

24-6217  
No.-----

ORIGINAL

IN THE

**SUPREME COURT OF THE UNITED STATES**

FILED  
DEC 23 2024  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

RICKY KAMDEM-OUAFFO, PhD  
t/a KAMDEM GROUP

Petitioner

v.

COLGATE PALMOLIVE CO; HILLS PET NUTRITION; NATURASOURCE  
INTERNATIONAL LLC; REARDON ANDERSON LLC; MORGAN LEWIS &

BOCKIUS LLP; LAW OFFICE OF MARK A KRIESEL LLC; VINCENT  
LEBLON, J.S.C.; TERRY D. JOHNSON, ESQ.; TODD B. BUCK, ESQ.; MARK  
A. KRIESEL, ESQ.; LASZLO POKORNY; MS. KIM; ALLISON A. KRILLA,  
ESQ.; ERIK ANDERSON, ESQ.; RUDOLPH J. BURSHNIC, II, ESQ.;

RICHARD G. ROSENBLATT, ESQ.; CLERK NEW JERSEY SUPERIOR  
COURT; DEBRA NICHOLS; DAVE BALOGA; SARAH B. MARTINEZ; LUIS

J. MONTELONGO; BRENT K. POPE; DENNIS JEWELL; LYNDA  
MELENDEZ; JASON, Hon. Leblon's Law Clerk; COLGATES SCIENCE &  
TECHNOLOGY; DONALD TRAUT; AKEEL A. QURESHI; ATTORNEY  
GENERAL NEW JERSEY; LAW OFFICE OF GERARD M GREEN; ET AL...

Respondents

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE US COURT OF APPEALS FOR THE THIRD CIRCUIT  
CASE No. 23-2982**

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**PETITION FOR A WRIT OF CERTIORARI**

**Date:** 12/23/2024

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## THE QUESTIONS PRESENTED FOR REVIEW

**QUESTION I:** Whether a federal court has the Subject-Matter Jurisdiction under any law of the United States to “*Order*” and “*Adjudge*” that a State Court Judge has the Jurisdiction to Decree Summary Judgment in an Action that was properly removed to a federal court pursuant to 28 U.S.C. §1454 in accordance with the procedures of 28 U.S.C. §1446(d); and whether in so “*Ordering*” and “*Adjudging*” the inferior courts deprived Petitioner’s fundamental constitutional rights.

**QUESTION II:** Whether a federal court has the Subject-Matter Jurisdiction to “*Order*” and “*Adjudge*” that a “*Form PTOL-1432 Notice Of Abandonment*” issued by the United States Patent and Trademark Office (“USPTO”) pursuant to MPEP §711(a) and 37 CFR 1.135 in furtherance of its Final Office Action rejecting a Patent Cooperation Treaty (“PCT”) Patent Application on ground of the Applicants’ failure to produce relevant scientific data does not support a lawsuit alleging that the purported “*Confidential documents*” which Applicants’ attorneys swore under penalty of perjury, in Declarations and Certifications, to be “*highly sensitive ... contributions to each of the claims... of the Patent application*” and withheld from Petitioner during a prior misappropriation of trade secrets litigation were fraud.

**QUESTION III:** Whether a State or Federal court in the United States has the jurisdiction to render nugatory the PCT *Rule 43bis.1* Written Opinion of the International Searching Authority issued on an International Patent Application.

## **LIST OF ALL PARTIES TO THE PROCEEDING**

### **A. Petitioner**

RICKY KAMDEM-OUFFO, PHD t/a KAMDEM GROUP

### **B. Respondents**

COLGATE PALMOLIVE CO; HILLS PET NUTRITION; NATURASOURCE INTERNATIONAL LLC; REARDON ANDERSON LLC; MORGAN LEWIS & BOCKIUS LLP; LAW OFFICE OF MARK A KRIEGEL LLC; VINCENT LEBLON J.S.C.; TERRY D. JOHNSON, ESQ.; TODD B. BUCK, ESQ.; MARK A.. KRIEGEL, ESQ.; LASZLO POKORNY; MS. KIM; ALLISON A. KRILLA, ESQ.; ERIK ANDERSON, ESQ.; RUDOLPH J. BURSHNIC, II, ESQ.; RICHARD G. ROSENBLATT, ESQ.; CLERK NEW JERSEY SUPERIOR COURT; DEBRA NICHOLS; DAVE BALOGA; SARAH B. MARTINEZ; LUIS J. MONTELONGO; BRENT K. POPE; DENNIS JEWELL; LYNDA MELENDEZ; JASON, Hon. Leblon's Law Clerk; COLGATES SCIENCE & TECHNOLOGY; DONALD TRAUT; AKEEL A. QURESHI; ATTORNEY GENERAL NEW JERSEY; LAW OFFICE OF GERARD M GREEN; FRANK ORBACH; JOHN J. HOFFMAN, Attorney General; SHANNON MCGARRAH; THOMAS HOXIE; MARK DELUCA; MICHAEL STRAHER; CLIFFORD WILKINS; WILLIAM BROGAN; DAWN GARDNER; BRIAN BELLES; MICHAEL DIDAS; SHARON HUANG; RYAN FLANDRO; TODD KLEIN; NIKHIL HEBLE; JUDY CHUNG; MICHAEL JORDAN; ANNE ST. MARTIN; GEORGE WANG; SAMIA CHAUDRY; SANGIL

LEE; CORY S. POKER; MATTHEW HERD; YIQUIN ZHAO; JACOB BLUMERT; HARVEY LIU; MARIO DEREVJANIK; KRISANNE LANE; GEORGE SANG; SAMUEL KATZ; THOMAS M. HUNTER; ROBERT T. LOUGY; A. LISA PUGLISI; IAN SUPERIOR COURT MIDDLESEX COUNTY; DEBRA L. STOREY; KLJ TRANSCRIPTION SERVICES, LLC; JOHN AND/OR JANE DOES 1-10; ABC CORPORATIONS 1-10 (See Appendix Volume 1 (“Appdx Vol. 1”), pp. 45 - 68, 11 - 21 District and Appellate Courts Docket Sheets respectively).

### **CORPORATE DISCLOSURE STATEMENT**

KAMDEM GROUP is a New Jersey based Sole Proprietorship of the *Pro Se* Petitioner (See Appdx Vol. 7, pp. 1701 – 1702).

### **LIST OF ALL PROCEEDINGS THAT ARE RELATED**

#### **A. NEW JERSEY SUPERIOR COURT PROCEEDING**

*Kamdem-Ouaffo v. NaturaSource International LLC*, New Jersey Superior Court Case No. MID-L-5527-13 (See Appdx Vol. 1, pp. 69 -73, NJ Superior Court Docket Sheet).

#### **B. FEDERAL COURT PROCEEDINGS**

1) *Kamdem-Ouaffo v. Colgate Palmolive, et al.*, District Court Case No. 22-cv-06623-CCC-JBC, in the US District Court for the District Of New Jersey, and Subsequently in the US Court Of Appeals for the Third Circuit as Case No. 23-

2982 (See Appdx Vol. 1, pp. 45 - 68, 11 - 21 District and Appellate Courts Docket Sheets respectively).

2) *Kamdem-Ouaffo v. NaturaSource International LLC*, REMOVAL Case No. 3:15-cv-06290-AET-LHG, in the US District Court for the District Of New Jersey, and Subsequently in the US Court Of Appeals for the Third Circuit as Case No. 16-

2304 (See “Appdx Vol. 1”), pp. 159 - 164, District Court Docket Sheet).

3) *Kamdem-Ouaffo v. Leblon, et al.*, District Court Case No. 15-cv-07481-AET-TJB, in the US District Court for the District Of New Jersey, and Subsequently in the US Court Of Appeals for the Third Circuit as Case No. 16-1006 (See Appdx Vol. 1, pp. 196 - 201, District Court Docket Sheet).

4) *Kamdem-Ouaffo v. Colgate Palmolive, et al.*, District Court Case No. 15-cv-07902-CCC-JBC, in the US District Court for the District Of New Jersey, and Subsequently in the US Court Of Appeals for the Third Circuit as Case No. 21-1198 (See Appdx Vol. 1, pp. 224 - 234, District Court Docket Sheet).

**C. AGENCY PROCEEDINGS AT THE PATENT COOPERATION TREATY (“PCT”) AND AT THE UNITED STATES PATENT AND TRADEMARK OFFICE (“USPTO”)**

1) International Stage PCT Patent Application, “*Pet food Compositions Having Antimicrobial Activity*”; International Application Number PCT/US2011/046422, **International Filing Date:** 3 August 2011; **Priority Data:** 3 August 2010;

**International Publication Number:** WO 2012/018913 A1 (See Appdx Vol. 2, pp.

278 – 309, Documents from the Patent Cooperation Treaty (“PCT”)).

**2)** US National Stage PCT Patent Application from PCT/US2011/046422 Application Titled “*Pet food Compositions Having Antimicrobial Activity*”; **Application #** 13/811,992 for which the USPTO provided the following bibliographic information:

**Earliest publication #** US 2013-0122164A1; **Earliest publication date:** 05/16/2013; **Filing or 371(c) date:** 01/24/2013; **Status:** Abandoned -- Failure to Respond to an Office Action - 02/20/2017; **Inventors:** Luis J. Montelongo, Lawrence, KANSAS (US), Brent K. Pope, Topeka, KANSAS (US); Sarah B. Martinez, Lawrence, KANSAS (US); **Applicants:** Data not available; **Correspondence address:** 23909- COLGATE-PALMOLIVE COMPANY 909 RIVER ROAD, PISCATAWAY, NJ, UNITED STATES (See Appdx Vol. 2, pp. 311 – 343, Documents from the United States Patent and Trademark Office (“USPTO”)).

**3)** US National Stage PCT Patent Application from PCT/US2011/046422 Application Titled “*Pet food Compositions Having Antimicrobial Activity*”; **Application #** 15/335,966 for which the USPTO provided the following bibliographic information:

**Status:** Abandoned -- Failure to Respond to an Office Action - 06/30/2020; **Filing or 371(c) date:** 10/27/2016; **Earliest publication #** US 2017-0042193A1; **Earliest publication date:** 02/16/2017; **Inventors:** Luis J. MONTELONGO, Lawrence, KANSAS (US); Brent K. POPE, Topeka, KANSAS (US); Sarah B. MARTINEZ, Lawrence, KANSAS (US); **Applicants:** Hill's Pet Nutrition, Inc., Topeka, **Correspondence address:** 23909- COLGATE-PALMOLIVE COMPANY, 909 RIVER ROAD, PISCATAWAY, NJ, UNITED

STATES (See Appdx Vol. 2, pp. 345 – 383, Documents from the United States Patent and Trademark Office (“USPTO”)).

4) US National Stage PCT Patent Application from PCT/US2011/046422 Application Titled “*Pet food Compositions Having Antimicrobial Activity*”; **Application #** 16/826,737 for which the USPTO provided the following bibliographic information:

**Filing or 371(c) date:** 03/23/2020; **Status:** Abandoned -- Failure to Respond to an Office Action - 06/04/2022; **Earliest publication #** US 2020-0221735A1; **Earliest publication date:** 07/16/2020; **Inventors:** Luis MONTELONGO, Lawrence, KANSAS (US); Brent POPE, Topeka, KANSAS (US); Sarah MARTINEZ, Lawrence, KANSAS (US); **Applicants:** Hill's Pet Nutrition, Inc., Topeka; **Correspondence address:** 23909 - COLGATE-PALMOLIVE COMPANY, 909 RIVER ROAD, PISCATAWAY, NJ UNITED STATES (See Appdx Vol. 2, pp. 385 – 441, Documents from the United States Patent and Trademark Office (“USPTO”)).

5) International Stage PCT patent Application “*Compositions and Methods For Modifying Gastrointestinal Flora*”, International Application Number PCT/US2011/067713, International Filing Date 29 December 2011, International Publication Number WO 2013/101019 A1 (See Appdx Vol. 2, pp. 442 – 473, Documents from the Patent Cooperation Treaty (“PCT”)).

6) US National Stage PCT Patent Application from PCT/US2011/067713 titled “*Compositions and Methods For Modifying Gastro Intestinal Flora*”; **Application #** 14/368,310 for which the USPTO provided the following bibliographic information:

**Filing or 371(c) date:** 06/24/2014; **Earliest publication #** US 2014-0328896A1; **Earliest publication date:** 11/06/2014; **Status:** Abandoned -- Failure to Respond to an Office Action - 12/28/2017; **Inventors:** Dennis Jewell, Lawrence, KANSAS (US); Luis J. Montelongo, Lawrence, KANSAS (US); Sarah Martinez, Lawrence, KANSAS (US); Lynda Melendez, Topeka, KANSAS (US); **Applicants:** Hill's Pet Nutrition, Inc., Topeka (US); **Correspondence address:** 23909 – COLGATE PALMOLIVE COMPANY, 909 RIVER ROAD, PISCATAWAY, NJ UNITED STATES (See Appdx Vol. 2, pp. 474 – 499, Documents from the United States Patent and Trademark Office (“USPTO”)).

