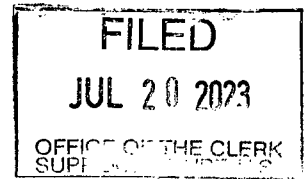


ORIGINAL

No. 23-299



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IN THE  
**Supreme Court of the  
United States**

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ATM SHAFIQUK KHALID  
*Petitioner,*  
v.  
CITRIX SYSTEMS, INC.  
*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the  
Ninth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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July 20, 2023

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## QUESTIONS PRESENTED

In the colonial era, all inventions were safely guarded trade secrets by employers depriving inventors of their rights to exclude others and ordinary citizens of knowledge. The corporations owning the printing press used to transfer all authorship rights to them. The Founding Fathers understood the widespread abuse of Copyright and Inventorship rights and solved them by adding the Patent and Copyright clause, *Art. I Sec. 8. Cl. 8, US Constitution*, authorizing Congress to protect authors and inventors by securing their respective rights for limited times. Founders' good intent and purpose have been destroyed in the last 70 years, and now 93% of patents are secured to corporations instead of inventors; *Art. I Sec. 8. Cl. 8, US Constitution* didn't authorize Congress to build such a patent system. Inventors are less protected now than they were in the colonial era. The patent system evolved in a way as if the Founders added *Art. I Sec. 8. Cl. 8, US Constitution* to penalize Inventors and to reward corporations. "Letters patent" is just the dress or cover for "the exclusive Right", *Art. I Sec. 8. Cl. 8, US Constitution* making it an offensive privilege to exclude others in sharp contrast to the common law defensive "exclusive license" right. In the last 70 years that safety net has been reversed to secure almost all inventions to corporations. This review is to protect the US Constitution from the erosion of the bold underlined text below that protected inventors for 160 years by securing inventions to inventors:

"**by securing** for limited Times to Authors and **Inventors** the exclusive Right to **their** respective Writings and Discoveries;". *Art. I*

*Sec. 8. Cl. 8, US Constitution.*[bold underline to emphasis]

The questions presented are:

1. Whether "the exclusive Right" in inventions as written in the Constitution is a fundamental Right or Constitutional privilege separate from common law "exclusive right" and *U.S. Const, Art I, Sec. 8, Cl. 8* sufficiently empowered the US Congress, irrespective of the *Fourteenth Amendments*, to enact *42 U.S. Code § 1983* to reach a private party without state action when the party burdens "the exclusive Right" and *42 U.S. Code § 1985* without class animus when the private party conspires to burden "the exclusive Right" by claiming false ownership of inventor's Patent.
2. Whether "the exclusive Right" in inventions as written in the Constitution is fundamental Right or Constitutional privilege separate from common law "exclusive right" and *U.S. Const, Art I, Sec. 8, Cl. 8* sufficiently empowered the US congress, irrespective of the commerce clause, to enact *15 U.S. Code § 1* to reach a private party for claiming false ownership of inventor's Patent burdening "the exclusive Right" causing restraint to use the Patent and to enact *15 U.S. Code § 2* for taking substantial steps to take over the monopoly power of inventors patent.
3. Whether an Agreement between an inventor and an employer corporation is actionable under the Sherman Act Section 1 or *15 U.S.*

*Code § 1* even when such Agreement is labeled as an Employee Agreement. Alternately if this Court in *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 769 (1984), foreclosed inventors' Constitutional Right to be the Constitutional anchor for "the exclusive Right" in Invention to be secured on.

4. Whether damage to patent term is controlled by State common law tort statute of limitation or subject to state res-judicata, when Congress conferred exclusive jurisdiction on the patent matter to Article III court, *28 U.S. Code § 1338(a)*, and when Congress set the 6-year statute of limitation, *35 U.S. Code § 286*, for damage to Patent, when such damage claim is dressed under *42 U.S. Code §§ 1983 & 1985*.

## **PARTIES**

The petitioner ATM Shafiqul Khalid, acting pro se is a resident of Redmond, Washington.

The respondent Citrix Systems, Inc., is a Florida corporation with its principal office of business in Fort Lauderdale, Florida.

## **RELATED CASES**

Khalid v. Citrix Systems, Inc., Case No. C20-711-RAJ, Dist. Court, WD Washington 2020. The order dismissing the Complaint was entered on April 6, 2020.

Khalid v. Citrix Systems, Inc., No. 21-35376. Court of Appeals, 9th Circuit 2023. Denial of motion for reconsideration and en banc review entered on April 21, 2023.

Khalid v. Citrix case has overlapping issues with the following case. And they need to be reviewed together. The Petitioner is filing a petition for certiorari at the same time. They can be consolidated.

Khalid v. Microsoft Corp., Case No. C19-130-RSM, Dist. Court, WD Washington 2020. The order dismissing the Complaint was entered on April 6, 2020.

Khalid v. Microsoft Corporation, No. 20-35921. Court of Appeals, 9th Circuit 2023. Denial of motion for reconsideration and en banc review entered on April 21, 2023.

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## PETITION FOR A WRIT OF CERTIORARI

ATM Shafiqul Khalid, the Petitioner in this action, acting pro se, respectfully requests that a writ of certiorari issued to review the opinion of the Court of Appeals of the Ninth Circuit entered in this matter on March 14, 2023, rehearing denied on April 21, 2023.

## INTRODUCTION

Around 1971, when the US was fighting the Vietnam War and sent its 7<sup>th</sup> fleet into the Indian Ocean to stop another conflict in the Indian subcontinent, a young boy was growing up in a rural setting in southeast Asia without electricity, TV, running water, and any modern amenities in a war torn country Bangladesh. The only educated people the boy then knew were his dad and teachers from his school who barely did middle or high school. His concept of TV was that smaller size humans existed who got inside the TV box to make a show. However, the boy had a sky-high dream to see the world. He scored top in his school district and got into the National Computer Science program, the only program in 1988 available in his country and reserved only for the top 30 students in the nation. It was so competitive that no one from his school district qualified for that program before the boy. Two years into the program, the boy won the national championship title in a Computer Programming contest. He was highly creative and could solve problems faster than many Ph.D. students. Because of his creative problem-solving skills, a few professors engaged him in early research.

