP
Washington Harbour
3000 K Street, N.W. | Suite 600
Washington, D.C. 20007-5109
Direct 202.295.4149; Cell 202.714.0431; esophir@foley.com

Counsel for Appellees, Citi Group, Inc., CitiBank, N.A;

November 12, 2020 Respectfully submitted,



Daniel Brune
1200 Via Tornasol
Aptos, CA 95003
Tel: 831.818.5950; Email: danbrune@me.com
Daniel Brune, Amicus Curiae