Supreme Court, U.S.
FILED
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20-532

No. __ ________

IN THE

Supreme Court of the United States

IN RE XIAOHUA HUANG'S PATENT INFRINGEMENT LITIGATION

XIAOHUA HUANG *PRO SE*
Petitioner,

V.

HUAWEI TECHNOLOGY LTD.
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit and the US District Court of Eastern Texas

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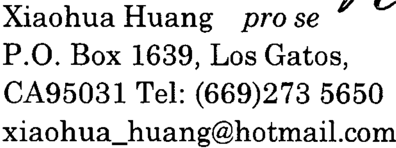

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July25,2020

ORIGINAL

QUESTION PRESENTED

U.S. court of appeals for the Federal Circuit has entered a decision in this case in conflict with the decision of U.S. Court of appeals for the Federal Circuit on same claim preclusion matter as in case ACUMED LLC v. Stryker Corp., 525 F.3d 1319 (Fed. Cir. 2008). The devices accused in this case are "essentially different" from the devices accused in the previous case, but the District Court and US Court of Appeal for the Federal Circuit merely took Huawei Technology's fraudulent statement that the "devices in two case are same" without any analysis and comparison to the devices accused in the two cases.

United States court of appeals for the Federal circuit has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power. US Court of Appeal for the Federal Circuit and the US District Court of Eastern Texas have systematically prejudiced *pro se* Plaintiff and only took Huawei Technologies' perjured declaration and fraudulent statement to set Huawei Technologies free from paying $billions in the United States for its infringing US patents, and further more sanctioned me $600K to pay Huawei attorney's fee based on Huawei's perjured declaration.

United States court of appeals for the Federal Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court. Rather than sanctioning Huawei's conduct of making perjured declaration, fraudulent Statement and hiding information United States Court of Appeals for the Federal Circuit and US District Court of Eastern Texas only took Huawei's perjured declaration, fraudulent statement and ignored the evidence produced by *pro se* Plaintiff to set Huawei free from being sanctioned for its perjury and hiding the true information, which is in contradict

with this Court's decision in the case "Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178, 1186 (2017)".

PARTIES TO THE PROCEEDINGS

Petitioner Mr. Xiaohua Huang was the plaintiff in the district court and the appellant in proceedings before the Federal Circuit. Respondents Huawei Technology Ltd. was defendants in the district court and Appellee in proceedings before the Federal Circuit.

LIST OF PARTIES AND RULE 29.6 STATEMENT

Petitioner Xiaohua Huang is an individual, *pro se*. is the owner of US patent 6744653, 6999331 and RE45259. Respondent is Huawei Technology Ltd. which sold networking switches and Routers containing Ternary Content Addressable Memory (TCAM) infringing US patents 6744653, 6999331 and RE45259 in the United States.

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OPINION BELOW

Opinion below includes:

The denial to Petition for Writ of Mandamus on February 28, 2020, the denial to Petition for rehearing en banc on December 18, 2019, the opinion by the panel of the US Court of Appeal for the Federal Circuit on October19, 2019 and the U.S. District Court of Eastern Texas in the order Dkt. No. 78, 65, 64, 52, 48, 34 and 28. Opinions below are incorporated in Appendix Volume I (Appx1-2, 11-16, 101-122).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1254(1).

INTRODUTION

Plaintiff Mr. Huang is the owner of U.S. Patent Nos. RE 45,259, 6,744,653, and 6,999,331. These patents relate to ternary content-addressable memory ("TCAM") technology in the semiconductor chip field. TCAM is a type of memory that can achieve high-speed routing and switching in networking devices. In the year of 2000 Mr. Huang found CMOS Micro Device Inc. (CMOS) in California to develop TCAM. During the year 2000 to 2002 Plaintiff Xiaohua Huang invented the advanced design of content addressable memory (TCAM), Huang's invention makes TCAM up to hundreds of time faster than the other TCAM design with much lower power consumption, which have increase the speed of Internet Router and Switches several hundreds of times, the invention were granted as US patent 6744653, 6999331 and RE45259 ("patent-in-suit"). Defendant Huawei Technologies obtained the TCAM invented by Huang from third parties which stolen Huang's TCAM designed based on "patents-in-suit", then Huawei Technologies incorporated the TCAM and chips designed based on "patents-in-suit" in its high speed internet Routers and Switches as well as its 3G,4G and 5G base station, and

achieved huge business success and generated multi hundreds billions USD profits over the world, in United States Huawei generated multi billion USD profits through using the "patent-in-Suits". From 2011 to 2015 Mr. Huang collected adequate evidence to prove that Huawei technology Ltd has used his "Patents-in-Suit" in its networking products. In August14, 2015 Plaintiff Mr.Huang filed complaint against Huawei in US District Court of Eastern Texas for patent infringement and accused Seven model networking Routers and Switches listed in Huawei's website, the case number is 2:15-cv-1413(case1). On May22, 2016 Huawei had their five employees to declare that Huawei designed several chips (seven chips) with the TCAM (infringing the "patent-in-suit") those chips are not used in the seven Routers and Switches accused, but used in other Huawei's networking products. On June 5, 2016 Huang moved the Court to add about eighty newly found different model routers, switches and Firewall etc. products which were sold in both China and USA, most of them contained TCAM to the case. Magistrate Judge in the District Court denied Huang's motion. Huang filed case 2:16-cv-946 (case2) to accuse the newly found more than seventy Routers, Switches and firewall products etc. Huawei made further perjured declaration that although the data sheet of the product are read by the "patent-in-suit" but the real product designed are different from its data sheet. Magistrate Judge took the perjured declaration of Defendant Huawei and further made fraudulent statements that all the evidence proving infringement were not produced during Discovery(in fact all the factual material evidence proving infringement were produced prior to the deadline of Discovery), then recommended to dismiss the case. The District Judge Gillstrap adopted and confirmed Magistrate Judge's recommendation. Plaintiff Mr. Huang filed Appeal to the US Court of Appeal for the Federal Circuit on case1. Under Huawei Counsel's instruction Magistrate Judge Roy Payne sanctioned

Plaintiff Mr. Huang to pay $600K to Defendant Huawei's attorney fees and costs completely based on Defendant Huawei's perjured declaration and Magistrate Judge Payne's own fraudulent statements, which are contradicted to the factual material evidence. Magistrate Judge also have the case2 STAYed. The panel in the US Court of Appeal for the Federal Circuit only took Huawei's perjured declaration and Magistrate Judge Roy Payne's fraudulent statement and affirmed the District's decision even the Panel admitted that the authenticated evidence proving infringement was produced one day prior to the deadline of the Discovery. Then Magistrate Judge dismissed the case 2 with the claim preclusion to case1. In fact the more than seventy model Switches, Routers and firewall products (devices) in case2 are different from the seven devices in case1 in the following :

(1). the more than seventy products in case2 have different model name and different function and structure from the seven devices in case 1.

