

No. 20-364

In the Supreme Court of the United States

November Term 2020

Thomas Wilkins, Petitioner

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United States District Court for the Eastern District of California (CAED 10-cv-00674, 13-cv-01943), the United State Court of Appeals for the Federal Circuit (2020-141, ECF 6),

United States International Trade Commission and United States Patent Office.

On petition for a writ of certiorari to the United States Court of Appeals for the Federal  
Circuit

and

United States District Court for the Eastern District of California

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PETITION FOR REHEARING

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## PETITION FOR REHEARING

Pursuant to supreme court Rule 44.2, Thomas Wilkins respectfully petitions for rehearing of the court's per curiam decision issued November 4, 2020, concerning the Opinion of the United States Court of Appeals for the Federal Circuit, dated August 14th, 2020-141, and November 4<sup>th</sup>, 2020 concerning *General Electric Company v. Wilkins*, 750 F.3d 1324(Fed. Cir 2014) cert. denied, 574\_(U.S. Oct. 6, 2014)(No. 14-157), where petitioner moves this court to grant this petition for rehearing and consider this case with merits pursuant to Supreme Court rule 44.2, this petition for rehearing is filed within 25 days of this court's decision in this case.<sup>1</sup>

## REASONS FOR GRANTING THE PETITION

As a substantial or controlling effect, Wilkins' inventorship in the USPTO application papers 10/350,452 (Fed. Cir. 2020-141 ECF. No. 2-2 Appxl- Appx29) endures and continues as established in the application papers under 37 CFR §§ 1.41(a)(1)(PRE-AIA), 1.53(b)(PRE-AIA) since January 24, 2003, as a matter of law, where the application papers 10/350,452 does not show an entry that the applicant did pay a fee to change the inventors under 37 CFR §§ 1.17(i)(PRE-AIA), 1.20(PRE-AIA) as required by 37 CFR §§ 1.324(PRE-AIA) 1.48(2002). The United States Appellate Court for the Federal Circuit does not have subject matter jurisdiction to change the inventorship in this case in view of 37 CFR § 1.324 (35 USC § 256)(PRE-AIA). The applicant in supplying the name or names of the inventor in the nonprovisional application filed on January 24, 2003 includes Thomas Wilkins. Thomas

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<sup>1</sup> The U.S. Appellate Court for the Federal Circuit on November 4<sup>th</sup>, 2020 en banc issued a denial specifically to Fed. Cir. 2020-141, Doc. No. 9 received on August 31, 2020. The denial on November 4, 2020 (Fed. Cir. 2020-141 Doc. No. 13) presumably incorporated the U.S. Court of Appeals for the Federal Circuit the writ of certiorari on October 5, 2020 Doc. No. 8.

Wilkins' name is found in the list of inventors in the application for patent with title "Low Voltage Ride Through For Wind Turbine Generators". The United States International Trade Commission in investigation 337-TA-641 appears to acknowledge this but does not have subject matter jurisdiction to determine Thomas Wilkins' inventorship and simply acknowledged Wilkins inventorship in the USPTO application papers 10/350,452, see USITC publication 4202(citation omitted).

Thomas Wilkins who is listed as a joint inventor on the Application for Patent with Title: "Low Voltage Ride Through For Wind Turbine Generators" filed January 24, 2003 with the USPTO application number 10/350,452(Fed. Cir. 2020-141 ECF. No. 2-2 Appx143-Appx172); where the applicant had not filed an oath or declaration during the pendency of a nonprovisional application; where pursuant to 37 CFR §§ 1.41(a)(1)(PRE-AIA),

"1.53(b) the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(b), and **the applicant has not filed a paper, including a processing fee set forth in § 1.17(i), supplying or changing the name or names of the inventors.**"

In addition, the applicant had not filed an application data sheet in the USPTO application papers 10/350,452.

