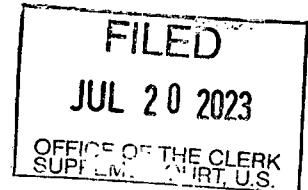


ORIGINAL

23-3001
No.

IN THE
Supreme Court of the
United States



ATM SHAFIQUL KHALID

Petitioner,

v.

MICROSOFT CORPORATION
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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July 20, 2023

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. In addition, 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, making 3rd party or corporations agents of inventors or users of inventions. 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. Based on those patents and related authorship, Corporations stole \$7 trillion from inventors and authors in the last 25 years alone. *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 barring an inventor from being a separate entity from corporation to bring action against the corporation under *15 U.S. Code § 1*.

PARTIES

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

The respondent Microsoft Corporation is a Washington corporation with its principal office of business in Redmond, Washington.

RELATED CASES

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 7th 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 enhanced his idea with more capabilities. 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. Microsoft demanded the boy transfer his Invention to Microsoft free of cost, claiming the boy didn't disclose his Invention while working for Microsoft in his second term in 2011. Email records showed the boy disclosed it in his employment agreement, and Microsoft removed those disclosure pages. Microsoft also collaborated with its partner Citrix System, Inc., where the boy once worked, 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. In parallel state court action, Microsoft refused to agree to clear the Petitioner's patent title so that the Petitioner could secure investment to monetize his Patent and build his start-up.

The dispute on patent ownership with Microsoft and its partner 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 Patent. 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.

The story reveals the dark side of our patent system and how abusive it has become for ordinary inventors. If the petition is granted, the Petitioner will brief this Court on how the patent system and constitutional guarantee to protect inventors had been broken in the last 70 years in favor of corporations and why 93% of patents and all its royalty now belong to corporations. And how the Corporations and the ruling class of the US stole \$7 trillion from inventors, authors, and the US treasury by abusing rights protected by the Patent and Copyrights clause, contributing to historic income inequality. And how an inventor now has less

protection with the Patent Act than they would have without the Patent Act. And how the correct interpretation of the Patent Act and Constitution can reverse the trend. The Petitioner expects to challenge all fraudulent and abusive patent ownership practices in 3-steps:

1. The Civil Rights Act protects inventors' civil rights related to patent ownership, and Antitrust Act can protect the patent market from destruction. The current petition raises this issue to give an Article III remedy to inventors.
2. The royalty from patents and Copyrights is secured to inventors in an irreversible way within the term, the same way life-term of Article III judges are secured. Corporations can only get a share of royalty as an agent. Therefore the \$3.1 trillion royalty income corporations moved in Ireland or offshore must be domesticated in the US for inventors and authors that would be subject to US tax. The Petitioner filed an action now pending with the D.C. Circuit Court to resolve standing questions that this Court might review in the future.
3. The interpretation of the patent ownership statute that corporations rely on to transfer patents would exceed congressional authority under the Constitution, an issue never challenged in this Court. The current interpretation made the Constitution subordinate to Contract and needs to be corrected. The Petitioner will file a new action in the future that this Court might review soon.

OPINIONS BELOW

The memorandum of the Court of Appeals for the Ninth Circuit (*App. 1*), which affirmed the District Court's judgment, is unpublished. The order of the District Court (*App. 5*) dismissed the instant matter 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.

Sherman Act:

15 U.S. Code §§ 1 & 2

App. 63

Civil Right Act:

42 U.S. Code §§ 1983.& 1985

App. 64

Other Relevant Provisions:

Declaration of Independence: An Transcription	App. 67
Federalist 43	App. 73
Federalist 69	App. 86
Patent Act of 1790	App. 97
Copyright Act of 1790	App. 103

STATEMENT OF THE CASE

This case arises under the Civil Right Act *42 U.S. Code §§ 1983, 1985*¹, and Sherman Act *15 U.S. Code §§ 1,2*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, 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

¹ *App. 64*

² *App. 63*

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 14th 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 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

The Petitioner filed a district court action on January 28, 2019. On June 6, 2019, Microsoft filed a motion to dismiss under the FRCP 12(b)(6). On November 29, 2019, Khalid filed the Second Amended Complaint. On December 13, 2019, Microsoft filed

another motion to dismiss. The trial court dismissed the Complaint on April 6, 2020. On September 21, 2020, the trial court denied a motion to reconsider and dismissed the case. 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

Petitioner ATM Shafiqul Khalid("Khalid") is a very creative computer engineer with 14 published research papers in journals and conference proceedings. He had been named inventor in 20 US and European patents, in which he assigned 17 patents to his employers, keeping 3 for himself. Petitioner always had his own creative projects in various areas to exercise his creativity and intellectual capacity.

Khalid joined Microsoft in 1998, left in 2006, and joined again in 2012 as a Senior Program Manager. Microsoft asked Khalid to sign a Microsoft Corporation Employee Agreement.