(2) Some of the more than seventy products case 2 contain TCAM which infringes "patent-in-suit" while the seven devices in case 1 contain NO TCAM as declared by Huawei.

Defendant and the District Court never proved that the Structure of the more than seventy devices in case2 are "essentially the same" with the seven devices in case 1, and just simply stated that that devices are "essentially the same".

Huang proved clearly that one of the device in case2 (N5000E Router contains the TCAM chips, which are essentially different from the seven devices in case 1 which contain NO TCAM based on Huawei's declaration. (Appx333-335)

Also the firewall product in case2 are not accused in case1(Appx637-638)

The panel of US Court of appeal for the Federal Circuit

only took all the fraudulent statement of the District Court and Defendant Huawei, completely ignored Huang' proof and analysis that the devices in case 2 are essentially different from the case1 and affirmed the District Court's decision.

The decision of both District Court and US Court of Appeal for the Federal Circuit is in contradict with the previous decision of US Court of Appeal for the Federal Circuit on the similar patent case related Claim preclusion (ACUMED LLC v. Stryker Corp., 525 F.3d 1319 (Fed. Cir. 2008)).

STATEMENT OF THE CASE

I. Case 2:15-cv-1413 (case 1)

In 2000 Mr. Huang found CMOS Micro Device Inc. (CMOS) in California to develop TCAM. TCAM is a type of memory that can achieve high-speed routing and switching in networking devices. Huang's invention makes TCAM three to hundreds of time faster than the other TCAM design with lower power consumption. Netlogic Microsystems Inc. stolen the TCAM design which was patented in US patent RE45259, Silicon Design Solution Inc.(SDS) (acquired by eSlicon Corporation) stolen the TCAM design which was patented in US patent 6744653 and 6999331.

In 2011 Plaintiff Mr. Huang found that Defendant Huawei's fully owned chip company "HiSilicon" licensed TCAM from eSilicon corporation, the TCAM datasheet of eSilicon read the claims of US patent 6744653 and 6999331.(Appx512-522) Huang also found that most Huawei's switches and Routers used TCAM chips of Netlogic Microsystems Inc. From 2011 to 2015 Mr. Huang did reverse engineering of several TCAM chips of Netlogic Microsystems Inc. the extracted layout and schematics of the chips in "Reverse engineering drawing description" (Appx523-545,698-746) read the claims of US patent RE45259.

Based on the pre-litigation findings Huang filed "Huang v. Huawei Techs. Co., 2:15-cv-1413-JRG-RSP (E.D. Tex. Aug. 14, 2015)" ("Case 1") with evidence that the TCAM used in Huawei's chips and TCAM chips used in Huawei's Switches and Routers infringed US patent 6744653,6999331 and RE45259 (Appx501-545). Mr. Huang accused SEVEN Huawei's devices listed in www.huawei.com in case1:

NE40E-X16A/X8A High end Universal Service Router;
NE40E-X1/X2 M Series Universal Service Router ;
S9300 Series Terabit Routing Switches;
S9700 Series Terabit Routing Switches;
S12700 Series Agile Switches;
S6300 Switches.
CloudEngine 12800 series switches

In May 10, 2016 Plaintiff Mr. Huang met a Lawyer Betty near Marshall Texas who referred Mr. Huang to two Lawyers Dan and his partner in Los Angeles, California. Dan offered to represent Mr. Huang to settle $5 million for his three patents (Appx428-436). During the meeting in LAX airport Dan claimed that their partner Local Counsel Betty knows Judge Gilstrap very well and signed up hundreds of patent cases in TXED each year. Plaintiff Mr. Huang obtained evidence that Huawei's 3G,4G networking products all used his patents and Huawei's 5G networking products will have to use his patents, that Huawei has used his patents and generated multi-billion USD profits in USA and hundreds of billion USD profit worldwide and would generate more profit in the future. Mr. Huang collected reverse engineering evidence and does not feel good for a 5 million quick settlement, then Plaintiff Mr. Huang said he wants to litigate the case by himself since he has got reverse engineering data to prove the infringement. Dan said: "just by you Judge Gilstrap by all means will not let the Company such as Huawei to transfer their money to your account. Judge does not understand your patent and will judge you lose." Plaintiff

Mr. Huang said: "I can appeal to the federal circuit." Dan said: "you should not expect that Judges in the Federal circuit will reverse the Order of Eastern Texas for a *pro se* litigant." Later Plaintiff Mr. Huang said that he wants to finish claim construction brief by himself before retaining them.

On May 23, 2016 Huawei filed Fed.R.Civ.P. 11 motion (Dkt.52) (Appx583-619) and used their 5 employees to declare that Huawei's division HiSilicon designed 7 model numbers of ASIC chips using the TCAM IP licensed from eSilicon, SD XXNo1, SDXXNo2, SDXXNo3, SDXXNo4, SDXXNo5, SDXXNo6, SDXXNo7. The XXNos are redacted. Huawei has not used any those 7 models ASIC chips containing TCAM IP in the SEVEN Huawei products which have been accused in case 1, but used those 7 models of ASIC chips containing TCAM in other Huawei's networking products.