## TABLE OF CONTENTS

<b>I. OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS .....</b>	<b>1</b>
<b>II. STATEMENT OF THE BASIS FOR JURISDICTION IN THE SUPREME COURT .....</b>	<b>1</b>
<b>III. THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE .....</b>	<b>2</b>
A. For “QUESTION I” .....	2
B. For “QUESTION II” .....	2
C. For “QUESTION III”.....	3
<b>IV. STATEMENT OF THE CASE.....</b>	<b>3</b>
A. Statement Of Petitioner’s Claim Of Fraud Upon The Court And Evidence In Support Of The Same As Alleged In The Matter Of Kamdem-Ouaffo v. Colgate Palmolive, et al., District Court Case # 22-cv-06623-CCC-JBC; US Court Of Appeals For The Third Circuit Case No. 23 - 2982 (“THE 22-cv-06623-Independent Action”).....	3
B. Petitioner’s Prior Court Cases In Which Respondents Who Are Officers Of The Court Procured Judgements By Fraud Upon The Court ..	10
1) Kamdem-Ouaffo v. NaturaSource International LLC, NJ Superior Court Case No. MID-L-5527-13 (“The MID-L-5527-13 Action”) .....	10
a) The “WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT RULE 43bis.1)” And The MID-L-5527-13 Complaint.....	11
b) The Purported Evidentiary Documents Fraudulently Withheld From Petitioner By Respondents During The Proceedings Of The MID-L-5527-13 Action .....	15
c) Petitioner’s 08/14/2015 Notice Of Removal Of His MID-L-5527-13 Action Pursuant To 28 U.S.C. §1454 In Accordance With The Procedures Of 28 U.S.C. §1446(d).....	17
d) Unconstitutional Post-Removal Meetings And Hearings In The Superior Court Of New Jersey .....	20

2) Kamdem-Ouaffo v. NaturaSource International LLC, US District Court For The District Of New Jersey REMOVAL Case No. 3:15-cv-06290-AET-LHG, And Subsequently US Court Of Appeals For The Third Circuit Case No. 16-2304 (“THE 15-cv-06290 Removal Action”).....	21
3) Kamdem-Ouaffo v. Leblon, et al., District Court Case No. 15-cv-07481-AET-TJB;US Court of Appeals For The Third Circuit Case No. 16-1006 (“THE 15-cv-07481 ACTION”) .....	25
4) Kamdem-Ouaffo v. Colgate Palmolive, et al., District Court Case No. 15-cv-07902-CCC-JBC; US Court of Appeals For The Third Circuit Case No. 21- 1198 (“THE 15-cv-07902 ACTION”).....	26
5) Post-Judgments Proceedings To Vacate Void Court Orders .....	27
<b>C. Procedural Background Of The Petitioner’s 22-cv-06623 Independent Action Filed As Of Right Pursuant To The Fed. R. Civ. P. Rule 60(d)(3).....</b>	<b>28</b>
<b>V. ARGUMENTS AMPLIFYING THE REASONS RELIED ON FOR ALLOWANCE OF THE WRIT OF CERTIORARI .....</b>	<b>30</b>
<b>A. Excerpts Of The Appellate Opinion From Which The Questions Are Derived, Scope, And Relevance Of The Questions In Relation To The Petitioner’s Complaint And To The Proceedings In The Inferior Courts ....</b>	<b>30</b>
<b>B. As A Matter Of Constitutional And Jurisdictional Laws Under Article III Section 2 Of The Constitution, The Supreme Court Is REQUIRED To Allow A Writ Of Certiorari On Petitioner “QUESTION I” Because No Federal Court Has The Subject-Matter Jurisdiction To “<i>Order And Adjudge</i>” That A State Court Has The Jurisdiction To Decree Summary Judgment On An Action That Was Properly Removed To A Federal Court Pursuant to 28 U.S.C. §1454 And In Accordance With The Procedures Of 28 U.S.C. §1446(d).....</b>	<b>32</b>
<b>C. As A Matter Of Constitutional Law Under Article III Section 2 Of The Constitution Of The United States, The Supreme Court Is REQUIRED To Allow A Writ Of Certiorari On Petitioner’s “QUESTION II” Because No Federal Court Has Jurisdiction Over USPTO’s “<i>Form PTOL-1432 Notice Of Abandonment</i>” Which The Agency Issued Pursuant To MPEP §711(a) and 37 CFR 1.135 In Furtherance Of Its Final Office Action Rejecting An International Patent Application For Failure To Produce Relevant Scientific Data In Support Of The Novel Patent Claims Disclosed In The Said PCT Applications .....</b>	<b>34</b>

<b>D. As A Matter Of Constitutional Law Under Article III Section 2 Of The Constitution Of The United States, The Supreme Court Is REQUIRED To Allow A Writ Of Certiorari On Petitioner “QUESTION III” Because No Federal Court Has Jurisdiction To Render Nugatory The PCT Rule 43bis.1 “Written Opinion Of The International Searching Authority” Issued In The Proceedings Of An International Patent Application.....</b>	<b>37</b>
<b>E. In Consideration Of The Supreme Court Rule 10, Allowance Of A Writ Of Certiorari For Petitioner’s “QUESTION I” Is Proper Because An Inquiry Into Whether The Inferior Courts Deprived Fundamental Constitutional Rights In Using “<i>Absolutely Void</i>” State Court Orders To Preclude Petitioner’s Well-Pleded 22-cv-06623-Independent Action Pursuant The Fed. R. Civ. P. Rule 60(d)(3) Is An Important Question Of Federal Law, And The Inferior Courts’ Decision Conflicts With Relevant Decisions Of The Supreme Court, Of All Other Federal Courts Of Appeals, And Of All State Courts Of Last Resort .....</b>	<b>38</b>
<b>VI. CONCLUSION AND REQUEST FOR RELIEF .....</b>	<b>40</b>

## INDEX TO THE APPENDICES

### **APPENDIX VOLUME 1**

#### **I. OPINION AND JUDGMENT SOUGHT TO BE REVIEWED**

**In The Matter of *Kamdem-Ouaffo v. Colgate Palmolive, et al., US Court of Appeals For The Third Circuit* (“USCA3”) Case No. 23- 2982 (Appeal From US District Court For The District Of New Jersey (“D.N.J.”) Case No. 22-cv-06623-CCC-JBC)**

23-2982-[Dkt # 69] OPINION.....	1
23-2982-[Dkt # 70] JUDGMENT .....	10
DOCKET SHEET FOR USCA3 CASE No. 23-2982.....	11

#### **II. OTHER RELEVANT OPINIONS, ORDERS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW**

**A. In the Matter of *Kamdem-Ouaffo v. Colgate Palmolive, et al., US District Court For The District of New Jersey (“D.N.J.”) Case No. 22-cv-06623-CCC-JBC, And Subsequently US Court Of Appeals For The Third Circuit (“USCA3”) Case No. 23-2982***

22-cv-06623-[ECF # 149].....	24
22-cv-06623-[ECF# 150].....	42
DOCKET SHEET FOR D.N.J. CASE No. 22-cv-06623-CCC-JBC.....	45

**B. In the Matter Of *Kamdem-Ouaffo v. NaturaSource International LLC, New Jersey Superior Court Case No. MID-L-5527-13***

DOCKET SHEET FOR NJ SUPERIOR COURT CASE No. MID-L-5527-13.....	69
Orders created during the 08/20/2015 Coram Non-Judice hearing.....	75 - 99
Transcript of Coram Non Judice meeting held on 08/20/2015.....	101 - 125
Order by Judge Cantor issued On 01/17/2014.....	75

Opinions and Orders on Motion For Relief from Judgment pursuant to New Jersey Court Rule 4:50-3.....	126 - 158
<b>C. In the Matter Of <i>Kamdem-Ouaffo v. NaturaSource International LLC, Case No. 3:15-cv-06290-AET-LHG, US District Court For The District Of New Jersey (“D.N.J.”), And Subsequently In The US Court Of Appeals For The Third Circuit (“USCA3”)</i> As Case No. 16-2304</b>	
DOCKET SHEET FOR D.N.J. CASE No. 3:15-cv-06290-AET-LHG.....	159 - 164
15-cv-06290-[ECF # 26] OPINION.....	165 - 171
15-cv-06290-[ECF # 27] ORDER granting Defendants' 12 & 16 Motions to Remand.....	172 - 173
15-cv-06290-[ECF # 34] OPINION.....	174 - 179
15-cv-06290-[ECF # 35] ORDER denying 30 Plaintiff's Motion for Reconsideration.....	180
15-cv-06290-[ECF # 42] OPINION.....	181 - 185
15-cv-06290-[ECF # 43] ORDER.....	186 - 187
15-cv-06290-[ECF # 59] MANDATE of USCA as to 56 Notice of Appeal (USCA) .....	188
15-cv-06290-[ECF # 59-1] Clerk's Letter to the District Court .....	190
15-cv-06290-[ECF # 59-2] OPINION .....	191 - 193
15-cv-06290-[ECF # 65] ORDER denying Plaintiff's 61 Motion for Relief from Judgment.....	194 - 195

**D. In The Matter Of Kamdem-Ouaffo v. Leblon, et al., US District Cort For The District Of New Jersey (“D.N.J.”) Case No. 15-cv-07481-AET-TJB, And Subsequently US Court Of Appeals For The Third Circuit Case No. 16-1006**

DISTRICT COURT DOCKET SHEET .....	196 - 201
15-cv-07481-[ECF # 28] OPINION .....	202 - 208
15-cv-07481-[ECF # 29] ORDER granting Defendants Motions 16 & 17 to Dismiss .....	209
15-cv-07481-[ECF # 36] OPINION .....	210 - 214
15-cv-07481-[ECF # 37] ORDER Denying 30 Motion for Reconsideration .....	215
15-cv-07481-[ECF # 38] USCA3 JUDGMENT .....	216
15-cv-07481-[ECF # 39] MANDATE .....	217
15-cv-07481-[ECF # 57] LETTER ORDER denying 40 Motion for Relief from Judgment .....	220 - 223

**E. Kamdem-Ouaffo v. Colgate Palmolive, et al., District Court Case No. 15-cv-07902-CCC-JBC, US District Court For The District Of New Jersey (“D.N.J.”), And Subsequently US Court Of Appeals For The Third Circuit Case No. 21- 1198**

DOCKET SHEET .....	224 - 234
15-cv-07902-[ECF # 90] OPINION .....	235 - 249
15-cv-07902-[ECF # 91] ORDER .....	250 - 251
15-cv-07902-[ECF # 96] USCA JUDGMENT as to 92 Notice of Appeal (USCA) .....	252 – 253

15-cv-07902-[ECF # 121, 121-1, 121-2] MANDATE of USCA as to 92 Notice of Appeal (USCA) .....	254 - 261
15-cv-07902-[ECF # 122] OPINION and ORDER denying 94 , 112 Plaintiff's Motion for Relief pursuant to FRCP 60(b)(1),(2),(3),(4) and (6); denying 109 Plaintiff's Motion for Declaratory Orders .....	262 - 269
15-cv-07902-[ECF # 128] OPINION and ORDER denying 123 Plaintiff's Third Motion for Reconsideration .....	270 - 277

### **III. ORDER ON REHEARING**

23-2982-[Dkt # 72] ORDER, petition for rehearing/petition for rehearing en banc.....	22
--	----

### **IV. JUDGMENT SOUGHT TO BE REVIEWED**

Same as above for USCA Case No. 23-2982.....	10
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## **APPENDIX VOLUME 2**

### **Other Relevant Opinions, Orders, Findings Of Facts, And Conclusions Of Law (Continued)<sup>1</sup> – Colgate Palmolive Company And Hill’s Pet Nutrition Inc’s Patent Prosecution At The Patent Cooperation Treaty (“PCT”) And The United States Patent And Trademark Office (“USPTO”)**

Records Of The Patent Cooperation Treaty (“PCT”), International Application Number PCT/US2011/046422, “ <i>Pet food Compositions Having Antimicrobial Activity.</i> ” .....	278 - 309
Records Of The United States Patent And Trademark Office (“USPTO”), US National Stage PCT Patent Application No. 13/811,992; from PCT/US2011/046422 Application Titled “ <i>Pet food Compositions Having Antimicrobial Activity</i> ”.....	311 - 343
Records Of The United States Patent And Trademark Office (“USPTO”), US National Stage PCT Patent Application No. 15/335,966; Titled “ <i>Pet food Compositions Having Antimicrobial Activity</i> ”.....	345 - 383
Records Of The United States Patent And Trademark Office (“USPTO”),, US National Stage PCT Patent Application No. 16/826,737; Titled “ <i>Pet food Compositions Having Antimicrobial Activity</i> ”.....	385 - 441
Records Of The Patent Cooperation Treaty (“PCT”), International Application Number PCT/US2011/067713, Titled “ <i>Compositions and Methods For Modifying</i>	

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<sup>1</sup> Additional “Other Relevant Opinions, Orders, Findings Of Facts, And Conclusions Of Law” are included in Appendix Volume 12, pp. 2907 – 2923, 2937 – 2944.

