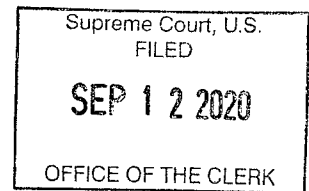


No. 20-364

In the Supreme Court of the United States

IN RE Thomas Alexander Wilkins,

Petitioner,



**On Petition for Writ of Certiorari to the
United States District Court for the Eastern District of California 1:10-cv-
00674,
1:13-cv-01943(Related),
the
United States International Trade Commission
and
United States Patent and Trademark Office
United States Court of Appeals for the Federal Circuit Case 2020-141 ECF.
No. 6,
August 14, 2020.**

Thomas Wilkins (PRO SE.)

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September 12, 2020

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PARTIES TO THE PROCEEDING

1. General Electric Company and GE Wind Energy LLC v. Thomas Wilkins, MITSUBISHI HEAVY INDUSTRIES, LTD., AND MITSUBISHI POWER SYSTEMS AMERICAS, INC., Intervenors E.D. Cal 1:10-cv-00674, E.D. Cal. 1:13-cv-01943. Fed. Cir. 2013-1086, 2013-1169, 2013-1170, 2013-1171.
2. GENERAL ELECTRIC COMPANY, Appellant, v. INTERNATIONAL TRADE COMMISSION, Appellee, AND MITSUBISHI HEAVY INDUSTRIES, LTD., AND MITSUBISHI POWER SYSTEMS AMERICAS, INC., Intervenors. Fed. Cir. 2010-1223(2011), USITC 337-TA-641

JURISDICTION

The United States Court of Appeals for the Federal Circuit entered its opinion August 14, 2020 without an U.S. Const. Art. III analysis of its own, the USITC, or the district courts jurisdiction, in accordance with 28 USC § 1254(1), this Court has jurisdiction to Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; where Article III of the Constitution confines the judicial power of federal courts to deciding actual “Cases” or “Controversies.” One essential aspect of this

requirement is that any person invoking the power of a federal court must demonstrate standing to do so. *Hollingsworth v. Perry*. 570 US 693 (2013).

FRONT MATTER 2 USC § 285

Petitioner provides all rights reserved as provided to petitioner as free inhabitant in the Articles of Confederation and North West Ordinance as the United States recognizes the free inhabitation of women and men with each state of the United States of America incorporated in the U.S. Code (Please find United States Code Title 1 Front Matter Law Revision Council 2 USC § 285(b)¹ are included and reserved.

U.S. CONSTITUTION ARTICLE 1 § 8, CL 3, CL 8

United State patent law is authorized by Article 1 section 8 clause 3 and clause 8 of the U.S. Constitution which states

“The Congress shall have the power...To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

U.S. CONSTITUTION ARTICLE III

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States

¹ Concerning the states and territories where jurisdiction is common to the Articles of Confederation, Northwest Ordinance and U.S. Constitution for the same.

shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State,—between Citizens of different States,— between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.”

U.S. CODE

19 USC § 1337

[...]

“Each determination under subsection (d) and (e) of this section shall be made on the record...with the provision of subchapter II of Ch. 5 of Title 5 USC.”

35 USC § 256 (PRE AIA)

“Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his part, the Director [may], on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate correcting such error. The error of omitting inventors or naming persons who are not inventors shall not invalidate the patent in which such error occurred if it can be corrected as provided in this section. The court before which such matter is

called in question may order correction of the patent on notice and hearing of all parties concerned and the Director shall issue a certificate accordingly. “

35 USC § 111(A)(1) (PRE AIA)

Application for Patent An application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Director.”

35 USC. § 116(B) OMITTED INVENTOR (PRE AIA)

“(b) OMITTED INVENTOR.— If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself and the omitted inventor. The Director, on proof of the pertinent facts and after such notice to the omitted inventor as he prescribes, may grant a patent to the inventor making the application, subject to the same rights which the omitted inventor would have had if he had been joined. The omitted inventor may subsequently join in the application.”

37 CFR § 1.41 (PRE AIA)

“(a) A patent is applied for in the name or names of the actual inventor or inventors.

(1) The inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by §1.63, except as provided for in §§.1.53(d)(4), and 1.63(d). If an oath or declaration as prescribed by § 1.63 is

not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(b), unless applicant files a paper, including the processing fee set forth in § 1.17(i), supplying or changing the name or names of the inventor or inventors.”

37 CFR § 1.48 (2002)

“(a) Nonprovisional application: Any request to correct or change the inventorship once the inventorship has been established under § 1.41 must include:

(1) An application data sheet in accordance with § 1.76 that identifies each inventor by his or her legal name; and

(2) The processing fee set forth in § 1.17(i).

(b) Inventor’s oath or declaration for added inventor: An oath or declaration as required by § 1.63, or a substitute statement in compliance with § 1.64, will be required for any actual inventor who has not yet executed such an oath or declaration.

(c) Any request to correct or change the inventorship under paragraph (a) of this section filed after the Office action on the merits has been given or mailed in the application must also be accompanied by the fee set forth in § 1.17(d), unless the request is accompanied by a statement that the request to correct or change the inventorship is due solely to the cancelation of claims in the application.”

