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Supreme Court, U.S.

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In the
Supreme Court
of the United States

IN RE URVASHI BHAGAT

Petitioner

*On Petition for Writ of Mandamus to the United
States District Court for the Eastern District of
Virginia, Alexandria Division.*

Emergency Petition for Writ of Mandamus

Vol. I.

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QUESTIONS PRESENTED

In extreme bad faith, the United States Patent & Trademark Office (USPTO) abused the examination of patent application no. 13/877,847 filed under the Patent Cooperation Treaty (PCT) for over eight years, damaging the Petitioner and obstructing exceptional innovations for public health that could have mitigated the COVID-19 pandemic. The Petitioner filed a complaint at the District Court pairing interdependent causes of action under 28 U.S.C. §§ 1331, 1338(a), 1361, and 35 U.S.C. § 145 asserting misconduct by USPTO in violation of constitutionally protected patent rights and that the patent should have been issued many years ago, and claiming damages due to bad faith delay, Takings claim under the Fifth Amendment, and seeking mandamus relief. Pretending lack of jurisdiction, immunity, and failure to state claims, the District Court on USPTO's motion dismissed interdependent causes of action as to damages, Takings claim, and mandamus relief, refusing to acknowledge facts and invocation of jurisdiction under §§ 1331, 1338(a), and 1361 in the First Amended Complaint and without answering arguments in Opposition. The District Court also granted the motion to strike jury trial without answering arguments in Opposition.

The questions are:

1. Whether the District Court abused discretion and obstructed justice in denying the existence of arguments and facts recited in the complaint refusing to even acknowledge invocations of §§1331 and 1338(a) refusing to answer entirety of the Petitioner's Brief in Opposition invoking this Court's precedents?
2. Whether the District Court abused discretion and obstructed justice in ruling lack

of subject matter jurisdiction on “civil actions arising under the Constitution [Art.I.S8.C8], laws [§1338(a) and §145], or treaties of the United States [PCT]” as per 28 U.S.C. § 1331, for damages and/or Takings claims?

3. Whether the USPTO, an agency engaged in business with the public, is immune to damages and jury trial, unlike private enterprises in violation of *FHA v. Burr*, 309 U.S. 242, 245 (1940), particularly when the agency invades federally protected patent rights in extreme bad faith?

4. Whether the District Court obstructed justice in requiring more than a short/plain statement of the claim showing the pleader is entitled to relief and prejudged the outcome by dismissing the causes of action before deliberating on complete facts from discovery and trial?

The questions are in context of extraordinary judicial usurpation of power violating the US constitution, statutes, and this Court’s precedents:

- “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S. Code § 1331;
- the federal district courts have original federal question jurisdiction under § 1331 when a claim arises out of a federal statute (*Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005));
- Takings claim can be brought under § 1331 where federally protected rights have been invaded (*Duke Power Co. v. Carolina Environmental Study Group*, 438 US 59 (1978));

- Tucker Act is not a prerequisite to a Fifth Amendment Takings claim (*Knick v. Township of Scott*, 139 S. Ct. 2162, 2174 (2019));
- Just Compensation clause is self-executing (*First English Evangelical Lutheran Church v. Cnty. of Los Angeles*, 482 U.S. 304, 314 (1987));
- "sue or be sued" agencies are equally amenable to judicial process as a private enterprise under like circumstances and waivers of governmental immunity should be liberally construed (*FHA v. Burr*, 309 U.S. 242, 245-246, 250 (1940));
- statutes can be paired for money damages (*United States v. Testan*, 424 U.S. 392 (1980));
- piecemeal litigation to be avoided (*Schlagenhauf v. Holder*, 379 U. S. 104, 111 (1964));
- sovereign immunity does not shield bad faith actions of the federal government, its agencies and officials when constitutional rights are violated (*Harlow v. Fitzgerald*, 457 U.S. 800 (1982) and *Saucier v. Katz*, 533 U.S. 194 (2001));
- Rule 12(b)(6) motion should be granted only if it appears beyond doubt that plaintiff can prove no set of facts in support of its claim for relief (*Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 654, (1999)); and
- court can draw reasonable inferences from pleadings for the alleged misconduct (*Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)).

Absent mandamus, piecemeal litigation and delay from dismissal of interdependent causes and lack of jury trial in view of the District Court's bias towards USPTO will irreparably injure the Petitioner and the innovation and obstruct settlement of new important issues of bad faith examination of nutrition patents.

PARTIES TO THE PROCEEDING

Petitioner Urvashi Bhagat is the applicant of U.S. Patent Application No. 13/877,847 at issue and the President of Asha Nutrition Sciences, Inc., the owner of the patent application.

Respondent in this Court is the United States District Court for the Eastern District of Virginia. Respondents also include the United States Patent and Trademark Office (USPTO), Kathi Vidal Under Secretary of Commerce for Intellectual Property and Director of the USPTO, and The United States of America.

CORPORATE DISCLOSURE STATEMENT

Asha Nutrition Sciences, Inc. owns 100% of U.S. Patent Application No. 13/877,847. Asha Nutrition Sciences, Inc. has no parent company, and no publicly held corporation owns 10% or more of its stock.

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OPINION BELOW

The Petitioner filed a complaint with the District Court against USPTO, *inter alia*, for abusing patent examination, damages, and Takings claim on December 9, 2020. The court docket number is 1:20-cv-1515 (CMH/IDD). The opinion and order to be reviewed is *Bhagat v. United States Patent and Trademark Office*, Civil Action 1:20-cv-1515 (E.D. Va. Jul. 22, 2021). (Pet.App., 1a-7a).

JURISDICTION

The District Court entered the opinion and order to be reviewed on July 22, 2021. The case is of such imperative public importance, that the delay will irreparably injure the cause and the Petitioner to justify deviation from normal appellate practice and require immediate determination in this Court. The Petitioner noticed the District Court of intention to seek mandamus relief from this Court on August 3, 2021 and motioned the Court to stay action on August 17, 2021. The District Court denied the motion to stay on April 12, 2022¹. The jurisdiction of this Court is invoked under 28 U.S.C. § 1651 .

UNITED STATES CONSTITUTION, STATUTES, and TREATIES

Pertinent provisions include, U.S. Constitution, Amendments V and VII, 28 U.S.C. §§ 1331, 1338(a), 1361, 35 U.S.C. § 145, and the Patent Cooperation Treaty, reprinted at Pet.App., 48a-51a.

¹ A copy of the Order denying motion for stay is attached as Exhibit A to the Emergency Application for a Stay filed simultaneously with this Petition.

STATEMENT OF THE CASE

This petition seeks a review of the District Court's opinion and order dismissing interdependent causes of action and a writ of mandamus from this Court without which irreparable injury will be caused to the Petitioner, the implementation of exceptional innovations for public health, and the national economy for years to come.