*Gastrointestinal Flora*”, International Publication Number WO 2013/101019 A1

.....442 - 473

Records Of The United States Patent And Trademark Office (“USPTO”), US

National Stage PCT Patent Application No. 14/368,310; titled “*Compositions and*

*Methods For Modifying Gastro Intestinal Flora*”.....474 – 499

## **APPENDIX VOLUME 3**

### **Material Required In Subparagraph 1(f) And 1(g)(i) Of The Supreme Court Rule 14<sup>2</sup>**

28 U.S.C. §1446 .....	500
28 U.S.C. §1454 .....	504
The First Amendment of the Constitution of the United States .....	506
Seventh Amendment of the Constitution of the United States .....	507
Manual of PATENT EXAMINING PROCEDURE (“MPEP”), Original Ninth Edition, March 2014, Latest Revision November 2024[R-01.2024] .....	508 - 641
37 CFR 1.135 .....	642
United States Code Title 35 – Patents (Appendix L Consolidated Patent Laws — January 2023 update) .....	643 – 659
Regulations under the Patent Cooperation Treaty (as in force from July 1, 2024) .....	660 – 686
Federal Rule Civil procedure Rule 56.....	691 -692
Federal Rule Civil Procedure Rule 60.....	694 – 695

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<sup>2</sup> Additional Material Required In Subparagraph 1(f) and 1(g)(i) Of The Supreme Court Rule 14 are included in Appendix Volume 12, pp. 2924 – 2936.

## **APPENDIX VOLUME 4**

### **Essential Materials – Records Of Proceedings From Inferior Courts.**

Operative Complaint And Records Of Proceedings In the Matter Of *Kamdem-Ouaffo v. Colgate Palmolive, et al.*, US District Court For The District of New Jersey (“D.N.J.”) Case No. 22-cv-06623-CCC-JBC, And Subsequently US Court Of Appeals For The Third Circuit (“USCA3”) As Case No. 23-2982 .....722 – 971

## **APPENDIX VOLUME 5**

### **Essential Materials – Records Of Proceedings From Inferior Courts.**

Records Of Proceedings In the Matter Of <i>Kamdem-Ouaffo v. Colgate Palmolive, et al.</i> , US District Court For The District of New Jersey (“D.N.J.”) Case No. 22-cv-06623-CCC-JBC, And Subsequently US Court Of Appeals For The Third Circuit (“USCA3”) As Case No. 23-2982 .....	972 – 1166
Records Of The Patent Cooperation Treaty (“PCT”), International Application Number PCT/US2011/067713, Titled “ <i>Compositions and Methods For Modifying Gastrointestinal Flora</i> ”, International Publication Number WO 2013/101019 A1 .....	1167 –
	1217

## **APPENDIX VOLUME 6**

### **Essential Materials – Records Of Proceedings From Inferior Courts.**

Records Of Proceedings In the matter Of *Kamdem-Ouaffo v. Colgate Palmolive, et al., US District Court For The District of New Jersey ("D.N.J.") Case No. 22-cv-06623-CCC-JBC, And Subsequently US Court Of Appeals For The Third Circuit ("USCA3") Case No. 23-2982* .....1218 – 1480

## **APPENDIX VOLUME 7**

### **Essential Materials – Records Of Proceedings From Inferior Courts.**

Records Of Proceedings in the *matter Of Kamdem-Ouaffo v. Colgate Palmolive, et al., US District Court For The District of New Jersey (“D.N.J.”) Case No. 22-cv-06623-CCC-JBC, And Subsequently US Court Of Appeals For The Third Circuit (“USCA3”) Case No. 23-2982* .....1481 – 1739

## **APPENDIX VOLUME 8**

### **Essential Materials – Records Of Proceedings From Inferior Courts.**

Records Of Proceedings In the matter Of *Kamdem-Ouaffo v. Colgate Palmolive, et al., US District Court For The District of New Jersey ("D.N.J.") Case No. 22-cv-06623-CCC-JBC, And Subsequently US Court Of Appeals For The Third Circuit ("USCA3") Case No. 23-2982* .....1740 – 2002

## **APPENDIX VOLUME 9**

### **Essential Materials – Records Of Proceedings From Inferior Courts.**

Plaintiff-Appellant's Brief and Reply Brief in the matter of *Kamdem-Ouaffo v. Colgate Palmolive, et al., US Court of Appeals For The Third Circuit* ("USCA3") *Case No. 23- 2982 (Appeal From US District Court For The District Of New Jersey ("D.N.J.") Case No. 22-cv-06623-CCC-JBC)* .....2003 - 2143

Plaintiff-Appellant's Brief and Reply Brief in the matter of *Kamdem-Ouaffo v. Leblon, et al., US Court of Appeals For The Third Circuit Case No. 16-1006 (Appeal from US District Cort For The District Of New Jersey ("D.N.J. ") Case No. 15-cv-07481-AET-TJB)* .....2144 – 2231

## **APPENDIX VOLUME 10**

### **Essential Materials – Records Of Proceedings From Inferior Courts.**

Plaintiff-Appellant's Brief and Reply Brief in the matter of <i>Kamdem-Ouaffo v. Colgate Palmolive, et al., US Court of Appeals For The Third Circuit Case No. 21 – 1198, (Appeal from US District Court For The District Of New Jersey ("D.N.J.") Case No. 15-cv-07902-CCC-JBC) .....</i>	2232 - 2284
Plaintiff-Appellant's Brief and Reply Brief in the matter of <i>Of Kamdem-Ouaffo v. NaturaSource International LLC, US Court Of Appeals For The Third Circuit ("USCA3") Case No. 16-2304, (Appeal from US District Court For The District Of New Jersey ("D.N.J.") Case No. 3:15-cv-06290-AET-LHG .....</i>	2285 – 2314
Third Amended Complaint ("TAC") in the matter of <i>Kamdem-Ouaffo v. Colgate Palmolive, et al., US District Court For The District of New Jersey ("D.N.J.") Case No. 22-cv-06623-CCC-JBC, And Subsequently In The US Court Of Appeals For The Third Circuit ("USCA3") Case No. 23-2982 .....</i>	2315 – 2473

## **APPENDIX VOLUME 11**

### **Essential Materials – Records Of Proceedings From Inferior Courts.**

Record of Proceedings in the Matter of <i>Kamdem-Ouaffo v. NaturaSource International LLC</i> , Case No. 3:15-cv-06290-AET-LHG, US District Court For The District Of New Jersey (“D.N.J.”), And Subsequently US Court Of Appeals For The Third Circuit (“USCA3”) Case No. 16-2304 .....	2474 – 2525
Record of Proceedings in the Matter Of <i>Kamdem-Ouaffo v. Leblon, et al.</i> , US District Cort For The District Of New Jersey (“D.N.J.”) Case No. 15-cv-07481-AET-TJB, And Subsequently US Court of Appeals For The Third Circuit Case No. 16-1006 .....	2526 - 2629
Record of Proceedings in the Matter of <i>Kamdem-Ouaffo v. Colgate Palmolive, et al.</i> , District Court Case No. 15-cv-07902-CCC-JBC, US District Court For The District Of New Jersey (“D.N.J.”), and Subsequently US Court of Appeals For The Third Circuit Case No. 21- 1198 .....	2630 – 2729

## **APPENDIX VOLUME 12**

### **Essential Materials – Records Of Proceedings From Inferior Courts.**

Record of Proceedings in the Matter of <i>Kamdem-Ouaffo v. NaturaSource International LLC</i> , Case No. 3:15-cv-06290-AET-LHG, US District Court For The District Of New Jersey (“D.N.J.”), And Subsequently US Court Of Appeals For The Third Circuit (“USCA3”) Case No. 16-2304 .....	2730 – 2770
Record of Proceedings in the Matter Of <i>Kamdem-Ouaffo v. Leblon, et al.</i> , US District Cort For The District Of New Jersey (“D.N.J.”) Case No. 15-cv-07481-AET-TJB, And Subsequently US Court of Appeals For The Third Circuit Case No. 16-1006 .....	2771 - 2793
Record of Proceedings in the Matter of <i>Kamdem-Ouaffo v. Colgate Palmolive, et al.</i> , District Court Case No. 15-cv-07902-CCC-JBC, US District Court For The District Of New Jersey (“D.N.J.”), and Subsequently US Court of Appeals For The Third Circuit Case No. 21- 1198 .....	2794 – 2838
Records Of Proceedings in the matter Of <i>Kamdem-Ouaffo v. Colgate Palmolive, et al.</i> , US District Court For The District of New Jesey (“D.N.J.”) Case No. 22-cv-06623-CCC-JBC, And Subsequently US Court Of Appeals For The Third Circuit (“USCA3”) Case No. 23-2982 .....	2839 – 2906
Opinion, Judgment, and Mandate in the matter of <i>Kamdem-Ouaffo v. Colgate Palmolive, et al.</i> , US Court of Appeals For The Third Circuit Case No. 21 – 1198, (Appeal from US District Court For The District Of New Jersey (“D.N.J.”) Case No. 15-cv-07902-CCC-JBC) .....	2907 – 2923
Opinion, Judgment, and Mandate in the matter of <i>Kamdem-Ouaffo v. Leblon, et al.</i> , US Court of Appeals For The Third Circuit Case No. 16-1006 (Appeal from US District Cort For The District Of New Jersey (“D.N.J.”) Case No. 15-cv-07481-AET-TJB) .....	2937 - 2944

**Material Required In Subparagraph 1(f) And 1(g)(i) Of The Supreme Court  
Rule 14<sup>3</sup>**

ARTICLE I of the Constitution of the United States .....	2924 – 2930
ARTICLE II of the Constitution of the United States .....	2931 – 2933
ARTICLE III of the Constitution of the United States .....	2934 – 2935
ARTICLE VI of the Constitution of the United States .....	2936

---

<sup>3</sup> Additional Material Required In Subparagraph 1(f) and 1(g)(i) Of The Supreme Court Rule 14 are included in Appendix Volume 3.

## TABLE OF AUTHORITIES CITED

### CASES

<i>Animal Legal Def. Fund v. Quigg</i> , 932 F.2d 920, 930 (Fed. Cir. 1991) .....	35
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 106 S. Ct. 2548 (1986) .....	39
<i>Cooper Technologies v. Dudas</i> 536 F.3d 1330 (Fed. Cir. 2008).....	35
<i>Fed. Deposit Ins. Corp. v. Arciero</i> , 741 F.3d 1111 (10th Cir. 2013).....	39
<i>Fed. R. Civ. P. Rule 56(d)</i> .....	30, 39
<i>Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee</i> , 456 U.S. 694, 102 S. Ct. 2099 (1982).....	34
<i>Kamdem-Ouaffo v. Colgate Palmolive, et al.</i> , D.N.J. Case No. 15-cv-07902-CCC-JBC; USCA3 Case No. 21- 1198.....	8
<i>Kamdem-Ouaffo v. Colgate Palmolive, et al.</i> , D.N.J. Case No. 22-cv-06623-CCC-JBC; USCA3 Case No. 23- 2982 .....	7
<i>Kamdem-Ouaffo v. Leblon, et al.</i> , D.N.J. Case No. 15-cv-07481-AET-TJB; USCA3 Case No. 16-1006.....	8
<i>Kamdem-Ouaffo v. NaturaSource International LLC</i> , D.N.J. REMOVAL Case No. 3:15-cv-06290-AET-LHG; USCA3 Case No. 16-2304.....	8
<i>Kamdem-Ouaffo v. NaturaSource International LLC</i> , New Jersey Superior Court Case No. MID-L-5527-13.....	7
<i>Kern v. Huidekoper</i> , 103 U.S. 485, 493, 26 L.Ed. 354 (1881).....	27, 29, 32

<i>Lacavera v. Dudas</i> , 441 F.3d 1380, 1383 (Fed. Cir. 2006).....	35
<i>Mandawala v. Baptist Sch. of Health Professions, All Counts</i> , No. 23-50258 (5th Cir. Apr. 4, 2024).....	39
<i>Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano</i> 140 S. Ct. 696 (2020) .....	32
<i>Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano</i> , 140 S. Ct. 696, 206 L. Ed. 2d 1 (2020).....	27
<i>Steamship Co. v. Tugman</i> , 106 U.S. 118, 122, 1 S.Ct. 58, 27 L.Ed. 87 (1882).....	32
<i>Stevens v. Tama</i> % 366 F.3d 1325, 1333 (Fed. Cir. 2004) .....	35
<i>Stubbs v. McGillis</i> , 44 Colo. 138, 96 P. 1005, 18 L.R.A.,N.S., 405, 130 Am. St. Rep. 116 .....	39

## STATUTES

18 U.S. C. §1503 .....	3
18 U.S.C. §2.....	3
28 U.S.C. §1254(1) .....	2
<b>28 U.S.C. §1338.....</b>	<b>19</b>
28 U.S.C. §1446 - Procedure for removal of civil actions .....	2
28 U.S.C. §1446(d) .....	7, 19, 25
28 U.S.C. §1454 - Patent, plant variety protection, and copyright cases .....	2
35 U.S.C. – Patents Laws.....	34

35 U.S.C. §§351 – 376.....	3, 37
35 U.S.C. §§371 – 376.....	38
35 U.S.C. §2 .....	30, 35, 37, 40
35 U.S.C. §2(b)(1).....	30, 37