Microsoft Employee Agreement, preamble, sections 5 and 6 reads in parts [bold underline to emphasis]:

If you wish to attach a list of inventions, per paragraph 6, below, please contact your recruiter.

**Microsoft Corporation Employee
Agreement ("Agreement")**

As a condition of my employment with
MICROSOFT CORPORATION
("MICROSOFT"), a Washington corporation,
and in consideration of the compensation now
and hereafter paid to me, I agree as follows:

5. Inventions. ..., I agree to grant and I hereby
grant, transfer and assign to MICROSOFT or
its designee all my rights, title and interest in
and to such Inventions. . . .

. . . . In addition to the rights provided to
MICROSOFT under paragraph 6 below, as to
any Invention complying with 5(a)-(c) above
that results in any product, service or
development with potential commercial
application, MICROSOFT shall be given the
Right of first refusal to obtain exclusive
rights to the Invention and such product,
service or development.

6. Excluded and Licensed Inventions. I
have attached a list describing all Inventions
belonging to me and made by me prior to my
employment with MICROSOFT that I wish to
have excluded from this Agreement. If no such
list is attached, I represent that there are no
such Inventions. As to any Invention in which I
have an interest ... if I use or incorporate such
an Invention in any ... Microsoft product...
MICROSOFT is hereby granted and shall have
an irrevocable, perpetual, royalty-free,
worldwide license ... This license shall be
exclusive.

Per section 6 of the Agreement, On December 19, 2011, Khalid sent an email to the Microsoft recruiter attaching a Word document, "Inventionlist.docx" as an invention disclosure list ("exclusion list") as Microsoft advised Khalid before signing the Employee Agreement. Khalid participated in a Microsoft employee orientation program where Khalid was required to sign a hard copy of the Employee Agreement using INK. Khalid again submitted an invention disclosure list and left a handwritten note on the Employee Agreement to show there were additional pages.

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. Microsoft Refused to Invest in Mini-cloud Invention

On June 30, 2014, Khalid sent an email to Stephen Elop, Microsoft EVP, reporting to Satya Nadella, Microsoft CEO. The email included Satya Nadella, Brad Smith, Microsoft's General Counsel, and a few executives. In the email, Khalid proposed a business model based on the mini-cloud Invention. On July 1, 2014, Stephen Elop declined Khalid's proposal. Khalid discussed the mini-cloud Invention with Microsoft executives in detail.

3. The Dispute Leading the Instant Litigation

On February 19, 2015, after terminating Khalid on February 2, 2015, Patrick Evans, Microsoft's in-house patent attorney, wrote to Khalid, "As per the Microsoft Corporation Employee Agreement you executed on December 19, 2011, Section 5 sets forth your obligations to assign intellectual property to Microsoft. Section 6 addresses inventions to be excluded, and no inventions were listed by you for exclusion". On the same date, Khalid notified Patrick that Khalid had submitted an exclusion list. On March 3, 2015, Patrick Evan wrote Khalid "...As per the employment agreement, Microsoft retains an assignment right in the patents" referring to US patent 8,782,637 and 8,286,219.

On April 14, 2015, Khalid requested Patrick to check with the hand-signed (using INK) employee agreement that Khalid signed on January 9, 2012. On June 15, 2015, Khalid notified Patrick over Email that Microsoft Xbox One infringed on Khalid's mini-cloud Patent US 8,782,637. On July 2015, Patrick also clarified that Microsoft's claim would extend to the mini-cloud patent family for past, present, and future patents that indirectly claim all the other patents in the Invention Disclosure documents.

4. The M&G letter — Microsoft Demands '219 and '637 Patents with Threat

On May 27, 2016, Khalid received a letter ("M&G letter"), from Microsoft outside counsel Andrew T. Pouzeshi at Merchant & Gould. The letter

said, "You also agreed to provide a list identifying all inventions made by you or belonging to you prior to your employment with Microsoft. There is no evidence that you provided a list of inventions prior to either period of employment...your failure to exclude inventions described in the '219 and '637 patents resulted in a grant of an exclusive, royalty-free, irrevocable, worldwide license to those inventions to Microsoft.". 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". Upon receipt of the M&G letter, Khalid demanded Microsoft send him the Vendor Agreement that Microsoft refused to share.

Citrix used the M&G letter in the state court Jury trial that not Khalid but Citrix or Microsoft owned '219 and '637 patents.

5. Related Citrix State Court Litigation and Microsoft M&G Letter's Impacts

In 2011, Citrix made an ownership claim to '219 and '637 patents. Khalid successfully litigated against Citrix in WA state court to clear Citrix's illegal claim, *Khalid v. CITRIX SYSTEMS, INC., Wash: Court of Appeals, 1st Div. 2020* ("Khalid v. Citrix"). Through the M&G letter, Microsoft participated in the Citrix litigation by making an ownership claim to '219 and '637 patents through a vendor agreement with Citrix. And Citrix asserted common interest with Microsoft pertaining to those patents. Had Citrix prevailed in the state court, Microsoft would have gotten the Right to those patents. Citrix used the M&G letter as a piece of evidence in *Khalid v. Citrix* litigation to

demonstrate that Microsoft asserted ownership of those patents. In 2017, Microsoft didn't produce the exclusion list to Citrix as part of a discovery request that otherwise would have shown Microsoft's claims were false.