(1) *US Government is Obstructing Advancement in Nutrition and Inducing Other Governments to do the Same with Dire Long-term Public Health Consequences Worldwide*

(i). The USPTO and the US Government in general is obstructing meaningful innovations/ advancement in the nutritional arts, instead issuing token patents in the art fostering stagnation and creating more chaos—**the exact opposite of what constitutes “quality patents” in nutrition science.** The piecemeal patents flood the markets with nutritional products that create excesses, deficiencies (excess of a nutrient can also create deficiency of another), or undesirable interactions and massive misinformation and disinformation as parties peddle their products. For example, 1000s of antioxidant supplements are sold over the counter to gullible consumers², which can be injurious not only now but portend long-term harm to public health with undesirable shifts in gene expression.

² gnc.com/vitamins-supplements/antioxidants/ and https://www.vitaminshoppe.com/c/vitamins-supplements/supplements/antioxidants

The subject innovations directed to tailored delivery of lipids and antioxidants, were conceived to prevent excesses and deficiencies of and undesirable interactions among these critical nutrients, which innovations would strengthen wellness including immunity.

If these innovations were supported with timely patent grant due nearly ten years ago, leading to timely implementation of the innovations, the COVID-19 pandemic and its adversity from underlying poor health could have been mitigated with worldwide positive impact, i.e., millions of lives and trillions of dollars lost could have been saved.³

Though vaccines provide relief in the short-term from specific viruses, but long-term and broad mitigation of many infectious agents (including agents unknown at present) can be achieved from the implementation of the inexpensive subject innovations.

Yet the USPTO failed its mission to advance innovation, at that, the most critical innovations. Further, the USPTO's abuse in examination of the subject patent applications was copied by other patent offices, multiplying the Petitioner's legal burden and compromising patent rights. Pet.App., 46a. Thus, the US is abusing and damaging

³ Can Bioactive Lipids Inactivate Coronavirus (COVID-19)? Arch Med Res. 2020 Apr; 51(3): 282–286 (pubmed.ncbi.nlm.nih.gov/32229155/); Bioactive Lipids in COVID-19-Further Evidence Arch Med Res. 2021 Jan; 52(1): 107–120 (ncbi.nlm.nih.gov/pmc/articles/PMC7480223).

innovators in nutrition sciences and leading the world away from prevention and wellness with dire long-term consequences for humanity.

(ii). Three exceptionally important patent applications directed to tailored delivery of lipids and antioxidants were submitted to USPTO: in 2009 US Patent Application no. 12/426,034 (USPA '034), in 2011 US Patent Application no. 13/332,251 (USPA '251), and in 2013 US Patent Application no. 13/877,847 (USPA '847). Each of the applications has suffered extreme abuse from the USPTO in examination, forcing rejections by mutilating the claims, the law, and the procedure; refusing to answer most of the arguments and evidence of poorly understood factors and opposite teachings in the art, and public suffering; delaying and dragging the applications, neutering the innovations, and inducing other jurisdictions into doing the same; and damaging the Petitioner, the innovations, public health, and national budgets and economies worldwide.

(iii). After rejection by the USPTO USPA '034 was appealed to the US Court of Appeals for the Federal Circuit in 2016 who regurgitated USPTO's imprudence, refusing to answer almost the entirety of Petitioner's briefs and 100s of evidence documents submitted to the court including testimony from skilled persons and issued an opinion contravening 35 U.S.C. §§ 100(b), 101, and 102, and many of this Court's precedents including *Diamond v. Diehr*, 450 U.S. 175, 188 (1981) (the claims must be considered as a whole), *Bilski v. Kappos*, 561 U.S. 593, 603 (2010) ("process" under § 100(b) does not require "transformation"), and *Ass'n for Molecular Pathology*

v. Myriad Genetics, Inc., 569 U.S. 576, 577, 595 (2013) (dictated by nature is not the test). This Court denied certiorari (18-274) and mandamus (18-1274) petitions⁴. Although, the USPTO granted USPA '251, but in 2019 after 10 years drag and compromising the patent claims and implementation of the innovations.

(iv). The related case history is provided above because **there is deliberate following of suit in the present case**, USPA '847, by the USPTO and the District Court. The Petitioner appealed the USPTO's bad faith actions to the District Court on December 9, 2020, including the assertion that the USPTO refused to answer 99% of the arguments and 100% of the evidence in examination and the appeal review, only to find the District Court do the same in improperly granting the USPTO's motions to dismiss interdependent causes of action denying the existence of facts expressly recited in the complaint, without answering the Petitioner's Brief in Opposition, and contravening the United States Constitution and Acts of Congress and this Court's precedents in act of extraordinary judicial usurpation of power.

At the heart of the matter are the federal questions of jurisdiction of the District Court under 28 U.S.C. § 1331 paired with § 1338(a) and 35 U.S.C.

⁴ Public has found this Court's denial of the Petitioner's petitions to be improper given the importance of the innovations and the chaos in patent eligibility. "Funk Brothers, Myriad & Products of Nature: How a Lack of Understanding Scientific Principles Is Damaging the Patent System." 49 Sw. L. Rev. 330 (2020-2021); <https://heinonline.org/HOL/LandingPage?handle=hein.journals/swulr49&div=17&id=&page=>

§ 145 for damages and Takings claims due to bad faith in examination and extraordinary delay in patent grant and of alleged sovereign immunity contravening *FHA v. Burr*, 309 U.S. 242, 245-246, 250 (1940), and the Fifth Amendment of the US constitution.

Relevant facts are summarized below.

(2) *Bad Faith in Examination of USPA '847 At the USPTO*

(i). USPA '847 application is a Patent Cooperation Treaty (PCT) application that entered national patentability examination at the USPTO under 35 USC 371 on April 4, 2013.

(ii). The innovations are directed to compositions and methods of tailored delivery of lipids, particularly dosages of omega-6 fatty acids and antioxidants including polyphenols, in the broadest embodiments with additional features in narrower embodiments. The Petitioner has made important discoveries on precise dosage requirements of and interactions among these substances with profound health effects, such that tailored dosages (specified delivery) have the potential of mitigating chronic diseases and acute health events (such as strokes and heart attacks) and infectious diseases. The broadest embodiments “collectively provide a dosage from 1 to 40g of omega-6 fatty acids and from 25mg to 10g of antioxidants, and wherein the antioxidants comprise one or more polyphenols in the dosage of greater than 5mg” via “one or more nutritional formulations for an individual” with instructions for suitable intake of the formulations.

(iii). The claimed features in the USPA '847 remain poorly understood in the art even today after over 100 years of identifying the problem. Many physicians teach reduced intake of omega-6 fatty acids, such as less than 1g/day, and some even label high omega-6 containing foods as "poison" at "any amount,"⁵ and many teach random or high intake of antioxidants/polyphenols⁶, including the publications cited by the USPTO. Further, these substances are randomly sold in supermarkets and drug stores, touting high antioxidant intake, across the US and around the world (cited above).

