

JUN 19 2021

OFFICE OF THE CLERK

NO. 21-330

IN THE
Supreme Court of the United States

AMY R. GURVEY, US PATENTEE,

Petitioner Pro Se,

v.

COWAN, LIEBOWITZ & LATMAN, PC,

CLEAR CHANNEL COMMUNICATIONS, INC.

LIVE NATION, INC., INSTANT LIVE CONCERTS, LLC.

NEXTTICKETING INCORPORATED, WILLIAM BORCHARD, MIDGE HYMAN, BAILA
CELEDONIA,

CHRISTOPHER JENSEN, DALE HEAD, STEVE SIMON, NICOLE ANN GORDON, SUSAN
SCHICK,

MICHAEL GORDON, DOES I-X INCLUSIVE,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit
28 USC §1651(a)

PETITION FOR A WRIT OF CERTIORARI

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ORIGINAL

i. QUESTIONS PRESENTED

1. Because of a 64-year split between the US Supreme Court, the Federal Circuit and eight United States circuit courts, the Supreme Court must revisit and settle the law and iterate the factors to be considered to determine which appeals court – the Federal Circuit or the local circuit - has the duty - during a combined antitrust and patent infringement lawsuit - to issue supervisory writs of mandamus under the All Writs Act, 28 USC §1651 for a district court’s ongoing usurpations of duty when the relief sought is not clearly “*in aide of*” the Federal Circuit’s “arising under” appellate jurisdiction? [See, In re Innotron Diagnostics, 800 F. 2d 1077 (Fed. Cir. 1986), citing La Buy v. Howes Leather Co., 352 US 249, 255 (1957); *see also Supervisory and Advisory Mandamus under the All Writs Act*, 86 Harv. L. Rev. 595 (1973)]; See Petitioner’s Memorandum of Law, Section VII, pp. 32, *infra*;
2. Whether because the Federal Circuit issued the first order on June 23, 2020 finding that the Second Circuit abused discretion in deciding a previous 2017 arising under patent appeal to orders of SDNY on summary judgment concerning the Cowan Liebowitz & Latman law firm defendants only, did not transfer that appeal to the Federal Circuit and prematurely closed the case, which court now - the Second Circuit or the Federal Circuit still has the duty to grant retroactive mandamus orders against the district court still owing to Petitioner including reversing *sua sponte* deletion from the docket of Petitioner’s Rule 60(b) and 15 motion date-stamped and docketed April 22, 2010 to reinstate defendant Live Nation and make all named defendants answer for strict liability infringement and other patent damages?
3. Whether because the Federal Circuit issued the first order on June 23, 2020 finding that the Second Circuit abused discretion in

deciding a previous 2017-arising under patent appeal to orders of SDNY on summary judgment concerning the Cowan Liebowitz & Latman law firm defendants only, closed the case and did not transfer that appeal to the Federal Circuit under 28 USC§ 1631, which court now - the Second Circuit or the Federal Circuit still has the duty post judgment to grant retroactive mandamus orders against the district court to disqualify the Cowan and Live Nation defendants' defense at Hinshaw & Culbertson, as required by NY's Judiciary Law Part 1240.6(d) no later than October 1, 2016, which date was five months prior to the district court's improper order of summary judgment motions in chief from these attorneys? [See, In re Innotron Diagnostics, 800 F. 2d 1077 (Fed. Cir. 1986), citing La Buy v. Howes Leather Co., 352 US 249, 255 (1957); *see also Supervisory and Advisory Mandamus under the All Writs Act*, 86 Harv. L. Rev. 595 (1973); *see also, Christianson v. Colt Industries Operating Corp.*, 486 US 800 (1988)(Brennan, J.); Grant Williams v. Citicorp, 659 F. 3d 208 (2d Cir. 2011)]

4. Same as 2, but whether the Supreme Court must now reverse the order of the Second Circuit finding "*mandamus cannot suffice for an appeal*" and closing the case prematurely for the third time because mandamus relief still owing to Petitioner by the Second Circuit remains outstanding and Petitioner's constitutional access to recover patent strict liability infringement damages against the Live Nation defendants in this lawsuit was impeded by the district court in violation of the First and Fifth Amendments of the United States Constitution?
5. Whether the district court's *sua sponte* deletion of Petitioner's FRCP Rules 60(b), 15 vacatur motion with amended complaint post patent issuance docketed April 22, 2010 pursuant 35 USC §271, 284, 285, 286 violated due process when the amended complaint was in full compliance with Form 18 of the Appendix to

the Rules of Federal Civil Procedure and means that mandamus relief still owing to Petitioner must now be ordered against the Second Circuit and its judgment entered April 1, 2021 must be reversed? [*K-Tech Telecommunications v. Time Warner Cable*, 714 F. 3d 1277 (Fed Cir. 2013); *Anza Technology v. Mushkin*, 934 F. 3d 1359 (Fed Cir. 2019); *Grant Williams v. Citicorp.*, 659 F. 3d 208 (2d Cir 2011); *Reedy v. Scott*, 90 US 352 (1874)]

6. Whether because the Second Circuit failed to grant mandamus relief to reverse the SDNY's *sua sponte* order in 2015 finding Petitioner is a practicing attorney in New York and must be held to a higher standard when Petitioner is not a NY attorney but a pro se litigant, must be reversed as per se prejudicial and a violation of due process, and a writ of certiorari against the Second Circuit granted to reverse the 2017 summary judgment orders of the district court on other grounds including to grant sanctions for in-court fraud and deceit against the Hinshaw and Culbertson defense lawyers who corrupted both SDNY and state files during the case? See, e.g., *Amalfitano v. Rosenberg*, 12 NY 3d 8 (2009), 533 F. 3d 117 (2d Cir 2007).
7. Whether because the SDNY *sua sponte* found during hearing in violation of due process on November 29, 2016 that Petitioner should file a separate lawsuit seeking *Ex parte Young*¹ relief to compel the state files and patent ethics complaints found by the Appellate Division to have been entered and corrupted *sua sponte* by Hinshaw defense attorneys without a warrant, whether retroactive disqualification of the attorneys back to October 1, 2016 must still be granted under Judiciary Law Part 1240.6(d) and the summary judgment orders they wrongfully induced through fraud and crimes reversed?

¹ 209 US 123 (1908)

8. Whether because the SDNY instructed Petitioner to file a separate lawsuit seeking prospective injunctive relief against the state attorney grievance committee (“AGC”) officers to compel production of the corrupted state files including Petitioner’s patent ethics complaints against the Cowan defendants for withholding her complete USPTO patent files in defiance of 37 CFR 2.10, 2.19, 10.66, 11.116, required the district court not only to disqualify defense attorneys by October 1, 2016 but also assess severe sanctions for in-court fraud and deceit in favor of Petitioner?² ³ Judiciary Law Part 1240.6(d); *Ex parte Young*, 209 US 123 (1908); *Amalfitano v. Rosenberg*, 12 NY 3 8 (2009), 533 F. 3d 117 (2d Cir 2007). *See also, Virginia Office of Protection and Advocacy v. Stewart*, 563 US 247 (2011)(Scalia, J.)

9. In this 13-year Sherman/Clayton antitrust, unfair competition breach of fiduciary duty and strict liability patent infringement litigation pursuant to 15 USC §§1-12, et seq., 35 USC §§271, 284, 285, 286 brought by Petitioner-US Patentee⁴ against DOJ-

² *Gurvey v. Garry, DiFiore, Hinshaw & Culbertson, et al.*, 19-cv-4739 (EDNY) (pending)

³ On January 8, 2020, the DC District Court and the US Dept. of Justice sanctioned the merged entity, defendant Live Nation Entertainment, with its merged partner Ticketmaster, for breach of the consent decree and competitive impact statement issued January 25, 2010, that was the subject of Petitioner’s Rule 60(b) motion and amended complaint post patent issuance on October 13, 2009. (Gurvey US Patent No. 7603321; D647910S) The EDNY is currently assessing criminal sanctions against Ticketmaster. 21-212, 214 (EDNY)

⁴ Petitioner is the sole named inventor of valuable standard essential ticketing and content management patents [Gurvey US Patent Nos. 7603321; D647910S] that issued on October 13, 2009, and November 1, 2011. The patents were delayed for issuance for 9 years based on USPTO practitioner conflict of interest violations by defendant Live Nation attorneys at defendant Cowan Liebowitz & Latman who were also representing Petitioner’s US patent applications before the USPTO without disclosing conflicts of interest. Cowan defendants abandoned Petitioner’s 2002 ticketing patent applications based on a conflict of interest *admitted* to the USPTO in 2003. Defiance of practitioner mandates, 37 CFR 2.10, 2.19, 1066, 11.116, 1.36(b); 1.324, caused forfeiture of the first US and EPO applications published in 2004. Petitioner’s first patents and enforcement rights against defendant Live

~~sanctioned concert promoter and dominant venue owner~~ defendant Live Nation, Inc.⁵, its subsidiary Instant Live Concerts, LLP and the parties' common USPTO attorneys at Cowan Liebowitz & Latman, PC, whether 2d Circuit's order entered April 1, 2021 finding that "*mandamus will not suffice for an appeal*" and closing the case prematurely for the third time, must again be reversed because Petitioner was entitled to two (2) early writs of mandamus against the SDNY under the All Writs Act, 28 USC §1651(a), that were not in aide of the Federal Circuit arising under jurisdiction and set the stage for ongoing violations of Petitioner's First and Fifth Amendment constitutional rights for the duration of the entire lawsuit?