## **OTHER AUTHORITIES**

PCT Rule 43 bis1 - <i>Written Opinion of the International Searching Authority</i> .....	3
USPTO’s “Form PTOL-1432 Notice Of Abandonment”.....	8, 10, 27, 31, 34 - 37
USPTO’s Notices of Final Rejection of Colgate Palmolive Company’s US National Stage PCT Patent Applications .....	8

## **RULES**

Fed. R. Civ. P. Rule 60(d)(3).....	3, 10, 28, 38
Federal Rule of Evidence Rule 902(5).....	3, 10
NJ Court Court Rule 4:50-3 .....	27
PCT Rule 43bis.1 .....	31, 37, 38
The Fed. R. Civ. P. Rule 60(b)(4) .....	39
The Federal Rule of Civil Procedure 56 .....	2
The Federal Rule of Civil Procedure Rule 60.....	2
The Supreme Court Rule 10 .....	38

## **TREATISES**

14C C. Wright, A. Miller, E. Cooper, J. Steinman, & M. Kane, Federal Practice and Procedure .....	32
---	----

Black's Law Dictionary 426 (11th ed. 2019) .....	32
--	----

## **REGULATIONS**

37 CFR 1.135.....	2, 9, 27, 31, 34 - 36
-------------------	-----------------------

## **CONSTITUTIONAL PROVISIONS**

Article I Section 8 Clause 18 ( “ <i>The Necessary and Proper Clause</i> ”) of the Constitution of the United States .....	34
--	----

Article I Section 8 Clause 8 (“ <i>The Intellectual Property Clause</i> ”) of the Constitution of the United States .....	34
---	----

Article III Section 2 of the Constitution of the United States.....	2
---	---

Article VI Clause 2 (“ <i>The Supremacy Clause</i> ”) of the Constitution of the United States .....	38
--	----

Article VI Clause 2 (“ <i>The Supremacy Clause</i> ”) of the Constitution of the United States .....	2, 3, 34
--	----------

The Fifth Amendment right to the due process of law .....	39
---	----

The First Amendment right to obtain a redress for grievances.....	39
---	----

The seventh amendment right to trial by a jury .....	39
--	----

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR A WRIT TO CERTIORARI

The Petitioner respectfully prays that a Writ of Certiorari be issued to review the Opinions and Judgments below.

**I. OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS**

***In the matter of Kamdem-Ouaffo v. Colgate Palmolive, et Al., US Court of Appeals for the Third Circuit (“USCA3”) Case No. 23-2982 (Appeal From The US District Court For The District Of New Jersey (“D.N.J.”) Case No. 22-cv-06623-CCC-JBC)***

23-2982-[Dkt # 69] USCA3 OPINION (See Appdx Vol. 1, pp. 1 – 8).

23-2982-[Dkt # 70] UCA3 JUDGMENT (See Appdx Vol. 1, pp. 9 – 10).

22-cv-06623-[ECF # 149] D.N.J. OPINION (See Appdx Vol. 1, pp. 24 – 41).

22-cv-06623-[ECF # 150] D.N.J. ORDER (See Appdx Vol. 1, pp. 42 – 44).

**II. STATEMENT OF THE BASIS FOR JURISDICTION IN THE SUPREME COURT**

The date on which the United States Court of Appeals for the Third Circuit (“USCA3”) Decided Case No. 23-2982 was on July 01, 2024 (See Appdx Vol. 1, pp. 1 - 8). A timely petition for rehearing in Case No. 23-2982 was denied by the United States Court of Appeals for the Third Circuit on 07/30/2024 (See Appdx. Vol. 1, pp. 22 – 23). On 10/10/2024, Petitioner’s Application No. 24A341 was granted by Justice Alito, extending the time to file a Petition For A Writ Of Certiorari until December 27, 2024.

The jurisdiction of the Supreme Court is invoked under 28 U.S.C. §1254(1).

### **III. THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE**

#### **A. For “QUESTION I”**

Article III Section 2 of the Constitution of the United States (See Appdx Vol. 12, p. 2934); 28 U.S.C. §1454 - Patent, plant variety protection, and copyright cases (See Appdx Vol. 3, pp. 504 – 505); 28 U.S.C. §1446 - Procedure for removal of civil actions (See Appdx Vol. 3, pp. 501 – 503); the First Amendment (See Appdx Vol. 3, p. 506), the Seventh Amendment (See Appdx Vol. 3, p. 507), and the Fifth Amendment of the Constitution of the United States; The Federal Rule of Civil Procedure Rule 60 (See Appdx Vol. 3, pp. 694 - 695); The Federal Rule of Civil Procedure 56 (See Appdx Vol. 3, pp. 691 - 692);

#### **B. For “QUESTION II”**

Article I Section 8 Clause 18 (“*The Necessary and Proper Clause*”), Article I Section 8 Clause 8 (“*The Intellectual Property Clause*”), and Article VI Clause 2 (“*The Supremacy Clause*”) of the Constitution of the United States; The Manual of Patent Examining Procedure (“MPEP”) §711 - Abandonment of Patent Application (See Appdx Vol. 3, pp. 520 - 565); 37 CFR 1.135 (See Appdx Vol. 3, pp. 642); 35 U.S.C. §§2, 135, and 141(See Appdx Vol. 3, pp. 643 - 659); N.J.S.A. 2C:28-6 - Tampering With Or Fabricating Physical Evidence (See Appdx Vol. 3, pp. 696); N.J.S.A. 2C:21-1 - Forgery and Related Offenses (See Appdx Vol. 3, pp. 697);

N.J.S.A. 2C:28-1 - Perjury (See Appdx Vol. 3, pp. 699); N.J.S.A. 2C:2-7 - Liability Of Corporations And Persons Acting, Or Under A Duty To Act, In Their Behalf (See Appdx Vol. 3, pp. 700); N.J.S.A. 2C:2-6 - Liability For Conduct Of Another; Complicity (See Appdx Vol. 3, pp. 701); 18 U.S.C. §1621 - Perjury Generally (See Appdx Vol. 3, pp. 703); 28 U.S. C. §1746 - Unsworn Declarations Under Penalty Of Perjury (See Appdx Vol. 3, pp. 718); 18 U.S. C. §1503 - Influencing Or Injuring Officer Or Juror Generally (See Appdx Vol. 3, pp. 705); 18 U.S.C. §2 - Principals (See Appdx Vol. 3, pp. 719); 18 U.S. C. §1001 - Statements or entries generally (See Appdx Vol. 3, pp. 720); Federal Rule of Evidence Rule 902(5) (See Appdx Vol. 3, pp. 715).

### **C. For “QUESTION III”**

Article II Section 2 (See Appdx Vol. 12, pp. 2932 – 2933), Article VI Clause 2 (“*The Supremacy Clause*”) of the Constitution of the United States; PCT *Rule 43 bis1 -Written Opinion of the International Searching Authority* (See Appdx Vol. 3, pp. 660 - 686); 35 U.S.C. §§351 – 376 (See Appdx Vol. 3, pp. 654 – 659).

## **IV. STATEMENT OF THE CASE**

### **A. Statement Of Petitioner’s Claim Of Fraud Upon The Court And Evidence In Support Of The Same As Alleged In The Matter Of Kamdem-Ouaffo v. Colgate Palmolive, et al., District Court Case # 22-cv-06623-CCC-JBC; US Court Of Appeals For The Third Circuit Case No. 23 - 2982 (“THE 22-cv-06623-Independent Action”)**

This lawsuit is an independent Action pursuant to the Fed. R. Civ. P. Rule 60(d)(3) for fraud upon the court. A copy of the operative Complaint is enclosed in Appdx

Vol. 4, pp. 746 – 887. In complaint COUNTS I, II, and III, Petitioner Alleged that those Respondents who are officers of the court committed acts of Fraud Upon Court and that their codefendants aided and abetted them during Petitioner’s prior federal and State court cases (See Appdx Vol. 4, pp. 808 – 845). A short statement of the Petitioner’s Claim of Fraud Upon The Court was presented to the Court of Appeals as follows:

“The more than 24,000 purported evidentiary documents Designated/Marked Attorney Eyes Only (“AEO”), concealed, and withheld from the Plaintiff by Defendants who are Officers of the Court, in spite Of Plaintiff’s Objections, and subsequently CERTIFIED “UNDER PENALTY” by them and Sealed on 08/20/2015 from the public records during their 08/20/2015 unconstitutional Summary Judgment hearing in the Plaintiff’s MID-L-5527-13 Action, under the pretext that the said documents were indisputable evidence of Colgate Defendants’ priority of invention and data supporting inventorship on the PCT Patent Application No. PCT/US2011/046422 and the related US National Stage Patent Applications Nos. 13/811992, 15/335966, 16/826737, and 14/368310 were fabricated and/or forged evidence and therefore constituted Fraud on the Court.” (See Appdx Vol. 9, p. 2044. Summary Of The Argument On Appeal).

With regard to the evidence in support of Petitioner’s Claim of Fraud Upon The Court, Petitioner had pleaded and argued the following on Appeal:

“Defendants’ Fraud On The Court was clearly and convincingly established by the United States Patent Office (“USPTO”)’s repeated rejections of all documents submitted by Colgate Defendants during the prosecution of their PCT Patent Application No. PCT/US2011/046422 and the related US National Stage Patent Applications Nos. 13/811992, 15/335966, 16/826737, and 14/368310, on the sole ground of failure to provide data to support the novel patent claims.

Colgate Defendants' abandonments of all its US National Stage Patent Applications, Publicly Noticed by the USPTO on 06/04/2022, further demonstrated Fraud On The Court committed by their lawyers in prior court cases." (See Appdx Vol. 9, p. 2045, Summary Of The Argument On Appeal).

The alleged Fraud Upon The Court comprised of fabrication of physical evidence, forgery, filing of false Certifications, Declarations and Affidavits by the lawyers for defendants in petitioner's prior federal and State court cases. Some of the Defendants' lawyers' Certifications, Declarations, and other Documents which Petitioner's alleged to constitute fraud upon the court are as follows:

- 1) CERTIFICATION OF TERRY D. JOHNSON ESQ. In Support Of Hill's Motion For An Order Sealing Deposition Transcript Marked Attorney Eyes Only, "UNDER PENALTY" (See [ECF# 38, p.45, ¶103, Lines 7&8], and Appdx Vol. 6, pp. 1326 – 1330 aka 22-cv-06623-[ECF# 95-24, pp.2-6]).
- 2) "CERTIFICATION OF TERRY D. JOHNSON ESQ. in Support of Defendant Hill's Pet Nutrition Inc's Motion For An Order Sealing Documents Produced And Marked As Attorney Eyes Only ("AEO")" (See Appdx Vol. 6, p. 1220, document No. 2 listed on the Letter to Clerk]). This particular "CERTIFICATION OF TERRY D. JOHNSON ESQ....("AEO")" was Never served on Petitioner. However, the title of the document is detailed enough to know that it pertains to the more than 24,000 fabricated evidentiary documents alleged in this lawsuit.

**3)** The CERTIFICATION “UNDER PENALTY” of Mark A. Kriegel Esq. filed in support of Summary Judgment the MID-5527-13 Action (See 22-cv-06623-[ECF# 38, p.45, ¶103], and Appdx Vol. 12, pp. 2844 – 2846).

**4)** UNCONSTITUTIONAL/VOID STATE COURT ORDERS FABRICATED by Morgan Lewis, Judiciary, Kriegel, Colgate, KLJ Transcription LLC, and NaturaSource Defendants during their 08/20/2015 Unconstitutional hearing at the Superior Court of NJ (See Appdx Vol. 1, pp. 80 – 99).

**5)** DECLARATION OF TERRY D. JOHNSON ESQ. IN SUPPORT Of Colgate Palmolive Company and Hill’s Pet Nutrition Inc’s Motions to dismiss Plaintiff’s Amended Complaint in the 15-cv-07902 Action (See [ECFs# (38, ¶189 (Johnson Decl.)), Appdx Vol. 11, pp. 2634 – 2729 aka 22-cv-06623-(95-9, pp.2-27, 50-51)]).

**6)** CERTIFICATION OF TERRY D. JOHNSON, ESQ. IN SUPPORT Of Defendant Colgate Palmolive Company And Hill’s Pet Nutrition Inc.’s Motion To Remand And To Award Relief Pursuant To 28 U.S.C. §1447(c) (See Appdx Vol. 11, pp. 2477 – 2525 aka 22-cv-06623-[ECF# 95-7, pp.2-3]).

**7)** DECLARATION OF RICHARD G. ROSENBLATT ESQ. IN SUPPORT OF Defendants Todd Buck Esq’s and Terry D. Johnson Esq. Motions to dismiss Plaintiff’s Amended Complaint in the 15-cv-07481 Action (See Appdx Vol. 11, pp. 2530 – 2629 aka [ECFs# (38, ¶190 (Rosenblatt Decl.)), (95-8, pp.2-4, 54-74)]).

**8)** TRANSCRIPT OF MOTION HEARING held by Respondents in violation of 28 U.S.C. §1446(d) on 08/20/2015 at NJ Superior Court (See Appdx Vol. 1, pp. 104 – 124 aka 15-cv-06290-[ECF# 16-2, pp. 29 -49]).