Where pursuant to 37 CFR § 1.76(PRE-AIA)

"An application data sheet must be titled "Application Data Sheet",

where concerning application papers 10/350,452, there is no Application Data Sheet appearing in the USPTO 10/350,452 application papers [emphasis added].

The nonprovisional application for patent with title: "Low Voltage Ride Through For Wind Turbine Generators" filed in January 24, 2003 at USPTO application papers 10/350,452 under 35 U.S.C., § 111(PRE-AIA) provides a list of inventors with Thomas Wilkins name appearing and contains a specification as prescribed by 35 U.S.C. § 112(PRE-AIA) containing a description pursuant to 37 CFR § 1.71(PRE-AIA) and at least one claim pursuant to 37 CFR § 1.75(PRE-AIA), and any drawing required by 37 CFR § 1.81(a)(PRE-AIA) and are filed in the Patent and Trademark Office. The USPTO is not found to introduced new matter into the application for patent at in the application papers 10/350,452 after its filing date.

Concerning the inventorship established for Thomas Wilkins in the USPTO application papers 10/350,452 under the implementing regulations (Supra), the United States International Trade Commission in investigation 337-TA-641 did not make a determination or issue any order to change the inventorship, neither did any U.S. District Court or any United States Court of Appeals Court including the Federal Circuit. The U.S. District Court did not determine Thomas Wilkins was under a duty to assign his rights granted to him to the Plaintiff concerning the application papers 10/350,452; where under 37 CFR § 3.73(PRE-AIA) the inventor is presumed to be the owner of a patent application, and any patent that may issue therefrom, unless there is an assignment, where with both the USPTO application 10/350452 and 37 CFR § 3.73(PRE-AIA) in mind, Thomas Wilkins to this very day is an owner of his interests of U.S. Patent No. 6,921,985.

The recused United States District Court Judge Lawrence J. O'Neill and recused United States District Court Judge Anthony Ishii (Fed. Cir. 2020-141, ECF No. 2-2, Appx 66, Appx 67; *General Electric Company v. Wilkins*, 750 F.3d 1324 (Fed. Cir. 2014) cert. denied, 574 U.S. Oct. 6, 2014) (No. 14-157), Appa.113a) presided over the case as recused without waiver before and after Oliver Wanger retired and not one of these three judges directed inventorship to change for USPTO application papers 10/350,452 *Id.* With two recused district court judges presiding without waiver and without disclosing all of their specific conflicts, and with the clerk of the court providing in the docket that plaintiffs lead attorney is also representing the Defendant, without the defendant's knowledge or expressed consent before and after U.S. District Court Judge Oliver Wanger retired (DOCKET 1:10-CV-00674 LJO-JLT; DOCKET 1:10-CV-00674 AWI-JLT; DOCKET 1:10-CV-00674 OWW-JLT; DOCKET 1:10-CV00674 LJO-JLT PRINTED OCTOBER 6, 2020) (Fed. Cir. 2020-141 Doc No 2-2, APPX173-APPX249), and with recused trial judge Lawrence J O'Neill, who presided over the underlying matter who is and was disqualified as a matter of law (574 U.S. Oct. 6, 2014) (No. 14-157) pg. 36), ignored the implementing regulation under 37 CFR § 1.324 (35 USC § 256) (PRE-AIA); with the record showing the defendant has made a reservation of rights (Fed. Cir. 2020-121 DOC No. 2-2, APPX123-APPX133).

With the foregoing in mind, it appears the United States Court of Appeals for the Federal Circuit panel provides,

"Mr. Wilkins' petition appears to be an attempt to relitigate that prior litigation concerning his inventorship dispute with GE. Mr. Wilkins lost the



first time around on the issues that he seeks review, and mandamus is not intended to afford him a second bite of the appellate apple.”( Fed. Cir. 20-141, Doc 6)