10. Whether because Federal Circuit found on June 23, 2020 that the Second Circuit "*abused discretion*" in not awarding early mandamus relief to Petitioner and not transferring Petitioner's 2017 "arising under" patent appeal to its court, the Supreme Court must now reverse the April 2, 2021 order of the Second Circuit closing the case and finding that "*mandamus will not suffice for an appeal*" because Petitioner's Rule 60(b) and 15 motion seeking leave to amend the complaint post patent issuance during the case was illegally deleted *sua sponte* from the docket by district court officers after it was printed and date stamped in a previous appeal appendix before the Second Circuit and was in full compliance with

Nation temporarily forfeited and delayed until October 13, 2009. Live Nation's significant NYC contacts and jurisdictional fraud in this case were established by orders entered the DC District Court and Dept. of Justice in the parallel 2009 merger proceedings with Ticketmaster on January 25, 2010, based on Live Nation's own admissions in that parallel litigation. *US v. Ticketmaster and Live Nation*, 2010 WL 975407, 975408 that resulted in Petitioner's Rule 60(b) motion and amended complaint date stamped and docketed on April 22, 2010.

⁵ On January 8, 2020, defendant Live Nation was sanctioned \$80m by the DC District Court and Dept. of Justice for the same antitrust violations alleged in Petitioner's original complaint in this lawsuit and ten years of defiance of the competitive impact statement and consent decree ordered in 2010.

Form 18? *K-Tech Telecommunications v. Time Warner Cable*, 714

F. 3d 1277 (Fed. Cir 2013); *Anza Technology v. Mushkin*, 934 F. 3d 1359 (Fed. Cir. 2019); *Grant Williams v. Citicorp.*, 659 F. 3d 208 (2d Cir 2011); *Reedy v. Scott*, 90 US 352 (1874).

11. Whether the Second Circuit had a duty to grant Petitioner, a Pro Se litigant *who is not a New York attorney*, mandamus relief, equal protection and reasonable accommodations including certification to the NY Court of Appeals to determine the date of the Hinshaw defense attorneys' mandatory disqualification under NY's Judiciary Law Part 1240.6(d) and to reverse the district court's clear and ongoing usurpations of duty? *See, Flo & Eddie v. Sirius XM Radio*, 821 F. 3d 265 (2d Cir 2016); NY Judiciary Law Parts 1240.6(d), 1240.18
12. Whether because both the DC District Court and Dept. of Justice each sanctioned defendant Live Nation in 2010 and again in 2020 for the same antitrust violations alleged in Petitioner's well-pleaded complaint and on January 25, 2010 confirmed Live Nation's jurisdictional fraud and deceit in denying under oath its significant NY contacts before the SDNY in 2008, the Supreme Court must reverse the Second Circuit's *sua sponte* order closing the case and not adjudicating the deleted Rule 60(b), 15 motion also based on res judicata and collateral estoppel and allow Petitioner to recover long-overdue strict liability willful infringement damages against defendant Live Nation?
13. Whether because multiple *sua sponte* orders of the district court caused premature closing of Petitioner's combined antitrust and patent infringement lawsuit three times, whether all *sua sponte* orders must be reversed because orders that implicate the constitutional rights of litigants, can never be granted *sua sponte*. *Link v. Wabash R. R. Co.*, 370 US 626, 630-631 (1962).

ii. PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all the parties appearing in the SDNY.

The Petitioner Pro Se in the instant Petition is Amy R. Gurvey, a US patentee and sole inventor of ticketing management systems and apparatuses disclosed in issued US patents. Gurvey US Patent Nos. 7603321; D647910S. Petitioner is not a NY attorney.

The Respondents include: (i) Live Nation, Inc., the world's largest promoter of concerts; (ii) its subsidiary defendant Instant Live Concerts, LLC; (iii) Mike Gordon of Phish; and (iv) Cowan Liebowitz & Latman, PC the parties common USPTO attorneys.

Respondents who appeared in Petitioner's mandamus petitions to the Federal Circuit in 2020 and to the Second Circuit in 2021 were only the Cowan Liebowitz & Latman law firm defendants. Respondents Live Nation and Instant Live Concerts, being duly served, defaulted.

iii. CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner, a Pro Se litigant and US patentee, states as follows:

Petitioner is the sole inventor and owner of US Patent Nos. 7603321; D647910S and other pending applications in a ticketing management portfolio comprised of proprietary secondary ticketing and ticketing management methods and apparatus technologies. the patents are in Petitioner's sole name and have not been assigned. Petitioner is not a non-governmental corporation. Petitioner has no parent corporation or shares held by a publicly traded company.

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Appendix ("A") Rule 14.1(i)(i)(ii)

2d Cir. Case No. 20-1986

Order entered April 1, 2021 (pp.) A1

Fed. Cir. Case No. 20-1620

Order entered on June 23, 2020 A2-14

(Appending requested 2020 SDNY orders)

2d Cir. Case No. 17-2760

Order 1-25-2019 A15-19

Order 5-29-2018 A20-21

SDNY Case No. 06cv1202

Order 1-31-2017 A22-23

Order 12-1-2016 A24-25

NY Appellate Division First Dept. M-5775

Order entered 4-21-2016 A26-27*

*(Currently on appeal to the New York Court of Appeals)

SDNY Case No. 06cv1202

Order 9-15-2017 A28-41

2d Cir. Case No. 0902185;10-4111

Order 2-10-2012 A42-48

SDNY Case No. 06cv1202

Order 9-20-2010 A49

Order 9-20-2010 A50-53

Order 4-27-2009 A54

Order 4-24-2009 A55-69

Amy R. Gurvey US Patents in Suit

Gurvey US Patent 7603321 Oct. 13, 2009 A79-101

Gurvey US Patent D647910S Nov. 1, 2011 A102-103

STATEMENT OF JURISDICTION

Jurisdiction over this petition seeking a writ of certiorari to the final order of the Second Circuit entered April 1, 2021, in Case No. 17-2760 is invoked pursuant to 28 USC§ 1254(1) and 28 USC §1651(a).

US CONSTITUTION AND STATUTORY PROVISIONS

A. The Fifth Amendment of the United States Constitution provides as follows:

“No person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for the public use without just compensation”.

B. 28 USC§ 1338 provides as follows:

“(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents.

(b) The district courts shall have original jurisdiction over any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.”

C. 28 USC §1295 provides as follows:

“(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction –

(1) Of an appeal from a final decision of a district court of the United States, in any civil action arising under, or in any civil action in which a party has asserted a compulsory counterclaim arising under any Act of Congress relating to patents or plant variety.”

D. 28 USC §1651(a) provides as follows:

“(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law”.

E. 28 USC § 1631 provides as follows:

“Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal... and the court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other court...in which the action or appeal could have been brought at the time it was filed or noticed. And the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or notices the court from which it is transferred.

F. 35 USC §271 provides as follows:

(a) “...Whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.

(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

(c) Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition, or a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-

infringing use, shall be liable as a contributory infringer."

(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his having done one or more of the following: (1) derived revenue from acts which if performed by another without his consent would constitute contributory infringement of the patent;... (3) sought to enforce his patent rights against infringement or contributory infringement; ... or (5) conditioned the license of any rights to the patent or the sale of the patented product on the acquisition of a license to rights in another patent or purchase of a separate product, unless, in view of the circumstances, the patent owner has market power in the relevant market for the patent or patented production on which the license or sale is conditioned." ...

(e) Whoever without authority imports into the United States or offers to sell, sells, or uses, within the United States a product which is made by a process patented in the United States shall be liable as an infringer, if the importation, offer to sell, sale, or use of the product occurs during the term of such process patent... A product which is made by a patented process will, for purposes of this title, not be considered to be so made after -- (1) it is materially changed by subsequent processes; or (2) it become a trivial and nonessential component of another product.

(f) As used in this section, the term "whoever" includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(g) As used in this section, an "offer for sale" or an "offer to

~~sell" by a person other than the patentee or any designee of the patentee, is that in which the sale will occur before the expiration of the term of the patent.~~

G. 35 USC §284 provides as follows:

"Upon finding for the claimant, the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

When the damages are not found by a jury, the court shall assess them. In either event, the court may increase the damages up to three times the amount found or assessed...

The court may receive expert testimony as an aid to the determination of damages or of what royalty would be reasonable under the circumstances."

H. 35 USC §285 provides as follows:

"The court in exceptional circumstances may award reasonable attorney fees to the prevailing party."

I. 35 USC §286 provides as follows:

"...No recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action."

J. 15 USC §1125 prohibiting false designations of origin, false descriptions and dilution forbidden, provides as follows:

(a)(1) Any person who, on or in connection with any goods or services or any container for goods, uses, in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading

description of fact, or false or misleading representation of fact, which-

- (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of such person with another person, or as to the origin, sponsorship or approval of his or her goods, services or commercial activities by another person, or
- (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities or geographic origin of his or her or another person's goods, services or commercial activities, shall be liable in civil action by any person who believes that he or she is or is likely to be damaged by such act.

K. FRCP Rule 60(b) provides as follows:

- (a) On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
 - (1) mistake, inadvertence, surprise, or excusable neglect;
 - (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
 - (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
 - (4) the judgment is void;
 - (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
 - (6) any other reason that justifies relief.

(b) Timing and Effect of the Motion.

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(c) Other Powers to Grant Relief. This rule does not limit a court's power to:

- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding; or
- (2) set aside a judgment for fraud on the court.