**9)** MORGAN LEWIS DEFENDANTS' PROPOSED ORDER Signed By Judge Defendant Leblon (See Appdx Vol. 11, pp. 2682 – 2683).

**10)** DECLARATION OF MARK A. KRIEGEL, Filed in Case # 3:15-cv-06290-AET-LHG (See [ECF# 38, ¶188 (Kriegel Decl.)], and Appdx Vol. 2734 – 2761).

**11)** CERTIFICATION IN LIEU OF AFFIDAVIT By FRANK ORBACH, filed in Case # 15-cv-07481-FLW-TJB (See Appdx Vol. 12, pp. 2784 – 2788).

**12)** CERTIFICATION IN LIEU OF AFFIDAVIT By FRANK ORBACH, filed in Case No. 15-cv-07481-AET-TJB (See Appdx Vol. 12, pp. 2792 – 2793).

The Petitioner's prior court cases in which the alleged acts of Fraud Upon The Court were committed by the Respondents are the following:

**1)** *Kamdem-Ouaffo v. NaturaSource International LLC*, New Jersey Superior Court Case No. MID-L-5527-13 (See Appdx Vol. 1, pp. 69 -73, NJ Superior Court Docket Sheet).

**2)** *Kamdem-Ouaffo v. Colgate Palmolive, et al.*, D.N.J. Case No. 22-cv-06623-CCC-JBC; USCA3 Case No. 23- 2982 (See Appdx Vol. 1, pp. 45 - 68, 11 - 21 D.N.J. and USCA3 Docket Sheets respectively).

3) *Kamdem-Ouaffo v. NaturaSource International LLC*, D.N.J. REMOVAL Case No. 3:15-cv-06290-AET-LHG; USCA3 Case No. 16-2304 (See Appdx Vol. 1, pp. 159 - 164, D.N.J. Docket Sheet).

4) *Kamdem-Ouaffo v. Leblon, et al.*, D.N.J. Case No. 15-cv-07481-AET-TJB; USCA3 Case No. 16-1006 (See Appdx Vol. 1, pp. 196 - 201, D.N.J. Docket Sheet).

5) *Kamdem-Ouaffo v. Colgate Palmolive, et al.*, D.N.J. Case No. 15-cv-07902-CCC-JBC; USCA3 Case No. 21- 1198 (See Appdx Vol. 1, pp. 224 - 234, D.N.J Docket Sheet).

On Appeal and at the District Court, Petitioner highlighted that acts of Fabrication of Evidence, Forgery, the filing of false Certifications, Declarations, and Affidavits in court proceedings by lawyers were legislated and codified in both State and Federal laws as crimes, the list of which is provided above at Section III(B) (See also Appdx pp. 2035 – 2036, (Appellant’s Brief Section III(F)).

As already mentioned above, the Evidence alleged in support of Petitioner’s Claim of Fraud upon the court Causes of Action comprised of the Official records of the United States Patent and Trademark Office (“USPTO”) showing Four USPTO’s Notices of Final Rejection of Colgate Palmolive Company’s US National Stage PCT Patent Applications on the sole ground of the Applicants failure to produce relevant scientific data in support of novel PCT Patent Claims (See Appdx Vol. 2, pp. 325 - 341, 360 - 373, 420 - 435), and four USPTO’s “*Form PTOL-1432 Notice Of*

*Abandonment*" issued by the USPTO pursuant to MPEP §711(a) and 37 CFR 1.135 in furtherance of its Notices of Final Rejection of Colgate Palmolive Company's US National Stage PCT Patent Applications (See Appdx Vol. 2, pp. 342 – 343, 382 – 383, 414 – 415, 498 – 499). The bibliographic information of the US National Stage PCT Patents in question were as follows:

- 1) US National Stage PCT Patent Application from PCT/US2011/046422 Application Titled "*Pet food Compositions Having Antimicrobial Activity*"; **Application #** 13/811,992 for which the USPTO provided bibliographic information (See Appdx Vol. 2, pp. 311 – 343, Documents from USPTO's Patent Center).
- 2) US National Stage PCT Patent Application from PCT/US2011/046422 Application Titled "*Pet food Compositions Having Antimicrobial Activity*"; **Application #** 15/335,966 for which the USPTO provided bibliographic information (See Appdx Vol. 2, pp. 345 – 383, Documents from USPTO's Patent Center).
- 3) US National Stage PCT Patent Application from PCT/US2011/046422 Application Titled "*Pet food Compositions Having Antimicrobial Activity*"; **Application #** 16/826,737 for which the USPTO provided bibliographic information (See Appdx Vol. 2, pp. 385 – 441, Documents from USPTO's Patent Center).
- 4) US National Stage PCT Patent Application from PCT/US2011/067713 titled "*Compositions and Methods For Modifying Gastro Intestinal Flora*"; **Application**

# 14/368,310 for which the USPTO provided bibliographic information (See Appdx Vol. 2, pp. 474 – 499, Documents from USPTO's Patent Center).

Petitioner argued in the Court of Appeals that USPTO's Notices of Final Rejection and the subsequent USPTO's "Form PTOL-1432 Notice Of Abandonment" were "*Evidence That Is Self-Authenticating*" as defined in the Federal Rule of Evidence Rule 902(5): "*Official Publications. A book, pamphlet, or other Publication purporting to be issued by a public authority*" (See Appdx Vol. 9, pp. 2034 – 2035 (Brief Section III(E) and p. 2036 (Section III(G)).

Given the fact that an independent Action pursuant to the Fed. R. Civ. P. Rule 60(d)(3) for Fraud Upon The Court seeks relief from a Judgment or Order rendered in a prior court case, it is necessary at this point that the Petitioner provides some background on the prior court cases before reaching the procedural history of this subsequent 22-cv-06623-independent Action.

**B. Petitioner's Prior Court Cases In Which Respondents Who Are Officers Of The Court Procured Judgements By Fraud Upon The Court**

One State and three prior federal Actions are relevant in this Independent Action.

**1) *Kamdem-Ouaffo v. NaturaSource International LLC, NJ Superior Court Case No. MID-L-5527-13 ("The MID-L-5527-13 Action")***

In the year 2013, Petitioner retained the Law-Firm Reardon Anderson to sue Colgate-Palmolive Company LLC and its Subsidiary Hill's Pet Nutrition Inc. for Misappropriation of Petitioner's Trade Secrets in violation of an active "MUTUAL

DISCLOSURE AGREEMENT.” A copy of the Petitioner’s Complaint in the New Jersey Superior Court Case No. MID-L-5527-13 Action is included in Appdx Vol. 11, pp. 2713 – 2729. The Complaint in the MID-L-5527-13 Action was written by the Law-Firm- Respondent Reardon Anderson whom Petitioner also sued in this lawsuit in Complaint COUNTS III and IV for having aided and Abetted the Fraud Upon The Court committed by Hill’s Pet Nutrition Inc’s and NaturaSource International LLC’s lawyers and by some State Court Personnel, including NJ Superior Court Judge Vincent Leblon and NJ Superior Court Clerk.

*a) The “WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT RULE 43bis.1)” And The MID-L-5527-13 Complaint*

In summary, Petitioner alleged in the MID-L-5527-13 Action that he had developed a fermented dairy flavoring system for use to impart multifunctionalities in pet foods including cats and dogs (See Appdx Vol. 6, pp. 1380 – 1390, “NATURAL FUNCTIONAL SAVORY FLAVOR (“NFSF”) APPLICATION GUIDE FOR CATS AND DOGS”). Petitioner named his flavoring system “NATURAL FUNCTIONAL SAVORY FLAVOR (“NFSF”). Several studies were conducted by the Petitioner himself and by independent laboratories to confirm the functionalities associated with Petitioner’s flavoring system (See Appdx Vol. 5, pp. 1109 – 1161, Expert Witness Report Of Marc Alan Meyers, PhD., CFS; pp. 1295 – 1315 (“Certification of Laszlo Pokorny...” )). Petitioner’s flavoring system was unique because it combined antimicrobial, palatability, and nutritional

functionalities in one flavoring system to provide a solution to an industry challenge. The industry challenge was that commercially available antimicrobials were known to decrease the palatability of pet foods when used in quantity and dosage sufficient to protect the shelf life of the said pet foods. Also, most of the commercially available antimicrobials were artificial. However, Petitioner's successfully designed a natural flavoring system having powerful antimicrobial activity and palatability enhancement properties at the same time. The petitioner successfully scaled up his flavoring system to commercial quantities and started confidentially providing samples along with the product claims to pet food manufacturers for testing in their commercial pet foods (See Appdx Vol. 12, pp. 2852 – 2894, “Certification of Laszlo Pokorny...” ). Furthermore, relevant documentations about the Petitioner's NFSF flavoring ingredients and processes of manufacture were submitted to the Food and Drug Administration (“FDA”) in support of an Application for an Export Certificate which the FDA Granted (See Appdx Vol. 7, pp. 1695 – 1700).

Petitioner used the mechanisms of trade secrets to protect his invention, including confidentiality agreements and disclosure on “need-to-know” basis only. Colgate Palmolive Company expressed interest in Petitioner's NFSF and entered into a confidentiality agreement for information and samples to be provided to its subsidiary Hill's Pet Nutrition Inc. (See Appdx Vol. 7, pp. 1720 – 1722, “MUTUAL CONFIDENTIAL DISCLOSURE” Agreement aka “Confidentiality Agreement”).

The Mutual Confidential Disclosure Agreement was signed on behalf of Petitioner by NaturaSource Source International LLC who was distributor for Petitioner's products pursuant to Services Contract and Business Agreement (See Appdx Vol. 7, pp. 1723 – 1733). Hill's Pet Nutrition Inc. tested Petitioner's flavoring and reported positive results (See Appdx Vol. 12, pp. 2872 – 2893, 2904 - 2095). They then informed Petitioner that they were considering using petitioner's NFSF in their commercial pet foods. But after a while they stopped communicating Petitioner. Their last communication to the Petitioner was dated 08/31/201 in which they asked a number of technical questions and for which Petitioner readily provided answers (See Appdx Vol. 12, p. 2906).

While other Pet food manufacturers were still testing the performance of Petitioner's NFSF flavoring in their commercial pet foods, Colgate Palmolive Company and its subsidiary Hill's Pet Nutrition Inc. filed two Patent Applications at the Patent Cooperation Treaty ("PCT") containing the same novel claims Petitioner had disclosed to them about the functionalities and the commercial usages of his NFSF flavoring system. The first of the two PCT Applications was titled "*Pet food Compositions Having Antimicrobial Activity*"; International Application Number PCT/US2011/046422, **International Filing Date:** 3 August 2011; **Priority Data:** 3 August 2010; **International Publication Number:** WO 2012/018913 A1 (See Appdx Vol. 2, pp. 278 – 309, Documents from the Patent Cooperation Treaty

(“PCT”)). Colgate Palmolive company’s International Application Number PCT/US2011/046422 focused more on the compositions and processing conditions to impart antimicrobial functionalities. Colgate’s second International Patent Application was titled “*Compositions and Methods For Modifying Gastrointestinal Flora*”, International Application Number PCT/US2011/067713, **International Filing Date:** 29 December 2011, **International Publication Number:** WO 2013/101019 A1 (See Appdx Vol. 2, pp. 442 – 473, Documents from the Patent Cooperation Treaty (“PCT”)). Colgate Palmolive company’s International Application Number PCT/US2011/067713 focused more on usage to impart other nutritional benefits.

Upon review of Colgate’s PCT Patent Applications, the PCT issued a “WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT RULE 43bis.1)” around the year 2012, finding that a total of three (3) Claims, namely Claims Nos. 13 to 15, of Colgate Palmolive Company’s International Application Number PCT/US2011/046422 titled “*Pet food Compositions Having Antimicrobial Activity*” met the requirements for “NOVELTY (N)”. However, the PCT determined that Colgate Palmolive Company failed to provide data to support the “INVENTIVE STEP (IS)” (See Appdx Vol. 5, p. 1092, “**Box No. V: Reasoned Statement of under Rule 43bis.1(a)(i) with regard to Novelty, Inventive Step or Industrial Applicability; Citations and Explanations supporting such statement**”).

In a second “WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT RULE 43bis.1)” issued around the year 2012, the PCT also found that a total of ten (10) Claims, namely Claims Nos. 4 – 6, 13, 14, 17 – 19, 22, and 23 of Colgate Palmolive Company’s International Application Number PCT/US2011/067713 titled “*Pet food Compositions Having Antimicrobial Activity*” met the requirements for “NOVELTY (N)”. However, the PCT also determined that Colgate Palmolive Company failed to provide data to support the “INVENTIVE STEP (IS)” (See Appdx Vol. 5, p. 1198, “**Box No. V: Reasoned Statement of under Rule 43bis.1(a)(i) with regard to Novelty, Inventive Step or Industrial Applicability; Citations and Explanations supporting such statement.**”).