Concerning the implementing regulations under 37 CFR §§ 1.41(PRE-AIA), 1.53(b)(PRE-AIA), what inventorship dispute does the panel at the Federal Circuit refer to? The recused district court was discussing naming Thomas A. Wilkins<sup>2</sup> as a co-inventor (574\_(U.S. Oct. 6, 2014)(No. 14-157), App.21a,) the plaintiff did not dispute the application papers in either their complaint or FAC( CAED 1-10-cv-005674 Doc Nos 1, 76), they simply provide in the complaint and FAC Thomas Wilkins is not a named inventor on the patent, then abandon their claims(\_\_\_\_(U.S. Nov 23, 20-364, Appendix). The Fed. Cir. Panel in General Electric Co. v. Wilkins, 750 F.3d 1324 (Fed. Cir. 2014) call it “co-inventorship”[emphasis added] without an appeal on file concerning “co-inventorship”; where the inferior courts use of inventorship without U.S. Const. Art. III jurisdiction for naming a co-inventor, there is a clear lack subject matter jurisdiction with 37 CFR § 1.324 (35 USC § 256)(PRE-AIA) in mind. The Federal Circuit's jurisdiction is appellate.

With the above in mind, with Thomas Wilkins' inventorship statutorily established with the implementing regulations under 37 CFR §§ et seq., and with the Plaintiff abandoning its claims, the U.S. District court did not have subject matter jurisdiction under

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<sup>2</sup> The applicant used Thomas A. Wilkins in application papers 10/643,297, and Thomas Wilkins in application papers 10/350,452, the Court used Thomas Alexander Wilkins in the court case, these are the same neutral person and free inhabitant under 10 Stat 50, 101 STAT 386 as incorporated in the U.S. Code by the organic laws of this country who is not an officer under 1 U.S.C., § 1.

U.S. Const. Art. III concerning a counterclaim[emphasis added] for naming the [co]-inventor with 37 CFR § 1.324 (35 USC § 256)(PRE-AIA) in mind.

Where the recused statutory U.S. District Court Judge Lawrence J. O'Neill appears whether knowingly or unknowingly to follow the implementing regulations 37 CFR § 1.324(c)(PRE-AIA) and did not issue a court order in view of the application papers under 37 CFR § 1.324(c)(PRE-AIA); where 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(PRE-AIA), 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, where pursuant subsection 37 CFR § 1.324(c)(PRE-AIA) **For correction of inventorship in an application, see § 1.48[emphasis added].**

The two recused district court judges are presumably aware of 37 CFR § 1.324 (c)(PRE-AIA), or 37 CFR § 1.48(2002), each knows he is disqualified as a matter of law due to their own recusal, the implementing regulations and resulting lack of subject matter jurisdiction. *Id.*

Where 37 CFR § 1.48(2002) provides,

“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)”

The application papers 10/350,452 does not show an application data sheet under 37 CFR § 1.76(PRE-AIA) or a processing fee set forth in 37 CFR § 1.17(i)(PRE-AIA) to change the list of inventors was ever filed or requested. Since the year 2003, the plaintiff has always had a remedy under 37 CFR §§ 1.324(PRE-AIA), 1.48 (2002), to correct the application, however no fee is found paid under 37 CFR §§ 1.17(i)(PRE-AIA), 1.20(PRE-AIA) as required by 37 CFR §§ 1.324(PRE-AIA), 1.48(2002) *Id.*

A request for certificate of correction was filed in USPTO application papers 10/350,452 on September 4, 2014. In 2018, the certificate was denied and the petitioner accepts the denial, however the office in error concerning the implementing regulations for the denial under 37 CFR § 1.33(b)( they incorrectly used a regulations after the AIA), where it should read 37 CFR § 1.33(b)(PRE-AIA), this is a minor error, however petitioner reserves the administrative right under Amendments and other papers. Where under 37 CFR § 1.33(b)(PRE-AIA) Amendments and other papers, except for written assertions pursuant to 37 CFR § 1.27(c)(2)(ii)(PRE-AIA) of this part, filed in the application must be signed by: (2) Partial assignee(s) together or with inventor(s) under 37 CFR § 3.71(PRE-AIA). Thomas Wilkins' inventorship is established in the application papers under 37 CFR §§ 1.41(a)(1)(PRE-AIA), 1.53(b)(PRE-AIA) without a duty to assign(Supra).