37 CFR § 1.76(PRE AIA)

“(a) Application data sheet. An application data sheet is a sheet or sheets, that may be voluntarily submitted in either provisional or nonprovisional applications, which contains bibliographic data, arranged in a format specified by the Office. An application data sheet must be titled “Application Data Sheet” and must contain all of the section headings listed in paragraph (b) of this section, with any appropriate data for each section heading. If an application data sheet is provided, the application data sheet is part of the provisional or nonprovisional application for which it has been submitted.”

37 CFR § 3.73 (PRE AIA)

“(a) The inventor is presumed to be the owner of a patent application, and any patent that may issue therefrom, unless there is an assignment. The original applicant is presumed to be the owner of a trademark application or registration unless there is an assignment.”

37 CFR § 1.324² (35 USC 256)

(a) Whenever through error a person is named in an issued patent as the inventor, or an inventor is not named in an issued patent, the Director, pursuant to 35 USC. 256, may, on application of all the parties and assignees, or on order of a court before which such matter is called in question, issue a certificate naming only the actual inventor or inventors.

(b) Any request to correct inventorship of a patent pursuant to paragraph (a) of this section must be accompanied by:

(1) A statement from each person who is being added as an inventor and each person who is currently named as an inventor either agreeing to the change of inventorship or stating that he or she has no disagreement in regard to the requested change;

(2) A statement from all assignees of the parties submitting a statement under paragraph (b)(1) of this section agreeing to the change of inventorship in the patent, which statement must comply with the requirements of § 3.73(c) of this chapter; and

(3) The fee set forth in § 1.20(b).

(c) For correction of inventorship in an application, see § 1.48.

² Federal Register / Vol. 69, No. 182. Section 1.324: Sections 1.324(a) and (b) are amended to provide an informational reference to 35 U.S.C. § 256 and to replace "petition" with "request." Section 1.324(a)

REQUEST FOR RELIEF

1. Should this court find that the inferior courts did not have U.S. Const. Article III jurisdiction, petitioner respectfully requests that this court direct such inferior appellate court, district courts and USITC to vacate any opinion, court orders, findings and conclusions of law that are issued without U.S. Const. Art. III jurisdiction.

STATEMENT

Neither the United States International Trade Commission(USITC), district court or the Federal Circuit directed the inventorship to change on United States Patent and Trademark Office(USPTO) application 10/350,452, where they never had U.S. Const. Art III jurisdiction to do so, given the application record and rights granted to the U.S Congress under the Organic law of this country³; and the rights granted to the president by the U.S. Congress and the rules promulgated by the President, the Secretary of Commerce and Director of the USPTO, specifically concerning 37 CFR §§ 1.324(PRE AIA), 3.73 (PRE AIA), 1.76(PRE AIA), 1.41(PRE AIA), 1.48(PRE AIA). In this case, it is given and undisputed that the petitioner's name is on each application for patent filed under 35 USC §§ 111, 116 at USPTO application 10/643,297 and 10/350,452, and plaintiff failed to provide to any court that the petitioner is or was under a duty to assign the same. Where both the USITC and the district court failed to analyze the application record and concerning the USITC and intervenors derived counter claim in E.D. Cal. 1:10-cv-00674 concerning 35 USC § 256(PRE AIA), and as a consequence usurp the role of the USPTO; where the petitioner contends the USTIC and district court erred by directing Mr. Wilkins to go to the district court concerning 35 USC § 256 and then hear this specific 35 USC 256 counterclaim, where under 35 USC 256 the statute uses the auxiliary verb "may" where the court is required to evaluate such application to determine the extent of its jurisdiction under U.S. Const. Article III and preserve the doctrine of separation of powers and not inadvertently usurp the role of the USPTO.

FED. RULE. APPELATE PROC. 35(B)(1)(A).

1. Petitioner filed a Petition for a Writ of Mandamus on July 16, 2020 to the United States District Court for the Eastern District of California Nos. 1:10-cv-

³ See 35 USC § 100(c)

00674, 1:13-cv-01943(Related). The Clerk of the court for the United States Court of Appeals for the Federal Circuit filed their response on August 14, 2020 (2020-141 ECF. No. 6). On August 27, 2020, Petitioner filed a request for review under Federal Rules of Appellate Procedure 35 to the response concerning *General Electric Company v. International Trade Commission and Mitsubishi Heavy Industries LTD, and Mitsubishi Power Systems Americas, Inc, Intervenors (Fed. Cir. 2010-1223)(2011)* (Related), Fed. Cir. 2013-1170 requesting for review under Fed. Rule Appellate Proc. 35, for the full court the United States Postal Service returned a form 8311 to the Clerk of the Court where the Rule 35 request was sent August 27, 2020 overnight guaranteed USPS Tracking number 9590 9402 5965 0062 3579 14 signed for delivery on August 31, 2020, where Petitioner presumed due to the inaccessibility of the clerk's office (on Friday August 28th, 2020), unless the court orders otherwise, if the clerk's office is inaccessible under Federal Rules of Appellate Procedure 26(a)(3) the request is received with the time allowed. The Clerk as of the filing of the Rule 35 request has not placed the request on the docket at 2020-141.