(v). The USPTO examiners held the scope of the inventions against the Petitioner and acted in bad faith invading the Petitioner's constitutionally protected patent rights, repeatedly applying numerous overlapping improper rejections and frivolous "objections" on every patent claim, such as lack of unity of invention, product of nature, abstract idea, double patenting, lack of written description supporting the claims, indefiniteness, improper dependency, lack of novelty, and obviousness while failing to even make a *prima facie* case of obviousness in several claims. The examiners disregarded repeated submissions of arguments and evidence fully rebutting the objections. Several improper final rejections were issued. The Petitioner had to file ten administrative petitions for

⁵twitter.com/drjamesdinic/status/1349317658697732096?cxt=H_HwWgMC4_d7Q3rkIAAA;
twitter.com/KenDBerryMD/status/1265302016487755776; and
twitter.com/robertlufkinmd/status/154835054479574630.

⁶ Risks and safety of polyphenol consumption. Am J Clin Nutr 2005;81(suppl):326S–9S. (pubmed.ncbi.nlm.nih.gov/15640498/)

supervisory review. Some of the objections/rejections were eventually reversed—confirming that they were frivolous—but after multiple repeat petitions had to be filed for higher and higher level of review at the USPTO at great cost and loss of time. Pet.App., 53a.

(vi). On February 11, 2019, appeal brief to USPTO’s Patent Trial and Appeal Board (PTAB) was submitted. However, USPTO’s bad faith actions and misconduct continued even in appeal review such that 99% of arguments and 100% of the evidence—scientific papers evidencing opposite teachings and critical unmet public health need—were disregarded in the appeal review and a decision contrary to PTAB’s own precedential opinions was issued. *Three* petitions for review by the Chief Administrative Patent Judge due to misconduct by the PTAB panel were filed, which were either dismissed without proper review or not answered, rather the Chief Judge also made false statements in his decision contradicting the record, demonstrating bad faith and disingenuousness in examination and appeal review. Pet.App., 54a-55a.

(vii). The PTAB panel issued a decision on the Request for Rehearing on October 7, 2020, denying the patent under the pretext of indefiniteness, improper dependency, and obviousness under 35 U.S.C. §§ 112 and 103. Thus, the USPTO denied the patent about eight years after the April 4, 2013, filing date.

(3) Refusal to Acknowledge Pleadings, Dismissal of Interdependent Causes of Action, and Judicial Usurpation of Power by District Court

(i). The action was timely initiated at the District Court on December 9, 2020, and the First Amended Complaint (“Complaint”) (Pet.App., 52a-79a) was timely filed on April 19, 2021, asserting that the USPTO is guilty of misconduct and bad faith invading the Petitioner’s constitutionally protected patent rights, that the Petitioner has been entitled to patent grant for many years, claiming relief under the Fifth Amendment’s Takings clause due to the extraordinary delay in patent grant, and claiming relief for damages to the Petitioner’s company, livelihood, and life, because the USPTO actions:

- created bias against the patent application and the business;
- stalled venture financing and licensing deals;
- caused loss of most opportune market timing;
- delayed and compromised several of Petitioner’s critical patents because USPTO actions were copied by other patent offices;
- multiplied legal burden because many responses, appeals, and legal actions had to be filed in US and many jurisdictions due to USPTO’s bad faith actions; and
- caused enormous expense, mental anguish, and loss of livelihood to the Petitioner.

Pet.App., 53a-55a, 61a, 73a-76a.

(ii). The Complaint timely and properly asserted that the Court has jurisdiction and venue pursuant to 28 U.S.C. §§ 1331, 1338(a), 1361, and 1391(b)(1)-(2), 1391(e), and 35 U.S.C. § 145. Pet.App., 60a-61a.

(iii). The Complaint also demanded a jury trial because of “[t]he landmark nature of the case due to significant ramifications from the disclosed innovations on public health, and harm rather than help being caused to public health by piecemeal patents and obstruction of innovation in nutrition and prevention by the USPTO” making a compelling case for jury trial. Pet.App., 78a.

(iv). On May 3, 2021, the USPTO filed motions to dismiss the Takings, the damages, and declaratory and injunctive relief claims fabricating lack of subject matter jurisdiction, sovereign immunity, and failure to state a claim. The USPTO also sought to weaken the Petitioner’s position in trial by seeking to dismiss claims to invasion of constitutionally protected patent rights, and misconduct and false statements made by USPTO, fabricating failure to state a claim. Additionally, the USPTO sought to dismiss the jury trial using sovereign immunity to shield bad faith actions.

(v). On May 24, 2021, the Petitioner filed a Brief in Opposition to USPTO’s motions (Pet.App., 8a-47a), asserting that

- the District Court has original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States, under 28 U.S. Code § 1331;
- the federal district courts have original federal question jurisdiction under § 1331 when a claim arises out of a federal statute (*Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005));
- Takings claim can be brought under § 1331 where federally protected rights have been

invaded (*Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 US 59);

- Tucker Act is not a prerequisite to a Fifth Amendment Takings claim (*Knick v. Township of Scott*, 139 S. Ct. 2162, 2174 (2019));
- Just Compensation clause is self-executing (*First English Evangelical Lutheran Church v. Cnty. of Los Angeles*, 482 U.S. 304, 314);
- "sue or be sued" agencies are equally amenable to judicial process as a private enterprise under like circumstances and waivers of governmental immunity should be liberally construed (*FHA v. Burr*, at 245-246, 250);
- statutes can be paired for money damages (*United States v. Testan*, 424 U.S. 392 (1976));
- piecemeal litigation is to be avoided (*Schlagenhauf v. Holder*, 379 U. S. 104, 111 (1964));
- sovereign immunity does not shield bad faith actions of the federal government, its agencies and officials particularly when constitutional rights are violated (*Harlow v. Fitzgerald*, 457 U.S. 800 (1982) and *Saucier v. Katz*, 533 U.S. 194 (2001));
- Rule 12(b)(6) motion should be granted only if it appears beyond doubt that plaintiff can prove no set of facts in support of its claim for relief (*Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 654 (1999); and
- a court can draw reasonable inferences from pleadings for the alleged misconduct (*Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)).

(vi). On July 22, 2021, the District Court dismissed the Petitioner's interdependent causes of damages,

Takings, declaratory/injunctive relief, and claims to invasion of constitutionally protected patent rights, and misconduct and false statements made by USPTO, **refusing to acknowledge significant parts of the Complaint written in black and white including invocation of jurisdiction under §§ 1331, 1338(a), 1361 and without answering the Petitioner's Brief in Opposition, failing to answer the authorities listed above.** The District Court also granted USPTO's motion to strike jury trial without answering the Brief in Opposition. Pet.App., 1a-7a.