The U.S. District court did not direct the inventorship to change and Wilkins' inventorship is established in the nonprovisional application in accordance with the implementing regulations under 37 CFR §§ et seq and no determination for a duty to assign

his interest in the application or any patent that issues therefrom. Rehearing is appropriate for this Court to consider the following substantial questions:

**I. With Thomas Wilkins' and Thomas A Wilkins' inventorship established in the both application papers 10/350,452, 10/643,297 under 37 CFR § 1.53(b) and as a matter of law is an owner under 37 CFR § 3.73(PRE-AIA) of his interest in U.S. Patent Nos. 6,921,985, 6,924,565, without a court finding he was hired to invent, whether the court has subject matter jurisdiction to hear the Complaint and FAC(CAED 10-cv-00674, Doc Nos. 1, 76) or subsequent compulsory counter complaint?**

With the foregoing in mind, and pursuant to the implementing regulations under 37 CFR §§ 1.41 (PRE-AIA), 37 CFR § 1.48 (2002), 1.53(PRE-AIA). 37 CFR § 1.76(PRE-AIA), 37 CFR § 3.73(PRE-AIA), and 37 CFR § 1.324 (35 USC § 256)(PRE-AIA), Thomas Wilkins' inventorship is and was established since January 24, 2003 in the application papers 10/350,452, and Thomas A. Wilkins inventorship since August 2003 is established in the application papers 10/643,297, Thomas A. Wilkins and Thomas Wilkins are the same natural person or free inhabitant also known as Thomas Alexander Wilkins where not any U.S. Const. Art. III court has determined that his performance includes an appointment as an officer under 1 U.S.C. § 1, or made a determination that he was hired to invent when he was working with General Electric Company and made no determination he was under a duty to assign his interest in such application papers; without a determination he had a duty to assign his interest in the either of the 10/350,452 application or the 10/643,297 application, he is an owner of the application 10/350,452 and 10/643,297 and the patent that issues therefrom including U.S. Patent Nos. 6,921,985, 6,924,565 under 37 CFR § 3.73(PRE-AIA); where under 37 CFR § 1.33(b)(PRE-AIA) Thomas Wilkins has a right to prosecute

each application along with the applicant. None of the plaintiffs' claims were granted, the plaintiff expressly abandoned their appeals Fed. Cir. 13-1086, 13-1169, 13-1171.

The Defendant and Intervenor after the Defendant made a reservation of rights due to no complaint being on file by plaintiff provided a [c]ompulsory counter claim for [n]aming an inventor on the patent with U.S. District Court Judge Oliver W. Wanger presiding, who then retired and recused U.S. District Court Judge Lawrence J. O'Neill rejoined the matter and presided without waiver from the parties. Given the application papers 10/350,452 and application papers 10/643,297, with inventorship established for both Thomas Wilkins and Thomas A. Wilkins by the application papers(supra), and without a determination from the district court that either Thomas Wilkins has a duty to assign his interest in the application papers 10/350,452 and without a determination from the court that Thomas A. Wilkins has a duty to assign his interest in the application papers 10/643,297, Plaintiff failed to satisfy the immediacy requirement of *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126–27 (2007). Petitioner contends such Complaint and FAC (CAED 00674 Doc Nos. 1, 76), 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. Art. III jurisdiction to the district court, or the Federal Circuit where the plaintiff has remedies even today under the implementing regulation under 37 CFR §§ et. seq.; where the U.S. Supreme Court has held “plaintiff” 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. *Id*

II. With the record showing the appeal Fed. Cir. 13-1170 was for [n]aming an inventor with 37 CFR § 1.324 (35 USC § 256)(PRE-AIA) in mind, whether the panel in *General Electric Co. v. Wilkins*, 750 F.3d 1324 (Fed. Cir. 2014) and Fed. Cir 20-141 Doc. No. 6 deprived Thomas Wilkins of Life, Liberty and property under U.S. Const. amend. V?

