IN THE

Supreme Court of the United States

IKORONGO TECHNOLOGY LLC AND IKORONGO TEXAS LLC,

Petitioners,

v.

BUMBLE TRADING LLC,

Respondent.

ON APPLICATION FOR AN EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITIONERS' APPLICATION FOR AN EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF CERTIORARI

HOWARD N. WISNIA
WISNIA PC
12636 High Bluff Drive,
Suite 400
San Diego, CA 92130
(858) 461-0989

KARL RUPP
SOREY HOOVER, LLP
100 North 6th Street
Waco, TX 76701
(903) 212-2822

JEFFREY J. ANGELOVICH
Counsel of Record
NIX PATTERSON, LLP
8701 Bee Cave Road
Building 1, Suite 500
Austin, TX 78746
(512) 488-4338
jangelovich@nixlaw.com

Counsel for Petitioners

327287

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

CORPORATE DISCLOSURE STATEMENT

Petitioners Ikorongo Texas LLC and Ikorongo Technology LLC have no parent corporations and no publicly held corporation owns more than 10% of either company.

To the Honorable John G. Roberts, Jr., Chief Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 33.2, Petitioners Ikorongo Technology LLC and Ikorongo Texas LLC (collectively "Ikorongo") respectfully request that the time to file its Petition for Writ of Certiorari in this matter be extended for sixty (60) days up to and including April 12, 2024. The United States Court of Appeals for the Federal Circuit issued its judgment without opinion on September 8, 2023 (Appendix ("App.") 1a-2a) and denied rehearing *en banc* on November 13, 2023 (App. 3a-4a). Absent an extension of time, the Petition for Writ of Certiorari would presently be due on February 12, 2024. Petitioners are filing this Motion more than ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1). Respondent does not oppose this request.

BACKGROUND

This is a patent infringement action concerning two "Reissue" patents. On Bumble's motion for summary judgment, the United States District Court for the Western District of Texas found the asserted patent claims of those Reissue patents invalid for failure to comply with the "original patent" requirement of 35 U.S.C. §251. The Court of Appeals affirmed without opinion and denied Ikorongo's petition for rehearing *en banc*.

This case is of exceptional importance as it continues the Court of Appeals' undue restriction on allowable reissue patents and conflicts with this Court's reissue jurisprudence, including *U.S. Industrial Chemicals, Inc. v. Carbide & Carbon Chemicals Corp.*, 315 U.S. 668 (1942).

The District Court applied the already dubious legal standard laid out in *Antares Pharma, Inc. v. Medac Pharma Inc.*, 771 F.3d 1354 (Fed. Cir. 2014) in a heretofore unprecedented manner—to forbid consideration of the original patent claims in its "original patent" analysis of the reissue claims under 35 U.S.C. §251.

The District Court's Order—and the Court of Appeal's summary affirmance thereof—is in stark and consequential conflict with well-established precedent of this Court. Specifically, in *Industrial Chemicals*, this Court applied 35 U.S.C. § 251, and in doing so, did not exclude the original claims from its analysis or apply an extra-statutory requirement of "clear and unequivocal" "separate and apart" disclosure. Rather, it looked for "the same invention" as in the original patent, and explicitly considered the original claims when determining whether reissue claims were supported by adequate disclosure in the original patent. The test established by this Court is that reissue claims must be for "the same invention described and claimed and intended to be secured by the original patent." *Id.* at 681.

Contrary to this clear precedent, the Court of Appeals summarily affirmed the District Court's legally erroneous order based on a reading of *Antares* wholly inconsistent with the statute and with *Industrial Chemicals*. And this deviation from precedent is particularly important because it presents an issue not previously considered in the 35 U.S.C. § 251 context: here, the aspects of the reissue claims found not to meet the original patent requirement are actually narrower than the original patent claims. A logical byproduct of the decision is that the original claims themselves would not pass muster under §251, a nonsensical result wholly at odds with *Industrial Chemicals'* "same invention" test. Moreover, the application of the *Antares* test resulted in yet another unprecedented holding—that alternative features disclosed in a patent specification in list format are *per se* insufficient to meet the original patent requirement.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. Petitioners' Counsel have numerous litigation deadlines in the weeks leading up to and immediately following the current deadline, including multiple full day depositions across three weeks in February, a full day mediation in New Orleans for a case pending in the United States Court of Appeals for the Fifth Circuit and another full day mediation in a

Houston, Texas federal trial court matter, extensive imminent briefing and expert report deadlines, and a March 4, 2024 trial setting.

2. Management for Petitioner has been unable to provide detailed assistance and input in the matter until recently due to personal issues, including recent deaths in the family.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the time to file the Petition for a Writ of Certiorari in this matter be extended 60 days, up to and including April 12, 2024.

Respectfully submitted,

HOWARD N. WISNIA
WISNIA PC
12636 High Bluff Dr.,
Ste. 400
San Diego, CA 92130
Phone: 858-461-0989

KARL RUPP
SOREY HOOVER, LLP
100 N. 6th Street
Waco, TX 76701
Phone: 903-212-2822

JEFFREY J. ANGELOVICH*
NIX PATTERSON, LLP
8701 Bee Cave Road
Bldg. 1, Suite 500
Austin, TX 78746
Phone: 512-488-5338
jangelovich@nixlaw.com

Counsel for Petitioners

*Counsel of Record

APPENDIX

TABLE OF APPENDICES

Page

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

IKORONGO TEXAS LLC, IKORONGO TECHNOLOGY LLC,
Plaintiffs-Appellants

v.

BUMBLE TRADING LLC,
Defendant-Appellee

2022-2044

Appeal from the United States District Court for the Western District of Texas in No. 6:20-cv-00256-ADA, Judge Alan D. Albright.

JUDGMENT

NATHAN HALL, Nix Patterson, LLP, Austin, TX, argued for plaintiffs-appellants. Also represented by JESSICA UNDERWOOD, NICHOLAS ANDREW WYSS; KARL RUPP, Sorey & Hoover LLP, Waco, TX; HOWARD N. WISNIA, Wisnia PC, San Diego, CA.

NOAH CAREY GRAUBART, Fish & Richardson P.C., Atlanta, GA, argued for defendant-appellee. Also

represented by ASHLEY BOLT; RUFFIN B. CORDELL, Washington, DC; ANDREW PEARSON, Boston, MA.

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (DYK, PROST, and STOLL, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

September 8, 2023	/s/ Jarrett B. Perlow
Date	Jarrett B. Perlow
	Clerk of Court

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

IKORONGO TEXAS LLC, IKORONGO TECHNOLOGY LLC,
Plaintiffs-Appellants

v.

BUMBLE TRADING LLC,
Defendant-Appellee

2022-2044

Appeal from the United States District Court for the Western District of Texas in No. 6:20-cv-00256-ADA, Judge Alan D. Albright.

ON PETITION FOR REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.[1]

PER CURIAM.

O R D E R

---

[1] Circuit Judge Newman did not participate.

Ikorongo Texas LLC and Ikorongo Technology, LLC filed a petition for rehearing en banc. The petition was first referred as a petition to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue November 20, 2023.

FOR THE COURT

November 13, 2023
Date

Jarrett B. Perlow
Clerk of Court