During his bachelor's years, the boy sent his research work to the USA. In 1995, in collaboration with the Wright-Patterson Airforce Base, the National Aerospace and Electronics Conference organizers invited the boy to come to Dayton, Ohio, USA to present his research. The boy then just finished his final exams. He came to the USA with \$300 in his pockets provided by his university to attend the conference and return after a few days. A professor from Wright State University, Dayton, Ohio, was in the room where the boy was presenting his research. The professor was impressed to see the only undergraduate student in the conference presenting research. The professor offered the boy to work with him and with a fellowship reserved for advanced Ph.D. students. The professor didn't want to lose the boy and asked him to start immediately. The school waived standard test scores and the lengthy admission process that could have taken a year from a foreign country. After accepting the offer, the boy began his graduate study immediately.

One day in 1996, the boy needed specific software. Having no car, he had to wait two days for his friend to come by and buy it for him from a local store. That problem forced the boy to work on a computer subscription model along with a prototype that a rudimentary form of Microsoft Office 365, or Apple App Store-like concept requiring no physical store that no company then conceived as a possibility.

In 1998, the boy finished his MS degree and was about to start his Ph.D. research. Instead, he decided to join Microsoft to understand the industry a bit better. The boy was told that he was the second student from his school to pass Microsoft high

recruitment bar in years. After joining Microsoft, he solved many technical problems Microsoft was facing. Microsoft received Nine (9) patents on those works.

While employed by Microsoft, the boy continued his work on his subscription prototype that he started in school. In 2001, he filed a provisional patent application for his work. He asked for help from Microsoft to develop his idea, and Microsoft refused. In 2006, the boy left Microsoft and joined Citrix Systems, Inc. In 2010, he filed a patent application and eventually received a patent titled as mini-cloud patent for residential users. Microsoft started realizing the Invention's value and started incorporating it in 2014 into their Xbox One gaming platform. Citrix in 2012, and Microsoft in 2015, demanded the boy transfer his Invention to Citrix and Microsoft free of cost, claiming the boy didn't disclose his Invention while working for them. Employee Agreement and Email records showed the boy disclosed it in his employment agreement with Microsoft and Citrix. Microsoft also collaborated with its partner Citrix, and extended its claim through its partnership with Citrix. Microsoft and Citrix kept the boy in Court for years. In 2021 after losing its appeal in Washington state court, Citrix gave up its claim after failing to prove to the state court Jury the mini-cloud Patent the boy invented had anything to do with Citrix's business.

The boy in the story is the Petitioner in this action who wanted to exceed the achievement of Bill Gates and Steve Jobs. He did not get a fair chance to succeed, instead had been a victim and squashed by the abusive and fraudulent patent ownership practice by the corporations that the US Constitution tried to

stop by granting inventors full freedom to their inventions. The Petitioner spent his whole productive life working and enhancing an invention that Microsoft Corporation, one of the richest corporations on this planet, wanted for free.

The dispute on patent ownership with Microsoft and Citrix restricted the Petitioner's ability to invent more, destroyed 30 patents in the pipeline he had before the dispute started, and destroyed two of his start-up efforts when investors shut their door hearing claims by Microsoft and Citrix. Petitioner lost 70% of the active patent term from his Patents. The District Court and the Ninth Circuit court refused to look at the issue to afford any remedy when Article III court has exclusive jurisdiction on Patent and related matters.



## **OPINIONS BELOW**

The memorandum of the Court of Appeals for the Ninth Circuit (App. 001), which affirmed the District Court's judgment, is unpublished. The order of the District Court(App. 004) dismissed the instant mattes for failure to state a claim.

## **JURISDICTION**

The Court of Appeals for the Ninth Circuit entered Judgement on March 14, 2023, and denied the motion for rehearing on April 21, 2023. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1254(1).

## **PERTINENT STATUTORY PROVISIONS**

The following statutes and regulations are involved in this case. Due to their length, the pertinent sections of their text shall be set forth in the appendix at the corresponding page numbers. 022

### Sherman Act:

15 U.S. Code §§ 1 & 2 App. 30

### Civil Right Act:

42 U.S. Code §§ 1983.& 1985 App. 31

### Other Relevant Provisions:

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Transcription App. 34

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Patent Act of 1790	App. 64
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## STATEMENT OF THE CASE

This case arises under the Civil Right Act 42 *U.S. Code §§ 1983, 1985* and Sherman Act 15 *U.S. Code §§ 1,2* and presents an issue of public importance concerning the abusive practice of employers to claim inventions done by employees outside their employment duties. Inventors find giving up patents is easier than keeping them when the Constitution specifically authorized Congress to protect inventors by securing their inventions to inventors for limited terms.

At issue is the dismissal of action by the U.S. District Court for the Western District of Washington has two set of issues:

1. District Court applied the 3-year State tort statute of limitation to dispose of Civil Rights claims based on patent rights and applied state res judicata doctrine to dispose of 15 *U.S. Code §§ 1*.

2. The district court also relied on another case<sup>1</sup> against Microsoft where the district held that an action against a private corporation under *42 U.S. Code §§ 1983* is not actionable without state action. And private suit under *42 U.S. Code §§ 1985* is not actionable without class animus. The district court further held that an agreement between an inventor(employee) and corporations is not a restraint contract actionable under *15 U.S. Code § 1*, and an attempt to take away a patent monopoly market is not actionable for attempted monopoly under *15 U.S. Code § 2*.

Lower court holdings overlooked without any constitutional and legislative history analysis that there are other rights in the Constitution apart from the Fourteenth Amendment Rights that the US Constitution protected long before any amendments in the Constitution were introduced. The Patent Act of 1790 is one of them that allowed a private action against private parties when state action and class animus did not even exist under the 14<sup>th</sup> Amendment. Therefore, the disposition of this case will reverse the broken patent system where 93% of inventors have already lost their ownership rights in their patents, and more inventors will keep losing their rights every day until those inventors can stand against corporations for illegal patent ownership claims. We need strong patent protection by securing patents to

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<sup>1</sup> Petitioner also filed a separate petition on Microsoft in this court that can be consolidated.

inventors, not corporations, as the US Constitution by explicit text required, "by **securing** for limited Times to ... Inventors the exclusive Right to their respective... Discoveries", US Constitution Art I, Sec 8, Cl 8.

### **A. Procedural Posture**

On May 11, 2020, Petitioner ATM Shafiqul Khalid("Khalid") filed suit against Citrix in the Western District Court of Washington. In his amended complaint, Khalid alleged that Citrix violated various federal statutes by "claiming free ownership to '219 and '637 patents" Citrix destroyed effective patent terms and inventions. He asserted violations of three provisions of the Clayton Act; violations of Sections 1 and 2 of the Sherman Act; attempted violation of involuntary servitude under *18 U.S.C. § 1594(a)*; violation of RICO, *18 U.S.C. § 1962(c-d)*; conspiracy – obstruction of justice under *42 U.S.C. § 1985(1)-(3)*; violations of civil rights under *42 U.S.C. § 1983*, and others. *Id.* On August 26, 2020, Citrix filed a motion to dismiss under Federal Rules of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted. On April 14, 2021, the District Court dismissed the action.