(vii). On August 3, 2021, and August 17, 2021, respectively, the Petitioner filed a notice and a motion to stay action with the District Court informing the court of her intention to seek review of the July 22nd Order and mandamus relief from this Court. The motion was opposed by USPTO on August 31, 2021, to which the Petitioner replied on September 9, 2021.

(viii). In the motion to stay and the reply, the Petitioner asserted that the Plaintiff seeks relief from the Supreme Court because the District Court ruling dismissing interrelated causes of action is **contrary to the Supreme Court precedents and guidance and the laws of the United States and irreparable injury will be caused to the Plaintiff in piecemeal litigation if interdependent causes of action stand dismissed**, and that the District Court did not answer apposite parts of Plaintiff's Complaint and the entirety of Plaintiff's Brief in Opposition to Defendant's Partial Motion to Dismiss and Motion to Strike, **evidencing the District Court's bias towards the Defendants making a stronger case for jury trial.**

(x). On April 12, 2022, the District Court denied the motion to stay and issued a scheduling order on July 11, 2022⁷.

REASONS FOR GRANTING THE PETITION

The issuance of a writ of mandamus to a lower court is warranted when a party establishes that “(1) ‘no other adequate means [exist] to attain the relief he desires,’ (2) the party’s ‘right to issuance of the writ is “clear and indisputable,”’ and (3) ‘the writ is appropriate under the circumstances.’”

Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (per curiam) (quoting *Cheney v. United States Dist. Court*, 542 U.S. 367, 380-381 (2004)) (brackets in original). All three criteria are plainly met by the District Court’s extraordinary disregard for the United States constitution, statutes, and this Court’s precedents. This Court should issue a writ of mandamus directly to the District Court correcting these errors. See *ibid.* (This Court may “issue the writ of mandamus directly to a federal district court.”).

As demonstrated above and below, the lower courts are condoning USPTO’s obstruction of meaningful advancement in nutritional arts, and this Court’s intervention is necessary to aid its appellate jurisdiction to hold lower courts to the law. See *Roche v. Evaporated Milk Ass’n*, 319 U.S. 21, 26 (1943) (“The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to

⁷ A copy of the scheduling order is attached as Exhibit B to the Emergency Application for a Stay filed simultaneously with this Petition.

a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.”). The petitioned “writ will be in aid of the Court’s appellate jurisdiction, [] exceptional circumstances warrant the exercise of the Court’s discretionary powers, and [] adequate relief cannot be obtained in any other form or from any other court,” as that will cause irreparable injury to the Petitioner and duplicative litigation.⁸

I. The Petitioner Has No Other Adequate Means to Attain Relief

(1) Dismissal of Interdependent Causes of Action Makes the Orders Unreviewable Upon Appeal and Difficult to Try at Court of Federal Claims

Absent mandamus relief, the District Court’s orders will be “effectively unreviewable” on appeal from final judgment because the court improperly dismissed USPTO’s bad faith actions, misconduct, violation of the Petitioner constitutionally protected patent rights, and the requested declaratory and injunctive relief under 28 U.S. Code § 1331, under the pretext of failure to state a claim. The monetary damages which are connected to the finding of bad faith actions will also be unreviewable on appeal. Findings on each previous claim counts towards the

⁸ In *Cheney*, which involved circumstances similar to this case, this Court granted the government’s certiorari petition but not extraordinary relief, noting that “this Court wa[s] not presented with an original writ of mandamus.” 542 U.S. at 391. Here the Petitioner seeks original writ of mandamus directly to the district court because its errors are clear and indisputable.

outcome of the successive claim; dismissing part of the claims damages the action overall.

Further, the dismissal of Takings claim and diverting it to the Court of Federal Claims will also cause irreparable injury to the Petitioner because the Court of Federal Claims will have to try USPTO's bad faith actions and misconduct and when the patent was rightfully due, which will be difficult because the District Court has exclusive jurisdiction over the 35 U.S.C. § 145 questions.

This Court has held that “[i]mmediately appealable “collateral orders” must [] be effectively unreviewable on appeal from a final judgment.” *Will v. Hallock*, 546 U.S. 345, 349 (2006).

Therefore, mandamus from this Court is a must, irreparable injury will be caused without it.

(2) *The Reviewing Court Will Defer to Factual Findings in the District Court Which Will be Misrepresented Due to The Court’s Dismissals and Evident Bias Towards the Defendants*

The Opinion below improperly states, “The Amended Complaint includes no facts supporting the conclusion that the USPTO violated Plaintiff’s constitutional rights,” “that the USPTO made false statements or acted with misconduct,” and “that Plaintiff is plausibly entitled to mandamus relief.” PetApp., 5a.

Contrarily, the Amended Complaint expressly states:

“The USPTO has acted in bad faith and violated Ms. Bhagat’s constitutional rights while being

fully aware of the constitutional rights, repeatedly applying numerous overlapping improper rejections and frivolous “objections” on every patent claim, such as lack of unity of invention, product of nature, abstract idea, double patenting, lack of written description supporting the claims, indefiniteness, improper dependency, lack of novelty, and obviousness while failing to even make a *prima facie* case of obviousness in several claims. The USPTO disregarded the repeated submissions of arguments and evidence fully rebutting the objections. Several improper final rejections were issued. Ms. Bhagat had to file numerous administrative petitions for supervisory review at the USPTO. Some of the objections/rejections were eventually reversed—confirming that they were frivolous—but after multiple repeat petitions were filed for higher and higher level of review at the USPTO at great cost and loss of time.

For example, the USPTO tried to force 35 U.S.C. § 101 rejection over multiple Office actions, even though the Plaintiff expressly disclaimed products of nature in the claims reciting, “wherein the product produced is not a specific variety of a vegetable, a fruit, a grain, a legume, a nut, or a seed.” But the Examiner kept applying lack of literal basis in the specification under § 112 1st paragraph, refusing to read responses where the support was cited and its was asserted that law does not require literal support. The rejections were reversed after multiple petitions but after wasting two years in prosecution and a whole lot of expense. Same process was repeated with other

rejections. Eventually, the '847 application was transferred to pro se exam unit, where the examiner forced other §§ 112 and 103 rejections refusing to respond to the arguments and evidence and even refusing to enter expert testimony into the record for an excuse to maintain § 103 rejections and so that the testimony is not available for appeal review

The USPTO's bad faith continued in appeal review at PTAB, such that 99% of arguments and 100% of the evidence (scientific papers evidencing poorly understood factors) was disregarded in the appeal review and a decision contrary to PTAB's own precedential opinions was issued, which is misconduct. Ms. Bhagat submitted several petitions for review by the Chief Administrative Patent Judge due to misconduct by the panel in appeal review requesting a new or expanded panel, which were either dismissed without proper review or not answered, rather the Chief Judge also made false statements in his decision contradicting the record [footnote 2]. This demonstrates bad faith and disingenuousness in examination and appeal review, despite being aware of Plaintiff's constitutional rights [footnote 3].