Around May 26, 2016 Mr. Huang found a commerce website https://e.huawei.com. The two website https://e.huawei.com/cn/ (China) and https://e.huawei.com/us/ (USA) lists entire more than 80 identical Huawei's networking products, which are sold both in China and USA respectively (Appx628-639). That means, except the SEVEN accused products, based on Huawei's declaration, that some products of the more than 80 products listed in website https://e.huawei.com use some of the those 7 models of ASIC chips (designed by HiSilicon) using the TCAM IP licensed from eSilicon. Then Mr. Huang moved the Court for leave to add 70 more newly found products to case1 in Dkt.No.58. Mr. Huang produced the good cause in Dkt.59 and 74 with Exhibit O and P which proved that some of newly found 70 more products to be added contains the TCAM IP infringing US patents and sold in the USA. Judge Payne denied Huang's motion to add newly found 70 more products, and has the case STAYed for two month for Mr. Huang to retain Lawyer. (Appx622-652). On September 29, 2016 Defendant-Appellee Huawei filed motion for Summary Judgment of non-

infringement in Dkt.105 of case1. Huawei further declared that the TCAM licensed from eSilicon are different from the content of the datasheet. Huwei made perjured declaration to abuse and manipulate the US legal systems. On October 17, 2016 Mr. Huang produced evidence and independent expert's declaration and expert report to prove the SEVEN products of Huawei's infringement to US patent No. RE45259 (Appx654-746). On November 22, 2016 Judge Payne made erroneous statement that Plaintiff-Appellant Mr. Huang's evidence were not produced during the Discovery. In fact those evidence were produced before the deadline of the Discovery November 17, 2016, Judge Payne stroke all the factual material evidence produced by Mr. Huang and recommend to District Court to grant Defendant Huawei's motion of non-infringement in Dkt.134 (Appx141-143). The district court adopted Dkt.134 and granted Defendant Huawei's motion to dismiss Plaintiff Mr. Huang's claim erroneously. As pointed out by District Judge J. Owen Forrester in Sklar v. Clough, 2007 U.S. Dist. LEXIS 49248 (N.D. Ga. July 6, 2007), "a district court may 'consider a hearsay statement in passing on a motion for summary judgment if the statement could be reduced to admissible evidence at trial or reduced to admissible form'" (citation omitted).

On January 18, 2017 Plaintiff-Appellant filed motion Dkt.170 and asked the Court to file the perjury charges against Defendant-Appellee Huawei's witness with evidence support. On January 19, 2017 Magistrate Judge denied Plaintiff-Appellant's motion and stated "Mr. Huang has no authority nor basis to charge Huawei with perjury." in Order Dkt.No.172.

On January 31, 2017 Defendant-Appellee Huawei filed motion for attorney fees in Dkt.179 based on its internal counsel's perjured declaration of forged telephone conversation. In Dkt.184 and its exhibits Plaintiff-Appellant Mr. Huang

proved that Defendant- Appellee's internal Counsel made perjured declaration and has very bad faith (Appx847-893).

One of Huawei's Counsel Scott W. Breedlove worked in Leon Carter's firm for many years, then left Carter's firm to join Vinson & Elkins in Dallas and worked in the same Law firm office with Mr. Stephen Gilstrap (Mr. Stephen Gilstrap is Son of Judge Gilstrap) for several years, then returned back to Carter's firm to represent Huawei in case 1, then attend the Hearing on March 8, 2017. In the Hearing of March 8, 2017 Huawei Counsel Leon Carter said to Judge Payne: "Let him (Huang) pay money." Judge Payne replied: "He does not have Money." This part was omitted in the transcript. This conversation showed that Leon Carter was in an advanced position able to command Judge Payne. On March 27, 2017 in Order 204 Judge Roy Payne used erroneous statement and "he (Mr. Huang) did not want to share revenue with a lawyer." (Appx133) as cause and took perjured declaration of Defendant-Appellee Huawei and granted Defendant's motion for attorney's fee and expert costs despite the factual material evidence

In the Hearing of March 8, 2017 Plaintiff-Appellant Mr. Huang firmly stated the evidence that he did adequate pre-litigation investigation and collected adequate evidence to prove Defendant-Appellee Huawei infringed "patent-in-suits" and during the case he is in good faith and has proved firmly that Defendant-Appellee Huawei infringed the "patent-in-suit". On March 27, 2017 Magistrate Judge Roy Payne made erroneous statement and took perjured declaration of Defendant-Appellee Huawei in Order 204 and granted Defendant's motion for attorney's fee and expert costs despite the factual material evidence Plaintiff-Appellant produced in Dkt.184-185, Dkt.193-194. Despite Plaintiff-Appellant Mr. Huang's factual material evidence produced and referred in Dkt. 211, in Order 212 the District Judge Gilstrap confirmed Magistrate judge's Order of Dkt.204 and threaten that "if Mr.

Huang files another paper on record in this Court making unsupported allegations of perjury or fraud, directed to any party or the Court, he will be required to appear for a show cause hearing to determine whether additional sanctions are appropriate." Then Magistrate Judge granted the attorney's fee in Dkt.213. In Dkt. 216 and 217 Plaintiff-Appellant Mr. Huang further proved that Defendant-Appellee Huawei made perjured testimony with evidence support, Order204 and Order212 only based on Defendant-Appellee Huawei's perjured testimony contrary to the factual material evidence produced in Dkt.184-185,193-194,211,216 and 217. But the District Judge Gilstrap ignored the evidence Plaintiff-Appellant Mr. Huang produced in Dkt.184-185,193-194, 211,216 and 217(Appx847-949), overruled in Order 218.

The Transcript of Hearing on March 8,2017 which was produced by Court reporter on June 6,2017, proof read and filed into ECF system as Dkt.230 by Mr. Huang on July 7, 2017 proved that the statement in Order 212 are clearly erroneous.

II. Case 17-1505

Mr. Huang appealed the district court's decision of case 2:15-cv-1413 to Federal Circuit in case 17-1505, the Panel took Huawei's perjury and Judge Payne's fraudulent statement as evidence and made further erroneous statement that "Mr. Huang did not do any pre-litigation investigation" and "he (Mr. Huang nevertheless did not want to share revenue with a lawyer". Although the Panel admitted that Mr. Huang produced the witness declaration, expert report and reverse engineering data prior to the deadline of Discovery in case 2:15-cv-1413, but the Panel chose to affirm the district court's decision.(Appx30).

III. Case 2:16-cv-947(case2)

On August 26, 2016 Plaintiff-Appellant Mr. Huang filed case 2:16-cv-947 (case 2) against Huawei to accuse the newly found

70-80 products which contain some of the 7 models of ASIC chips containing TCAM from eSilicon and TCAM chips.(Appx 300-322).