2. Petitioner requested a review of the full court and it has not been placed on the docket 2020-141 as of September 6th, 2020 of the panel decision or opinion at Fed. Cir. 2020-141 ECF. No. 6, and Fed. Cir. 2013-1170 ECF No. 22 conflict with a decision of the United States Supreme Court under *Loving v. United States*, 517 U.S. 748, 757(1996), *Washington v. Glucksberg*, 521 U.S. 702 (1997), *United States v. Carlo Bianchi & Co.*, 373 U.S. 709, 715 (1963), *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126-27 (2007), *Liteky v. United States*, 510 U.S. 540, 555(1994), petitioner incorporates the authorities cited in the writ (Fed. Cir. 2020-141 ECF. Nos 2-1,2-2) and consideration by this court is therefore necessary to secure and maintain uniformity of the court's decisions⁴.

⁴ No court made a determination Mr. Wilkins is under a duty to assign in either patent, plaintiff abandoned their claims with prejudice, see E.D. Cal. 1:10-cv-00674 LJO-JLT ECF. No. 383; See Fed. Cir. 2020-141, ECF. No. 2-2, Appx 67-Appx90, concerning both USPTO Applications 10/350,452,

3. The United States District Court for the Eastern District of California decision at E.D. Cal. 1:10-cv-00674 ECF Nos. 22, 38, 58, 76, 82, 125, 151, 173, 190, 574, 580, 610, 629, 638, 674, 744, 745 conflict with a decision of the United States Supreme Court under *Loving v. United States*, 517 U.S. 748, 757(1996)), *Washington v. Glucksberg*,, 521 U.S. 702 (1997) , *United States v. Carlo Bianchi & Co.*, 373 U.S. 709, 715 (1963), *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126-27 (2007), *Liteky v. United States*, 510 U.S. 540, 555(1994), petitioner incorporates the authorities cited in the writ (Fed. Cir. 2020-141 ECF. Nos. 2-1,2-2) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions.

4. The [Wanger] district court and the [recused] O'Neill and [recused] Ishii district court did not test for its Article III jurisdiction given Mr. Wilkins' name is on both application for patent and corresponding application records USPTO Application 10/350,452 or USPTO Application 10/643,297 as provided in the writ. Defendant's attorney was removed after pointing this out to the district court, subsequently neither the Plaintiff nor Intervenor argued U.S Const. Art. III jurisdiction. Subsequently, the [recused] district court or the Fed. Cir. did not test for Art. III jurisdiction.

10/643,297; wherefore, and reasons in the writ and herein, Mr. Wilkins has his ownership interest in both patents that issued therefrom, U.S. Patent Nos. 6,924,565, 6,921,985 under 37 CFR 3.73(PRE AIA), no party disputes this, in the Complaint FAC or Counterclaims, however Petitioner contends the he did not have jurisdiction to bring [c]ounter claims to the district court or the Federal Circuit.

USPTO PROCEDUAL BACKGROUND

5. Under 37 CFR § 3.73 (PRE AIA), Mr. Wilkins⁵ is an owner of U.S. Patent No. 6,921,985; plaintiff did not file [s]pecific claims concerning sole ownership of United States Patent and Trademark Office (USPTO) Application 10/350,452; where Mr. Wilkins' name is in the list of inventors on the statutory application for patent with title "Low Voltage Ride Through For Wind Turbine Generators", under 35 USC § 111(a) filed USPTO Application 10/350,452; where concerning 10/350,452, the applicant did not file an Application Data Sheet(ADS) under 37 CFR § 1.41 (PRE AIA), 37 CFR § 1.48 (2002), 37 CFR § 1.76(PRE AIA), and Applicant did not pay a fee to change inventor under 37 CFR § 1.17(i)(PRE AIA).

6. Petitioner looked and finds the appellate court in Fed. Cir. 2013-1170 ECF No. 22, and Fed. Cir. 2020-141 ECF. No. 6, that the this court and the district court that Mr. Wilkins name does not appear on U.S. Patent No. 6,921,985; where Petitioner contends the USPTO has jurisdiction to place Mr. Wilkins name on such patent or [n]ot; where given the USPTO Application 10/350,452, with Thomas Wilkins listed as an inventor, with no ADS and no fee paid to change or remove the inventor, the appellate court, the district court and the USITC lack jurisdiction under U.S. Const., Art. III; where the USPTO governs under 37 CFR §§ et seq. (PRE AIA). Petitioner contends given the USPTO Application 10/350,452, the United States International Trade Commission (337-TA-641), the district court and the appellate court erred by not dismissing the 35 USC § 256(PRE AIA) claim for lack of jurisdiction and deprive the US Congress, The President of the United States, the USPTO of their liberty interest under U.S. Const., Art. 1, Sec. 8

⁵ Mr. Wilkins is recognized by this petitioner and presumably the Fed. Cir. and district court as he and all women and men are each a free inhabitant with organic rights and duties in accordance with 1 Stat. 50, 101 Stat 386, and this country.

concerning a “35 USC § 256(PRE AIA) opinion” concerning Fed. Cir. cases 2013-1170, 2010-1223, E.D. Cal 1:10-cv-00674 ECF Nos. 744, 745⁶.