The Petitioner timely appealed to the Ninth Circuit Court of Appeals. On March 14, 2023, Ninth Circuit Court denied the appeal, and on April 21, 2023, denied rehearing giving rise to this petition.

## **B. Relevant Factual Background**

Citrix employed Khalid as a software engineer for approximately five years, beginning on September 18, 2006. On the day of his hire, Khalid signed an employment agreement that included a patent assignment clause ("Invention Assignment Clause"). Section 7 of the agreement, contained[in parts]:

If at any time during the term of my employment by Citrix, I (either alone or with others) make, conceive, discover or reduce to practice any invention, modification, discovery, design, development, improvement, process, software program, work of authorship, documentation, formula, data, technique, know-how, secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright or similar statutes or subject to analogous protection) (hereinafter called "Developments") that (i) relate to the business of Citrix or any of the products or services being developed, **manufactured or sold by Citrix, or which may be used in relation therewith;** (ii) result, directly or indirectly, from tasks, duties and/or responsibilities assigned to me by Citrix; ..., such Developments and the benefits thereof shall be considered work made for hire and shall immediately become the sole and absolute property of Citrix and its assigns.

Khalid filed few patent applications during his Citrix employment. On October 3, 2011, Citrix terminated Khalid. On October 25, 2011, Citrix

counsel after withholding Khalid's severance pay claimed ownership of all patent applications filed by Khalid "which may be used in relation" with "products . . . sold by Citrix", as shown in bold above that later state court found unlawful in violation of RCW 49.44.140 and struck out.

### **1. The Inventions – '219 and '637 Patents**

While in graduate school, during 1996-1997, Khalid invented the idea of a subscription that would allow a user to consume software without driving to a store to buy it. Khalid continued his work for years through 2010 when the idea evolved and transformed into a mini-cloud subscription that would allow a user to consume computing resources and content on-demand. In 2001, Khalid filed a patent application for software subscriptions and filed another in 2007 to cover digital content like movie subscriptions. On November 22, 2010, Khalid filed a patent application on the mini-cloud subscription that combined all subscription elements. In 2014, the US Patent and Trademark Office issued a patent 8,782,637 ("637 patent") on the application. The mini-cloud Patent was developed to host and deliver any digital services through cheap terminals in a cost-effective way, making the cloud services affordable to an ordinary residential user by device consolidation. Microsoft Xbox One uses all components of '637 patents or mini-cloud Invention.

On February 16, 2008, Khalid filed a patent application on whitelisting-based software security. On October 9, 2012, the US patent office issued Patent 8,286,219 ("219 Patent"). The Invention protected a

computer system from malicious attacks that the widely used black-listing-based security couldn't protect.

All those years developing patents, Khalid and his team of around 20 engineers invested more than 30,000 engineering hours with an equivalent of at least \$3.5 million as a value of labor alone. Khalid had a total of 30 patentable ideas in the development stage. To date, Khalid continuously needs to add labor and foot the bill to maintain the '219 and '637 patents and patent family, a total equivalent investment to date exceeding \$7.1 million.

## **2. Prior Litigation in State and Federal Courts**

On October 2, 2015, Khalid sued Citrix in King County Superior Court "to clear patent ownership issue of '219 and '637 patent along with damage.". He alleged violations of Washington's Consumer Protection Act ("CPA"), breach of employment contract, wrongful termination in retaliation, breach of the duty of good faith and fair dealing, and tortious interference, and sought a declaratory judgment that the Invention Assignment Clause was unenforceable under RCW 49.44.140 and that Citrix had no ownership rights to the '219 or '637 patents. *Khalid v. Citrix Sys., Inc.*, 15 Wash. App. 2d 1043 at \*8.3

On May 5, 2016, Citrix attempted to remove the case to federal district court based on diversity. "On May 12, 2016, Citrix followed through its litigation threat by filing a countersuit against Khalid in Western District Washington, case no. 2:16-cv-00650,

for specific performance on its illegal contract, a declaratory relief that it owned 219 and 637 patent, an injunction so that Khalid and his start-up Xencare can't use the Patent. The federal court remanded the suit to the State court. Among Seven claims, Citrix claimed ownership of '219 and '637 patents as below:

#### DECLARATORY JUDGMENT

"Citrix is entitled to an Order that the '219 Patent and the '637 Patent are the property of Citrix", ER 306 ¶ 46

#### INJUNCTIVE RELIEF

"Citrix is entitled to a preliminary and permanent injunction to enjoin Khalid and XenCare's wrongful conduct and to order and determine that Khalid and XenCare shall comply with Citrix's property rights relative to the '219 Patent and the '637 Patent, including all relevant provisions of the Employee Agreement." ER 307 ¶ 58

#### SPECIFIC PERFORMANCE

"Citrix is entitled to an order requiring that Khalid and XenCare effectuate the assignment of the '219 Patent and the '637 Patent to Citrix."

Three weeks later, on May 27, 2016, Microsoft sent a letter to Khalid ("M&G letter"), claiming that Microsoft had rights to patents '219 and '637 based on its vendor agreement with Citrix.

On July 21, 2016, the Honorable John C. Coughenour remanded the case after concluding that removal was untimely. *Khalid v. Citrix Sys. Inc.*, No.



*C16-0650 JCC, 2016 WL 9412678, at 1 (W.D. Wash. July 21, 2016).*

After remand to state court, Khalid moved for partial summary judgment claiming, among other things, that the Invention Assignment Clause was unenforceable because it violated RCW 49.44.140 and that Citrix's actions constituted unfair or deceptive acts under RCW 19.86.020 and unlawful restraint of trade under RCW 19.86.030. *Khalid v. Citrix Sys., Inc.*, 15 Wash. App. 2d 1043 at \*8.

In 2018, the trial court granted Citrix a summary judgment motion and dismissed Khalid's claim under *RCW 19.86.030*, holding the employment agreement couldn't support actionable antitrust conspiracy under *RCW 19.86.030*.