Thus Colgate Palmolive Company and its Subsidiary Hill’s Pet Nutrition Inc. had disclosed a total of thirteen (13) novel and patentable Claims in their two International Patent Applications, yet they did not produce any relevant scientific data to support the novelty and the invention thereof. Accordingly, Petitioner sued them for misappropriation of his Trade Secrets in violation of the Confidentiality Agreement.

***b) The Purported Evidentiary Documents Fraudulently Withheld From Petitioner By Respondents During The Proceedings Of The MID-L-5527-13 Action***

In April of the year 2015, Law-Firm-Respondent Reardon Anderson filed a motion to withdraw as attorney for Petitioner in Petitioner’s MID-L-5527-13 Action.

Petitioner Opposed the motion, nevertheless asked that in case their motion was granted, sufficient time should be granted for Petitioner to look for a new counsel and to complete whatever discovery was still pending as of that time. On June 12, 2015, their motion to withdraw was granted (See Appdx Vol. 1, p. 77). The Order granting Law-Firm-Respondent Reardon Anderson's motion to withdraw stated that Petitioner ought to immediately appear "*pro se*". In addition it stated that the attorneys for the Defendants and for the Petitioner had agreed to designate some defendant's documents purportedly produced by Hill's Pet Nutrition Inc as attorney Eye Only "AEO" and that those documents were not to be transferred to Petitioner.

Petitioner had not heard about such "AEO" documents before, nor had Petitioner ever been asked by Law-Firm-Respondent Reardon Anderson whether the could agree with the Defendants' lawyers to withhold defendants' documents from Petitioner. Upon inquiry the Law-Firm-Respondent Reardon Anderson disclosed that the number of documents they had agreed with defendants' lawyers to withhold from Petitioner were more than 24,000, which they had marked as "AEO".

Petitioner then asked them to transfer those "AEO" documents to Petitioner's Scientific Expert witness for a review their contents, but they refused. The Law-Firm-Respondent Reardon Anderson then mailed the remaining case file to the Petitioner which Petitioner received on or around June 21, 2015. Then on June 26, 2015 the lawyers for Hill's Pet Nutrition Inc.'s filed a motion for Summary

Judgment (See Appdx Vol. 6, pp. 1219 – 1390). The said Motion for Summary Judgment was supported by Statements Of Undisputed Material Facts (“SUMFs”) which defendants’ lawyers claimed to be supported by the documents they had withheld from the Petitioner and which they also filed “Under Seal” without serving copies on the Petitioner (See Appdx Vol. 6, pp. 1259 – 1272, 1292, 1317 - 1347). Similarly, the defendants’ witnesses’ Certifications or Affidavits filed in support of their Motion for Summary Judgment were based on documents they claimed to be part of the ones they had marked as “AEO” and had withheld from petitioner (See Appdx Vol. 1, pp. 1282 – 1294).

***c) Petitioner’s 08/14/2015 Notice Of Removal Of His MID-L-5527-13 Action Pursuant To 28 U.S.C. §1454 In Accordance With The Procedures Of 28 U.S.C. §1446(d)***

Defendants’ Motion for Summary Judgment in the MID-L-552713 Action was basically asking Petitioner to answer a Motion for Summary Judgment and their Statement of Undisputed Material Facts (“SUMFs) without having any knowledge of the contents of any of the documents that defendants’ lawyers cited in support. Nevertheless, upon review of their arguments, the one thing that became clear to Petitioner was that the adjudication of the MID-L-5527-13 Action hinged upon determining who was the true inventor of the thirteen (13) novel PCT Patent Claims in Colgate and Hills’ PCT Applications Nos. PCT/US2011/046422 and PCT/US2011/067713. In addition, Petitioner found in the public domain that

Colgate Palmolive Company had entered National Stage PCT Patent Applications in numerous Countries including in the European Union, Canada, China, Russia, Brazil, Japan, Etc... (See Appdx Vol. 2, p. 278).

As a first approach, Petitioner Opposed MID-L-5527-13-Defendants Motion for Summary Judgment, and filed a Cross-Motion for Judicial Notice of the Decision of the PCT's Colgate and Hills' PCT Applications Nos. PCT/US2011/046422 and PCT/US2011/067713. Then upon further review of the federal Statutes, Petitioner assessed that because the adjudication of his MID-L-5527-13 Action hinged upon determining who was the true inventor of the thirteen (13) novel PCT Patent Claims in Colgate and Hills' PCT Applications Nos. PCT/US2011/046422 and PCT/US2011/067713, the MID-L-5527-13 Action was therefore fundamentally a Federal Question of Patent Laws. In fact, the PCT is a Treaty of the United States and had already issued two "WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT RULE 43bis.1)" in the year 2012 stating that the Colgate Palmolive Company and Hill's Pet Nutrition Inc. did not have the data to prove the invention they had disclosed (See Appdx Vol. 5, p. 1092, and Appdx Vol. 5, p. 1198). Having reached this understanding, Petitioner decided to Remove his Action from the State Court to the Federal Court under 28 U.S.C. §1454.

Upon such background, Petitioner prepared, filed and served a Notice of Removal for the Removal of his MID-L-5527-13 Action pursuant to 28 U.S.C.

§1454 from NJ Superior Court to the US District Court for the District of New Jersey (See Appdx Vol. 8, pp. 1876 – 1899). 28 U.S.C. §1454 provides that removal must be done in accordance with the procedural Mandates of 28 U.S.C. §1446(d). Petitioner filed and served his Notice of Removal by mail through a third party carrier named FedEx on 08/13/2015. FedEx delivered Petitioner's papers on 08/14/2015 on the Clerk of the US District Court for the District of New Jersey, the Clerk of the Superior Court of New Jersey, and on all Respondents that were sued in the Petitioner's MID-L-5527-13 Action (See Appdx Vol. 8, pp. 1866 – 1874). Petitioner's Notice of Removal comprised of a Pleading of the grounds for Removal under 28 U.S.C. §1454 and a copy the entire Record of the proceedings that took place or were pending in the MID-L-5527-13 Action (See Appdx Vol. 8, pp. 1999 – 2002). The Total weight of proceedings documents removed from the State Court to the federal court was 18.2 Lbs/8.26 Kgs as measured by FedEx (See Appdx Vol. 8, p. 1866). Along with Petitioner's Notice Of Removal, Petitioner submitted a legal analysis and a Demand pursuant to 28 U.S.C. §1146(d) to the Clerk of the Superior Court of New Jersey in a document titled "***Docket Number MID-L-5527-13 - NOTICE OF REMOVAL PRUSUANT TO 28 U.S.C. §1454 AND 28 U.S.C. §1338***". In specific, Petitioner stated the following:

*"In view of the provisions of 28 U.S.C §1338 and pursuant to 28 U.S.C. §1454 & 28 U.S.C. §1446(d), I am removing this patent matter from the State Court to bring it to the United States District Court. 28 U.S.C. §1446(d) states the following: "Notice to Adverse Parties and State Court — Promptly*

after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

Please be informed that I have a Notice of Removal with the United States District Court for the District of New Jersey, therefore I am demanding pursuant to 28 U.S.C 1446(d) that you must direct the Superior Court of the State of New Jersey and the Judges assigned to this case to "...Proceed No Further..." and to immediately stop any activity on MID-L-5527-13." (See Appdx Vol. 8, p. 1879).

The record of the District Court and of NJ Superior Court are both in agreement with the fact that Petitioner's Notice Removal was filed and served on 08/14/2015 (See Appdx Vol. 1, p. 71 (NJ Superior Court Docket Sheet), and p. 160 (US District Court Docket Sheet)). And on the same date, the US District Court for the District of New Jersey immediately exercised its jurisdiction on the case, including sending Notification to the Director of the USPTO to initiate all relevant statutory proceedings at the USPTO (See Appdx Vol. 8, p. 1889 - 1896).

***d) Unconstitutional Post-Removal Meetings And Hearings In The Superior Court Of New Jersey***

After Petitioner filed and served his Notice of Removal 08/14/2015, Petitioner received numerous improper and unlawful e-mails from Defendants' lawyers and harassing Phone calls from Respondent Vincent Leblon's law Clerk pressuring Petitioner to appear in person for a meeting at NJ Superior Court on 08/20/2015. Petitioner rejected their improper and unlawful invites and reminded them of the

mandate of 28 U.S.C. §1446(d) which states that “the State court shall proceed no further unless and until the case is remanded.” Then in the late afternoon of 08/20/2015, Petitioner received improper e-mails from Defendants’ lawyers to which were attached several documents purported to be Orders of New Jersey Superior Court dismissing Petitioner’s Complaint with prejudice and Granting miscellaneous reliefs for Defendants (See Appdx Vol. 1, pp. 80 – 99). However, no Opinion was ever written by any NJ Superior Court to explain the “rationale” upon which a Summary Judgment ought to be granted to any of the Defendants in the MID-L-5527-13 Action. Thus the only document from which a person may obtain some insight into what the defendants said among themselves in their unconstitutional post-removal meetings is the transcript of their 08/20/2015 unconstitutional hearing, which they subsequently Certified under penalty and filed in the federal court as evidence in support of the dismissal of Petitioner’s Removal Action and other related Actions (See Appdx Vol. 11, pp. 2505 – 2525).

**2) *Kamdem-Ouaffo v. NaturaSource International LLC, US District Court For The District Of New Jersey REMOVAL Case No. 3:15-cv-06290-AET-LHG, And Subsequently US Court Of Appeals For The Third Circuit Case No. 16-2304 (“THE 15-cv-06290 Removal Action”)***

Three weeks after the date of 08/20/2015 when some of the Respondents had held an unconstitutional meeting at NJ Superior Court under the docket of Petitioner’s MID-L-5527-13 Action, the lawyers for Colgate-Palmolive Company and Hill’s Pet Nutrition Inc. appeared for the first time in the US District Court for

the District Of New Jersey on 09/11/2015 and filed “**DEFENDANT COLGATE PALMOLIVE COMPANY AND HILL’S PET NUTRITION INC’S. NOTICE OF MOTION TO REMAND AND TO AWARD RELIEF PURSUANT TO 28 U.S.C. §1447(c)**” (See Appdx Vol. 11, pp. 2474 – 2525). Similarly, the lawyers for NaturaSource International LLC and Laszlo Pokorny appeared in the US District Court for the District of New Jersey on 09/10/2015 and filed “**DEFENDANTS NATURASOURCE INTERNATIONAL, LLC AND LASZLO POKORNY’S MOTION TO REMAND** (See Appdx Vol. 12, pp. 2730– 2770).

In support of their motions to remand, the lawyers for the Defendants filed the “**CERTIFICATION OF TERRY D. JOHNSON, ESQ. IN SUPPORT OF DEFENDANT COLGATE PALMOLIVE COMPANY AND HILL’S PET NUTRITION INC.’S MOTION TO REMAND AND TO AWARD RELIEF PURSUANT TO 28 U.S.C. §1447(c)**” in which they Certified a “*copy of the transcript of the oral argument held on Hill’s Motion for Summary Judgment in the Superior Court of New Jersey, Middlesex County before the Honorable Vincent LeBlon on August 20, 2015*” under penalty as “*true*” (See Appdx Vol. 11, pp. 2477 – 2525). The said Transcript provided a passage in which Respondent Buck, speaking as a lawyer for Colgate stated the following:

“6 THE COURT: We’re -- we’re going to -- we’re  
7 going to mark this as defendant, Hills 1 in evidence,  
8 okay?  
9 (D-1 marked for identification and into evidence)

10 MR. BUCK: If you compare what we've done to  
11 this PCT application, everything was there. We had  
12 virtually every data point. We had virtually ever  
13 figure prior to Mr. Pokorny contacting Hills. So,  
14 there is no issue of -- of fact here at all. There is  
15 nothing he needs to see. That's why we're comfortable  
16 with the documents being under seal. He doesn't need  
17 to see those. What he needs to show is that he somehow  
18 gave us some of that data, or some of that -- some of  
19 those data points that is found in the PCT. He keeps  
20 coming back to that, and there's just nothing there.  
21 So, if you look at that time line, we've done  
22 everything, and it's all documented and it's all  
23 choreographed very nicely. This is how a company runs  
24 discovery process in getting to the point of filing a  
25 patent application.