Footnote 2:

Petition Decision from Chief Judge mailed on August 17, 2020, footnote 1, alleged that on October 25, 2018, Applicant filed a petition requesting supervisory review of the final Office action of August 13, 2018 and that the Technology Center Director considered and dismissed the petition in a decision mailed February 13, 2019. However, the statement is false. Neither did the

Examiner meaningfully address the subject rejections, nor were the rejections the subject of the petitions. The petitions were in reality directed to improper restriction of Claim 112 and the Examiner's improper refusal to enter the Das and Erickson Declarations into the record. This falsity was called to attention in Applicant's August 31, 2020 petition to the Chief Judge, available in electronic file at USPTO.

Footnote 3:

<https://www.uspto.gov/web/offices/pac/mpep/mpep-0020-introduction.html>"

Pet.App., 53a-55a. Also see Pet.App., 70a-76a.

Thus, the Opinion below misrepresents that Petitioner "provides no factual support for the allegation that the USPTO made false statements or acted with misconduct." Pet.App., 5a.

These arguments were presented to the District Court in the Brief in Opposition, but the court failed to answer them. For example, it was asserted that Fed. R. Civ. P. 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Pet.App., 37a-41a.

Refusal to acknowledge pleadings written in black and white is portending of prejudiced proceedings and fact findings against the Petitioner by the District Court.

The dismissal of USPTO's bad faith actions by the District Court will also limit discovery in the action at the court affecting the reviewability of its orders. For example, in the Joint Proposed Discovery Plan submitted on July 27, 2022, the USPTO objected to

discovery of “correspondences concerning case strategy, edits to draft court filings, analysis of case risk...”, which is improper given USPTO’s bad faith examination. For example, it is necessary to know why the USPTO was strategizing to obstruct such an important innovation at the expense of public health and the Plaintiff’s business and life?

Furthermore, the reviewing court may defer to factual findings, however flawed, of the District Court, particularly in view of the Government’s bias against nutritional innovations as asserted above, like the Petitioner’s experience in case of USPA ‘034 where the Federal Circuit simply rubberstamped USPTO’s actions.

Therefore, mandamus from this Court is a must, irreparable injury will be caused without it.

(3) *Piecemeal Litigation Would Multiply the Petitioner’s Legal Burden in US and Abroad Causing Further Loss of Patent Rights and Obstruct Settling New and Important Issues*

The interests of judicial economy are best served if the interdependent causes of action are adjudicated at the District Court, which is the *only court* that has jurisdictions for *all* causes of action under 28 U.S.C. §§ 1331, 1338(a), 1361, and 35 U.S.C. § 145, “so as to avoid piecemeal litigation and to settle new and important problems” (*Schlagenhauf v. Holder* at 111, 128). Dismissal of interrelated causes of action will increase Petitioner’s and public’s litigation burden in appeals and at the Court of Federal Claims (including duplicative discovery) and *obstruct settlement of new and important issues of prejudicial examination of*

nutritional innovations at USPTO at great cost to public health and the national economy.

For example, the subject Complaint asserts,

“The USPTO has held the scope of the inventions against the inventor, at great cost to public health and the nation. USPTO prefers to issue extremely narrow patents (apparently to increase its revenue and protect big businesses) particularly in nutrition, which cause misinformation and disinformation in the art as each party seeks to hype its patent protected products and methods, leading to chaos in the nutrition art. For example, USPTO has issued about 135,000 patents directed to various narrow compositions and methods comprising fatty acids, i.e., roughly 2.7 million years of monopolies (@ 20 years/patent) instead of granting a proper 20-year patent as claimed to eradicate the problem. USPTO has tried to force Ms. Bhagat to accept an extremely narrow patent which would have compromised the innovations. In other words, USPTO is making public ill to boost its revenues.” Pet.App., 58a.

The Complaint asserts exceptional importance of the innovations at issue for public health (Pet.App., 57a-59a, 64a-65a) and that the proclivity of the USPTO against innovation in nutrition has been causing harm to the public health (Pet.App., 58a, 68a), and bad faith actions of the USPTO (Pet.App., 53a-55a, 70a-73a) are making the patent system harmful to public rather than helpful (Pet.App., 74a), necessitating a jury trial (by representatives of the public). The assertions are neither too broad nor perceived. For example, Pet.App., 68a ¶46 asserts that the USPTO tried to restrict the Petitioner’s

claims to where all the ingredients would have to be mixed in the same container potentially leading to hazardous interactions, greatly compromising the innovations and public health.

Thus, bad faith examination of nutritional patents by USPTO compromising public health is a new and important problem to be settled, yet the District Court has improperly dismissed the cause of action.

The piecemeal proceedings would also multiply the Petitioner's legal burden in multiple legal actions abroad. The USPTO's bad faith actions caused extraordinary delay in patent allowance since the 2013 filing, resulting in loss of the most opportune market timing, bias against the patent applications and the business, and copying of the USPTO actions by other patent offices compromising foreign patent cases, and stalling of venture financing and licensing deals. PetApp., 46a, 55a-56a, 76a. This has already multiplied the Petitioner's legal burden to scores of appeals and dozens of legal actions, which will further snowball with further abuse of the US case. Not only would the legal burden multiply, but the patent terms will also be lost further in many jurisdictions where there is no patent term adjustment.

These examples of irreparable injury are continuing with each passing day, monetary compensation cannot cure or put these conditions back as they were.

Further, the opportunity to implement these exceptional innovations will be permanently lost. Market forces are unable to solve this complex problem without significant patent because of adverse economics and misinformation and disinformation in

the art, and patentability is lost to future applicants because the subject matter is genuinely anticipated/obvious after the subject disclosure.

Speedy resolve to prevent further irreparable injury is why the Petitioner seeks relief directly from this Court, because too much time will be wasted, and greater irreparable injury will be caused in pursuing interim reviews at appeals courts.

Thus, if the District Court's order to dismiss causes of action is not immediately vacated and if the orders dismissing the causes of action are allowed to take effect, there will be no going back, and irreparable harm will be caused to the Petitioner, the innovation, and public health.

These circumstances “remove this case from the category of ordinary [] orders where interlocutory appellate review is unavailable,” *Cheney* at 381, and they make it a classic case in which mandamus relief is warranted.