In 2018, a jury found that Citrix had breached Khalid's employment agreement and severance agreement and awarded Khalid over \$3 million in damages. The trial court concluded that "Citrix has no ownership or other rights to or arising under US Patent No. 8,286,219 and 8,782,637," and entered a declaratory judgment in Khalid's favor with respect to patent ownership. In post-trial motions, Khalid was awarded \$2.6 million in attorney fees and costs. Citrix asserted it had no liability because Microsoft claimed the same Patent when Microsoft claimed patents through a vendor agreement with Citrix, an impossible circular argument. Citrix appealed the state court judgment including holding that Citrix had no right to Khalid's Patent.

### **3. The M&G letter — Microsoft Ownership Claim on '219 and '637 Patent Through Vendor Agreement with Citrix**

On May 27, 2016, Khalid received a letter ("M&G letter"), from Microsoft outside counsel Andrew T. Pouzeshi at Merchant & Gould. Microsoft asserted Citrix was a Microsoft vendor. Microsoft in the M&G letter, said, "Microsoft owns all of the intellectual property produced by the vendor and the vendor employees" and because Khalid was an employee of its vendor it retains rights to Khalid's Patent. In the letter, Microsoft also claimed ownership of '219 and '637 patents through its employee agreement when Khalid explicitly excluded his patents from the agreement with a patent disclosure that Microsoft concealed.

Around April 16, 2018, "Citrix claims a common interest with Microsoft based on Plaintiff's potential use of his patents adverse to both Microsoft and Citrix".

### **4. Citrix Refused to Invest in Mini-cloud Invention**

During the development of the '219 and '637 patents, Khalid offered Citrix to invest in those inventions. Citrix declined. However, after terminating Khalid, Citrix claims ownership of those patents free of cost. Before filing a state court suit, Khalid asked Citrix to license his patents for \$50,000 a piece. Citrix refused that too. And engaged in a 6-

year-long court battle that damaged Khalid's patent term.

#### **5. Related Khalid v Microsoft case on Microsoft Ownership**

In 2019, in an attempt to overcome Microsoft's wrongful claim, Khalid filed suit pro se against Microsoft, where he was employed from 2012 through 2015, alleging violations of Sections 1 and 2 of the Sherman Act; violation of 18 U.S.C. § 1962(c-d); Actual or Attempted Forced Labor 18 U.S.C. § 1589; violation of civil rights under 42 U.S.C. § 1983 and 1985; and violation of 18 U.S.C. § 1595(a), among others. Honorable Ricardo S. Martinez dismissed with prejudice Khalid's second amended complaint on April 6, 2020. *Khalid*, 2020 WL 1674123, at \*11.

## REASONS FOR GRANTING THE PETITION

In the last 25 years alone, more than Seven(7) trillion<sup>2</sup> US dollar has been stolen from Inventors and Authors, which might be higher than the combined reported theft and robbery by ordinary citizens since 1787, along with the cost of World War II and subsequent Vietnam, Iraq, and Afghanistan war. Corporations stole that amount by taking ownership and total control of 93<sup>3</sup>% of all issued patents, with 100% royalty flowing to corporations. Corporations transfer their royalty collection rights to offshore countries like Ireland and Camino Island. And not only that, but when those corporations pay taxes to offshore governments for their illegal offshore money, they claim tax credits from the US treasury. That practice equates to putting inventors, authors, and US taxpayers on the hook for paying taxes to the Irish and offshore governments. Those stolen \$7 trillion can be traced back to one of the roots of the historic income equality in the US, increased budget deficit, and a high national debt that one day can disintegrate the whole Union.

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<sup>2</sup> <https://www.bloomberg.com/graphics/2017-overseas-profits-tax/> reported \$3.1 trillion royalty money moved offshore by year 2017. That number grew in the last 6 years. Similar royalty amount was earned inside USA but corporate reports them differently. Total amount would exceed \$7 trillion.

<sup>3</sup> US individuals received 13,643 patents out of total 298,407 patents issued, which is 4.6% of total. US and foreign corporations received 278,153 patents or 93.2% of total. *2015 Patent Technology Monitoring Team Report, United States Patent and Trademark Office.*

Creativity is a gift from the Creator. The patent clause, *U.S. Const, Art I, Sec. 8, Cl. 8*, was introduced in the Constitution to protect inventors' fundamental rights in their Invention. Patents are only protected when inventors are protected to own patents. If a president signs a contract to transfer his presidency to his friend or an Article III judge signs a contract to transfer his life term to another magistrate judge, those contracts would be bizarre, invalid, and illegal. However, without transferring their Constitutional Privileges, both president and Article III judges can contractually employ secretaries and clerks to help them and fire them as wished. Similarly, inventors needed assigns or agents to enforce their constitutional privileges. That was the case for 160 years when the US issued patents only to inventors or their assigns or agents. Unfortunately, after the passage of a law around 1953 to give more convenience to inventors, those agents or assigns now have become the owners of 93% of patents stripping inventors of all rights, including their fundamental rights. Inventors can't fire or revoke them because now the Contract is more powerful, and Constitution is made subordinate to Contract.

Corporations' patent ownership practice has become so abusive that now they have become patent breeding firms and would claim all past and future patents of inventor-employees even when inventors develop patents on their own time and dime. The patent breeding firm is just a different

dressings from the slave breeding firm<sup>4</sup>, where patent privilege is more commercially valuable than slave labor.

Also, for 160 years, the Patent Act and patent practice adhered to the explicit text of *U.S. Const, Art I, Sec. 8, Cl. 8*. Things started changing when corporations started having employees sign Employment Agreements with overbroad languages claiming employees all past and future inventions. As this petition will show, Employers started claiming an employee's past Patent asserting the employee didn't disclose his past Invention even when the employee did so, and claims all future inventions that can be commercially valuable. *U.S. Const, Art I, Sec. 8, Cl. 8* didn't authorize Congress to build a patent system like that where inventors will lose their inventions based on what words were added in the Contract. Patent Act of 1790, *App. 064*, issued patents to inventors and their agents, disregarding whatever Contract they might have with others, in contrast to the Copyright Act of 1790, *App. 070*, which gave the Copyright term to exiting Copyright holders by Contract and gave another second term to authors disregarding authors prior transfer contracts. This contrast at the time when all founders were breathing on this planet shows Patents were only for inventors, and inventors would get a full term of their work no matter what

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<sup>4</sup> Children of slaves used to be slave for the masters, The Thirteenth Amendments abolished the chain and slavery altogether.

Contract existed; others could only get common law use licenses<sup>5</sup>.