1 So, there is no issue of fact that we know.  
2 We had this in our possession.  
3 So, if you had the invention in your  
4 possession prior to Mr. Pokorny contacting us, how can  
5 you take it? You can't take anything. So, there's no  
6 trade secret that we took, because the information in  
7 the patent application is ours. We generated it.  
8 There's no confidential information that we  
9 took because the -- the information in the patent  
10 application is ours. We generated it. There's unjust  
11 enrichment, because the benefit that we derived we  
12 derived on our own, because it was our data, and it was  
13 our -- our discovery process. Literally, ever single  
14 count falls because there's nothing that he gave us  
15 that's found anywhere in this patent application  
16 whatsoever." (See Appdx Vol. 11, p. 2516)

However, whereas the lawyers for Defendants asserted that the documents they had for during their 08/20/2015 unconstitutional meeting proved that "*we've done everything, and it's all documented and it's all choreographed very nicely. This*

*is how a company runs discovery process in getting to the point of filing a patent application*”, all of the four US National Stage PCT Patent Applications they were subsequently allowed to prosecute on the thirteen (13) novel patent claims they had disclosed earlier to the PCT were rejected by the USPTO for failure to provide data to support the invention. This material fact evidently raised a question as to the true nature of the more than 24,000 purported evidentiary documents they had withheld from Petitioner and which they asserted to be “evidence” and “data” of their “discovery process” and “invention”. Accordingly, the Petitioner alleged in this lawsuit that Defendants’ more than 24,000 purported evidentiary documents, the transcript of their 08/20/2015 unconstitutional hearing, the Orders they created during the said unconstitutional hearing, and the Certifications of attorney filed in support of their Motion to Remand Petitioner’s MID-L-5527-13 Action were all fraud upon the court. An Initial Opinion and Order of the District Court Remanding Petitioner’s MID-L-5527-13 Action to the State Court was issued on 9/29/2015 (See Appdx Vol. 1, pp. 165 – 173). Petitioner then filed a timely Motion for Reconsideration that was decided on 10/28/2015 (See Appdx Vol. 1, pp. 174 – 180). A timely Notice of Appeal in the Removal Action was decided on 08/14/2017 (See Appdx Vol. 1, pp. 191 – 193). In any even there is no dispute as to the fact that the Opinions issued on Petitioner’s Removal Proceedings were premised upon the so-called State Court Orders fabricated by some of the Respondents during their

08/20/2015 unconstitutional post-removal meeting. Furthermore, it should be highlighted that as a result of the fraudulent, unlawful, and unconstitutional Remand of the Petitioner's Action, an immediate damage to Petitioner's was the loss by the Petitioner of the opportunity to appear before the USPTO based upon the 08/14/2015 Notice that was sent to the Director of the USPTO to by the Clerk of the US District Court (See Appdx Vol. 8, p. 1889 - 1896).

**3) *Kamdem-Ouaffo v. Leblon, et al., District Court Case No. 15-cv-07481-AET-TJB; US Court of Appeals For The Third Circuit Case No. 16-1006 (“THE 15-cv-07481 ACTION”)***

In this Action, Petitioner alleged that the post-removal meetings held by Respondents on 08/20/2015 after the proper filing and service of Petitioner's Notice of Removal in the Petitioner's MID-L-5527-13 Action was a violation of 28 U.S.C. §1446(d) and that the so-called Orders of Summary Judgment they fabricated during the said meeting were “*VOID*” (See Appdx Vol. 8, pp. 1927 – 1997).

Defendants' lawyers filed several motions to dismiss this Action on grounds of several preclusion doctrines including the Rooker-Feldman doctrine, Res Judicata, collateral estoppel, and sovereign immunity (See Appdx Vol. 11, p. 2526 – 2529). In support of their Motions, they filed Certifications and Declarations under penalty such as the “*DECLARATION OF RICHARD G. ROSENBLATT ESQ. IN SUPPORT OF DEFENDANTS TODD BUCK ESQ'S AND TERRY D. JOHNSON ESQ. MOTIONS TO DISMISS PLAINTIFF'S AMENDED COMPLAINT*” (See

Appdx Vol. 11, pp. 2530 – 2629) to which they attached the documents fabricated by some of the Respondents during their 08/20/2015 unconstitutional meeting at NJ Superior Court. The District Court Dismissed Petitioner’s Complaint (See Appdx Vol. 1, pp. 202 – 215). On Appeal to the US Court of Appeals for the Third Circuit, Case No. 16-1006, the Appellate Court Affirmed that a State Court has Jurisdiction over an Action even after it had been removed to the federal court in accordance with the procedures of 28 U.S.C. 1446(d) (See Appdx Vol. 1, pp. 216 – 219).

**4) *Kamdem-Ouaffo v. Colgate Palmolive, et al., District Court Case No. 15-cv-07902-CCC-JBC; US Court of Appeals For The Third Circuit Case No. 21- 1198 (“THE 15-cv-07902 ACTION”)***

Petitioner filed this lawsuit as a Diversity Case on Claims that had been dismissed without prejudice earlier from the Petitioner’s MID-L-5527-13 Action by NJ Superior Court Judge Cantor (See Appdx Vol. 1, pp. 75 – 76, Cantor’s 1/17/2014 Orders). But upon defendants’ lawyers’ Motions to dismiss supported by false Certifications of the same unconstitutional documents they fabricated during their 08/20/2015 meeting at NJ Superior Court (See Appdx Vol. 11, pp. 2630 - 2729, and Vol. 12, pp. 2794 – 2836), the inferior courts dismissed the Action through an unconstitutional application of preclusion doctrines. In specific, they held that the unconstitutional Judgements and Orders fabricated by Respondents during their on 08/20/2015 post-removal meting at NJ Superior court under docket No. MID-L5527-13 Action precluded any further Action (See Appdx Vol. 1, pp. 235 - 261).

### **5) Post-Judgments Proceedings To Vacate Void Court Orders**

After the Supreme Court issued its *Sua Ponte* Decision *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, 140 S. Ct. 696, 206 L. Ed. 2d 1 (2020), stating that “*Once a notice of removal is filed, "the State court shall proceed no further unless and until the case is remanded.*” 28 U. S. C. § 1446(d) <sup>2</sup>. *The state court "los[es] all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment [are] not ... simply erroneous, but absolutely void.*” *Kern v. Huidekoper* , 103 U.S. 485, 493, 26 L.Ed. 354 (1881)” *Id* at 700, Petitioner filed Motions pursuant the Fed. R. Civ. P. Rule 60(b)(4) and NJ Court Rule 4:50-3 to ask the inferior courts to vacate their the Judgments in the Petitioner’s prior Actions as Jurisdictionally and Procedurally “*VOID*” but they refused to vacate their “*Void*” Court Orders. They continued to “*ORDER*” and “*ADJUDGE*” that notwithstanding the Supreme Court’s *Sua Ponte* Decision in *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, 140 S. Ct. 696, 206 L. Ed. 2d 1 (2020), a State Court Judge has Subject-Matter Jurisdiction over an Action even after it had been removed from the State Court to the federal court (See Appdx Vol. 1, pp. 143 -158, 194 – 195, 220 – 223, 262 – 277).

Then on 06/09/2022, the USPTO issued a “*Form PTOL-1432 Notice Of Abandonment*” pursuant to MPEP §711(a) and 37 CFR 1.135 in furtherance of its 10/06/2021 Final Office Action rejecting Colgate-Palmolive Company’s US

National Stage PCT Patent Application No. 16/826,737 on ground of the Applicants' failure to produce relevant scientific (See Appdx Vol. 2, pp. 414 – 415). The USPTO's 06/09/2022 Notice of Abandonment marked the end of the four separate patent prosecutions that Colgate-Palmolive company was allowed for its PCT Patent Applications. All of the other Applications had already been rejected earlier and Notices of abandonment issued for failure to produce relevant data in support the novel patent claims they had disclosed to the PCT (See Appdx Vol. 1, pp. 382 – 383, 342 – 343, 498 – 499). Thus out of the thirteen (13) Patentable claims identified in two Colgate's PCT Applications, they could not provide relevant data in support of any of them nor any derivative of the same. As a result this lawsuit ensued.

**C. Procedural Background Of The Petitioner's 22-cv-06623 Independent Action Filed As Of Right Pursuant To The Fed. R. Civ. P. Rule 60(d)(3)**

A copy of the operative Complaint is enclosed in the Appdx Vol. 4, pp. 746 – 887. Respondents filed numerous motions pursuant to the Fed. R. Civ. P. Rule 12(b) seeking dismissal based upon the same preclusion doctrines they had argued earlier in the 15-cv-06290, 15-cv-07481, and 15-cv-07902 Actions (See Appdx Vol. 1, pp. 24 – 41, D.N.J. OPINION). Respondents argued that Petitioner's 22-cv-06623-independent Action was precluded by Res Judicata, Collateral Estoppel, Rooker Feldman, Sovereign immunity, Noerr Penington doctrines because of the unconstitutional, "*coram non-judice*" and "*absolutely void*" State Court Orders they fabricated during their 08/20/2015 Coram Non Judice meeting after Plaintiff filed

and served his 15-cv-06290 Notice of Removal (See Appdx Vol. 1, pp. 24 – 41). Consistent with the Supreme Court’s *Sua Ponte* Decision stating that “*Once a notice of removal is filed, .... The state court "los[es] all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment [are] not ... simply erroneous, but absolutely void."* *Kern v. Huidekoper*, 103 U.S. 485, 493, 26 L.Ed. 354 (1881)” (See *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano, Supra, at 700*), Petitioner’s Opposed their motions to dismiss.

Then upon a careful review of Respondents’ motions to dismiss, the Petitioner noticed that they did not provide any alternative justification as to Colgate Palmolive Company’s and Hill’s Pet Nutrition Inc’s failure to obtain a US National Stage Patent on at least one of the thirteen novel patent claims. Based Upon this material fact, Petitioner filed Motions for Summary Judgment supported with the same Statements of Undisputed Material Facts (SUMFs) as the ones litigated in the State Court, adding some new as necessary to account for the Fraud Upon The Court Cause of Action (See Appdx Vol. 5, pp. 972 – 1166, Vol. 6, pp. 1220 – 1480 Vol. 7, pp. 1481 – 1739; Vol. 8, pp. 1740 – 1819). In total Petitioner filed 472 SUMFs in this Action as compared to the 412 SUMFs litigated by Respondents in the MID-L-5527-13 Action (See Appdx Vol. 6, pp. 1391 – 1443). The difference of 60 SUMFs is properly accounted for by the Petitioner’s Complaint COUNTS I, II, and III for Fraud Upon the Court and violation of fiduciary duty. Respondents opposed Petitioner’s Motions for Summary Judgment but neither answered Petitioner’s SUMFs nor filed an

Affidavit or a Declaration as Required by the Fed. R. Civ. P. Rule 56(d) in case they had need for further discovery.

Subsequently, without taking Judicial Notice of USPTO's and PCT's Decisions cited by Petitioner in support of his Complaint, the District Court issued an Opinion and Orders dismissing Petitioner's complaint on the basis of preclusion doctrines (See Appdx Vol. 1, pp. 24 – 41, D.N.J. OPINION). On Appeal, the US Court of Appeals stated that it Affirmed the District Court's "*Rationale*" (See Appdx. Vol. 1, pp. 7 – 8). The Appeals Court also Denied Petitioner's Motion to pursuant to the 35 U.S.C. §2(b)(1) to take Judicial notice of USPTO's and PCT's evidentiary records.

## **V. ARGUMENTS AMPLIFYING THE REASONS RELIED ON FOR ALLOWANCE OF THE WRIT OF CERTIORARI**

### **A. Excerpts Of The Appellate Opinion From Which The Questions Are Derived, Scope, And Relevance Of The Questions In Relation To The Petitioner's Complaint And To The Proceedings In The Inferior Courts**

“QUESTION I” should be construed to encompass whether the Supreme Court knows of any “*Rationale*” that supports the preclusion of Petitioner's Rule 60(d)(3) Independent Action with “*Absolutely void*” State Court Judgments/Orders. “QUESTION I” was derived from the following passage of the Appellate Opinion:

“Kamdem-Ouaffo's state court complaint was dismissed with prejudice after Defendant Judge LeBlon found that there was no basis for any of his claims. Shortly before the dismissal, Kamdem-Ouaffo attempted to remove the State Court Action to federal court (hereinafter the “Removal Action”), but the case was quickly remanded.....

Upon review, we agree with the District Court's reasoning and conclusions regarding the dismissal of Kamdem-Ouaffo's claims. In his brief, Kamdem-Ouaffo reiterates his claims and unsupported allegations of

fraud upon the court, but fails to present any meaningful challenge to the District Court's rationale. Accordingly, we will affirm the judgment of the District Court (See Appdx Vol. 1, pp. 4, 7-8)

“QUESTION II” should be construed to encompass an inquiry into the Finality and the judicial sufficiency of USPTO's and PCT's Final Decision on a PCT Patent Application. It should also be construed to encompass whether any federal or State court has jurisdiction over a USPTO's “*Form PTOL-1432 Notice Of Abandonment*” issued pursuant to MPEP §711(a) and 37 CFR 1.135 in furtherance of a USPTO's Final Office Action rejecting a PCT International Patent Application on ground of the Applicants' failure to produce relevant scientific data. QUESTION II was derived from the following passage of the Appellate Opinion:

“To the extent that Kamdem-Ouaffo was attempting to present new claims related to fraud upon the court, the District Court concluded that he failed to present sufficient evidence to “meet the demanding standard for fraud upon the court.....

In his brief, Kamdem-Ouaffo reiterates his claims and unsupported allegations of fraud upon the court, but fails to but fails to present any meaningful challenge to the District Court's rationale.... We likewise deny his motion for judicial notice.” (See Appdx Vol. 1, pp. 7 – 8)

“QUESTION III” is similar in scope and purpose to “QUESTION II” except that the relevant constitutional agency is the Patent Cooperation Treaty (“PCT”) and its public record pleaded as evidence in support of this independent Action was the “*PCT Written Opinion of the International Searching Authority*” issued under PCT *Rule 43bis.1* for a PCT Patent Application (See Appdx Vol. 2, 291 – 294, 453 – 458).