NetEngine20E-S Series Universal Service Routers
NE05E/08E Series Mid-range Service Routers
NetEngine5000E Cluster Routers
S7700
S6700
S6720
http://e.huawei.com/us/products/enterprise-networking/switches
CloudEngine 8800 series switches
CloudEngine 7800 series switches
CloudEngine 6800 series switches
CloudEngine 5800 series switches
CloudEngine 1800V series switches
http://e.huawei.com/us/products/enterprise-networking/switches/campus-switches
S5720-HI
S5720-EI
S5720-SI
S5700-EI
S5700-SI
S5700-LI
S3700
S2700
http://e.huawei.com/us/products/enterprise-networking/switches/soho-smb-switches
Sl700.
http://e.huawei.com/us/products/enterprise-networking/routers
ARl 60-M Series Agile Gateways
ARSOO Series Agile Gateways
AR510 Series Agile Gateways
AR530 Series Agile Gateways
ARSSO Series Agile Gateways

AR3600 Series Agile Gateways
AR3200 Series Enterprise Routers
AR2200 Series Enterprise Routers
AR1200 Series Enterprise Routers
AR120/150/160/200 Series Enterprise Routers
AtomEngine Series Products
http://e.huawei.com/us/products/enterprise-networking/wlan
AC6005 Access Controller
AC6605 Access Controller
ACU2
http://e.huawei.com/us/products/fixed-network/transport
Optix OSN9800
OPtix OSN8800
OPtix OSN1800-V
OPtix OSNl 800
Optix PTN7900
Optix PTN3900
OPtix PTN1900
OPtix PTN900
MSTP platform
http://e.huawei.com/en/products/fixed-network/ access
SmartAX MA5620
SmartAX MA5621
SmartAX *MAS* 800
SmartAX MA5680T
http://www.huawei.com/us/products/fixed-access/index.htm
MA5800 Series OLT
MA5800 Series OLT
HG8240
http://e.huawei.com/us/products/enterprise-networking/security/firewall-gateway
USG6600
USG6650
USG6300

USG6000V
NIP6000
NIP6000D
NIP6000VN5600/5800
ASG2000
USG2110
USG5100BSR
USG2000BSR
NIP2000/5000
WAF2000
http://e.huawei.com/us/products/wireless/elte-access
eA660 CPE
eA360CPE
DBS3900
eCN600
eCN610
eCNS210
eSCN230
http://carrier.huawei.com/cn/products/fixed-network/access
OLT
MXU
http://carrier.huawei.com/cn/products/fixed-network/carrier-ip
SIG9800
SNC
VcmS020,vcmS010, vcn3010,vcn3020
SmartAX MAS600T
SmartAX MAS800 Series OLTs
UASOOO Multi-Service Access Platform
SmartAX MAS620 Series Fiberoptic MDUs
USG6300, USG6600,USG9SOO,NIP6000

Based on Huawei five employees declaration that the seven products in case1 do not contain the TCAM, but some of the above more than 70 devices in case2 contain the TCAM, TCAM is the core to infringe the "patent-in-Suit".

The more than 70 devices (products) accused in the above case2 are different from the seven devices accused in case1. The first three group products NE series routers, S series Switches and CE series Switches are related products to the corresponding products in cas1, but is different in model numbers, structures and applications. The price of CE12800 data center Switch in case1 is over $100K, but the CE6800 Switch accused in case2 is only $8K. The NE40 router is Universal **service** Router in case1, the NE5000E is the **cluster** router.

The other devices accused in case2 are completely different from the seven devices accused in c ase1. AR3600 Series Agile Gateways, USG6600 series Firewall products, eA660 CPE and eCN600 series wireless access products etc. in the above case2 are completely unrelated to the Routers and Switches accused in case1.

One of 70 products accused in case 2 is Huawei's NE5000E Router which contains TCAM chips of Netlogic Microsystems Inc. and ASIC chips (SD587 and SD587i)using TCAM IP from eSilicon (Appx333-335). Both TCAM IP from eSilicon and TCAM chips of Netlogic Microsystems Inc. read the claims of '331patent, '653patent and '259patent with evidence of reverse engineering data and data sheet.

Magistrate Judge Payne canceled the initial case meeting for case 2:16-cv-947 and instructed Huawei to file motion for summary judgment. Huawei filed motion for summary judgment Dkt.40 of 2:16-cv-947 to dismiss the case 2:16-cv-947. Mr. Huang responds in Dkt.41. Magistrate STAYed the case 2:16-cv-947. On January, 2019 Magistrate reactivated case 2:16-cv-947,Judge Payne did not compare the devices accused in case2 with the devices accused in case1 and just granted Huawei's motion to dismiss case 2 with the cause claim preclusion.

Plaintiff Huang filed appeal to US Court of Appeal for the Federal Circuit in March 25, 2019.

Case 19-1726.

Huang appealed to US Court of Appeal for the Federal Circuit, then the Panel of Federal circuit just took Huawei's fraudulent statement and the fraudulent statement of the District Court and never analyze the devices accused in the two case, then affirmed the district Court's decision.

Huang filed appeal for rehearing, which were simply denied.

SUMMARY OF ARGUMENT

1. the decision on this case (case2) is in contradiction with the decision of case ACUMEDLLC v. STRYKER case No. 2007-1115 of United States Court of Appeals for the Federal Circuits (Acumed LLC v. Stryker Corp., 525 F.3d 1319, 1326) (Fed.Cir.2008). District Court use case1 as claim preclusion to dismiss the case2. Most of the more than 70 devices accused in case2 are "essentially different" from the seven devices accused in case1. The decision of US court of appeal for the Federal circuit and the District Court are erroneous and in contradiction with the previous decision of US Court of Appeal for the Federal circuit, ninth circuit and this court on the same(similar) patent case.

2. the case1 is involved in "Fraud on the Court" in terms that the decision of the district court are based on Huawei's perjured decision and the fraudulent statement of the Court biased by Huawei's attorney who is related to the District Judge and that Huang did not retain the lawyers who are related to the District Judges and the Judges in the Federal circuit did not correct the mistakes made by the District Court with the cause that Huang did not share the revenue with a lawyer.