USITC’S, DISTRICT COURT’S AND FED. CIR.’S LACK ARTICLE III JURISDICTION

7. With the forgoing in mind, Petitioner contends Fed. Cir. 2020-141 ECF No. 6 conflict with a decision of the United States Supreme Court and with the United States Court of Appeals for the Federal Circuit, the United States International Trade Commission (USITC) an Article III Court and the district court concerning a U.S. Const., Article III case or controversy that existed in the USITC investigation 337-TA-641 (*In the matter of Certain Variable Speed Wind Turbines and Components thereof Inv. No. 337-TA-641 Publication 4202 January 2010*) and appeal *General Electric Company v. International Trade Commission and Mitsubishi Heavy Industries LTD, and Mitsubishi Power Systems Americas, Inc, Intervenors (Fed. Cir. 2010-1223)(2011)* and the Fed. Cir 2013-1170 ECF No. 22 is not fully reviewed by this court.

8. The Petitioner in accordance with 37 CFR § 3.73 (PRE AIA) is an owner of his interest in U.S. Patent No. 6,924,565 since August 2003, as a listed inventor on the statutory application for patent with title “Continuous Reactive Power Support for Wind Turbine Generators” filed under 35 USC § 111(a) at United States Patent and Trademark Office USPTO Application 10/643,297.

⁶ Petitioner contends, the full USITC Commission and district court erred by not performing an Article III analysis concerning [t]heir 35 USC § 256 (PRE AIA) claim as provided in USITC publication 4202(citation omitted); wherefore, the USPTO and implementing regulation under 37 CFR §§ et seq. would govern, therefore E.D. Cal. 1:10-cv-00674, E.D. Cal. 1:13-cv-01943, Fed. Cir. 2013-1086, 2013-1169, 2013-1170, ECF. No.22, 2013-1171 appeal at Fed. Cir. 2010-1223 and writ of mandamus 2020-141 requires review. Note Petitioner erred in citation in FRAP 35(b) for review and used 2012-1223 meaning 2010-1223.

9. . . . Petitioner filed an oath and spec during petition of writ of certiorari to the Supreme Court of the United States in 2014 *General Electric Company v. Wilkins*, 750 F.3d 1324(Fed. Cir 2014) cert. denied, 574_(U.S. Oct. 6, 2014)(No. 14-157) for both USPTO Applications 10/350,452 and 10/643,297; where a retired [Wanger] district court had not ended the TRO or Injunction and a recused district court (Fed. Cir. 2020-141, ECF No. 2-2, Appx 66, Appx 67) presides without waiver.

10. Petitioner contends concerning both statutory application for patent and resulting Application, Plaintiff did not claim in either in its Compliant (Fed. Cir. 2020-141 ECF. No. 2-2 Appx134-Appx142) and First Amended Complaint (Fed. Cir. 2020-141 ECF. No. 2-2 Appx143-Appx172) that **Wilkins is required to assign [a]ll of his interests in such USPTO Application 10/350,452 or USPTO Application 10/643,297, U.S. Patent No. 6,921,985 or U.S. Patent No.: 6,924,565 that issues therefrom to the Plaintiff**, yet still motion the court for a TRO (E.D Cal 1:10-cv-00674 OWW-JLT, ECF No. 38) and injunction, then abandoned their claims with prejudice (E.D. Cal. 1:10-cv-00674, ECF No: 383); [a]nd Petitioner contents Plaintiff does not dispute and did not claim in either in its Complaint (Fed. Cir. 2020-141 ECF. No. 2-2 Appx134-Appx142) and First Amended Complaint (Fed. Cir. 2020-141 ECF. No. 2-2 Appx143-Appx172) that Wilkins assign [a]ll of his interest in such USPTO Application 10/643,297 or U.S. Patent No. 6,924,565 that issues therefrom to the Plaintiff. The parties have their respective interest in each Application and patent that issues therefrom.

11. Petitioner contends in view of 37 CFR 3.73(PREAIA) plaintiff failed to satisfy the *immediacy requirement of MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126-27 (2007). Petitioner contends such Complaint Fed. Cir. 2020-141-ECF. No. 2-2 Appx134-Appx142) or FAC (Fed. Cir. 2020-141 ECF. No. 2-2 Appx143-Appx172) did not confer U.S. Const., Article III jurisdiction to the district court, where the U.S. Supreme Court has held where "plaintiff" (and presumably the Counter Claimant) did not provide they have suffered an injury in fact i.e. a concrete and particularized, actual or imminent invasion of a legally protected interest, wherefore a U.S. Const., Article III case or controversy had not arisen in district

court [claims] because concerning 37 CFR § 3.73 (PRE AIA), “[n]o defendant ha[d] wronged the plaintiff or ha[d] threatened to do so.” *Id.*, at 288, 290 and consideration by the full court is therefore necessary to secure and maintain uniformity of the court’s decisions. The [Wanger] district court did not have U.S. Const., Art III, jurisdiction to issue the TRO (ECF No. 38) or Injunction, where subsequent district court dismissals and filings requires review.