II. The District Court Clearly and Indisputably Erred in Dismissing Well-Paired Claims to Damages, Takings Claim, Mandamus Relief, and in Striking the Jury Trial Demand

(1) The District Court Clearly and Indisputably Erred in Dismissing Monetary Damages Claims for Alleged Sovereign Immunity and Lack of Jurisdiction

The Opinion below improperly states, “Congress has not waived its sovereign immunity for money damages in actions brought pursuant to 35 U.S.C. § 145. Any claims for money damages brought under

this statute are dismissed for lack of subject matter jurisdiction" (PetApp., 2a), because the Petitioner invoked jurisdiction under well-paired statutes 28 USC §§ 1331, 1338(a), and 35 USC § 145. Pet.App., 60a ¶18. Statutes can be paired for money damages as per this Court precedent. *United States v. Testan* at 398.

Further, in *FHA v. Burr*, this Court held, "when Congress establishes such an agency, authorizes it to engage in commercial and business transactions with the public, and permits it to 'sue and be sued,' it cannot be lightly assumed that restrictions on that authority are to be implied," "when Congress launched a governmental agency into the commercial world and endowed it with authority to "sue or be sued," that agency is not less amenable to judicial process than a private enterprise under like circumstances would be," and "Waivers by Congress of governmental immunity from suit in the case of such federal instrumentalities should be construed liberally." *Id.* at 245.

Furthermore, in *FDIC v. Meyer*, 510 U.S. 471, 475 (1994) this Court upheld its ruling in *FHA v. Burr* stating, "Because the claimant in each of these cases was seeking to hold the agency liable just like "any other business," [Federal Housing Administration, Franchise Tax Board, and United States Postal Service], it was only natural for the Court to look to the liability of private businesses for guidance. It stood to reason that the agency could not escape the liability a private enterprise would face in similar circumstances." *Id.* at 482. Further, even in *Meyer* the Court ruled, "we hold that FSLIC's sue-and-be-sued clause waives the agency's sovereign immunity." *Id.*

at 483. Thus, *Meyer* also supports the Petitioner's position that agency cannot escape the liability a private enterprise would face in similar circumstances, and "sue-or-be-sued" structure waives the agency's sovereign immunity.

Even if § 145 does not explicitly provide for money damages, it does not bar it, unlike the APA, which expressly bars it stating, "relief other than money damages." 5 U.S.C. § 702. Thus, Congress' intent in § 145 leaves the possibility of money damages, unlike in the APA. § 145 can be paired with other statutes for money damages, such as § 1338(a), which states, "The district courts shall have original jurisdiction of *any* civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks" (emphasis added), and § 1331 as in *Grable* doctrine, when a claim arises out of a federal statute (§ 145) that has not specifically granted a private right to a cause of action.

Furthermore, sovereign immunity does not shield bad faith actions of the Federal Government and its agencies and officials from claims for money damages. In *Harlow v. Fitzgerald* this Court held that executive officials in general are entitled to only qualified or good faith immunity. The recognition of a qualified immunity defense for high executives reflects an attempt to balance competing values: not only the importance of a damages remedy to protect the rights of citizens, but also the need to protect officials who are required to exercise discretion and the related public interest in encouraging the vigorous exercise of official authority. In *Saucier v. Katz* this Court held that for qualified immunity: First, a court must look at whether the facts indicate that a constitutional

right has been violated; Second, a court must then look at whether that right was clearly established at the time of the alleged conduct. Under the *Saucier* test, qualified immunity applies unless the official's conduct violated such a right.

In the present action constitutional patent rights have been clearly violated, which right was clearly established at the time of the very filing of the USPA '847, and the USPTO knew that constitutional patent rights are being violated⁹ from their bad faith in examination and appeal review. Pet.App., 53a-55a.

Accordingly, the District Court clearly and indisputably erred in dismissing the monetary damages claim because the court has jurisdiction at least under well-paired statutes, 28 U.S.C. §§ 1331, 1338(a), and 35 U.S.C. § 145, and USPTO is a “sue and be sued agency”, which waives the agency's sovereign immunity and sovereign immunity does not shield bad faith actions of the government.

(2) *The District Court Clearly and Indisputably Erred in Dismissing the Fifth Amendment Takings Claim for Alleged Lack of Jurisdiction*

The Opinion below improperly states, “the Court of Federal Claims has exclusive jurisdiction over this claim. Plaintiff's Fifth Amendment takings claim is dismissed for lack of subject matter jurisdiction” (Pet.App., 3a), because the Petitioner invoked 28 USC § 1331, not the Tucker Act, § 1491. Pet.App., 60a-61a ¶¶ 18, 20.

⁹ <https://www.uspto.gov/web/offices/pac/mpep/mpep-0020-introduction.html>

This Court emphatically cleared the confusion in the law in June 2019. Overturning a prior holding this Court held, “But the Court was simply confused. A claim for just compensation brought under the Tucker Act is not a prerequisite to a Fifth Amendment takings claim—it is a Fifth Amendment takings claim. A party who loses a Tucker Act suit has nowhere else to go to seek compensation for an alleged taking,” and opined that parties could pursue takings claims in federal courts. *Knick v. Township of Scott* at 2174. The Solicitor General also argued in the litigation as amicus curiae advising this Court that “inverse condemnation claims “aris[e] under” federal law and can be brought in federal court under 28 U.S.C. § 1331 through the *Grable* doctrine. Brief for United States as *Amicus Curiae* 22–24; see *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005).” *Id.* at 2174 n.5.

This Court’s holding in *Knick v. Township of Scott* that a claim for just compensation brought under Fifth Amendment takings claim is independent of the Tucker Act overturns *E. Enters. v. Apfel*, 524 U.S. 498, 520 (1998) cited in the Opinion below. Pet.App., 3a.

Further, this Court held in *Grable* that the federal district courts have original federal question jurisdiction under 28 U.S.C. § 1331 when a claim arises out of a federal statute (federal tax laws in *Grable*) that has not specifically granted a private right to a cause of action. Section 1331 recites, “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Accordingly, this claim is “arising under” the federal patent laws, Title 35 U.S.C. and the Takings Clause of the Fifth

Amendment of the Constitution. Analogous to *Grable*, in the present action the constitutional takings claim arises out of inverse condemnation of the Plaintiff's patent rights by the federal government by abuse of federal patent laws. For all the foregoing reasons, the District Court has original federal question jurisdiction under § 1331, and the Fifth Amendment claim can be and is related to 35 U.S.C. § 145 cause of action.

The Tucker Act is not needed to waive sovereign immunity for takings claim; that waiver is self-executed by the Fifth Amendment itself. In fact, this Court has repeatedly emphasized the principle that the Just Compensation Clause is self-executing. E.g., *First English Evangelical Lutheran Church v. Cnty. of Los Angeles*, 482 U.S. 304, 314 (1987); *San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621, 654 (1981) (Brennan, J., dissenting); *United States v. Clarke*, 445 U.S. 253, 257 (1980); *Jacobs v. United States*, 290 U.S. 13, 15 (1933).