L. NY's Judiciary Law Part 1240, 1240.6(d) effective October 1, 2016, provides as follows:

“No former member of the Committee or member of the Committee’s professional staff, may represent a respondent or complainant in any matter in which the Committee member or staff member participated personally while in the Committee’s service.”

I. STATEMENT OF THE CASE

This Petition seeking a writ of certiorari against the United States Court of Appeals for the Second Circuit is filed by US ticketing/event content management patentee Amy R. Gurvey⁶ in response to an order entered April 1, 2021, prematurely closing the combined patent infringement and antitrust lawsuit for the third time in thirteen years and finding that “*mandamus will not suffice for an appeal*”. The Federal Circuit transferred the case back to the Second Circuit on June 23, 2020, finding the Second Circuit abused discretion in not transferring a previous 2017 “arising under” patent appeal to the summary judgment orders of the SDNY to the Federal Circuit because the outstanding mandamus relief owed to Petitioner “not in aid” of the Federal Circuit’s arising under jurisdiction at the end of the case. The Second Circuit getting the case back, then closed the case *sua sponte* for the third time, without granting mandamus relief, patent discovery and strict liability infringement damages conditionally due Petitioner pursuant to 35 USC §271 against all named defendants.

⁶ Petitioner’s attorney in this lawsuit, Squitieri & Fearon, LLP, moved to unilaterally withdraw ex parte after Petitioner won binding arbitration against the Cowan Liebowitz & Latman, PC law firm defendants on August 4, 2009, on certain contract counts. Arbitration was won after the case was already prematurely closed on April 27, 2009, without discovery. Unilateral withdrawal was then improperly granted to Squitieri *sua sponte* in September 2010 during the first appeal before the Second Circuit and without the benefit of Petitioner’s opposition papers. The case was remanded in February 2012 and Petitioner had no lawyer at that time. Petitioner’s docketed and date stamped amended complaint and Rule 60(b) motion had by that time been deleted ex parte from the docket with not notice to Petitioner.

~~This Petition now seeks to resolve the 64-year-old split among the~~
US Supreme Court, the Federal Circuit and eight local appeals courts as to which court – the Federal Circuit or the local district court - has the duty to issue mandamus orders for ongoing usurpations of administrative duties by the district court during a combined antitrust and patent infringement litigation when the relief sought is not clearly “in aid of” the Federal Circuit exclusive appellate jurisdiction at the end of the case. [See, e.g., *In re Innotron Diagnostics*, 800 F. 2d 1077 (Fed. Cir. 1986), citing *La Buy v. Howes Leather Co.*, 352 US 249, 255 (1957); *see also Supervisory and Advisory Mandamus under the All Writs Act*, 86 Harv. L. Rev. 595 (1973)]; See Petitioner’s **Memorandum of Law, Section pp. infra.**]

Petitioner argues that the Second Circuit was required to grant mandamus relief to Petitioner five times since 2010 based on clear and ongoing usurpations of duty by the SDNY including deleting *sua sponte* Petitioner’s strict liability infringement amended complaint post patent issuance from the SDNY docket sometime before 2012 after the motion was date-stamped and filed on April 22, 2010. The SDNY and then Second Circuit did ever not hear the amended complaint. In the first appeal to the first order prematurely closing the case by the district court on April 27, 2010, the Second Circuit held the notice of appeal to the first appeal was filed five months before patent issuance and therefore could not be heard under FRAP 10 (e). However, in that appeal the Second Circuit also did not reverse the district court’s *sua sponte* grant of withdrawal to Petitioner’s attorney, Squitieri & Fearon,

LLP, leaving Petitioner without an attorney and to move for mandamus relief as a *pro se* litigant. There have been two more of these premature orders closing the case without any relief granted to Petitioner in violation of the Fifth Amendment for 13 years including the most recent orders entered 2019 and 2021.

The facts are undisputed that the Second Circuit failed to grant mandamus relief against the SDNY five times since remanding the case in 2012, decided to wait until the end of the case to deal with the *sua sponte* deletion of the docketed amended complaint and the separate issue that defense attorneys at Hinshaw & Culbertson, LLP were required to be disqualified from the case no later than October 1, 2016 based on the Judiciary Law (“JL”) Part 1240 amended statutes enacted by New York’s Legislature on October 1, 2016. At all times relevant, defense attorneys at the Hinshaw and Culbertson law firm, were serving on the Appellate Division First Dept. attorney grievance committee (“AGC”) and were involved with getting “whitewashed” Petitioner’s 2005 state grievances seeking return of her complete USPTO patent files from the Cowan Liebowitz & Latman law firm defendants. The Cowan defendants abandoned her early patent applications based on an *admitted conflict of interest* with defendant Live Nation and another client Legend Films of ‘San Diego and moved twice in 2003 and 2007 to unilaterally withdraw from Petitioner’s USPTO patent applications but were never granted that right because of defiance of the governing conflict of interest practitioner statutes. 37 CFR 2.10, 2.19, 10.66, 11.116, 1.36

~~Now with the continued withholding of mandamus relief still owing Petitioner and being found empirically material and essential by the Federal Circuit to Petitioner's right to protect her US patents and get paid for their 15 years of willful infringement by defendant Live Nation, the Supreme Court must order a writ of certiorari to reverse the third order prematurely closing the case and find that until the infringement amended complaint is adjudicated, the case cannot be closed. The Federal Circuit transferred the case back for the Second Circuit to issue the mandamus relief owing based on law of the case; but in its April 1, 2021, order, the Second Circuit still failed to do so and *sua sponte* dismissed the case again. The case, therefore, has since been bandied back and forth for four years with Petitioner still being denied all access to the district court in violation of the First and Fifth Amendment to get paid for her valuable standard essential ticketing management patents by willful and contributory infringers.~~

Petitioner respectfully now seeks a Writ of Certiorari to prevent manifest injustice and egregious forfeiture to Petitioner, and because the Second Circuit still owes mandamus relief to Petitioner that in abuse of discretion, was not granted earlier in the case. By this petition, therefore, Petitioner seeks to resolve the split among the US Supreme Court, the Federal Circuit and the circuit appeals courts over which appellate court has the duty to issue supervisory writs of mandamus under the All Writs Act, 28 USC§ 1651(a) that are not clearly "in aid of" the Federal Circuit's arising under appellate jurisdiction or fall within the gray area as to proper categorization. See

Petitioner's Memorandum of Law, Section IV, pp. infra; *In re Innotron Diagnostics*, 800 F. 2d 1077 (Fed. Cir. 1986) citing *La Buy v. Howes Leather Co.*, 352 US 249, 255 (1957) see also, *Supervisory and Advisory Mandamus under the All Writs Act*, 86 Harv. L. Rev. 595 (1973). If mandamus relief is not granted by at least one appeals court at critical early stages based on a district court's clear and ongoing usurpation of power in deciding procedural motions in a combined antitrust and patent litigation, a patentee, as in this case, could potentially suffer manifest injustice, forfeiture of patent interests and years of patent protection. This makes the instant petition of national import to the patent industry as a whole.

II. REASONS FOR GRANTING THE WRIT

Often, it is unclear during the case whether the final orders of the district court will be in the exclusive "arising under" jurisdiction of the Federal Circuit at the end of the lawsuit; or whether, as in this case, the district court intentionally deleted *sua sponte* from the docket Petitioner's amended complaint to avoid an appeal to the Federal Circuit. In this case, therefore,⁷ mandamus orders, are still unconditionally due and owing to Petitioner and the Second Circuit must be told it could not sweep this case under the table for the third time after the Federal Circuit found a clear abuse of discretion.

The instant case, therefore, is a perfect vehicle to resolve the split existing for more than 60 years. Here, several mandamus orders owed

⁷ See also, *Christianson v. Colt Industries Operating Corp.*, 486 US 800 (1988)(Brennan, J.)

to Petitioner sine 2010 were both “*in aid of*” and “*not in aid of*” the Federal Circuit’s arising under jurisdiction and the Second Circuit, finding certain usurpations by the district court repugnant, wiped its hands of its mandamus duties altogether.

The United States Supreme Court must now grant certiorari to order the writ, iterate Petitioner’s remedies at this late stage, and identify which unlawful supervisory orders were entitled to mandamus relief in favor of Petitioner earlier in the case and which appeals court had the duty to grant that relief. This Court should also resolve whether each appeals court – the Second Circuit or the Federal Circuit had mandamus duties on particular motions, which motions are in aid of the Federal Circuit’s arising under jurisdiction at the end of the case, and in which chronological order those motions were required to be adjudicated. *K-Tel Telecommunications v. Time Warner Cable*, 714 F. 3d 1277 (Fed. Cir. 2013). In this case, it was *per se* prejudicial to delay issuing mandamus orders to disqualify defense counsel for the infringers to the end of the case. The end result of the court’s withholding of essential mandamus relief at early stages of the litigation to improper *sua sponte acts and orders*, saw a complete and total forfeiture of Petitioner’s constitutional rights to protect her patents in violation of the Fifth Amendment before the district court. Orders that implicate the constitutional rights of litigants, can never be granted *sua sponte* and must be immediately reversed. *Link v. Wabash R. R. Co.*, 370 US 626, 630-631 (1962).