TRO (ECF NO. 38)⁷

12. Petitioner contends, with the writ (Fed. Cir. 2020-141 ECF No. 2-1, 2-2) in mind, the district court by issuing the TRO (Fed. Cir. 2020-141 ECF No. 2-2 Appx82-Appx86) and Injunction (Fed. Cir. 2020-141 ECF No. 2-2, Appx331-Appx336) without the Plaintiff providing to the district court Mr. Wilkins was under a duty to assign his interest under 37 CFR § 3.73, (PRE AIA) to the Plaintiff, the district court deprived Mr. Wilkins and the intervenor of a protected liberty interest deeply rooted in this country under 35 USC § 100(c).

13. Where the [Wanger] district court issues a restraining order [E.D. Cal 1:10-cv-00674 ECF No. 38, Fed. Cir. 2020-141 ECF No. 2-2 Appx82-Appx86] that effectively enjoins the USPTO at application 10/350,452 without a complaint on file, knowing Mr. Wilkins is listed as a joint inventor on both application for patents, and the Plaintiff not providing a duty for Mr. Wilkins to assign his rights to the plaintiff usurp the role of the USPTO where petitioner contends the [Wanger] district court did not and does not have Article III jurisdiction to do so.

14. In the [Wanger] district court, Mr. Wilkins’ council provides the district court is acting without a complaint on file that it does not have jurisdiction (Fed. Cir. 2020-141 ECF No. 2-2 Appx100-Appx108). Mr. Wilkins attorney is subsequently

⁷ E.D. Cal. 1:10-cv-00674 OWW-JLT ECF 38 is where the district court usurp the role of USPTO for the application record 10/643,297 and 10/350,452.

removed (Fed. Cir. 2020-141 ECF No. 2-2, Appx204, 00674 ECF No. 145, 146). Petitioner contends the district court usurps the role of the USPTO, then the district court restrains and then enjoins [b]oth Mr. Wilkins and the USPTO by issuing the TRO (Fed. Cir. 2020-141 ECF No. 2-2 Appx82-Appx86) and Injunction (Fed. Cir. 2020-141 ECF No. 2-2, Appx331-Appx336) and the intervenor is compelled to join, but does not argue jurisdiction?; whereby, the district court specifically ignores the doctrine concerning the separation of powers, see *Loving v. United States*, 517 U.S. 748, 757(1996)), *Washington v. Glucksberg*, 521 U.S. 702 (1997) and due process under (see 521 U.S. 702; U.S. Const., Art. I, Sec. 8, cl. 3, cl. 8; U.S. Const, art. III) where the district court acts to deprive Mr. Wilkins of a U.S. Const., Art. 1, Sec. 8 rights without Article III jurisdiction.

15. Concerning the USITC, and *General Electric Company v. International Trade Commission and Mitsubishi Heavy Industries LTD, and Mitsubishi Power Systems Americas, Inc, Intervenors* (Fed. Cir. 2010-1223)(2011) and subsequent "USITC's and intervenor's" directed counter claim concerning USPTO Application 10/350,452 and USPTO Application 10/643,297 concerning 1 USC § 1, the courts do not have U.S. Const., Article III jurisdiction to hear or opine concerning a 35 USC § 256(PRE AIA) counterclaim if the Inventor's name is already on the PRE AIA statutory application for patent, the applicant has not filed an **Application data sheet(ADS)** under 37 CFR § 1.41 (PRE AIA), 37 CFR § 1.48 (2002), 37 CFR § 1.76(PRE AIA), and **applicant did not pay a fee to change inventor** under 37 CFR § 1.17(i)(PRE AIA) at USPTO Application 10/350,452. Mr. Wilkins is found in the list of inventors for both statutory application for patents, with no duty to assign.

16. Wherefore, the USITC investigation 337-TA-641 (*In the matter of Certain Variable Speed Wind Turbines and Components thereof, Inv. No. 337-TA-641 Publication 4202 January 2010*)); concerning the ALJ's Initial Determination(ID), the USITC Administrative law judge Charles Charninski in his ID directing Mr. Wilkins and the Intervenor to [p]erfect legal title through correction by a district

court under 35 USC § 256(PREAIA) is without analysis to USITC's U.S. Const., Article III jurisdiction and Petitioner contends this in error usurps the role of the USPTO. Where both the USITC and the district court acted in error to usurp the role of the USPTO. This issue was not considered in the appeal *General Electric Company v. International Trade Commission and Mitsubishi Heavy Industries LTD, and Mitsubishi Power Systems Americas, Inc, Intervenors* (Fed. Cir. 2010-1223)(2011) and the courts lacks uniformity of its decisions; where given the [a]pplication record 10/350,452, the question is whether the USITC has Article III jurisdiction to hear the 337-TA-641 without review of the USPTO [a]pplication record? Petitioner contends no court performed such analysis concerning 10/350452 and the patent that issues therefrom.