Also, the current Patent system evolved in a way as if the founders added *U.S. Const, Art I, Sec. 8, Cl. 8* to penalize Inventors and reward corporations. In the colonial era, knowledge for invention "know-how" used to remain a safely guarded secret because that was the only way to exclude competitors. Employers often used to keep employees happy with extra incentives to guard their secrets. In contrast, today, an employer with abusive patent ownership practices can fire an employee and keep employee patents sufficient to stop a competitor from using those patents or collect royalties from a competitor even if the competitor hires the fired employee. The employee can't be a competitor because the employer can now claim all past and future patents from the fired employee by reinterpreting their Employee Contract without bound.

If the current judgment holds, that would further erode inventors' rights. A corporation will raise false claims on patent ownership through a contract that the Article III court would decline to hear for lack of Article III standing. The inventor will litigate the case in state court for years to win a declaratory judgment on ownership. Then, if he

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<sup>5</sup> Court need not to step into this specific question to resolve the petition. Petitioner is raising them to establish constitutional principle behind patents. However, petitioner will bring this issue for review in the future.

returns to Article III court for any civil right violation or restraint of trade violation, Article III court could again strike it applying state res judicata law and State 3-year statute of limitation. In this case, in 2011, Citrix made a false claim to the Petitioner's Patent. Citrix lost its appeal to the state court in 2021. A state court suit against Microsoft on the same issue is still ongoing in state court. A patent is issued for 20-year terms. Without a remedy in Article III court, inventors would be better off without the patent clause, *U.S. Const, Art I, Sec. 8, Cl. 8*, in the Constitution and just live with keeping the knowledge that corporations can't claim.

In the following sections, though it might sound argument on meris, the Petitioner tried to explain more context around the Patent and their constitutional history and analysis, and how the US government, Congress, and Corporations acted in concert, allowing corporations to own and control 93% of all issued patents. Those are needed to evaluate why inventors had more benefits in the colonial era than in the present era concerning Invention.

The Court should grant the petition and make corrective action the Constitution afforded this Court to uphold the Constitution. The Court should review the broken patent system that had been stolen from inventors since 1953, when the current abusive trend started.



**A. Patent privilege is a constitutional Privilege immune from the common law invasion; a Contract is an instrument subordinate to the Constitution because of the supremacy clause.**

### **1. Historical Context of Patent and Copyright Act**

In the colonial era, Common law Copyright existed to protect Copyright, and the "Copyright Act of 1710," known as the "Statute of Anne" was enacted. The statute served its intended purpose until "The Stationers' Company" of the city of London, having printing presses, emerged with monopoly power. An ordinary author couldn't buy an expensive printing press to circulate their writing. Therefore, "The Stationers' Company" stripped authors of all their rights by having them sign a contract to transfer authors' rights that the Statute of Anne was supposed to protect. Authors sometimes were obligated to sign transfer contracts even before the author wrote his manuscript. And most benefits from the manuscript went to the printing press company, not the author restricting the progress of the Arts. The founders of the Constitution knew the widespread abuse of the Statute of Anne and recognized Authors' rights as fundamental rights safeguarded by the US Constitution. In fact, the US "Copyright Act of 1790," immediately adopted after the US constitution, voided any contractual transfer after 14 years of Contract. And whatever

Contract the author signed, the author was given back additional 14 years of protection to their authorship.

In those days, knowledge for invention "know-how" remained a safely guarded secret benefiting only those who knew it. That deprived ordinary citizens of the knowledge of Invention and any subsequent improvements. That slowed the progress of science and useful arts.

The founders of this republic were aware of those problems; they often traveled to Great Britain and knew what was happening then. To solve the problem, funders, recognized Authors, and inventors had fundamental rights in their creative works, freed them from abusive common law contracts, and allowed them to share with ordinary citizens by setting a term limit and a very innovative way to solve all problems. Unfortunately, today's corporations are more abusive than "The Stationers' Company". "The Stationers' Company" used to share small royalty to authors. This petition would show Corporations share no royalty with inventors and would claim free ownership of all inventions by abusing contracts or legal processes. And 93% of all inventions along with 100% royalty, now belonged to them. This Court needs to review such unconstitutional practices.

## 2. Patent Clause Declaring Patent Privilege & Rights

The framers of the Constitution recognized inventors' rights in inventions as fundamental rights, *Federalist 43*. U.S. Const, Art I, Sec. 8, Cl. 8 authorized Congress to protect "the exclusive Right" for limited times for the inventors. The U.S. Const, Art I, Sec. 8, Cl. 8 ("Patent Clause") reads [emphasis added]:

*The Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;*

The *Patent and Copyright Clause* is the declaration of "*the exclusive Right*" privilege in Invention and Congress's power to secure "*the exclusive Right*" to inventors for "limited Times" currently set at 20 years. The clause didn't empower Congress to reduce inventors' rights to zero and convert the employer's common law contract right into a constitutional privilege.

The Constitution doesn't allow anyone to create constitutional privilege. Differentiating US president from a King Alexander Hamilton wrote:

*"The one can confer **no privileges** whatever; the other can make denizens of aliens, noblemen of commoners; can erect corporations with all the*

*rights incident to corporate bodies.",  
Federalist No. 69. App. 63.*

Had the framers wanted to protect only "the exclusive Right" in an invention, not the inventors, they could have written the Patent Clause without the limiting eight words "*by securing...to Authors and Inventors...their respective*". Without those limiting words, Congress, like a king, could create the patent privilege to "*erect corporations with all the rights incident to corporate bodies.*", *Federalist No. 69*, a scenario the framers carefully avoided. Instead, they allowed Congress only to create mechanics to secure privilege for "limited times" to whoever got it from their Creator. The Framers considered "*the exclusive Right*" privilege in Invention a fundamental right undetachable from inventors having the ability "*To promote the Progress of Science and useful Arts*". The framers added the preamble in *U.S. Const, Art I, Sec. 8, Cl. 8*, not as Congress's additional role but to delegate the role to inventors ensuring incentive and protection. Congress enacted *35 U.S. Code § 151-153*, to issue "letters patent" and created Patent right *35 U.S. Code §171* assertible against private citizens. Exclusive jurisdiction on patents remains in Article III courts, *Federalist No. 43; 28 U.S. Code § 1338(a)*.

Since the enactment of the Patent Act 230 years back, out of all issued patents in 2015, only 4.6% were issued to US inventors, and **93.2%**<sup>6</sup> were issued to US and foreign corporations. This extraordinarily

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<sup>6</sup> *2015 Patent Technology Monitoring Team Report, United States Patent and Trademark Office.*

high 93.2% allocation of patents to corporations shows Corporations are becoming Kings of the new era to *"erect corporations with all the rights[93% Patents] incident to corporate bodies."*, *Federalist No. 69*, breaking the foundations of the Constitution to protect fundamental rights and constitutional privilege.