III. STATEMENT OF RELEVANT FACTS

In particular, this case involves infringer defendant Live Nation's contumacious and ongoing defiance of a consent decree and competitive impact statement defendant signed before the DC District Court and Dept. of Justice on January 25, 2010, as a condition of its 2009 merger with Ticketmaster. At this time, defendant Live Nation was already outsourcing Petitioner's US ticketing patent claims (then pending for issuance) with ETS Eventim of Germany and engaging in unfair competition by falsely issuing press releases that it had a monopoly on distributing live concert recordings based on a recording patent it acquired in 2005 that was quickly invalidated by the USPTO in 2007.⁸ In addition, by February 2008, defendant Live Nation was importing an infringing primary ticketing system from ETS Eventim and had implemented Petitioner's proprietary technology at its NYC venues – House of Blues, Irving Plaza and Roseland Ballroom. Therefore, as soon as the first ticketing and authenticated content distribution patents issued to Petitioner on October 13, 2009, defendant Live Nation became a willful infringer under multiple sections of 35 USC §271 and liable to Petitioner for treble strict liability damages.

Notably, the competitive impact statement and consent decree signed by defendant Live Nation in 2010 were also defied for 10 years. On January 8, 2020, sanctions of \$1mil per violation were assessed by the Dept. of Justice and the DC District Court and the Clayton

⁸ *US v. Ticketmaster and Live Nation*, 2010 WL 975407, 975408 (DC Dist. 2010)

antitrust mandates extended through 2026. The sanctions imposed were for the same antitrust violations alleged by this Petitioner in her claims for damages in her early complaints filed between 2006 and 2010. Petitioner's antitrust claims were solicited for public comment and posted on the DOJ Media and Entertainment website as Entry "E" in February 2010. Yet the same allegations were dismissed by the district court on April 27, 2009. The mandates precluded and still preclude defendant Live Nation Entertainment (now merged with Ticketmaster) from withholding ticket data from companies entering defendant's owned, operated, and dominant share of serviced venues to conduct non-ticketing businesses.⁹ Ticket data is not copyrightable, and Ticketmaster already lost a significant lawsuit on this issue in the CD California.¹⁰ However, most recently in 2021, Ticketmaster was sued by the US Dept. of Justice before the Eastern District of New York seeking criminal sanctions for defendant's ongoing attempts to steal ticketing data from competitor's websites. (21-212, 214)(EDNY).

Petitioner's patent holding company, LIVE-Fi Technologies® and ticketing subsidiary, Fan-Task-Tix™ with offices in California and New Jersey, is retained by artists to provide overlay ticketing platforms for authenticated distribution of live event and content including charitable benefit concerts, medical conferences, and symposia. Petitioner's proprietary technology and software platforms provide ticketing

⁹ 2010 WL 975408, pp. 8, line 10

¹⁰ *Tickets.com v. Ticketmaster*, 2003 WL 21406289 (CD CA 2003)

~~overlays to enable authenticated transmission and management of event live and virtual content, streams, downloads and other benefits for those artists and their fan base with full royalty accounting.~~

Petitioner is the sole inventor and owner of LIVE-Fi®'s US apparatus and utility patents that are categorized as standard essential patents ("SEP"s). This means that any subsequent applicant for a patent in the relevant field will necessarily have to infringe or cite to Petitioner's patents as prior art because they disclose the claims for the minimum essential platforms. Petitioner's proprietary ticketing platform is a complete end-to-end management system for live and virtual events benefitting artists and their fans with direct-to-fan marketing.

It was alleged in Petitioner's original complaints, that were duly filed, date stamped and docketed between 2006-2010, that after LIVE-Fi®'s contracts with artists were consummated, defendant Live Nation began willfully infringing Petitioner's patents' pending, engaged in unfair competition by precluding Petitioner's technology from its venues, precluding Petitioner from accompanying artists into its venues, and issuing false and misleading press releases that defendant had acquired a recording patent that gave it a monopoly on distributing live concerts in violation of 15 USC§ 1125 (which that patent did not).¹¹ Commencing in 2009, defendant Live Nation admitted to the Dept. of

¹¹ *Griner US Patent* No. 6,614,729 is a master recording patent acquired by defendant Live Nation and subsidiary defendant Instant Live Concerts, LLC in 2005 that was invalidated by the USPTO in 2007.

Justice and DC District Court in the merger proceedings with Ticketmaster, that no later than February 2008 it was importing a primary ticketing service from ETS Eventim in Germany for its owned and operated venues in NYC – House of Blues, Irving Plaza and Roseland Ballroom to compete with Ticketmaster. Yet in April 2008, defendant falsely swore to the SDNY in fraudulent Rule 12(b) motions filed by eight Baker Botts attorneys in Texas and New York and Texas that defendant had “no contacts with NYS” sufficient to confer jurisdiction to answer Petitioner’s claims.

Petitioner’s Rule 60(b) motion with amended complaint post patent issuance was then docketed, filed and date-stamped on April 22, 2010. The complaint alleged that defendant Live Nation continued willful infringement of Petitioner’s issued US patents including with a new venture partner iTunes in violation of the doctrine of equivalents, that the *Griner* patent defendant Live Nation acquired in 2005 was invalidated by the USPTO in 2007 and that its false press releases claiming a faux monopoly on distributing live concert recordings continued after the Griner patent was invalidated. Therefore, contrary to the Court’s order closing the case, Petitioner stated a false advertising claim and not a passing off claim, make the court’s application of a passing off statute of limitation without jurisdictional discovery, reversible error. Petitioner’s motions for reconsideration, vacatur and to file the long-awaited amended complaint were then date-stamped, filed, and docketed under Rules 59(e), 60(b) on April 22, 2010, seeking strict liability infringement damages. The patent by then was being willfully infringed warranting treble damages. Moreover, because

the amended complaint in full compliance with Form 18 of the Appendix to the Rules of Federal Civil Procedure was deleted *sua sponte* by the district court clerk from the docket, mandamus relief still remains owing to Petitioner against the court to bring defendant Live Nation back into the case to answer for Petitioner's claims. *K-Tech Telecommunications v. Time Warner Cable*, 714 F. 3d 1277 (Fed Cir. 2013); *Anza Technology v. Mushkin*, 934 F. 3d 1359 (Fed Cir. 2019); *Grant Williams v. Citicorp.*, 659 F. 3d 208 (2d Cir 2011); *Reedy v. Scott*, 90 US 352 (1874).

It was also alleged that the parties' common USPTO attorneys at defendant Cowan Liebowitz & Latman defied USPTO practitioner conflict of interest mandates and abandoned Petitioner's early patent applications in 2003, causing forfeiture of Petitioner's first US and EPO patent applications published in 2004 and delaying Petitioner's right to injunctive relief and to recover damages against defendant Live Nation.¹² Before patent issuance revival and reissue proceedings were necessary to save the abandoned disclosures (continuing), demonstrating that Petitioner's damages had to be compensated and that Petitioner had strict liability claim for contributory infringement against the Cowan defendants. Defendant Live Nation was noticed several times that defendant and its subsidiary defendant Instant Live Concerts, LLP had been using the issued patent claims since 2004 based on conflicts of interest admitted to the USPTO by the Cowan

¹² 37 CFR 2.10, 2.19, 10.66, 11.116, 1.36(b), 1.324; 35 USC 256

~~defendants and the first response sent to Petitioner by defendant Live nation's executive vice president, Stephen Prendergast in 2005 was that "anyone could use her patents".~~

Therefore, in this case, treble damages for both antitrust violations and willful infringement were properly awarded Petitioner as alleged in the filed 2010 amended complaint pursuant to 35 USC §271, 284, 285, 286 and 15 USC §1-12 and Petitioner's claims relate back to the operative complaint based on infringement of the same noticed technology under Federal Circuit law. Anza Technology v. Mushkin, 934 F. 3d 1359 (Fed. Cir. 2019); *see also, Reedy v. Scott*, 90 US 352 (1874).

Defendants Live Nation and the Cowan lawyers then, immediately committed additional procedural “crimes” before the SDNY via its defense attorneys Hinshaw & Culbertson, LLP (“H&C”), equity partner Richard Supple, Esq. and Baker Botts, to get dismissed from the lawsuit without proper legal justification and prevent the Federal Circuit from having “arising under” jurisdiction at the end of the case. Until then, the Cowan defendants had been improperly representing defendant Live Nation before the USPTO without disclosing conflicts of interest to Petitioner. Defendants’ attorneys at Hinshaw including Supple were expressly found by the Appellate Division in an order entered April 21, 2016, to have entered and corrupted the relevant state files concerning Petitioner’s 2005 attorney grievances seeking orders to compel return of her USPTO patent files then being unlawfully

withheld. At all times relevant, Supple was an undisclosed officer serving on the NYS First Dept. attorney grievance panel. Supple in fact was personally involved with Petitioner's ethics complaints. Supple and his firm, Hinshaw, therefore, breached state fiduciary duties and conflicts of interest mandates owed to Petitioner as an aggrieved client by accepting the SDNY retainer for the Cowan defendants and then also defendant Live Nation in the case.

Effective October 1, 2016, NY's Legislature enacted NY's Judiciary Law Part 1240 making Supple and Hinshaw's acceptance and continued retainer for the Cowan attorney defendants unlawful and requiring mandatory disqualification orders from the SDNY no later than October 1, 2016 (NY's Judiciary Law Part 1240.6(d)). Instead, the SDNY issued orders on November 29, 2016, authorizing Supple and Hinshaw to file summary judgment motions in chief in 2017 without any discovery to Petitioner and while 50 genuine issues of fact remained open.