ARGUMENT

1. CASE SHOULD NOT BE BARRED BY CLAIM

PRECLUSION TO CASE1, THE DEVICES IN CASE2 ARE ESSENTIALLY DIFFERENT FROM THE DEVICES IN CASE 1

Under the doctrine of claim preclusion, "a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action." *Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 327 n. 5, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979).

To the extent that a case turns on general principles of claim preclusion, as opposed to a rule of law having special application to patent cases, Acumed LLC v. Stryker Corp., 525 applies the law of the Ninth Circuit. *See Media Tech. Licensing, LLC v. Upper Deck Co.,* 334 F.3d 1366, 1369 (Fed.Cir.2003). The Ninth Circuit applies claim preclusion where: "(1) the same parties, or their privies, were involved in the prior litigation, (2) the prior litigation involved the same claim or cause of action as the later suit, and (3) the prior litigation was terminated by a final judgment on the merits."

Whether a claim in patent infringement case to be barred by res judicata (claim preclusion) are further specified in ACUMEDLLC v. STRYKER case No. 2007-1115 of United States Court of Appeals for the Federal Circuits (Acumed LLC v. Stryker Corp., 525 F.3d 1319, 1326 (Fed.Cir.2008). "[O]ne of the essential transactional facts giving rise to a patent infringement claim is 'the structure of the device or devices in issue.' " Therefore, '[C]laim preclusion does not apply unless the accused device in the action before the court is "essentially the same". The party asserting res judicata has the burden of showing that the accused devices are essentially the same.

The panel decision and the district court abuse the discretion since Defendant Huawei, the panel of Federal Circuit and the District Court never produce any evidence, analysis and comparison to prove the devices accused in case 1 is

"essentially the same" to the devices accused in case 2. Both the district court and Panel decision merely just make erroneous statement that *"the Case 2 chips are essentially the same as the Case 1 chips for purposes of claim preclusion.1"* without any evidence and analysis proof of the chips. It will be addressed that the TCAM chips used in the devices accused in case 1 are NOT essentially same to the TCAM chips used in the devices accused in case 2 .

Case 1 and case 2 claimed that "the TCAM licensed from eSilicon and TCAM chips of Netlogic/Broadcom" used in Huawei's products infringed US patents 6744653,6999331 and RE45259. So the nucleus is "TCAM" licensed from eSilicon and "TCAM chips of Netlogic/Broadcom".

The fact is that Huawei declared that the Seven products (devices) accused in the case1 did not contain any of 7 ASIC chips using TCAM licensed from eSilicon while some of the more than 70 products(devices) accused in case 2 contain some of 7 ASIC chips using TCAM IP, which makes the devices accused in case2 are NOT essentially same from the devices accused in case 1.

It is the TCAM infringing the claim limitation of '653 patent and '331patent, products (devices) accused in case 1 contain NO ASIC chips using TCAM and the products (devices) accused in case 2 contain ASIC chips using TCAM, so the structure of the devices in case1 and case 2 are "essentially different" in terms of reading the claim limitation of the '653 and '331patents.

In case1 only four model TCAM chips: the "KBP sample chips" (including

IDT75K72234,
IDT75S10020,
IDT75S10010 and
NL9512))

are accused to be used in the seven accused products.

In case2 there are total 24 model TCAM chips are accused, where including four "KBP **sample** chips" (including
IDT75K72234,
IDT75S10020,
IDT75Sl0010 and
NL9512)
which were accused in case1.
and Twenty more chips including (not limited to):
NL6000 Family ,
NL7000 Family
NL/NLA 9000 Family
NL/NLA 1000 Family
NL/NLA 12000 Family
NLS025,
NLS045,
NLS055,
NLS1005,
NLS1008,
NLS105,
NLS2008,
NLS205,
75K Series,
Pl025 NSE chips of Freescale Semiconductor Inc.
Octeon Plux,
Octeon TX,
CN63xx,
CN7xxx,
CNX8xxx of Cavium Inc and the chips of Dune Networks Inc. (acquired by Broadcom Corporation)
are accused to be used in the more than 70 products.

Beside four chips accused for being used in the Seven products in case1, there are additional twenty chips are accused for being used in the more than 70 products in case2.

So the opinion that *"the Case 2 chips are essentially the*

same as the Case 1 chips for purposes of claim preclusion.1" used by Federal Circuit is completely erroneous and in contradiction with the fact. In case1 only four chips and seven products were accused. In case2 twenty additional chips and more than 70 additional products were accused.

The panel and the district court argue that the case1 and case2 use the same infringement contention and claim chart.

The fact is that all claims of the patents-in-suits are asserted in two cases there are only seven devices and four chips were accused in the infringement contention in case1, but there are additional more than seventy different devices and additional twenty different chips were accused in case2. The chips and devices in case2 are essentially different from the chips and devices in case1, and most of them are read by different claims of the "patent-in-suit".

Further more, the devices accused in case1 containing NO ASIC chips using TCAM IP based on Huawei's declaration, but the devices accused in case 2 containing ASIC chips using TCAM IP based on Huawei's declaration. It is TCAM which read the claim limitation of the patents, so the structure of the devices in case1 and case 2 are NOT "essentially same" in terms of reading the claim limitation of the '653 and '331patents. Case 2 can not be barred by case 1 based on the analysis in *Acumed LLC v. Stryker Corp., 525 F.3d ,1327 (Fed. Cir. 2008).*

On May 23, 2016 Huawei used their 5 employees to declare that Huawei's division HiSilicon designed 7 model numbers of ASIC chips using the TCAM IP licensed from eSilicon, SD XXNo1, SDXXNo2, SDXXNo3, SDXXNo4, SDXXNo5, SDXXNo6, SDXXNo7. Huawei has not used any those 7 models ASIC chips containing TCAM IP in the SEVEN Huawei products accused in case 1, but used those 7 models of ASIC chips containing TCAM in other Huawei's networking products (Switches and Routers) .(Appx583-619)

Huang found a commerce website https://e.huawei.com

lists entire more than 80 identical Huawei's networking products, which are sold both in China and USA respectively. That means, except the SEVEN accused products in case 1, based on Huawei's declaration, that some products of the more than 80 products listed in website https://e.huawei.com use some of the those 7 models of ASIC chips (designed by HiSilicon) using the TCAM IP licensed from eSilicon.