Khalid also initiated litigation in state court against Microsoft to clear Microsoft's illegal patent ownership claim, *KHALID EX REL. XENCARE SOFTWARE, INC. v. Microsoft Corporation, Wash: Court of Appeals, 1st Div. 2020*. WA appeal court held that Khalid properly alleged breach of Employee Agreement for Microsoft's claim to '219 and '637 patents, breach of good faith and fair dealings, declaratory relief for unenforceability of "right of first refusal" and Consumer Protection Act(CPA) violation against Microsoft.

6. Citrix and Microsoft claim to destroy 30 patents, two start-ups, and 70% patent term.

Before Citrix and Microsoft made ownership claims to Khalid's Invention, Khalid had 30 additional inventions/improvements in the pipeline. He was building two start-ups with some commitment from investors. However, after Citrix and Microsoft ownership claims, investors walked away. Khalid could not raise funds to continue supporting his R&D, and since then, Khalid has been in Court. Khalid's Patent was issued with a 20-year term with 2008 and 2010 priority date. 70% effective term is gone to build any viable business around it.

REASONS FOR GRANTING THE PETITION

In the last 25 years alone, more than Seven(7) trillion³ 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 93⁴% 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.

³ <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.

⁴ 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

dressing from the slave breeding firm⁵, 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 where inventors will lose their inventions based words in the Agreements, and how Employers interprets words. Patent Act of 1790, *App. 97*, issued patents to inventors and their agents, disregarding whatever Contract they might have with others, in contrast to the Copyright Act of 1790, *App 103*, 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 will get a full term of

⁵ Children of slaves used to be slave for the masters, The Thirteenth Amendments abolished the chain and slavery altogether.

their work no matter what Contract existed; others could only get common law use licenses⁶.

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.

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

⁶ 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.

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 statue 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 Statue 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. App. 73. 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. 86.

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%**⁷ were issued to US and foreign corporations. This extraordinarily 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*⁸, July 4, 1776;

"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*;

⁷ 2015 Patent Technology Monitoring Team Report, United States Patent and Trademark Office.

⁸ *App. 67*

"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.

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[patent], 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.

6. An Employee has less protection now than in the colonial era involving Invention.

In the colonial era, An employee had no rights to inventions . All inventions were part of common law trade secrets. If the inventor-employee leaves, the trade secret could have been compromised. The employer needed to pay premium or share profits to

safe guard secrets involving inventions. The Patent Clause, *US Constitution Art I, Sec 8, Cl 8*, and subsequent Patent Act of 1790, secured “fourteen years” patent term to the inventors⁹, not the employer, *Sec 1, Patent Act of 1790; App. 97-98*. In contrast, the *Sec 1, Copyright Act of 1790; App. 103-104*, gave the first “fourteen years” term to the “other person”¹⁰ [employer] and the second “fourteen years” term to the author when applicable. The “other person” as present in *Sec 1, Copyright Act of 1790; App. 103-104* was not included in *Sec 1, Patent Act of 1790*. This sharp contrast in the Patent Act of 1790, when all founding fathers were alive, along with *Federalist 43*, shows the true intention of the farmers, to protect inventors not employers.

As this case demonstrates, the employer now can terminate an inventor-employee and claim all employees past, present, and future patents even when the employer made no investment in those patents. In the absence of any Article III remedy for false ownership claim to Patent Title, the employer enjoys higher protection through patents than it had in common law trade secrets. This is equivalent to having a remedy for counterfeit money but no remedy for stealing the money printing machine. This incentivizes the employer to steal the Patent (equivalent to a money printing machine) to avoid any

⁹ “petitioner[inventors] or petitioners, his, her or their heirs, administrators or assigns”, App. 97

¹⁰ “who have or have not transferred to any other person”, App. 103.

infringement damage (equivalent to damage from counterfeit money).

B. Civil Rights protect inventors.

Affirming the District courts dismissal of Civil Rights claims, the Ninth Court wrote:

Khalid failed to state a civil rights claim under 42 U.S.C. § 1983 because he did not sufficiently allege state action. *See Ballinger v. City of Oakland*, 24 F.4th 1287, 1300–01 (9th Cir. 2022). He failed to state a claim under 42 U.S.C. § 1985(3) because he failed to allege that racial or class-based discriminatory animus motivated Microsoft's actions. *See Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 268–69 (1993).

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.4th 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 Constitution 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.

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.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Respectfully submitted.



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