In addition, in January 2008, Supple moved ex parte to stay discovery on unfair competition and patent infringement claims in the instant case against both defendants Cowan and Live Nation in 2006 and 2008 and the SDNY never adjudicated those motions, never granted discovery, and Petitioner did not even get jurisdictional discovery against defendant Live Nation. In addition, the court entered a *sua sponte* order for arbitration against the Cowan defendants. Patent delay damages could not be recovered during arbitration. Based on these *sua sponte* orders, Petitioner lost her attorney in 2010. The attorney, Lee Squitieri, Esq., told Petitioner the case was rigged

because in 2005, defendant Live Nation owned Roseland Ballroom, Irving Plaza, House of Blues, all in NYC, and according to the Dept. of Justice, by February 2008 was distributing its own ticketing system imported from ETS Eventim of Germany to these venues. Defendant also had ownership interests in several iHeart radio stations in NYC including Z-100 and WLTW 106.7 Lite FM in the same building with the Cowan defendants.

Therefore, that Live Nation was *sua sponte* dismissed based on jurisdictional fraud by the district court on April 27, 2009, and that the SDNY found that defendant had no NY contacts sufficient to confer jurisdiction to answer for Petitioner's claims is ludicrous. In addition, the SDNY applied a shorter passing off claim statute of limitations that was never alleged by Petitioner. Instead, the operative complaint stated a false advertising claim based on defendant Live Nation's continuing press releases concerning the invalid Griner recording patent (*fn 8*) that had extended statutes of limitation, and the complaint at paras. 16-18 expressly alleged that the complaint would be deemed amended to recover infringement damages as soon as the anticipated US patents issued (which they did on October 13, 2009).

Jurisdictional fraud by Live Nation was established *de facto* in consent decree and competitive impact statement entered in the January 25, 2010, *US v. Ticketmaster and Live Nation* merger

proceedings. This was nine months after the SDNY closed the case on April 27, 2009.¹³ ¹⁴

Then, after Petitioner's Rule 60(b) motion and infringement amended infringement complaint were docketed, date stamped and filed on April 22, 2010, the motions were "somehow" deleted *sua sponte* from the SDNY docket without any notice in violation of due process of law and Petitioner's right of constitutional access to the district court in violation of the First and Fifth Amendments to protect her intellectual property and get injunctive relief and strict liability damages against the named defendants. It is essential that a patentee be allowed access to the courts enforce US patents as soon as they issue, or serious prejudice and forfeiture of property will certainly result. In this case, mandamus relief was immediately owing from one of the two appeals courts. The question this Honorable Court must answer is which one? The issued patent made this case an arising under patent case within the final appellate jurisdiction of the Federal Circuit, but the *sua sponte* deletion of the motion by the district court – clearly intentional –could be deemed to put the case in the gray area and giving the duty to the Second Circuit.

For the next seven years, 2010-2017, defense attorneys Supple and Hinshaw & Culbertson (hereinafter "H&C"), attempted to prevent

¹³ 2010 WL 975408

¹⁴ While certain claims against defendant Live Nation were dismissed on March 17, 2009, FRCP Rule 60(b)(6) would extend the time to file for vacatur for a reasonable time, including an additional month "for any other reason" including for Petitioner to recover for continuing willful infringement of the issued patent with ETS Eventim of Germany and defendants' jurisdictional fraud

the Federal Circuit's exclusive appellate jurisdiction at the end of the case, and thereby also to prevent the Federal Circuit from granting interim writs of mandamus "*in aid of its jurisdiction*". [See, *In re Innotron Diagnostics*, 800 F. 2d 1077 (Fed. Cir. 1986), citing *La Buy v. Howes Leather Co.*, 352 US 249, 255 (1957); *see also Supervisory and Advisory Mandamus under the All Writs Act*, 86 Harv. L. Rev. 595 (1973)]; See Petitioner's **Memorandum of Law, Section** pp. infra;

The district court continued usurpations of procedural duty against Petitioner's patent interests and appears to have helped the defendants along. The district court failed to adjudicate Petitioner's amended infringement complaint immediately even after ordering Petitioner pay \$10,000 into the SDNY Cashier for a special patent master (which Petitioner did). The amended complaint was required to be adjudicated because it related back to the original complaint seeking treble damages for willful infringement of the same proprietary disclosures noticed in the original complaints. *Anza Technology v. Mushkin*, 934 F. 3d 1359 (Fed Cir. 2019).

On remand from the Second Circuit in 2012, the district court continued to deny Petitioner all patent discovery including signed subpoenas against the USPTO. Supple was believed to have ripped the subpoenas out of the SDNY file room after they were docketed. They remain ripped out. Discovery rights in favor of Petitioner to compel her withheld files from the Cowan defendants were not granted. Moreover,

the state attorney grievance panel ignored Petitioner's complaint, did not send the responses from the Cowan defendants even though the patent files are federally mandated documents. FRCP Rule 56; 37 CFR §§2.10, 2.19, 10.66, 11.116, 1.36, 1.324; 35 USC 256; Virginia Office of Protection and Advocacy v. Stewart, 563 US 247 (2011)(Scalia J.)(citing Ex parte Young, 209 US 123 (1908). Ignorance by the state was attributable to defense attorney Supple being a concealed member of the AGC panel and violating conflicts of interest mandates. See Anderson v. First Dept. Disciplinary Committee, State of NY, et al, 614 F. Supp. 2d 404 (SDNY 2009)(Headnotes 15, 16)¹⁵

Then, when the district court was presented with an order of the Appellate Division First Dept. entered April 21, 2016, that Supple had engaged in additional crimes by entering and corrupting the state ethics files at the AGC including inserting unserved documents into Petitioner's Third Dept. retirement bar files (1998) without a warrant, the court failed to immediately disqualify Supple and the Hinshaw firm from defendants' representation as required by JL Part 1240.6(d). Petitioner has never seen the inserted files, but they were admittedly considered by the district court in "nasty", unjustified orders entered in 2015 and on summary judgment in 2017, ordering Petitioner to pay \$10,000 into the SDNY Cashier for a special master (which Petitioner did). Petitioner's motions to compel production of the inserted

¹⁵ The current Chief Clerk of the Second Circuit, Catherine O'Hagan Wolfe, formerly Chief Clerk of the First Dept. AGC, was sued by Anderson in 2007 for her retaliatory termination in violation of the First Amendment and attempting to protect the civil rights of aggrieved clients to file ethics complaints against NYC lawyers.

documents and corrupted files allowable under *Ex parte Young*, 209 US 123 (1908) against state AGC officers are now pending in the EDNY when the SDNY denied Petitioner's motions to produce the documents *in camera*.¹⁶

That Supple was involved with Petitioner's state patent ethics complaints duly filed against the Cowan defendants, means he could not appear in the case at all. The court continued to usurp its duties to Petitioner. Instead of issuing mandatory disqualification orders, the court did just the opposite, it ordered motion in chief on behalf of the Cowan defendants by Hinshaw and suggested to Petitioner at the conference on November 29, 2016 "to consider filing a separate lawsuit against Supple and the Hinshaw firm for prejudicing her patent interests in this lawsuit" and to compel the files they corrupted from the state. The hearing was transcribed and sent to the Second Circuit seeking mandamus relief¹⁷ ¹⁸ or in the alternative, certification of the

¹⁶ Pursuant to NY's Judiciary Law, no individual may enter state grievance files without a warrant. Judiciary Law Part 1240.18. Documents were inserted by Supple to attempt legitimize Supple's corruption of Petitioner's confidential state files in his dual capacity as a First Dept. grievance panel officer, which are crimes and precluded him and his firm H&C from ever appearing on behalf of the Cowan defendants in this lawsuit. Judiciary Law Part 1240.6(d) The Appellate Division also confirmed that Supple entered and corrupted Petitioner's confidential state files in retaliation for filing the proper ethics complains.

¹⁷ US Patent No. 6,614,729 invalidated by the USPTO on application of the Electronic Frontier Foundation in 2007

¹⁸ Contrary to the order of the SDNY closing the case on April 27, 2009, Petitioner never claimed defendant Live Nation passed off of Petitioner's pending patents as its own, but instead false advertising of a non-existent monopoly based on defendant's acquisition of the Griner patent (that was invalidated by the USPTO shortly after it was acquired). Aside from defendant Live Nation's jurisdictional fraud in denying all NY contacts that received a *sua sponte* dismissal order in favor of defendant on April 27, 2009, the SDNY also improperly found – without discovery – that Petitioner claims of unfair competition were related to "passing off" Petitioner's pending patents, not what was alleged, i.e., intentional issuance of false

date of October 1, 22016, mandatory disqualification under JL Part 1240.6(d) to the NY Court of Appeals. The motion was ignored. Apparently, even in a patent litigation disqualification of the infringers' defense attorney cannot be reviewed until the end of the case, a rule that should be revisited by the Supreme Court.

On July 6, 2017, the district court *sua sponte* denied Petitioner's cross-motion for summary judgment, granted premature summary judgment to the Cowan defendants, and still did not assess infringement damages against defendant Live Nation. Petitioner's amended infringement complaint post patent issuance was in full compliance with Form 18 of the Appendix to the Federal Rules of Civil Procedure along and was required to be granted. The summary judgment orders made the case an "arising under" patent case as a matter of law under the exclusive jurisdiction of the Federal Circuit. *Sua sponte* denial of Petitioner's cross-motion and her amended complaint not only made this case an "arising under" patent case under the exclusive appellate jurisdiction of the Federal Circuit as a matter of law [*K-Tech Telecommunications v. Time Warner Cable*, 714 F. 3d 1277 (Fed. Cir. 2013)], but it bequeathed the Federal Circuit with mandamus powers "in aid of its jurisdiction" against the district court retroactively. *In re Innotron Diagnostics*, 800 F. 2d 1077 (Fed Cir. 1986). However, the *sua sponte* deleted amended complaint and the denial of

press releases claiming a non-existent monopoly based on acquisition of the Griner patent. The Griner patent has nothing to do with ticketing or content management and set forth a bogus system for recording concerts.

disqualification against the Hinshaw lawyers were not the subject of any mandamus order by the Federal Circuit or the Second Circuit.