17. Concerning the Supreme Court of the United States and *The Interior Petitioner v. DEFENDERS OF WILDLIFE, et al*, 504 U.S. 555 Dec, 1991 the Plaintiff or Counterclaimants did not meet the burden of showing standing by establishing *inter alia*, they have suffered an injury in fact, i.e. a concrete and particularized, actual or imminent invasion of a legally protected right. Where the district court is depriving Wilkins of his legally protected right under 37 CFR § 3.73 (PRE AIA) by issuing the TRO (Fed. Cir. 2020-141 ECF. No. 2-2 Appx82-Appx86) and Injunction (Fed. Cir. 2020-141 ECF. No. 2-2, Appx331-Appx336) Plaintiff providing to the district court that Mr. Wilkins is not under a duty to assign his all of his interest to the Plaintiff, where the intervenor is compelled to join because district court usurps the role of the USPTO and is depriving the government under U.S. Const., Art. 1, Sec. 8.

18. Mr. Wilkins concerning the statutory application for patent at USPTO Application 10/350,452 (Fed. Cir. 2020-141 ECF. No. 2-2 Appxl-Appx29), and statutory application for patent at USPTO Application 10/643,297 (Fed. Cir. 2020-141, ECF. No. 2-2 Appx30-Appx65) concerning inventing did not perform as an officer under 1 USC § 1, and such performance does not include the performance of the functions of a public office, is not considered as a full-time life insurance salesman who is considered an employee, employee to Mr. Wilkins means worked

he with the men and women with GE Fed. Cir. 2020-141 ECF. No. 2-2 Appx216 (see E.D. Cal. 1:10-cv00674 LJO-JLT ECF No. 297).

19. Given both USPTO Application 10/350,452 and USPTO Application 10/643,297, and for reasons in the writ, the Supreme Court of the United States has held "that consideration is to be confined to the administrative record and that no de novo proceeding may be held." *United States v. Carlo Bianchi & Co.*, 373 U.S. 709, 715 (1963). Limiting judicial review of actions taken within the scope of the agency's authority as conferred by Congress in its organic statute in this manner reflects fundamental separation-of-powers principles. By seeking to leverage the civil litigation process to direct the district court's decisions outside the congressionally prescribed statutory framework, the courts run roughshod over those principles, the USITC, the district court and this court usurp the roles of the U.S. Congress and the Commissioner and Director of the USPTO contra to the Administrative procedures act Administrative Procedure Act (APA), 5 USC § 551 et seq; "where one of the initial errors in the district court" concerning U.S. Const., Article III jurisdiction occurred when the [Wanger] district court issued the TRO(Fed. Cir. 2020-141 ECF. No. 2-2, Appx82-Appx86) wherefore, for reasons in the writ, subsequent errors followed concerning the plaintiff abandoning their claims with prejudice; (Fed. Cir. 2020-141 ECF. No. 2-2, Appx87-Appx90), so the district court errors when dismissing such claims under Fed. Rule. Civ. Proc. 41 and instead should dismiss under Fed. Rule. Civ. Proc. 12(h)(3).

20. Petitioner contends, the Plaintiff not providing a duty to assign; for reasons in this writ, the plaintiff in their Complaint(Fed. Cir 2020-141, ECF No. 2-2, Appx134-Appx142) and First Amended Complaint(Fed. Cir. 2020-141 ECF No. 2-2, Appx143-Appx172) both provide insufficient facts demonstrating a lack of cognizable legal theory concerning controversy and actual controversy under 28 USC § 1391(a), 28 USC §§ 2201, 2202 and 28 USC § 1332; *Bell Atl Corp. v. Twombly*, 550 U.S. 544,555,127 S. Ct. 1955,167 L.Ed.2d 9209 (2007); where three declarations, ECF No. 17-1(Fed. Cir. 2020-141 ECF No 2-2, Appx68-Appx70), ECF No. 18-1(Fed. Cir.

2020-141, ECF. No. 2-2, Appx73-Appx81), ECF No. 81(Fed. Cir. 2020-141 ECF. No. 2-2, Appx277-Appx280) and did not provide a U.S. Const., Article III case or controversy and as an underlying basis counterclaimant the Intervenor did not provide a U.S. Const., Article III case or controversy to the district-court.

FILING AT FED. CIR. 2020-141 ECF NO. 6

21. The filing at 2020-141 ECF No. 6 this courts provides that Mr. Wilkins is a named inventor on the statutory application for patent with title “Low Voltage Ride Through For Wind Turbine Generators” at USPTO Application 10/350,452; where Mr. Wilkins is also an owner of his interests in U.S. Patent No. 6,921,985 under 37 CFR § 3.73 (PRE AIA), and 35 USC §§ 111(a), 100(c).