One of 70 products accused in case 2 is Huawei's NE5000E Router which contains TCAM chips of Netlogic Microsystems Inc. and ASIC chips (SD567, SD587 and SD587i) using TCAM IP from eSilicon (Appx333- 334). NE5000E was not accused in case 1.

Both TCAM IP from eSilicon and TCAM chips of Netlogic Microsystems Inc. read the claims of '331patent, '653patent and '259 patent based on the evidence of reverse engineering data and data sheet.

In case 1 Plaintiff Mr. Huang accused four TCAM chip Model IDT75K72234, IDT75S10020, IDT75S10010 and NL9512 used in seven Huawei's products. In case 2 Plaintiff Mr. Huang accused 20 more TCAM chip model NL6000 Family, NL7000 Family, NL/NLA 9000 Family, NL/NLA 1000Family, NL/NLA 12000 Family, NLS025, NLS045, NLS055, NLS1005, NLS1008, NLS105, NLS2008, NLS205, 75K serials and P1025 NSE chips of Freescale Semiconductor Inc.(part of NXP) used in more than 70 Huawei's products beside IDT75K72234, IDT75S10020, IDT75S10010 and NL9512, those TCAM chips were not accused in case1. Based on reverse engineering data the TCAM chips accused in case 2 are NOT "essentially same" to the TCAM chips models accused in case 1. The TCAM chips accused in case2 do not use dynamic circuit and not infringed the claim 29 of '259 patent while the TCAM chip model accused in case 1 used the dynamic circuit and infringed claim 29 of '259 patent. So case 2 can not be barred by case 1 with claim preclusion.

2. THE DISTRICT COURT ABUSED DISCRETION AND INVOLVED "FRAUD ON THE COURT" IN CASE 1 AND CASE 2

Plaintiff Mr. Huang did adequate pre-litigation and produced expert report and witness declaration in Dkt.109 of case1 and its exhibit to prove that accused Huawei's products infringed US patents 6744653, 6999331 and RE45259(Appx654-746). Judge Payne's Orders to dismiss case 2:15-cv-1413(case1) and sanction Plaintiff Mr. Huang to pay Defendant Huawei $600K are erroneous and an abuse of discretion.

In May 10, 2016 Plaintiff Mr. Huang met a Lawyer Betty near Marshall Texas who referred Mr. Huang to two Lawyers Dan and his partner in Los Angeles, California. Dan offered to represent Mr. Huang to settle $5 million for his three patents (Appx428-436). During the meeting in LAX airport Dan claimed that their partner Local Counsel Betty knows Judge Gilstrap very well and signed up hundreds of patent cases in TXED each year. Plaintiff Mr. Huang obtained evidence that Huawei's 3G,4G networking products all used his patents and Huawei's 5G networking products will have to use his patents, that Huawei has used his patents and generated multi-billion USD profits in USA and hundreds of billion USD profit worldwide and would generate more profit in the future. Mr. Huang collected reverse engineering evidence and does not feel good for a 5 million quick settlement, then Plaintiff Mr. Huang said he wants to litigate the case by himself since he has got reverse engineering data to prove the infringement. Dan said: "just by you Judge Gilstrap by all means will not let the Company such as Huawei to transfer their money to your account. Judge does not understand your patent and will judge you lose." Plaintiff Mr. Huang said: "I can appeal to the federal circuit." Dan said: "you should not expect that Judges in the Federal circuit will reverse the Order of Eastern Texas for a *pro se*." Later Plaintiff Mr. Huang said that he wants to finish claim construction brief

by himself before retaining them.

One of Huawei's Counsel Scott W. Breedlove worked in Leon Carter's firm for many years, then left Carter's firm to join Vinson & Elkins in Dallas and worked in the same Law firm office with Mr. Stephen Gilstrap (Mr. Stephen Gilstrap is Son of Judge Gilstrap) for several years, then returned back to Carter's firm to represent Huawei in case1, then attend the Hearing on March 8, 2017, where Leon Carter commend Judge Roy Payne : "let him(Mr. Huang) pay money". Stephen Gilstrap and Vinson & Elkins LLP has interest conflict with Judge Gilstrap in US district Court of Eastern Texas. Huawei's Counsel Scott Breedlove has interest conflict with Judge Gilstrap and District Court.

Case 2:15-cv1413(case1) was dismissed with the cause that the evidence was not produced during the Discovery, although the cause is false. On the Order 134 Magistrate Judge Roy Payne stated: "Mr.Huang highlights several alleged reverse engineering records, but the Court must GRANT Huawei's motion to strike....these records because Mr. Huang failed to produce them during discovery. Accordingly, it is RECOMMENDED that Huawei's motion for summary judgment be GRANTED." Judge Payne just lied since all the evidence produced before October 17, 2016 and before the deadline of Discovery.(Appx141-143). By March 8, 2017, two yeas before the resolution of Appeal to Federal Circuits , the case 2:16-cv-947 and case 2:15-cv-1513 had proved Huawei's infringement to US patent 6744653,6999331 and RE45259. The District Court Judge Payne STAYed the case 2:16-cv-947 on March 8, 2017, and never allow the case be reactivated until January 11, 2019 to deny Mr. Huang's motion to transfer case 2:16-cv-947 to US District Court of Northern California and dismiss the case 2:16-cv-947 with the claim preclusion to case 2:15-cv-1413. Judge Payne's Order to STAY the case 2:16-cv-947 is a further abuse of description to further help Huawei to

avoid paying the royalty of patent infringement in USA. The fact is that Plaintiff Mr. Huang appealed to US Supreme Court, and there is no resolution yet, so the case 2:15-cv-1413 is not the case which finally lost by plaintiff Mr. Huang. The District Court abused the discretion again to dismiss the case 2:16-cv-947 while case 2:15-cv-1413 is being appealed in the US Supreme Court.

The case 2:16-cv-947 overcome the cause which the Court used to dismiss case 2:15-cv-1413 "the evidence were not produced during the Discovery" which is Judge Payne's lie and fraudulent statement. But the Court have the case 2:16-cv-947 STAYed to wait that judgment made on case 2:15-cv-1413 was confirmed by Federal Circuit, then used the claim preclusion to dismiss the case 2:16-cv-947. The district court's decision in favor of Huawei further proved that the Court is "Fraud is on the Court".