The Federal Circuit found that disqualification of attorneys is *not in aid of its jurisdiction*, and therefore it was the Second Circuit's job to grant mandamus relief starting in 2016 when the district court denied Petitioner's motion. The Second Circuit then failed to transfer Petitioner's "arising under" appeal to the summary judgment orders entered in 2017 to the Federal Circuit in response to Petitioner's 28 USC §1631 motion, exceeded its jurisdiction and prematurely dismissed the case for the second time without granting the mandamus relief to Petitioner still owed. Ergo, because Second Circuit was already found to have decided an arising under appeal improperly and closed the case in 2019, being sent back the case, the Second Circuit could not avoid law of the case inconsistently enter an order on April 1, 2021, that "mandamus would not suffice for an appeal". Then the Second Circuit also failed to fix is incorrect finding that Petitioner is a New York practicing attorney in the First Dept. (which she is not and never was) and sweep the case under the carpet. The liberal pleading rules of the Second Circuit allow a patent owner to replead a complaint even post judgment and the circuit should have ordered mandamus against the district court to adjudicate the amended complaint against all defendants especially defendant Live Nation. Grant Williams v. Citicorp., 659 F. 3d 208 (2d Cir. 2011)

Since 2017, the case has been transferred back and forth twice in defiance of *Christianson v. Colt Industries Operating Corp.*, 486 US 800

(1988) (Brennan, J.). Once the case was sent back from the Federal Circuit on June 23, 2020, the Second Circuit had a duty to grant mandamus relief to Petitioner, retroactively disqualify defense counsel and vacate the summary judgment orders entered allowed to have been wrongfully filed after the mandatory disqualification date.

There is, of course, no dispute Petitioner never had any remedy at law. Sometime between 2010 and 2012, the essential amended complaint post patent issuance and her Rule 60(b) motion seeking vacatur of the sua sponte dismissal of defendant Live Nation based on jurisdictional fraud were both deleted sua sponte from the SDNY docket without notice after they were date-stamped and filed on April 22, 2010. The motions were printed in 2011 in stellar fashion in a Second Circuit appendix to the first appeal filed in 2009 along with 200 documents including press releases placed by defendant Live Nation falsely advertising a monopoly on distributing live concert recordings.¹⁹ There is no doubt, therefore, Petitioner was denied constitutional access to both the district court and the Second Circuit to protect her valuable patented properties in violation of the First and Fifth Amendment of the United States Constitution.

IV. OTHER REASONS THE WRIT OF CERTIORARI MUST ISSUE

Serious prejudice to a patentee and particularly to a *Pro Se*

¹⁹ 09-2185;10-4111 (2d Cir.)

~~patentee will arise whenever a party infringer or willful infringer is~~ strategically attempting to prevent final appellate jurisdiction in favor of the Federal Circuit by engaging in procedural “crimes” during the case. As an example, not only did defendant Live Nation engage in perjury by falsely denying under oath its NY contacts to get dismissed via fraud, but Petitioner is now forced to appear in this petition as a *Pro Se* litigant only because the district court also usurped its duty by granting *sua sponte* withdrawal to Petitioner’s lawyers at Squitieri & Fearon, LLP in September 2010 without allowing Petitioner to file opposition papers in violation of due process. Petitioner, in fact, was never served with Squitieri’s motion to withdraw and *pro se* status was forced upon her. Petitioner did not choose it.

The grant of unilateral withdrawal to Squitieri in 2010 was itself suspicious. At the same time, defense attorney Richard Supple, Esq., had already moved *ex parte* to withdraw his previous motion to compel arbitration. The motion was granted the same day *sua sponte* on January 30, 2008. However, somehow arbitration was ordered a year later with no corresponding motion or order on the docket. Supple then ripped out from the SDNY file room Petitioner’s applications seeking signed subpoenas against the USPTO to compel production of Petitioner’ complete USPTO patent files being unlawfully withheld by the Cowan defendants. These applications along with Petitioner’s motion pursuant to FRCP Rules 15, 60(b)(1)-(6) appending the amended infringement complaint were sent to both the *Pro se* office and to Judge Jones’s mailbox. Judge Jones’s mailbox had to be copied because *Pro Se*

litigants are denied e-filing privileges in the SDNY. Judge Jones then retired, and the new magistrate Henry Pitman refused to co-sign the subpoenas in 2013, usurping his duty. The Office of the USPTO General Counsel told Petitioner the subpoenas were never received. Then, the magistrate issued an order that he never denied Petitioner discovery²⁰. Shortly thereafter, it was discovered that Petitioner's docketed amended infringement complaint with the Rule 60(b) motion had both been deleted *sua sponte* from the SDNY docket sometime after it was date-stamped, filed, and docketed on April 22, 2010.

On April 21, 2016, the Appellate Division finally found that Hinshaw defense attorney Supple also entered and corrupted state files related to ethics complaints duly filed by Petitioner against the Cowan defendants since 2004. The ethics complaints were copied in Petitioner's 1998 retirement files in the Appellate Division Third Dept. because Petitioner was never admitted to the First Dept. That Supple was dually serving as an undisclosed officer for the First Dept. attorney grievance panel and was personally involved with Petitioner's patent practitioner ethics complaints against the Cowan defendants precluded Supple and the Hinshaw firm from ever representing the Cowan defendants in this lawsuit. Judiciary Law Part 1240.6(d), Part

²⁰ There were also non-joinder claims in the amended complaint appending supporting documents that the Cowan defendants had engaged in fraud in violation of 37 CFR 1.36(b) in a fraudulent declaration of inventorship filed for another client Legend Films, Inc. by omitted Petitioner's name as co-inventor of a PCT application the Cowan defendants filed for Legend on May 6, 2020. [02 US PCT 14192 based on 60/288929]. The Legend application included reference to Plaintiff's content editing and film masking technology for colorization of black and white films.

1240.18.²¹ However, that the Appellate Division found that Supple entered and corrupted Petitioner's confidential state files by inserting unserved and forged documents without a warrant demonstrates crimes. On November 29, 2016, the SDNY told Petitioner during hearing that while she was denying disqualification of Supple and Hinshaw & Culbertson, she was still going to entertain their summary judgment motions in chief on behalf of Cowan and Live Nation defendants. The Judge also said that "*Petitioner should consider filing a separate lawsuit against them for causing prejudice and damages to her confidential files and seek orders from the state to compel production of the files*".²² It was the duty of the SDNY to compel production of all patent files in possession of the Cowan defendants and the USPTO relevant to this case prior to entertaining summary judgment motions, and that duty was also breached. That the Court ordered Petitioner to pay \$10,000 into the SDNY Cashier for a special patent master and never hired that master, but closed the case instead, only further demonstrates that the case was conducted in defiance of all Petitioner's

²¹ Unbeknownst to Petitioner, Supple was dually serving on the NYS attorney grievance panel and was personally involved with Petitioner's ethics complaints filed against the Cowan defendants since 2004. Based on a conflict of interest with his state duty to Petitioner, Supple could never accept retainer defendants in this case. However, pursuant to NY's Judiciary Law Parts 1240. 6 and 1240.18 Supple and H&C were required to withdraw or be disqualified by the district court no later than October 1, 2016.

²² Petitioner's EDNY damages lawsuit against Supple and H&C for losing her infringement claims in this lawsuit has been pending for two years. 19-cv-4937 (EDNY) and is now the proper subject of mandamus relief by the Second Circuit. The EDNY has not decided Petitioner's default motion pending since October 2019. Five NY agencies including NYS Thruway, and the Port Authority (JFK and Newark Liberty Airports) have since taken Petitioner's patents with venture partners without payment of just compensation in violation of the Fifth Amendment.

constitutional rights.

VI. SPLIT IN THE LAW

Contrary to US Supreme Court decisions, the Federal Circuit takes the position that the duty to issue mandamus orders against a district court during a patent case *is not* a jurisdictional matter. *Cf. Christianson v. Colt Industries Operating Corp.*, 486 US 800 (1988)(Brennan, J.) and *In re Innotron Diagnostics*, 800 F. 2d 1077, 1080 (Fed. Cir. 1986) *see also, La Buy v. Howes Leather Co.*, 352 US 249, 255 (1957) The Federal Circuit law is that if mandamus orders would not be “*in aid of its arising jurisdiction*” at the end of the case, in certain circumstances, it need not adjudicate mandamus petitions during the case.

In part, the Supreme Court disagrees. In *Christianson, supra*, Justice Brennan made clear that only a well-pleading complaint filed under 28 USC §1338 (as opposed to a well-pleading counterclaim filed in response to an antitrust lawsuit from an infringer), will bequeath the Federal Circuit with mandatory “arising under” jurisdiction at the end of the case. Based thereon, the Supreme Court’s position is that there are situations where a local circuit court has both the duty and power to issue interlocutory mandamus orders for a district court’s usurpation of duties or failure to adjudicate essential motions, but only when a party-litigant has no other remedy at law. This is how the Supreme Court reconciles the Federal Circuit’s denial of mandamus relief in cases where the relief sought is not *in aid of* its exclusive arising under

appellate jurisdiction. *See, also La Buy v. Howes Leather Co.*, 352 US 249, 255 (1957).