Given the foregoing and Intervenor's directed statement of the issues in the appeal filed May 13, 2013, Fed. Cir. 13-1169, 1170, 1171, which provides Thomas Wilkins' inventorship is established in the application papers since January 24<sup>th</sup>, 2003 (Supra). The Fed. Cir. panel errors and does not address the application papers 10/350452, in *General Electric Co. v. Wilkins*, 750 F.3d 1324 (Fed. Cir. 2014) or Fed. Cir 20-141 Doc. No. 6.

The recused District Court Judge Lawrence J. O'Neill as the undersigned provides the following in the DECISION OF THE COURT: FINDING OF FACTS AND CONCLUSIONS OF LAW FOLLOWING BENCH TRIAL *Id.*

"The Court Conducted a six day trial in this case. The bench trial began on November 6, 2012 and ended November 14, 2012. The sole issue before the Court was whether Counter-Plaintiff Thomas A. Wilkins ("Mr. Wilkins") should be named a co-inventor of U.S. Patent No. 6,921,985 ("the '985 patent") pursuant to 35 U.S.C. § 256." *Id.*

Thomas [ ] Wilkins is listed on the application papers 10/350,452 and Thomas [A.] Wilkins is listed on the application papers 10/643,297 where both application papers establish his inventorship (Supra). Where the sole issue according to the recused U.S.

district Judge Lawrence J O'Neill is whether Counter-Plaintiff Thomas A. Wilkins ("Mr. Wilkins") should be named a co-inventor of U.S. Patent No. 6,921,985("the '985 patent") pursuant to 35 U.S.C. § 256(PRE-AIA). The court erred and lacks subject matter jurisdiction to hear the counter complaint because (1) the Plaintiffs Complaint and FAC (*Id.*) are completely dismissed either by expressed abandonment before Trial, (2) the court did not find Wilkins was hired to invent (3) the claims are time barred regarding a duty to assign before Trail, and (4) Wilkins' inventorship is established in the application as a matter of law *Id.* The dispositive question is whether GE has any basis in law for precluding "Thomas Wilkins" from licensing the '985 or "Thomas A. Wilkins" from licensing the '565 patent. As all the parties (including GE) agree that GE cannot preclude Mr. Wilkins from licensing the '565 patent on the basis that GE hired Mr. Wilkins to invent. For the same reason and with Wilkins' inventorship established in the 10/350,452 application papers the parties (including GE) agree, GE cannot preclude Mr. Wilkins from licensing the '985 patent because no court has determined that GE hired Mr. Wilkins to invent and his inventorship is established in the application papers (*supra*). Where even the Federal Circuit provides in 20-141 Doc. No. 6

"General Electric ("GE") had also sought to quiet title as to U.S. Patent No. 6,924,565, but the district court found that claim was time-barred, and GE voluntarily withdrew its appeal from that judgment." (Fed. Cir. 20-141, Doc No 6)

With Wilkins' inventorship is established in the application papers in this court's records and the Federal Circuit not testing if inventorship is establish clearly and convincingly as a matter of law (*Supra*) deprives the [D]efendant of rights under U.S. Const. Amend V.; where also the recused district court did not determine that Wilkins was hired

to invent. *Bd. of Trustees of the Leland Stanford Junior University v. Roche Molecular Systems*, 131 S. Ct. 2188, 2192, 180 L. Ed. 2d (2011). Those rights may be transferred to another party only through assignment. See *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1327 n.5 (Fed. Cir. 2010).

#### CONCLUSION

I respectfully request that this Court grant the petition for rehearing and order full briefing and argument on the merits of this petition.

Respectfully Submitted,



Thomas Wilkins Date December 12 2020



**CERTIFICATE**

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

*Thomas Wilkins 12/12/2020*  
Thomas Wilkins