22. Concerning the filing at Fed Cir. 2020-141, DKT 6, Petitioner accepts this courts meaning of word “withdrawal” to mean that the Plaintiff abandoned certain claims in their Complaint (Fed. Cir. 2020-141, ECF No. 2-2, Appx134-Appx142) and FAC(Fed. Cir. 2020-141, ECF No. 2-2, Appx143-Appx172) with prejudice under E.D. Cal. 1:10-cv-00674 LJO-JLT ECF. No. 383(Fed. Cir. 2020-141, ECF. No. 2-2, Appx68-Appx71) that include both USPTO Application 10/350,452 and USPTO Application 10/643,297 and their incorporated statutory application for patent; where concerning both patent that issues therefrom including U.S. Patent No. 6,924,565, and U.S. Patent No. 6,921,985 Mr. Wilkins as THOMAS WILKINS or THOMAS A. WILKINS is an owner of both Applications and the patent that issues therefrom under 37 CFR § 3.73 (PRE AIA).

23. This courts characterization that Mr. Wilkins “lost” in its opinion (Fed. Cir. 2020-141 ECF No. 6) to means Mr. Wilkins is an owner of both patents U.S. Patent No. 6,921,985, U.S. Patent No. 6,924,565 under 37 CFR § 3.73 (PRE AIA); where this court and the district court did not test for U.S. Const Art III jurisdiction concerning the doctrine of separation of powers given the Application records at

USPTO Application 10/350,452 (Fed. Cir. 2020-141; ECF No. 2-2, Appx1-Appx29), and USPTO Application 10/643,297 and *General Electric Company v. International Trade Commission and Mitsubishi Heavy Industries LTD, and Mitsubishi Power Systems Americas, Inc, Intervenors* (Fed. Cir. 2010-1223)(2011) and this court and the district court had been aware since the issuing of the TRO(Fed. Cir. 2020-141, ECF No 2-2, Appx82-Appx86) the plaintiff did not produce a duty for the defendant to assign his rights under 37 CFR § 3.73 (PRE AIA).

24. This courts characterization that “*Mr. Wilkins lost the first time around on the issues that he seeks review*”, Petitioner contends that this court and the district court did not test for their U.S. Const., Article III jurisdiction, specifically concerning separation of powers, see *Loving v. United States, 517 U.S. 748, 757(1996)*, *Washington v. Glucksberg,, 521 U.S. 702 (1997)* and due process under (see 521 U.S. 702; U.S. Const., Art. I, Sec. 8, cl. 3, cl. 8; U.S. Const, art. III) concerning a protected liberty interest deeply rooted in this country; where the district court uses Fed. Rule. Civ. Proc. 41 to dismiss the abandoned claims, where for reasons the writ the Petitioner contends the district court should use Fed. Rule. Civ. Proc. 12(h)(3) to dismiss both cases because the Petitioner respectfully contends the parties failed to provide to the district court and this court a U.S. Const., Article III case or controversy because the Plaintiff, Intervenor and counter claimant failed to satisfy the immediacy requirement of *MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 126-27(2007)*; where in other cases the Supreme court held that an U.S. Const., Article III case or controversy had not arisen because “[n]o defendant ha[d] wronged the plaintiff or ha[d] threatened to do so.” *Id.*, at 288, 290.

25. Concerning (Fed. Cir. 2020-141 ECF. No. 6) that Mr. Wilkins filed a separate complaint asserting claims for malicious prosecution and abuse of process against GE and its counsel; with three district judges in the cases, where one retires **and two the recused judges preside without waiver; and the clerk of the court includes Lowell Carruth, GE’s Attorney as Mr. Wilkins’ council,** (see E.D: Cal 1:10-cv-00674), Mr. Carruth’s representation of Wilkins [a]ppears to be one of the many substantive errors which result in

adverse substantive consequences by the clerk of the court, however, Mr. Wilkins has no knowledge of such representation by Mr. Carruth; wherefor reasons in the writ the intervenors and plaintiff and 40 attorneys may explain this better than Petitioner. Where when the Petitioner looked in Fed. Cir. 2020-141, ECF No. 6 and concerning the specific citation *Cf. Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943) Petitioner did not find any words "**afford him a second bite of the apple**", and Petitioner looked and did not find in the citation, *Cf. Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943) specifically explaining that

"mandamus is not a substitute for an appeal. The Petitioner did look and Petitioner finds the following, "As the jurisdiction of the circuit court of appeals is exclusively appellate, its authority to issue writs of mandamus is restricted by statute to those cases in which the writ is in aid of that [j]urisdiction. Its authority is not confined to the issuance of writs in aid of a jurisdiction already acquired by appeal but extends to those cases which are within its appellate jurisdiction although no appeal has been perfected. Otherwise the appellate jurisdiction could be defeated and **the purpose of the statute authorizing the writ thwarted by unauthorized action of the district court obstructing the appeal.** Ex parte *Bradstreet*, 7 Pet. 634; *Insurance Company v. Comstock*, 16 Wall. 258, 270; *McClellan v. Carland*, supra, 217 U.S. 280 , 30 S.Ct. 504; *Ex parte United States*, 287 U.S. 241, 246 , 53 S.Ct. 129, 130; cf. *Ex parte Siebold*, 100 U.S. 371, 374 , 375 S.; *Ex parte Republic of Peru*, April 5, 1943, 318 U.S. 578 , 63 S.Ct. 793, 87 L. Ed. --, and cases cited."