The use of mandamus has in fact been expanded by the circuit courts in certain situations when they find it necessary to impose supervisory regulations against a district court for ongoing breaches of power and failing to act when it must. *Ibid.* Because interim orders may violate the final judgment rule, however, the result has been a vast inconsistency and a split in reported cases, particularly those that involve mandatory disqualification of opposing counsel in combined antitrust and patent cases. ²³

The Federal Circuit's position is that it makes no sense for a patentee to be plagued with a different and potentially adverse legal result should the patentee elect to file a counterclaim instead of a separate lawsuit or amended complaint seeking infringement damages.

In re Innotron Diagnostics, 800 F. 2d 1077, 1080 (1986). The Federal Circuit has in fact found it is in the proper discretion of the district courts to consolidate two antitrust and infringement lawsuits between the same parties and the order of consolidation will rarely, if ever, be overturned by mandamus or on appeal. *Ibid.*

Conflicting policies notwithstanding, this Honorable High Court

²³ No matter the extent of potential prejudice, unless breach of confidential privileged communications are at bar, some courts find the issue of disqualification of opposing counsel should be heard at the end of the case. *Spalding Sports Worldwide v. Wilson*, 203 F. 2d 800 (Fed Cir. 2000)

~~must respectfully see that during the pendency of a combined antitrust and infringement case and particularly if the patentee is a Pro Se litigant expecting an issued patent during the case, the patentee has no crystal ball to be able to predict if a district court will deny a properly filed amended complaint seeking infringement damages post patent issuance during the lawsuit.~~ In this situation, the national cases cannot be reconciled at all. However, the liberal pleading rules of the Second Circuit - including in patent cases - establish that during this 13-year wrenching litigation, the SDNY usurped its duties to Petitioner multiple times and that the Second Circuit was required to grant mandamus relief to vacate certain procedural orders *not in aid of* the Federal Circuit's arising under jurisdiction, much earlier in the case. Plus, the Second Circuit had the duty under its own liberal pleading rules to order mandamus against the district court to adjudicate the amended infringement and could do so even post judgment. *Grant Williams v. Citicorp*, 659 F. 3d 208 (2d Cir. 2011)

In the instant litigation, arising under appellate jurisdiction in favor of the Federal Circuit at the end of the case was always a given and both the district court and the Second Circuit usurped their designated powers in denying Petitioner constitutional access to the court during the case since remand from the Second Circuit in 2012 to protect her patents. However, certain mandamus orders such as to reverse the *sua sponte* grant of withdrawal by the district court to Petitioner's attorney Squitieri in 2010 could have been ordered.

There is no dispute that Petitioner was the victim of antitrust

violations, unfair competition, and willful patent infringement by defendant Live Nation since 2005. In 2007, it was importing Petitioner's proprietary ticketing technology with ETS Eventim of Germany. Petitioner's US ticketing and content management patents were anticipated and were always expected to issue during the case. They did issue in October 2009, five months after the first notice of appeal was filed in May 2009; and just two months after Petitioner was binding arbitration against the Cowan defendants on August 4, 2009, after the case was already prematurely closed for four months.

Petitioner's pending early applications were unlawfully abandoned by the Cowan defendants as Live Nation's agent in 2003 based on conflicts of interest *admitted* to the USPTO. Two patent applications went abandoned on the docket in 2003 and had to be revived and one patent reissued, delaying injunction and formal enforcement rights against defendant Live Nation until October 13, 2009. In the interim, Petitioner had to protect the four-year statute of limitation on Live Nation's separate antitrust violations and continuing false advertising torts that were confirmed by the Dept. of Justice along with defendant Live Nation's significant NY contacts, during the 2009-2010 merger proceedings with Ticketmaster. ²⁴

The first patents that did ultimately issue to Petitioner on October

²⁴ The USPTO never granted the Cowan defendants unilateral withdrawal after Cowan's two attempts to withdraw in May 2003 and February 2007 because of contumacious defiance of practitioner conflict of interest statutes. 37 CFR 2.10, 2.19, 10.66 11.116, 1.36, 1.324

13, 2009, were the same disclosures already noticed to defendant Live Nation as being willfully infringed since 2005. When the first patent did issue and Petitioner filed an amended complaint immediately that was docketed and date stamped with a Rule 60(b) motion on April 22, 2010, both were required to be adjudicated. Instead, they were deleted *sua sponte* from the docket. On January 25, 2010, the DC District Court and Dept. of Justice confirmed jurisdictional fraud by Live Nation in this lawsuit in denying its significant NY contacts to avoid being forced to answer for crimes against this Petitioner.

Therefore, on every ground, Petitioner's docketed amended infringement complaint and Rule 60(b) motions could not be *sua sponte* dismissed by the district court in 2017 and especially not based on moving papers filed by attorneys who were never legally permitted to appear on behalf of defendants. In fact, more than 200 documents including notices from defendant Live Nation to Petitioner that defendant was using her patents because "*patents could be used by anyone*" and that the Cowan defendants were "*following the client's instructions*" were in the district court file and in the Second Circuit appeals records, along with Live Nation's false press releases advertising a false monopoly on distributing live concert recordings. The composite of the documents before the Second Circuit in previous appeals clearly demonstrates willful infringement and Petitioner's right to recover of treble damages back to 2004. If Petitioner is forced to file a new infringement lawsuit, only six years of relate back damages are recoverable and already more than fifteen years of patent protection

have been forfeited and will continue to be lost because defendant Live Nation has changed its business model to get around Petitioner's patents. *SCA Hygiene Product Aktiebolag v. First Quality Baby Products*, 137 S.Ct. 954 (2017). Petitioner is also a *Pro Se* litigant and was required to be granted reasonable accommodations by the federal courts in NY, not railroaded out of the court. *Erickson v. Pardus*, 551 US 89 (2007)

In contumacious defiance of the law, the SDNY also ordered Petitioner to pay for a special patent master and deposit \$10,000 into the court cashier in 2015, which Petitioner did, but then the court still *sua sponte* dismissed Petitioner's amended complaint and denied Petitioner's cross-motion on summary judgment. The amended complaint was in full compliance with Form 18 of the Appendix to the Federal Rules of Civil Procedure and could not be *sua sponte* dismissed. *K-Tech Telecommunications v. Time Warner Cable*, 714 F. 3d 1277 (Fed. Cir. 2013).

In addition, Petitioner's discovery requests for signed subpoenas to compel unprivileged documents from the USPTO based on Cowan defendants' patent filings were ripped out of the file room by Hinshaw's attorney Supple. Emails in Petitioner's possession include defendant Cowan's admissions that they were "following the client's instructions".

Since the case was closed prematurely for the second time by the district court in July 2017 and reconsideration denied in September

2017 it was bandied back and forth between the Second Circuit and the Federal Circuit for four years. Each appeals tribunal contends the other court had the duty to issue writs of mandamus earlier in the case based on clear usurpation of procedural powers by the district court.

The Second Circuit then dismissed Petitioner's second appeal in 2018 and did not transfer the appeal to the Federal Circuit in response to Petitioner's motion pursuant to 28 USC §1631. On June 23, 2020, the Federal Circuit found on mandamus that the Second Circuit abused discretion in deciding the 2017 appeal without jurisdiction because it was an *arising under* appeal at that time and based on the law of the case, sent the case back for the Second Circuit to grant mandamus orders still owed to Petitioner under law of the case.

The Second Circuit then issued an order on January 8, 2021, and mandate on April 1, 2021, that "*mandamus will not suffice for an appeal*" and closed the case prematurely for the third time. The Court having been petitioned for reconsideration on the ground that Petitioner is not a practicing attorney in NYS nor a patent attorney and cannot be held to the standard of an attorney in this case was never adjudicated. has been an attorney in practice in NYS and closed the case. The Second Circuit continued to deny mandamus relief to Petitioner and was already found to have to have exceeding its appellate jurisdiction in improperly deciding the 2017 appeal and not transferring the case at that time to the Federal Circuit, resulting in the instant Petition.

VII. MEMORANDUM OF LAW

The prevailing law of the US Supreme Court on mandamus orders owing against the district courts in combined antitrust and patent cases was established by Justice Brennan in 1988 in *Christianson v. Colt Industries Operating Corp.*, 488 US 800 (1988). Most respectfully, *Christianson* requires revisit in the advancing technology market and instant case is a perfect vehicle to address the split in the courts to the extent that it implicates inconsistent national decisions emanating from *La Buy v. Howes Leather Co.*, 352 US 249, 255 (1957).

A premise of Justice Brennan's decision is that no patentee should have to wait four years for two appeals courts to play "ping pong" and deny an appeal and/or mandamus relief to a patentee. According to Justice Brennan, however, the Federal Circuit only has exclusive jurisdiction in a patent litigation under 28 USC§ 1295 if a "well pleaded complaint" and not a well pleading counterclaim arises under the patent laws or is defined by patent statutes. Therefore, if a counterclaim is filed seeking infringement damages instead of a new lawsuit or an amended complaint, then, and only if the patentee has no other remedy at law, may the circuit court properly grant mandamus orders based on the district court's usurpation of duties in deciding essential procedural motions during the case.