Furthermore, in *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, this Court held, a takings claim can be brought under § 1331 federal question jurisdiction "where federally protected rights have been invaded...courts will be alert to adjust their remedies so as to grant the necessary relief,' *Bell v. Hood*, supra, at 684, we conclude that appellees' allegations are sufficient to sustain jurisdiction under § 1331 (a)." *Id.* at 71.

Thus, the District Court has jurisdiction over takings claims under 28 U.S.C. § 1331; and a waiver of sovereign immunity for taking claims is not only unnecessary, but duplicitous.

In the subject action, judicial economy and efficiency is in adjudicating both the claims at the District Court as the claims are interdependent—First Claim for Relief “entitled to issuance of the patent for several years” (Pet.App., 73a-75a) is tied to the Second Claim for Relief “entitled to damages due to bad faith actions of the USPTO” (Pet.App., 75a-76a) and the District Court holds *exclusive* jurisdiction over the First Claim for Relief under 35 U.S.C. § 145. Proceedings at the District Court to establishing USPTO’s takings of substantial property rights from the Plaintiff through abuse of process and bad faith actions in examination of the ‘847 application are the first step, one outcome of which will be the finding that the patent should have been issued and *when*. Thereafter, the Second Claim for Relief “damages due to bad faith actions” will be ripe for adjudication. Accordingly, it is necessary and efficient for takings claim also to be adjudicated at the District Court, and § 1331 provides the requisite jurisdiction for takings claims to the District Court.

Thus, the District Court has jurisdiction over takings claims pursuant to 28 U.S.C. § 1331 and 35 U.S.C. § 145, and the District Court clearly and indisputably erred in dismissing the claim.

(3) *The District Court Clearly and Indisputably Erred in Dismissing USPTO’s Bad Faith Actions Violating the Petitioner’s Constitutional Patent Rights and Mandamus Relief for Alleged Failure to State a Claim*

As asserted above, the Opinion below improperly states, “The Amended Complaint includes no facts supporting the conclusion that the USPTO violated

Plaintiff's constitutional rights," "that the USPTO made false statements or acted with misconduct," and "that Plaintiff is plausibly entitled to mandamus relief." Pet.App., 5a.

Express citations to the contrary from the Amended Complaint are provided above in the section titled "The Petitioner Has No Other Adequate Means to Attain Relief" part (2). Also see the Complaint at Pet.App., 53a-55a, 74a-76a, ¶¶ 2-3, 55, 59, 60, and 62.

It is clear from ¶¶ 2-3 of the Complaint that the Petitioner asserts that right to patents is grounded in the US Constitution, which was violated by bad faith actions of the USPTO. The District Court refused to acknowledge the statements on two full pages of the Complaint, refusing to acknowledge the immediate context, let alone the context of the whole Complaint.

This Court has previously instructed lower courts to construe pro se pleadings liberally; "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," *Estelle v. Gamble*, 429 U. S. 97, 106 (1976) (internal quotation marks omitted); and that a court can draw reasonable inferences from pleadings that defendant is liable for the misconduct alleged, *Ashcroft v. Iqbal* at 1949.

The District Court is in violation of *Estelle v. Gamble* and *Ashcroft v. Iqbal*.

The Complaint adequately meets the requirement of Fed. R. Civ. P. 8(a)(2) "a short and plain statement of the claim showing that the pleader is entitled to relief," in asserting, "the Court should order the Director to issue one [patent] and grant additional declaratory, injunctive, and monetary relief because of

the USPTO’s bad faith actions,” Pet.App., 59a ¶13, and § 1361 jurisdiction, Pet.App., 60a ¶18. Further, Fed. R. Civ. P. 8 allows the court to consider plausible inferences arising from totality of the statements made in the complaint.

Therefore, the Complaint does include facts supporting the conclusion that the USPTO violated Plaintiff’s constitutional rights, that the USPTO made false statements, and that Plaintiff is entitled to mandamus relief.

The Petitioner appropriately invoked 28 U.S.C. § 1361 which provides, “The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”

The Opinion below misapplies *Heckler v. Ringer*, 466 U.S. 603, 616 (1984), where the correct instruction is, “28 U.S.C. § 1361, is intended to provide a remedy only if the plaintiff has exhausted all other avenues of relief, and only if the defendant owes him a nondiscretionary duty.” Accordingly, the Petitioner has exhausted all other avenues of relief at USPTO and the action at the District Court is the only avenue available to pursue the remedies against the USPTO.

Subsequent to adjudication of all of the Petitioner’s claims, the District Court would be in a position to order the Director of USPTO to issue the patent and grant additional declaratory, injunctive, and monetary relief because of the USPTO’s bad faith actions to fulfill nondiscretionary duty to good faith examination of patent application.

A writ of mandamus is an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion. *Cheney v. United States Dist. Court.*

Therefore, the Opinion below clearly and indisputably erred in dismissing the Petitioner's claim to mandamus relief.

(4) *The District Court Clearly and Indisputably Erred in Striking Plaintiff's Right to Jury Trial*

"I consider [trial by jury] as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." - Thomas Jefferson.

Accordingly, the right by jury trial is provided in the U.S. Constitution, Seventh Amendment. If the test is applied correctly, a jury is not optional but mandatory. That is, the constitutional language puts forth not a suggestion but a requirement, and any fair examination of the history reveals that the substitution of government agencies for juries is flatly unconstitutional.

Further, there is no bar in 28 U.S.C. §§ 1331, 1338(a) and 35 U.S.C. § 145 for the jury trial. Furthermore, the USPTO is a "sue and be sued" agency that should be held to the same standards as a private corporation, as per this Court precedents. *FHA v. Burr* at 245-246, 250 and *FDIC v. Meyer* at 482-483. Therefore, the Petitioner has a right to jury trial as it would against a private enterprise.

Furthermore, this Court has held in *Harlow v.*

Fitzgerald, 457 U.S. 800 (1982), that executive officials in general are usually entitled to only qualified or good faith immunity, which is a more appropriate balance between the need of government officials to exercise their discretion and the importance of protecting individual rights. Additionally, in *Saucier v. Katz*, this Court held that qualified immunity does not apply when constitutional right clearly established at the time of the alleged conduct is violated.

Same principle applies for overcoming alleged federal immunity from jury trial.

Here, the USPTO including the Examiners and the PTAB were fully aware that they were violating constitutional patent rights of the Plaintiff under Article 1 Section 8 Clause 8—the very basis for the USPTO's existence.

The District Court has demonstrated bias towards the Defendants by disregarding the constitution, statutes, a large body of case law, and facts expressly stated in the Complaint.

Therefore, jury trial is in the public interest to curb the USPTO abuse of discretion, which has been impeding advancement in nutritional arts critical for public health, and to curb the District Court's bias towards the USPTO. Therefore, the Plaintiff is right in demanding trial by jury.