### 3. Constitutional history, uses of the "secure" word in the context of fundamental rights, and Constitutional privilege

Declaration of Independence and the US Constitution wanted to secure some unalienable natural rights that were unsafe at the hands of royals or tyrant entities. The text reflected it.

"all men ... are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.-  
-That to **secure** these rights ...", *Declaration of Independence, July 4, 1776; App. 34*

"We the People ... and **secure** the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." *The preamble of the US Constitution;*

"The Congress shall have power... To promote the Progress of Science and useful Arts, by **securing** for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries", *US Constitution Art I, Sec 8, Cl 8.*

Referencing the patent clause, *US Constitution Art I, Sec 8, Cl 8*, James Madison in Federalist 43 wrote:

A power to "promote the progress of science and useful arts, by **securing for a limited time, to authors and inventors**, the exclusive right to their respective writings and discoveries." The utility of this power will scarcely be questioned. The copy-right of authors has been solemnly adjudged in Great Britain, to be a right at common law. The Right to useful inventions, seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals. **The states cannot separately make effectual provision for either of the cases**, and most of them have anticipated the decision of this point, by laws passed at the instance of Congress. *App. 40*

The Constitution referenced the word "secure" only in three places – the "Liberty" clause, "right against unreasonable searches," and "the exclusive Rights" in the Invention and authored content. All are fundamental rights. For patents constitution secured "for limited Times", a term open to be set by Congress, which was 14 years in 1790, and now it is 20 years.

#### **4. The Patent Act Ensures Incentives for Inventors**

Creativity is a gift from the Creator, and the Constitution secured "the exclusive Rights" to inventors in their inventions for limited times. Congress will be out of power to secure "the exclusive Rights" to anyone who is not the

inventor. Any other entity using a patent must operate in place of inventors or underneath and must not replace the inventors.

"Soon after the adoption of the Constitution, the First Congress enacted the Patent Act of 1790 ... allowed the grant of a limited monopoly", *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 US 141 - Supreme Court 1989. "The patent laws promote this progress by offering a right of exclusion for a limited period as an **incentive to inventors**", *Kewanee Oil Co. v. Bicron Corp.*, 416 US 470 - Supreme Court 1974. "Society may give an exclusive right to the **profits arising** from them[p~~atent~~], as an encouragement to men[inventors] to pursue ideas which may pursue utility", *Thomas Jefferson, letter to Isaac McPherson, August 13, 1813*, cited in *Int'l Technologies Consultants v. Pilkington plc*, 137 F. 3d 1382 - Court of Appeals, 9th Circuit 1998. "As a reward ... the United States offers a seventeen-year monopoly to an inventor who refrains from keeping his invention a trade secret.", *Universal Oil Co. v. Globe Co.*, 322 U. S. 471, 484 (1944).

Historically "letters patent" was a kind of instrument used by the King for his appointments. Article III judges appointment was also made with "letters patent". The "letters patent" commissions an inventor to exercise "the exclusive Right" in the inventions described in the Patent.

Patent Act of 1790 issued "letters patent" to inventors and their heirs or their assigns. Patent Act of 1793 made the Patent assignable, which allowed inventors to select assigns who could act in place of inventors just like a Magistrate Judge can act in place

of Article III judges. The "assignable" property was not added to detach "the exclusive Right" from inventors and secure it back to another entity. The patent clause explicitly secured "the exclusive Rights" privilege to "inventors" that can't be changed without Constitutional Amendment under Article V. The Constitution's supremacy clause will guard the patent clause against any purported interpretation to remove inventors with common law contracts.

**5. Employer's Right to Invention Is  
What an Employee grants Them  
as Common Law Right; it can't  
have Constitutional Privilege.**

"Since 1790, the patent law has operated on the premise that rights in an invention belong to the inventor. ... We have recognized that unless there is an agreement to the contrary, an employer does not have rights in an invention", *Bd. of Trust. of Leland Stanford v. ROCHE SYS.*, 131 S. Ct. 2188 - Supreme Court 2011. Unless an inventor-employee grants the Right to his employer for his Invention, the employer's Right is limited to shop-right. See *United States v. Dubilier Condenser Corp.*, 289 US 178 - Supreme Court 1933.

"[T]he exclusive Right" in an invention is a constitutional privilege for 20 years, the same way life term appointment is a privilege for Article III judges; those are not transferable. The patent title allows inventors to create a common law license allowing others to use the Invention, where the license can be conveyed or transferred to their employers, 35 U.S. Code § 261. Employers have no constitutional privilege or fundamental rights in the Patent. Its



Right is limited to common law contract right, *35 U.S. Code § 261*, or shop right. An Employer, at best, can act as an inventor's agent or assign.

Neither Congress nor the inventor himself can create constitutional privilege and transfer it to a corporation. The "letters patent" bearing the seals of the United States and describing an invention and delivered to an inventor, his heirs, administrators, or assigns effectively identify the inventors as Nobel "*To promote the Progress of Science and useful Arts*". If the title to a patent is considered a form of the Title of Nobility because it improves social status allowing the collection of royalty from others, then US Const. Art. I, § 9, Cl 8("No Title of Nobility shall be granted by the United States"), also bars the US to award patent title to Corporations.

#### **B. Civil Rights protect inventors.**

Section 1985 and Section 1983 are part of the Civil Rights Act protecting all rights secured by any provisions of the Constitution. See *Monell v. New York City Dept. of Social Servs.*, 436 US 658 - *Supreme Court* 1978, and not all rights need state actions.

#### **1. Section 1983 – Patent Doesn't Require State Action**

The Court requires state action for Civil rights when the implicated Right is protected by the *Fourteenth Amendment* that requires state action see *Ballinger v. City of Oakland*, 24 F.4<sup>th</sup> 1287, 1300–01

(9th Cir. 2022); *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012). However, "[c]ases holding that those clauses are directed only at state action are not authority for the contention that Congress may not pass laws supporting rights which exist apart from the *Fourteenth Amendment*", *Griffin v. Breckenridge*, 403 US 88 - Supreme Court 1971.

§ 1983 reads in parts[**bold underline emphasized**]:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws..."

Congress explicitly selected the phrase "rights, privileges ... secured by the Constitution" which undoubtedly included constitutional patent privilege. Two underlined parts in § 1983 require two separate inquiries, see *Flagg Bros., Inc. v. Brooks*, 436 US 149 - Supreme Court 1978. A single "state action" inquiry can meet both. In *Lugar v. Edmondson Oil Co.*, 457 US 922 - Supreme Court 1982 court wrote:

"§ 1983 is applicable to other constitutional provisions and statutory provisions that contain no state-action requirement. Where such a federal right is at issue, the statutory concept of action under color of state law[or custom usage] would be a **distinct element of**

the case not satisfied implicitly by a finding of a violation of the particular federal Right."