The Federal Circuit's position is to the contrary, *i.e.*, that it should make no difference if a patentee files a counterclaim, amended complaint

or a separate lawsuit, because in theory, the legal result should be the same in each instance. *In re Innotron Diagnostics*, 800 F. 2d 1077, 1080 (1986). However, the Federal Circuit will also not grant mandamus relief against a district court unless the orders are “*in aid of*” its arising under jurisdiction at the end of the case.

In *In re Innotron Diagnostics*, 800 F. 2d 1077, 1080 (Fed. Cir. 1986) the Federal Circuit iterated its mandamus policy in combined antitrust and patent cases. The analysis begins with acknowledgment that statutory grant of jurisdiction to each of the regional courts of appeal pursuant to 28 USC §1294 provides appellate jurisdiction over judgments of district courts located within its geographical circuit “[e]xcept as provided in Sections 1292 (c), (d) and 1295.”

With respect to district courts, the grant to the Federal Circuit is found in 28 USC §1295(a)(1), (a)(2), which provide appellate jurisdiction over judgments of any district court when the jurisdiction of that court was based, in whole or in part on 28 USC §1338 or §1346 (*The Little Tucker Act*) respectively, and in §1295 (a)(4)(C) when the action was filed in the district court as authorized in 35 USC §§ 145, 146.

Mandamus is properly employed “to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to act.” *Roche v. Evaporated Milk Ass’n*, 319 US 21, 26 (1943) *see also Bankers Life & Casualty Co., v. Holland*, 356 US 379, 382 (1953) However, the regional courts of appeals have

increasingly extended applications and employed the writ in implementing their supervision of district courts. See Annot., 57 L. Ed. 2d 1203 (1979); Note, Supervisory and Advisory Mandamus under the All Writs Act, 86 Harv. L. Rev. 595 (1973).

Use of mandamus in exercising supervisory authority has in fact been approved “in certain circumstances” by the Supreme Court. La Buy v. Howes Leather Co., 352 US 249, 255 (1957). In *La Buy*, however, the Court was dealing with a court having appellate jurisdiction over judgments of district courts whose *location* is within its circuit, 28 USC § 41, not with the Federal Circuit, whose appellate jurisdiction over judgments of district courts is determined by the basis for the district court’s *jurisdiction*. Thus, the key phrases useful to the Federal Circuit in determining whether that Court will entertain petitions of mandamus against a district court are those cases where granting the writ is both “*in aid of its jurisdiction*” pursuant to 28 USC §1651 and to the Supreme Court’s reference to “*in proper circumstances*” in *La Buy*.

“In Aid of Its Jurisdiction”

Where the Federal Circuit would have jurisdiction over an appeal from a final judgment of the district court, it has power under §1651 to overturn a district court order that would prevent that appeal or would otherwise frustrate this court’s exercise of its proper jurisdiction. In re Innotron Diagnostics, 800 F. 2d 1077, 1080 (1986). **This is clearly the instant case.** The order of the SDNY *sua sponte* dismissing

Petitioner's amended strict liability infringement complaint post patent issuance and cross-motion for summary judgment under 35 USC §§271, 284, 285, 286 and FRCP Rule 56 bequeathed the Federal Circuit with mandamus power "in aid of its jurisdiction" based on usurpation of procedural powers by the district court that met the definition. A problem is that the district court entertained summary judgment orders from defense attorneys required to be disqualified under state law prior to the date of the briefing. Then, the Second Circuit improperly heard and failed to transfer the appeal pursuant to Petitioner's 28 USC §1631 motion and closed the case. The Federal Circuit then being petitioned for mandamus agreed the Second Circuit exceeded its jurisdiction and abused discretion both by not transferring the case and hearing the appeal. The Second Circuit's rules allow an amended pleading post judgment by mandamus. *Grant Williams v. Citibank*, 659 F. 2d 208 (2d Cir. 2011). There is the additional fact that a multitude of *sua sponte* orders were entered by the district court. Orders that implicate the constitutional rights of litigants, can never be granted *sua sponte*. See, e.g., *Link v. Wabash R. R. Co.*, 370 US 626, 630-631 (1962).

In mandamus cases involving combined antitrust and patent claims, the Federal Circuit is often troubled – as it was in this case - by certain petitions seeking to overturn district court orders that would not necessarily frustrate the Federal Circuit's appellate jurisdiction. Such petitions may be placed into three categories: (1) those implicating responsibilities of regional circuit courts for supervising, administering, overseeing, and managing the courts within the circuit (e.g., assignment

of judges, adjustment of calendars, transfer of case to another district, reference to master); (2) those that arise in all types of cases, but do not directly implicate the patent or *Little Tucker Act* doctrinal jurisprudence of this court (e.g., mandatory disqualification of opposing counsel); and (3) those that do directly implicate, or are intimately bound up with and controlled by, the patent and Tucker Act doctrinal jurisprudential responsibilities of the Federal Circuit (e.g., separate trial of patent issues; refusal to apply 35 USC §282; court-ordered tests for utility, and *sua sponte* dismissal of an anticipated amended infringement complaint post patent issuance during the case). The instant case is a combination of (2) and (3), causing four years of bandying between two circuit courts. However, in the instant case, the SDNY even hired a special patent master and made Petitioner pay \$10,000 into the district court cashier for that master, and still never heard the patent claims demonstrating additional bias.

The Federal Circuit has in fact affirmatively disavowed “supervisory” authority over the district courts. In so doing, it has recognized that a writ would *not* be “*in aid of its jurisdiction*” if issued on petitions in categories (1) and (2). The court might very well, however, aid its jurisdiction (and its mission as well) when it issues a writ in response to a petition in category (3). The instant case is an overlap of (2) and (3), which is how Petitioner was deprived of essential mandamus orders against the district court from both circuit and was deprived of all constitutional access to protect her patents.

Form 18 in the Appendix of the Federal Rules of Civil Procedure sets forth a sample complaint for direct patent infringement and requires:

(1) an allegation of jurisdiction; (2) a statement that the plaintiff owns the patent; (3) a statement that defendant has been infringing the patent ‘by making, selling, and using [the device] embodying the patent’; (4) a statement that the plaintiff has given the defendant notice of its infringement; and (5) a demand for an injunction and damages. *McZeal v. Sprint Nextel Corp.*, 501 F. 3d 1352, 1357 (Fed Cir. 2007)

Form 18 in no way relaxed the clear principle of Rule 8, i.e., that a potential infringer be placed on notice of what activity or device is being accused of infringement.

As the Federal Circuit stated in *McZeal, supra*:

‘It logically follows that a patentee need only plead facts sufficient to place the alleged infringer on notice as to what he must defend. *See Bell Atl. V. Twombly*, 127 S. Ct. 1955, 1971 n. 10 (stating “[a] defendant wishing to prepare an answer in the simple fact pattern laid out in Form 9 [in the Federal Rules of Civil Procedure] would know what to answer; a defendant seeking to respond to plaintiffs’ conclusory allegations ... would have little idea where to begin.”). Thus, a plaintiff in a patent infringement suit is not required to specifically include each element of the claims of the asserted patent. *See, e.g., Phonometrics Inc., v. Hospitality Franchise Systems*, 203 F. 3d 790, 794 (Fed. Cir. 2000); 501 F. 3d 1352, 1357 (Fed Cir 2007)”.

There is no dispute that defendant Live Nation was put on notice of infringement in 2005 by certified mail, return receipt requested, and responded that “*Petitioner’s patent could be used by anyone*”. Defendant

Live Nation was also found to be importing infringing systems with ETS Eventim of Germany in 2007 for use at its NYC venues. Clearly, this defendant cannot be let out of this case based on jurisdictional and in-court fraud and deceit by its attorneys who were required to be disqualified by the court, not supported.

VIII. CONCLUSION

Because the Federal Circuit already found the Second Circuit exceeded its jurisdiction and abused discretion in deciding the 2017 patent appeal and not transferring the case, in sending the case back, the clear implication was that the Federal Circuit was ordering the Second Circuit to exercise its powers and grant long-overdue mandamus orders owing to Petitioner. That meant both ordering retroactive disqualification of the attorneys who were never legal able to file summary judgment motions in 2017 and vacating the summary judgment orders ignoring the district court's improper *sua sponte* deletion of Petitioner's amended complaint post patent issuance from the docket.

Mandamus relief is long overdue in this case to prevent manifest injustice and an egregious forfeiture to Petitioner. Mandamus to amend the complaint is authorized by the liberal pleading rules of the Second Circuit. That the ongoing procedural usurpations of power by the district court were both committed during adjudications "in aid of" and "not in aid of" the Federal Circuit's jurisdiction is the clear problem, and this Honorable Court must iterate concrete standards to fix the law

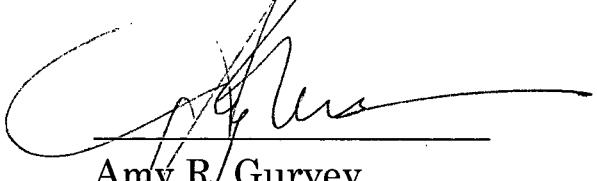
and iterate the proper sequence of adjudications in close cases. K-Tel
Telecommunications v. Time Warner Cable, 714 F. 3d 1277 (2013)

WHEREFORE, based on the foregoing Petition and the supporting orders and documents printed in the Appendix hereto, Petitioner respectfully prays that a Writ of Certiorari issue against the Second Circuit.

Dated: June 7, 2021

*Appendix
Revised
8-20-21*

Respectfully submitted,



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