On Hearing of March 8, 2017 Plaintiff Mr. Huang argued that the evidence of reverse engineering was already authentic by then, that Huawei infringed US patent RE45259 was proved further by the evidence provided by Broadcom. Plaintiff Mr. Huang produced adequate pre-litigation evidence and was in good faith, Huawei's Counsel was perjured, Mr. Huang should not be sanctioned for attorney fees. Huawei Counsel Leon Carter said to Judge Payne: "Let him (Mr. Huang) pay the money." Magistrate Judge Payne replied: "He (Mr. Huang) does not have Money." This part was omitted in the transcript by the District Court. This conversation showed that Leon Carter was in an advanced position able to command Magistrate Judge Payne, Magistrate Judge Payne's judgment was commended by Defendant Huawei Counsel Carter, the district court reporter deliberately omitted this conversation in transcript. With evidence support Plaintiff Mr. Huang filed motion Dkt.170 to ask the District Court to take action on Huawei's perjured declaration with evidence support, the District Court denied Mr.

Huang's motion right away with fraudulent cause that Mr. Huang's motion has no evidence support. The Court's conduct encouraged Huawei Counsel Li and Torkelson to make more perjured declaration in Motion for attorney fees. Even when Plaintiff Huang proved Huawei's declaration is perjured, the District Courts still took all Huawei Counsel's perjury as evidence to grant Huawei's Motion for money based on Huawei Counsel's instruction which proved again what Huawei counsel Ms. Li said " they knows Judges very well."

Order Dkt.204 and the decision of Panel of the Federal circuit all stated: "he (Mr. Huang) nevertheless did not want to share the revenue with a lawyer." ,which seems to be the true reason of the "Fraud on the Court". Although admitting that Plaintiff Mr. Huang produced "Expert report and declaration" to prove Huawei's infringement to US patent 6744653, 6999331 and RE45259 before the deadline of Discovery and Mr. Huang is one expert witness who was disclosed before, the Panel of federal circuit of case 17-1505 still affirmed Judge Payne's decision to dismiss case 2:15-cv-1413 and took Judge Payne's lie in Dkt.134 that "Mr. Huang highlights several alleged reverse engineering records, but the Court must GRANT Huawei's motion to strike....these records because Mr. Huang failed to produce them during discovery. Accordingly, it is RECOMMENDED that Huawei's motion for summary judgment be GRANTED." "

In Dkt.71 of case 2:16-cv-947 Defendant Huawei further moved the District Court to use its inherent power again to restrict Mr. Huang to appeal to higher level court for the district Court's decision of case 2:16-cv-947 and further sanction Mr. Huang to pay money to Defendant Huawei's attorney fee. Huawei also asked Gilstrap to sentence Mr. Huang contempt the District Court.

3.. THE SANCTION OF ATTORNEYS FEE AND COSTS in case1 IS ERRONEOUS AND WRONGFUL

(1). Mr. Huang did adequate pre-suit investigation. This is as stated in section I of this petition

(2). Plaintiff Mr. Huang has been in good faith during the litigation.

In his declaration ExhibitX-2 of Dkt.184 of case1 Mr. Huang disclosed the original TCAM design of Fig.1 of RE45259 patent sent to Andy Bechtolsheim in 2002 under NDA in page 28-30 of "Infringement contention" which was sent to Defendant Huawei on November, 2015. This proved that Huawei's Counsel Torkelson's declaration in motion for attorney fee Dkt.179 is perjured. In "Infringement contention" Huang brought up 20 page layout and schematics in "Reverse Engineering Drawing Description" Exhibit F of case1. The District Court granted Defendant Huawei's motion for attorney fees and expert costs based on Huawei counsel Pengyan Li's declaration Dkt179-1 and Huawei Counsel Torkelson's declaration Dkt.179-2. Both Li's declaration and Torkelson's declaration were contradicted to the factual material evidence, they are all perjured. In declaration of Exhibit X-1 and declaration of Exhibit X-2 of Dkt.184 in case1 with factual material support Plaintiff Mr. Huang denied all the content in the Li's declaration Dkt.179-1 and Torkelson's declarationDkt.179-2(Appx878-908). The Court took Huawei Counsel Ms. Li's perjury as evidence is erroneous. In spite that with factual material evidence support Plaintiff Mr. Huang denied Huawei's perjured testimony Magistrate Judge Payne made Sanction to Plaintiff Mr. Huang in Order 204 based on Huawei Li's perjured testimony and in Order 212 the district Judge Gilstrap cited Huawei Li's perjured testimony from Order 204 and threaten to Sanction Plaintiff Huang more if Huang dare to tell the truth that Huawei's motion for attorney fee are based on Huawei Counsel's perjury. In Dkt.216 Plaintiff Huang proved that Judge Payne's Order 204 and Judge Gilstrap's Order 212 are based on their own

fraudulent statement and Huawei's perjury(Appx906-950). By declaration Huang denied Judge's fraudulent statement and Huawei Counsel's perjury, Pengyan Li's 's declaration "Mr. Huang has repeatedly called, emailed, and sent messages to me seeking payment for dismissal of his lawsuits ..." is contradicted to fact and perjured. Pengyan Li sent me email on September 2, 2015 and express intention to talk with me, cited Li's email : "We hope you would agree,....Thus, we have more time to discuss with you facts of the case). When I called Penyan Li's cell Phone She asked me How much I want to settle case. I told her that Huawei needs to make offer. On September15, 2015 Li sent me email and asked me: "MAYWE HAVE A TELEPHONE CALL TODAY.". On February 5, 2016 Pengyan Li sent me email: "Huawei team intends to discuss settlement DIRECTLY with you in order to save time and resource of both side". On February 15, 2016 Pengyan Li sent me email, threatened: "Huawei expect that you withdraw the complaint. ...the settlement amount will be very low, HUAWEI WILL CONTINUE LAWSUIT TO AVOID MORE COMPLAINTS AGAINST HUAWEI HAPPENS" "CONTINUE LAWSUIT" means to have Plaintiff incur costs. On May23, 2016, Pengyan Li sent me email:" Mr. Huang, Next Month June 7 –13 I will be in Dallas, TX, wonder you would be in Dallas on that time , if possible , hope to discuss this case with you". I proposed 10Million USD to settle the case at Li's request. Huawei Counsel Ms. Li's emails proved that in her perjured declaration she put her own conducts on Plaintiff Mr. Huang. The Judges overlooked those facts. Huawei Ms. Li told me : "Huawei authorized me to make five digit number offer to you, as a *pro se*, the Court won't allow you go to Jury Trial, Huawei won't be taken to the Trial by all means." On Hearing of July 27, 2016 I had conversation with Judge Payne: MR.HUANG: Your Honor, Assume court will grant the motion of summary judgment, I still have one more patent and I will have whole