The appellant contends patent right is a kind of Right that doesn't rely on state action. "'custom . . . of any State" as used in § 1983 need not involve official state development, maintenance, or participation", *Adickes v. SH Kress & Co.*, 398 US 144 - Supreme Court 1970. "to show that a person has acted "under color of [a] statute" for purposes of § 1983... it essential that he act with the knowledge of and pursuant to that statute", *Flagg Bros., Inc. v. Brooks*, 436 US 149 - Supreme Court 1978. Here, Citrix used an instrument of Contract controlled by state law or common law to violate Khalid's exclusive patent right. This sufficiently meets the statutory requirement of "under color of any... custom or usage" for violating a constitutional right not requiring "state action" to sustain a violation under Section 1983. In *Adickes v. SH Kress & Co.*, 398 US 144 - Supreme Court 1970 descending judge wrote "the phrase "under color of any . . . custom" derives from § 2 of the 1866 Act, which rested on the *Thirteenth Amendment* whose enforcement does not turn on "state action."". In *Lugar v. Edmondson Oil Co.*, 457 US 922 - Supreme Court 1982 court highlighted a comment from Section 1983 bill history as:

it was understood by the members of that body to go no further than to protect persons in the rights which were guaranteed to them by the Constitution and laws of the United States

Congress enacted 35 U.S. Code § 271 to hold a private party accountable who copies inventions without permission from inventors no state

participation is needed. If the Constitution authorized Congress to create a remedy for violation of patent privilege in Section 1983 against a private actor, injecting state action in Section 1983 in such would be "legislation-overriding" not "gap filling" and the judiciary would limit Congress's power in violation of the separation of power. "[T]he judges in every state shall be bound thereby", *Article VI Paragraph 2 of the Constitution*, when Congress properly carries out its constitutional mandate.

The *Fourteenth Amendment* § 5 gives power to Congress to protect common law rights from the invasion of state actors, not from private actors. Congress needs another source of power to hold a private party liable under the Civil Rights Act when a state actor is absent. See, *In Heart of Atlanta Motel, Inc. v. United States*, 379 US 241 - Supreme Court 1964 (used commerce clause), *Griffin v. Breckenridge*, 403 US 88 - Supreme Court 1971 (analyzed Thirteenth Amendment & Commerce clause). If the commerce clause in *Heart of Atlanta Motel* allowed Congress to hold the motel owner in violation of Civil Right Acts, the patent clause, *US const Art I Sec 8 Cl 8*, certainly allows Congress to hold Microsoft and Citrix liable under the Civil Right Act Section 1983 and 1985 for the deprivation of the patent right.

## **2. Section 1985 – Patent Doesn't Require class animus**

If we apply the analysis the Supreme Court applied in *Griffin v. Breckenridge*, 403 US 88 - Supreme Court 1971, where the Court interpreted

Section 1985(3) text and Congress power under the *Thirteenth Amendment* and the commerce clause to reach private citizens, the results for the rights under the *Patent and Copyright Clause* will be the same. Both constitutional sources independently provide equal power to Congress to protect respective rights without requiring any class animus. Class animus is a requirement added by the Court because Fourteenth Amendment's equal protection clause needs it. The patent clause was added to the Constitution long before the Fourteenth Amendment. *Griffin v. Breckenridge* is a holding that § 1985(3) protects rights outside the Fourteenth Amendment.

In *Griffin court* interpreted § 1985(3) text as: congressional intent to speak in § 1985 (3) of all deprivations of "equal protection of the laws" and "equal **privileges** and immunities under the laws," **whatever their source ... intent** to **deprive** of *equal* protection, or *equal* privileges and immunities, means that there must be some racial, or **perhaps otherwise class-based**, invidiously discriminatory animus behind the conspirators' action. The conspiracy, in other words, **must aim at a deprivation of the equal enjoyment of rights** secured by the law to all.

Supreme court further held, "right of interstate travel is constitutionally protected, does not necessarily rest on the *Fourteenth Amendment*, and is assertable against **private** as well as governmental interference", Id. A citizen will have "rights to travel the public highways without restraint in the same terms as white citizens in Kemper County", Id., and conspiracy to deprive that Right will be actionable

under Section 1985(3). The geographical territory came from the Right, not from the statute, to show unequal or "invidiously discriminatory" action, which is not connected to race or sex. The source of Congress's power will determine the kind of equal protection or equal privilege someone can get under Section 1985(3). "[T]he *exclusive Right*" and patent right in inventions are rights and privileges covered by "*equal protection of the laws*" and "*privileges under the laws*" applicable to inventor citizens of the United States, 35 U.S.C. § 271; U.S. Const, Art I, Sec. 8, Cl. 8, protected against private interference. Applying *Griffin's* authority, Khalid should be able to enjoy his patents under equal terms as the Citizen inventor in "Kemper County". In other words, Employers must treat Khalid on equal terms as other inventor Citizens concerning patent privileges. In the instant case, 35 U.S. Code § 271 already protects a patent from private infringement. If required, "inventors" fit in the "perhaps otherwise class-based" animus in *Griffin*. While enacting Civil Rights Act, Congress would be within its power under U.S. Const, Art I, Sec. 8, Cl. 8, to protect "Inventors" and "the exclusive Right" from any private conspiracy.

*Bray v. Alexandria Women's Health Clinic*, 506 US 263 - Supreme Court 1993 court denied Section 1985(3) claim "because they have identified no right protected against private action that has been the object of the alleged conspiracy", Id. Here, Khalid identified constitutional privilege in Invention and his Right under 35 U.S. Code § 271 to restrict other citizens from using his Patent without his permission which is an object of the conspiracy, and *Bray* would have allowed such conspiracy.

### **3. 6-Year Statute of Limitation for Civil Right Violation based on Patent.**

Patent injury statute of limitation is six years, *35 U.S. Code § 286*, can't be barred by common law doctrine, see *SCA HYGIENE v. First Quality Baby Products*, 137 S. Ct. 954 -Supreme Court 2017. Congress didn't set any statute of limitation for Section 1983 and Section 1985 claims because those sections protect various rights. However, Congress explicitly has set a six-year statute of limitation for infringing on the patent right, *35 U.S. Code § 286*, and the patent clause gave the exclusive power to Congress to protect the patent right, State legislator or State Court has no authority over the patent issue. *Federalist No. 43*; *28 U.S. Code § 1338(a)*.