37 CFR § 1.324 PROVIDES FOR CHANGING THE INVENTOR.

26. Petitioner contends concerning 35 USC § 256 (PRE AIA) and USPTO rules, the several inferior courts did not review for U.S. Const Art. III jurisdiction,

“Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his part, the Director [may], on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate correcting such error. The error of omitting inventors or naming persons who are not inventors shall not invalidate the patent in which such error occurred if it can be corrected as provided in this section. The court before which such matter is called in question **may order correction of the patent** on notice and hearing of all parties concerned and the Director shall issue a certificate accordingly. “

27. Where the District Court and Federal Circuit ignored 37 CFR § 1.324 Federal Register / Vol. 69, No. 182. . Section 1.324: Sections 1.324(a) and (b) are amended to provide an informational reference to 35 USC. § 256 and to replace “petition” with “request.” Section 1.324(a) is amended by adding an explicit reference to 35 USC. 256 and its requirement in order to clarify that the inventorship of a patent may be changed only by way of a request from all of the inventors together with assignees of the entire interest, or on order of a court⁸. The Office will then issue a certificate naming the correct inventors. 35 USC. § 256 requires that there be agreement among all parties (inventors and existing assignees), **or that a court has issued an order so directing the inventorship change.** The previous reference in § 1.324 to a petition was

⁸ The USITC, the district court and the federal circuit with regard to 35 USC § 256, where such statute **provides** the word “may”, failed to review the application for patent, application record and the 37 CFR §§ et. seq. to determine their U.S. Const. Art III jurisdiction in view of the Pub.L. 79-404, 60 Stat. 237(e.g. APA), enacted June 11, 1946, and the rights of the USPTO.

eliminated in order to conform the rule language to earlier changes made to § 1.20(b).

28. 37 CFR § 1.324 Federal Register / Vol. 69, No. 182. Section 1.324 the district court at ED Cal. 1:10-cv-00674 **did not direct the inventorship to change**, the Fed. Cir. 2013-1170, ECF No 22, 2020-141, ECF No. 6 **did not direct the inventorship change**. The [retired] District Court did opine on the application record concerning 37 CFR § 3.73 however later the recused district court and the Federal Circuit did not review the application record 10/350,452.

Durousseau v. United States, 10 U.S. (6 Cr.) 307, 313-314 (1810). The appellate powers of the Supreme Court of the United States are given by the Constitution, but they are limited and regulated by the Judicial Act and other acts passed by Congress on the subject. In *Dickinson v. Zurko*, 527 U.S. 150 (1999) the Supreme Court of the United States provides "Several policy reasons that the Federal Circuit believes militate against using APA review standards-that a change will be disruptive to the bench and bar; that the change will create an anomaly in which a disappointed patent applicant who seeks review directly in the Federal Circuit will be subject to court/agency review, while one who first seeks review in a district court will have any further appeal reviewed under a court/court standard; and that stricter review produces better agency factfinding-are unconvincing. Pp. 161-165."

Where if the district court had U.S. Const. Art III jurisdiction it places Wilkins under a clear and convincing standard under 35 USC § 256(PRE AIA), where the Patent office under 37 CFR § 1.324 provides that with the applicant already providing his name is on the application Mr. Wilkins and provides any request to correct inventorship of a patent pursuant to paragraph (a) of this section must be accompanied by:

(1) A statement from each person who is being added as an inventor and each person who is currently named as an inventor either agreeing to the change of inventorship or stating that he or she has no disagreement in regard to the requested change;

(2) A statement from all assignees of the parties submitting a statement under paragraph (b)(1) of this section agreeing to the change of inventorship in the patent, which statement must comply with the requirements of § 3.73(c) of this chapter.....


Petitioner contends the recused district court by providing a standard of review different than what is provided in the implementing regulations at 37 CFR §§ 1.41 (PRE AIA), 1.48 (2002), 1.76 (PRE AIA), 1.324 (PRE AIA), 1.17(i) (PRE AIA), 3.73 (PRE AIA) wherefore the USITC, district court and Fed. Cir. usurp the role of the U.S. Congress and President.

REASONS FOR GRANTING CERTIORARI

- I. Petitioner contends for reasons provided herein the several courts ignore the administrative provisions provided by the USPTO for amending the application record and usurp the role of the USPTO.
- II. Plaintiff failed to provide a controversy or actual controversy proving the USITC and federal courts U.S. Const. Art. III jurisdiction.
- III. For reasons provided herein and I and II above, Intervenor and Intervenor and USITC derived counter claims for Defendant Mr. Wilkins are in error and did not provide the district court or the Federal Circuit U.S. Const. Art. III jurisdiction.

CONCLUSION

For the foregoing, the Petitioner respectfully request review to review of E.D. Cal. 1:10-cv-00674, E.D. Ca. 1:13-cv-001943, Fed. Cir. 2020-141, Fed. Cir. 2010-1223 and Fed. Cir. 2013-1086, 2013-1169, Fed. Cir. 2013-1170, Fed. Cir. 2013-1171 concerning U.S. Const. Art. III jurisdiction.

 Respectfully submitted by
Thomas Wilkins, September 14 2020