bunch evidence. Can that patent, with evidence, be taken to trial? THE COURT: Are you talking about the reissue patent? MR. HUANG: Yes. THE COURT: If summary judgment is not granted as to all of your patents, then the others would proceed on and the litigation would continue on toward trial. While Huawei Ms. Li kept contacting me Huawei's other Counsels sent me email and asked me not to talk to Ms. Li. It is Huawei's conspired plan to build up "the evidence". Huawei Li's declaration ", he could still file more motions and papers with the Court, and Huawei will have to reply and incur further legal fees." is perjured. That "HUAWEIWILL CONTINUE LAWSUIT is what Pengyan Li threatened Plaintiff Huang to have Mr. Huang incur more litigation cost. Huawei benefited multi-billion USD from using the asserted patents. The royalty is much higher than its litigation cost. Ms. Li perjured: "He sued Huawei because one ... told him that it would quickly settle. He ..sue Huawei on ...representation that Huawei would pay $1.5 million...." I declared that Huawei Pengyan Li said to me: "You should hire a lawyer since your patents are very unique and different from the others who sued Huawei. Your patents are better solution that others..." Li continued: "Huawei had hundreds of lawsuits in TXED, known and retained some lawyers who knows Judges very well. Upon your retaining a lawyer who knows Judges well Huawei could be willing to settle up to one and half million with you." Huawei Pengyan Li said to me: "Now we are going to retain a law firm well connected to the Court of Appeal for the Federal Circuits upon your appeal, I hope you withdraw your appeal, otherwise Huawei is going to file motion for attorney fees." Ms. Li perjured: "He did not hire an attorney because he does not want to share revenue with a lawyer." Magistrate Payne in Order 204 cited as: "Huang said that he nevertheless decided not to hire an attorney because he did not want to share revenue with a lawyer". The Panel's proceeding cited: "that he did not want to share revenue with a

lawyer," That "He does not want to share revenue with a lawyer" should not be the reason to be sanctioned. Why Judges all cited that? Why Huawei Counsel Li perjured this declaration? Does this relate to what Huawei Li said "knows Judges well."

(3). Five motion to compel were all filed with reasonable cause

Prior to filing lawsuit Plaintiff Mr. Huang believed he collected adequate evidence to prove infringement to Jury Trial without further information from Defendant Huawei, so Mr. Huang did not request information from Defendant until May22, 2016 Defendant Huawei made perjured testimony in rule11motion Dkt.52 that no Huawei's products containing eSilicon TCAM IP are sold in USA. On July3, 2016 Mr.Huang sent document production request and asked Defendant Huawei to provide information including the contract, source code and product model numbers which contains the seven ASIC chips using TCAM IP of eSilicon and the model numbers of seven ASIC chips, Huawei ignored Mr. Huang's request, then Mr. Huang filed first motion to compel the information on July 8, 2016(Dkt.76)(Appx951-955). In Hearing July27, 2016 Defendant Huawei and Magistrate Judge said no confidential source code should be disclosed to Plaintiff Mr.Huang, then on August 12, 2016 Mr. Huang filed second motion to compel (Dkt.94) non confidential information including model numbers of Huawei's products using TCAM IP of eSilicon and manufacture process in order to verify whether those products are sold in the USA(Appx956-960). Magistrate Roy Payne ordered: "The Court previously entered an Order staying this case and all associated deadlines until September 28, 2016 ....(Dkt. Nos. 94...) are DENIED WITHOUT PREJUDICE. Plaintiff may re-file these motions only after the expiration of the stay." in Dkt.99. On October11, 2016 based on Magistrate Judge Payne's Order in Dkt.99 Plaintiff Mr. Huang refiled second motion to compel as third motion to

compel to compel the non-confidential information. The third motion to compel is a refiling of second motion to compel based on Magistrate Payne's Order Dkt.99. On October 24, 2016 Plaintiff Mr.Huang retained three outside independent experts who signed undertaking protective order agreement, basedon10(e) of protective order, those experts can access the "restricted, attorney eye only, confidential source code information." Plaintiff Mr. Huang sent the protective order undertaking signed by independent experts to Defendant Huawei and asked Defendant to disclose the requested information to retained independent experts. Defendant ignored Plaintiff's requests, The Plaintiff Mr. Huang filed fourth motion on October28, 2016(Appx963-962). Defendant Huawéi used unreasonable cause and denied Plaintiff 's request. On November 18, 2016 Huawei Counsel Torkelson sent Plaintiff Mr. Huang email and stated that Broadcom allowed Huang's retained experts to access and review the confidential source code of TCAM chip NSE5512 , Huawei Counsel also sent email on November28, 2016 and acknowledge that based on item 5(e) , 9, 10(a) and 10(h) of Protective Order signed by Magistrate Payne independent experts are allowed to access confidential information. Based on the fact that Broadcom allowed Plaintiff's retained experts to access its confidential source code Plaintiff Mr. Huang filed fifth motion to compel Huawei to allow his retained experts to access the source code of eSilicon TCAM IP used in HiSicon ASIC chip of Huawei's networking products on November 28, 2016. The independent expert should be given the same right with or without attorney as long as signing the NDA or/and undertaking of protective order since the independent expert is third party. Signing NDA is the industrial common practice for all the professionals to view the confidential source code. No any professionals who access the confidential source code daily are supervised by a lawyer. Both attorney and experts are retained by Plaintiff or

Defendant, all qualified professional experts should be given same right as constitutional law requires no matter under lawyer's supervision or not.

IV CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: Octobert10, 2020 Respectfully Submitted,

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