Citrix conspired with Microsoft in 2018 while claiming '219 and '637 causing injury which is within three years of filing this suit. Also, because Citrix claimed ownership to 219 and 637 patents, Khalid couldn't prevail in his civil rights claim without first prevailing against Citrix's claim of ownership in the state court, see *McDonough v. Smith*, 139 S. Ct. 2149 - Supreme Court 2019.

The US supreme court in *McDonough v. Smith*, held when a civil right is infringed, and litigation is needed to prove the infringement, the cause of action accrues on a favorable judgment. *McDonough* sued *Smith* under Section 1983, asserting fabrication of evidence similar to Citrix's false ownership claim. In *McDonough*, the Supreme Court held the statute of limitations began to run when the underlying

proceedings have resolved in *McDonough's* favor. *McDonough* could not bring his section 1983 fabricated evidence claim before favorable termination of his prosecution. The trial on state suit ended on August 1, 2018, in Khalid's favor and Khalid filed this litigation on May 11, 2022 which is still within 3-year even if the court declines the 6-year patent statute of limitation.

**C. Inventors are not corporate officers; a contract between an inventor and a corporation is actionable in Sherman Act § 1**

Ninth Circuit Court affirmed the district court's dismissal of the claim under § 1 of the Sherman Act relying on *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 769 (1984) ("[O]fficers or employees of the same firm do not provide the plurality of actors imperative for a § 1 conspiracy.").

*U.S. Const, Art I, Sec. 8, Cl. 8* explicitly said the Right to the Invention is to be secured to inventors, not corporations, the same way life term is secured to Article III judges, not magistrate judges. Corporations are considered as collective rights of shareholders, not inventors. Corporations can use inventions or act as an agent of inventors. Injury to constitutional privilege in the Invention is a constitutional injury that flows through inventors, not through corporations.

*Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 769 (1984) held a parent corporation, and its subsidiaries are a single economic entity because all their damages and injuries flow through the parent



corporation. Corporate officers act on behalf of the corporation. But inventors' creativity is a gift from the creator, and the Constitution protected it for limited times by securing it to inventors. Corporations at best, get a right to use the Invention. A law school helped a law graduate to become an Article III judge doesn't entitle the law school to claim a life term for another graduate, or a Magistrate judge can act on behalf of an Article III judge doesn't entitle them to claim a life term. Corporations can't enslave their officers because *Thirteenth Amendment* prohibits it. Similarly, corporations can't retain constitutional privilege in the Invention by labeling inventors as their officers. Founders created the patent clause to avoid such a scenario. The separation between Inventors and corporations is as much as Article III judges' life term is separate from the term of the president or senators or their identity. When inventors are absorbed as corporate officers inside corporations, society is deprived of the benefit of inventors because inventors are no longer independent pertaining to their inventions' constitutions secured in them for limited times.

#### **D. A patent has Market Power to Support Antitrust claims.**

The Ninth Circuit Court affirmed the district court's dismissal of Sherman Act § 1 & 2 for lack of market injury generally established by the rule of reason or quick-look analysis. *FTC v. Qualcomm, Inc.*, 969 F.3d 974, 989 (9th Cir. 2020) (rule of reason analysis); *California ex rel. Harris v. Safeway, Inc.*, 651 F.3d 1118, 1133–34 (9th Cir. 2011) (en banc) (per se and quick look analysis). The Patent has a limited Monopoly Constituting Market.

"Patent monopoly" is an act of Congress under 35 U.S. Code § 154(a)(1), "a grant to the patentee, his heirs or assigns, of the right to exclude others from making" founded on "the exclusive Right", *U.S. Const, Art I, Sec. 8, Cl. 8*, that "the United States offers a seventeen-year monopoly to an inventor", *Universal Oil Co. v. Globe Co.*, 322 U. S. 471, 484 (1944). "The requisite economic power is presumed when the tying product is patented", *United States v. Loew's Inc.*, 371 US 38 - Supreme Court 1962. The patent monopoly market is strictly constructed by the scope of the patent claim on which "the exclusive Right" is granted per 35 U.S. Code § 154(a)(1). Before 1988, courts used "patent monopoly" against the patent owner as owning market power in the product market. In 1988, Congress created immunity for patent owners from such application in tying cases unless the patent owner had market power in the relevant product markets, 35 U.S. Code § 271(d), which is an exception to patent monopoly under 35 U.S. Code § 154(a)(1). A patent market, a protected market by itself, is the value created by a patent within a product market.

The requirement of Rule of Reason analysis to show a market injury for Article III standing in an antitrust case is a judicial doctrine that Congress lacks the power to reach private citizens under the commerce clause. The Patent Clause authorized Congress to reach private citizens to protect patents, 35 U.S. Code § 271.

Congress exercised its power under *U.S. Const, Art I, Sec. 8, Cl. 8* to enact Patent Act 35 U.S. Code § 271, allowing an inventor to restrict private citizens to participate in the patented market without the

inventors' permission. In contrast, Congress exercised its power under the Commerce Clause to enact Sherman Act, to restrict a private citizen from participating in the general market when the private citizen with market power creates a barrier for another market participant. Market power and its abuse are what destroy the general market, where the same abuse or restraint is allowed for inventors in his patented market. Rule of reason analysis is needed to establish a market injury. Because the Patent Act makes it legal for inventors to restrict their patent markets to others, no Rule of Reason Analysis is needed pertaining to his patented market.

**E. State Res judicata can't preempt  
federal action "relating to patents", 28  
USC § 1338(a).**

"No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents", 28 U.S. Code § 1338(a). Khalid claimed federal remedy against private entity Citrix, a kind of remedy Congress had to rely on *Patent and Copyright Clause* to draw sufficient power. Antitrust claims relied on a "patent monopoly" market created by "the exclusive Right", Civil rights are based on violation of constitutional privileges in patents. WA requires prior jurisdictional competency. For preclusive effects, "[t]he superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court", See *WA Const. Art. IV, § 6*; *Williams v. Leone & Keeble, Inc.*, 254 P. 3d 818 - Wash. Supreme Court 2011;

Also 15 U.S. Code § 15(a) confers exclusive jurisdiction to federal courts on the antitrust issue. *Marrese v. American Academy of Orthopaedic Surgeons*, 470 US 373 - Supreme Court 1985(State court suit didn't create res judicata effects on the federal antitrust claim).

### CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Respectfully submitted.



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