“The landmark nature of the case due to significant ramifications from the disclosed innovations on public health, and harm rather than help being caused to public health by piecemeal patents and obstruction of innovation in nutrition and prevention by the USPTO makes

a compelling case for jury trial in this case.”
Pet.App. 78a.

III. Exceptional Circumstances Warrant Mandamus Relief

- (1) *The Opinion Below Is an Extraordinary
Judicial Usurpation of Power Violating the
Constitution, Statutes, and This Court’s
Precedents; Review Is Simple Question of Law*

Review is a simple question of law requiring minimal judicial resources.

Within minutes of review this court can ascertain that in dismissing the causes of action, the District Court violated at least, US Constitution V and VII amendments, 28 U.S. Code §§ 1331, and 1338(a), and this Court’s precedents including *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, *Knick v. Township of Scott*, *First English Evangelical Lutheran Church v. Cnty. of Los Angeles*, *United States v. Testan*, *Schlagenhauf v. Holder*, *Harlow v. Fitzgerald*, *Saucier v. Katz*, *Davis v. Monroe County Bd. of Educ*, and *Ashcroft v. Iqbal*.

Beyond these simple realizations that take minutes to confirm, no more is required for this Court than to apply its own precedents listed above.

Thereafter, this Court can grant mandamus under the Court’s GVR (grant, vacate, remand) practice.

(2) *Granting Mandamus is Important to Correct USPTO's Obstruction of Advancement in Nutrition Arts with Long-term Worldwide Public Health and Economic Benefits*

As asserted above, dismissal of interrelated causes of action will obstruct settlement of new and important issues of prejudicial examination of nutritional innovations at USPTO at great cost to public health and the national economy.

USPA '847 is directed to new, specifically tailored innovations to nutrition pertaining to poorly understood factors, mass confusion, and great potential to enhance public health. Pet.App., 62a-65a.

Yet,

“The USPTO has held the scope of the inventions against the inventor, at great cost to public health and the nation. USPTO prefers to issue extremely narrow patents (apparently to increase its revenue and protect big businesses) particularly in nutrition, which cause misinformation and disinformation in the art as each party seeks to hype its patent protected products and methods, leading to chaos in the nutrition art. For example, USPTO has issued about 135,000 patents directed to various narrow compositions and methods comprising fatty acids, i.e., roughly 2.7 million years of monopolies (@ 20 years/patent) instead of granting a proper 20-year patent as claimed to eradicate the problem. USPTO has tried to force Ms. Bhagat to accept an extremely narrow patent which would have compromised the innovations. In other words, USPTO is making public ill to boost its revenues.” Pet.App., 58a.

Further, these improper actions of the USPTO have been copied by several other jurisdictions. For example, the absurdity of refusing to acknowledge pleadings and arguments was started by the USPTO and copied by other jurisdictions and by the District Court, e.g., in denying the existence of facts directed to misconduct and false statements written in black and white in the Complaint (discussed *supra*). Thus, US is leading worldwide obstruction of innovation in nutrition arts.

The Petitioner intends to undertake a related original action at this Court under Article III of the US Constitution, 28 U.S. Code § 1251, and Supreme Court, Rule 17 as to why the institutions of the United States and foreign states are obstructing advancement in nutrition arts each contrary to their own laws, while the public and national economies suffer from chronic and infectious diseases.

However, before United States can advise others, the United States must correct its own errors.

Therefore, the mandamus should be granted to serve justice, to inculcate more responsible examinations at USPTO, to defend the Constitution of the United States, and to protect the integrity of the patents system and prevent it from becoming a hazard to public.

Otherwise, the patent system is not only a burden on the public in the near term but bears momentous long term detrimental consequences for humanity because it is obstructing advancement in nutrition and public health and is steering it on a dangerous path, which makes outcomes from catastrophes like COVID-19 worse than they otherwise would be

causing loss of millions of lives and trillions of dollars in pandemics.

Innovation should be liberally encouraged in nutrition science as nutrition addresses a wide variety of preventable chronic diseases costing the country hundreds of billions of dollars every year. Accordingly, nutrition science promises potential benefits for individual and public well-being and national economics.

Therefore, the exceptional circumstances warrant the mandamus.

(3) *Granting Mandamus Is Appropriate According to Supreme Court Precedent*

Although the writ of mandamus is extraordinary relief, this Court has explained that it is appropriately used “to confine an inferior court to a lawful exercise of its prescribed jurisdiction,” *Roche v. Evaporated Milk Ass’n*, at 26; and to correct “particularly injurious or novel privilege ruling[s],” *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 110 (2009). The district court’s stark departure from “fundamental principles of judicial review of agency action,” *Florida Power & Light*, 470 U.S. 729, 743 (1985); satisfies justifications for mandamus. The denial of relief here would cause “immediate and irreparable” harm to the Petitioner and the public while imposing minimal burdens on respondents.

It is not an overstatement that this a classic case for a writ of mandamus.

There is judicial precedent and statutory support compelling this Court to grant mandamus. The case meets all the requirements for mandamus set out in

Cheney “judicial usurpation of power,” “clear abuse of discretion [bad faith],” and “clear and indisputable” right to relief. *Cheney* 381.

Further, the Petitioner has “no other adequate means” to “attain the relief” Petitioner seeks given the USPTO and the courts refuse to abide by the law.

Thus, the statutory framework established by Congress demonstrates mandamus is appropriate under the circumstances, and all factors outlined in *Cheney* are satisfied.

(4) *Granting Mandamus Will Have a Positive Effect on the Courts and USPTO*

Granting mandamus on the very clear and simple issues before this Court will provide an indispensable, reminder to lower courts and USPTO that they cannot violate the US Constitution, Statutes, and this Court’s precedents. Presently, the USPTO and the courts are in complete disarray with respect to patent grants.

Rather than following the law, they follow whimsical approach that broader patents are not to be granted, unmindful of the fact that some sensible broad patents can eradicate problems in nutrition and set us on a course to healthier future. Narrow patents in nutrition create chaos and harm, and more often than not are an antithesis of a “quality patent.”

The cure to this chaos is granting mandamus, which will remind them that the courts and USPTO are limited to interpreting the plain language of the statutes and following this Court’s precedents.

CONCLUSION

The Petitioner respectfully requests this Court issue a writ of mandamus ordering the District Court to set aside the opinion and order issued on July 22, 2021 and reinstate all causes of action presented in the Amended Complaint, ordering that the District Court has jurisdiction for each of the claims and that the claims have been adequately stated, and ordering the District Court to allow the trial to proceed by jury.

August 23, 2022, Respectfully submitted,

/s/ Urvashi Bhagat
Urvashi Bhagat
Pro Se Petitioner