**B. As A Matter Of Constitutional And Jurisdictional Laws Under Article III Section 2 Of The Constitution, The Supreme Court Is REQUIRED To Allow A Writ Of Certiorari On Petitioner “QUESTION I” Because No Federal Court Has The Subject-Matter Jurisdiction To “*Order And Adjudge*” That A State Court Has The Jurisdiction To Decree Summary Judgment On An Action That Was Properly Removed To A Federal Court Pursuant to 28 U.S.C. §1454 And In Accordance With The Procedures Of 28 U.S.C. §1446(d)**

In *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano* 140 S. Ct. 696 (2020), the Supreme Court issued a *Sua Ponte* reading and application of the jurisdictional mandate of 28 U.S.C. §1446(d) as follows:

“Once a notice of removal is filed, “the State court shall proceed no further unless and until the case is remanded.” 28 U. S. C. § 1446(d)<sup>2</sup>. The state court "los[es] all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment [are] not ... simply erroneous, but absolutely void." *Kern v. Huidekoper* , 103 U.S. 485, 493, 26 L.Ed. 354 (1881). “Every order thereafter made in that court [is] *coram non judice* ,” meaning “not before a judge.” *Steamship Co. v. Tugman* , 106 U.S. 118, 122, 1 S.Ct. 58, 27 L.Ed. 87 (1882); Black’s Law Dictionary 426 (11th ed. 2019). See also 14C C. Wright, A. Miller, E. Cooper, J. Steinman, & M. Kane, *Federal Practice and Procedure* § 3736, pp. 727–729 (2018).

<sup>2</sup> “The laws of the United States relating to ... removal of causes ... as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the United States District Court for the District of Puerto Rico and the courts of Puerto Rico.” 48 U.S.C. §864.

The Court of First Instance issued its payment and seizure orders after the proceeding was removed to federal district court, but before the federal court remanded the proceeding back to the Puerto Rico court. At that time, the Court of First Instance had no jurisdiction over the proceeding. The orders are therefore void.” *Id* at 700.

Some 144 years ago, in *Kern v. Huidekoper* 103 U.S. 485 (1880), the Supreme court had also held the following:

“Where a State court, proceeding to the trial of a suit which had been removed therefrom, renders judgment against the party, whose petition for a removal it erred in refusing to grant, **he may raise here the question as to the jurisdiction of that court**, notwithstanding the fact that he appeared at the trial and insisted upon the merits of his cause of action or defence.”

As demonstrated above in Section IV(B)(1)(c), the 08/20/2015 unconstitutional post-removal meeting during which Respondents fabricated their so-called State Court Orders of Summary Judgment was held after Petitioner properly filed his Notice of Removal to the US District Court for the District of New Jersey and properly served copies of the same on Respondents. In *Roman Catholic*, 140 S. Ct. 696 (2020), *Supra*, the Supreme Court unambiguously condemned such State Court Orders that were fabricated by State Court personnel in unconstitutional post-removal meetings as “absolutely void...coram non judice ,” meaning “not before a judge.” Furthermore the Supreme Court clearly explained that a Removal Proceeding is governed by “The laws of the United States relating to ... removal of causes ... as between the courts of the United States and the courts of the several States.” The inferior courts did not disclose any information about the nature of the “Rationale” they claimed to have used to arrive at the conclusion that a State Court has the jurisdiction “to proceed further” after a Notice of Removal is filed in accordance with the mandates of 28 U.S.C. §1446(d). In any event, their so-called “Rationale” is contrary to the Jurisdictional Mandate of 28 U.S.C. §1446(d). Thus,

based upon the Supreme Court's Ruling in *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 102 S. Ct. 2099 (1982) stating that “[T]he rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record.” *Mansfield, C. L. M. R. Co. v. Swan*, 111 U.S. 379, 382 (1884) ” *Id* at 701 – 702, the Supreme Court is REQUIRED to allow a Writ of Certiorari in an Action like this one which has been improperly dismissed.

**C. As A Matter Of Constitutional Law Under Article III Section 2 Of The Constitution Of The United States, The Supreme Court Is REQUIRED To Allow A Writ Of Certiorari On Petitioner’s “QUESTION II” Because No Federal Court Has Jurisdiction Over USPTO’s “*Form PTOL-1432 Notice Of Abandonment*” Which The Agency Issued Pursuant To MPEP §711(a) and 37 CFR 1.135 In Furtherance Of Its Final Office Action Rejecting An International Patent Application For Failure To Produce Relevant Scientific Data In Support Of The Novel Patent Claims Disclosed In The Said PCT Applications**

The USPTO is a constitutional authority created by the Congress pursuant to its constitutional powers provided by Article I Section 8 Clause 18 ( “*The Necessary and Proper Clause*”) of the Constitution of the United States. Its purpose is to implement and administer the provision of Article I Section 8 Clause 8 ( “*The Intellectual Property Clause*”) of the Constitution of the United States. Under Article VI Clause 2 ( “*The Supremacy Clause*”) of the Constitution of the United States, the USPTO and 35 U.S.C. – Patents Laws are “*Supreme law of the land*”

(See Appdx Vol. 12, p. 2936). USPTO's Powers and Duties are codified in 35 U.S.C. §2 (See Appdx Vol. 3, pp. 648 – 649).

In the matter of *Cooper Technologies v. Dudas* 536 F.3d 1330 (Fed. Cir. 2008), the US Court of Appeals for the Federal Circuit, the only federal court of Appeals that has Jurisdiction over the reading and interpretation of US Patent laws, read and interpreted the 35 U.S.C. §2 – Powers And Duties as follows:

"Under 35 U.S.C. §2, the Patent Office has authority to establish regulations to "govern the conduct of proceedings in the Office." 35 U.S.C. §2(b)(2)(A); *see also Animal Legal Def. Fund v. Quigg*, 932 F.2d 920, 930 (Fed. Cir. 1991). This is "the broadest of the Office's rulemaking powers" and, "[b]y this grant of power we understand Congress to have 'delegated plenary authority over PTO practice . . .' to the Office." *Stevens v. Tama* 366 F.3d 1325, 1333 (Fed. Cir. 2004) (quoting *Gerritsen v. Shirai* 979 F.2d 1524, 1527 n. 3 (Fed. Cir. 1992)); *see also Lacavera v. Dudas*, 441 F.3d 1380, 1383 (Fed. Cir. 2006) ("Under 35 U.S.C. §2(b)(2), the PTO has broad authority to govern the conduct of proceedings before it . . ."). To comply with section 2(b)(2)(A), a Patent Office rule must be "procedural" — i.e., it must "govern the conduct of proceedings in the Office." \*1336" (See *Cooper Technologies v. Dudas* 536 F.3d 1330 (Fed. Cir. 2008)) at 1335.

The USPTO's procedural Rules that govern its work is called the Manual of Patent Examining Procedures ("MPEP") (See Appdx Vol. 3, pp. 508 – 641). The MPEP §711 - Abandonment of Patent Application [R-07.2015] states the following:

***"37 CFR 1.135 Abandonment for failure to reply within time period.  
(Pages 130 and 141)***

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise."

During the prosecution of Colgate Palmolive Company's and Hill's Pet Nutrition Inc's US National Stage Patent Applications Nos. 13/811992, 15/335966, 16/826737, and 14/368310, the USPTO issued four "*Form PTOL-1432 Notice Of Abandonment*" in furtherance its last Office Actions after the applicants failed to respond (See Appdx Vol. 2, pp. 342 – 343, 382 – 383, 440 – 415, and 498 – 499 respectively). From the time the USPTO issued its Final Office Action and prior to the issuance of a "*Form PTOL-1432 Notice Of Abandonment*", the USPTO issued the following instructions in "Box 1" of USPTO's Form PTOL-303 "**Advisory Action Before The Filing Of An Appeal Brief**":

"THE REPLY FILED (...DATE...) FAILED TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.  
NO NOTICE OF APPEAL FILED.

The Reply was filed after a Final Rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) An amendment, affidavit, or other evidence which places the application in conditions of allowance. (2) A Notice of Appeal with (Appeal fee) in compliance with 37 CFR 41.31. (3) A Request for Continuing Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note RCEs are not permitted in design applications. that The reply must be filed within one of the following time period.

b) The period for Reply expires on: (1) the mailing date of this Advisory Action. (2) Or the date set forth in the Final Rejection whichever is later. In no event however will the statutory period for reply expire later than SIX MONTHS from the mailing date of the Final Rejection." (See Appdx Vol. 2, pp. 381, 438, and 496).

It is clear from the USPTO's Form PTOL-303 "**Advisory Action Before The Filing Of An Appeal Brief**" that when an applicant whose Patent Application has

been rejected by the USPTO fails to meet at least one of the requirements set forth in USPTO's Form PTOL-303 "**Advisory Action**, as was the case for Colgate and Hill's, the USPTO issues a "*Form PTOL-1432 Notice Of Abandonment*" over which no federal court has jurisdiction. Under such circumstances the grounds for the USPTO's Final Rejection is "FINAL" and unappealable. Thus, as a matter of law and of fact, the issuance by the USPTO of a "*Form PTOL-1432 Notice Of Abandonment*" in furtherance of a Final Rejection is an indisputable testimony and proof that the applicant for a patent was given all opportunities available under the patent Laws/Rules but the applicant failed to prove the invention. Furthermore, 35 U.S.C. §2(b)(1) mandates that "—*The Office - (1) shall adopt and use a seal of the Office, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Office shall be authenticated;*" Thus, this lawsuit must be adjudicated in Petitioner's favor based upon USPTO's "*Form PTOL-1432 Notice Of Abandonment*" because all courts are REQUIRED to "judicially notice" USPTO's records which are authenticated by its "Seal".

**D. As A Matter Of Constitutional Law Under Article III Section 2 Of The Constitution Of The United States, The Supreme Court Is REQUIRED To Allow A Writ Of Certiorari On Petitioner "QUESTION III" Because No Federal Court Has Jurisdiction To Render Nugatory The PCT Rule 43bis.1 "*Written Opinion Of The International Searching Authority*" Issued In The Proceedings Of An International Patent Application**

The PCT is an international treaty of the United States codified in 35 U.S.C. §§351 – 376) (See Appdx Vol. 3, pp. 646 – 647 and 654 – 659). Such a treaty is

made under the constitutional authority of Article II Section 2 (See Appdx Vol. 12, pp. 2932 – 2933). Furthermore, under Article VI Clause 2 (“*The Supremacy Clause*”) of the Constitution of the United States, the PCT is a “*Supreme law of the land*” (See Appdx Vol. 12, p. 2936). The only Agency that has the statutory jurisdiction to review a PCT *Rule 43bis.1* “*Written Opinion of the International Searching Authority*” is the USPTO upon the commencement by an applicant of US National Stage Patent Application under 35 U.S.C. §§371 – 376 (See Appdx Vol. 3, pp. 657 – 659). No Court, federal or State alike has such a jurisdiction. And Here, after 12 years of patent prosecution at the PCT and USPTO, the two supreme authorities reached the same conclusion that Colgate Palmolive Company and Hill’s Pet Nutrition Inc. did not have relevant data to support any of the thirteen (13) novel patent claims they disclosed in their PCT applications (See [Appdx Vol. 2, pp. 342 – 343, 382 – 383, 440 – 415, and 498 – 499 for USPTO Notices of Abandonment], Appdx Vol. 2, 291 – 294, 453 – 458) for PCT *Rule 43bis.1* “*Written Opinions*”]).

**E. In Consideration Of The Supreme Court Rule 10, Allowance Of A Writ Of Certiorari For Petitioner’s “QUESTION I” Is Proper Because An Inquiry Into Whether The Inferior Courts Deprived Fundamental Constitutional Rights In Using “*Absolutely Void*” State Court Orders To Preclude Petitioner’s Well-Pleaded 22-cv-06623-Independent Action Pursuant The Fed. R. Civ. P. Rule 60(d)(3) Is An Important Question Of Federal Law, And The Inferior Courts’ Decision Conflicts With Relevant Decisions Of The Supreme Court, Of All Other Federal Courts Of Appeals, And Of All State Courts Of Last Resort**

The Dismissal of a Complaint prior to trial by a Jury is an important federal question of law because such a drastic decision deprives a Plaintiff of: 1)- the First

Amendment right to obtain a redress for grievances; 2)- the Fifth Amendment right to the due process of law, and 3)- the seventh amendment right to trial by a jury. In fact, the use of “*Absolutely Void*” State Court Orders to dismiss Petitioner’s Complaint is in conflict with *United Student Aid Funds v. Espinosa* U.S. 559 U.S. 260 (2010) and with the Colorado Supreme Court’s Decision in *Stubbs v. McGillis*, 44 Colo. 138, 96 P. 1005, 18 L.R.A.,N.S., 405, 130 Am. St. Rep. 116y because both of these sovereign and Supreme Authorities reached the same legal conclusion that a Court Judgment or Order affected by want of Jurisdiction is a legal “*nullity*” and “*devoid of any potency*”. Furthermore, in a manner consistent with the Fed. R. Civ. P. Rule 60(b)(4), the Rules of Civil Procedures of all States of the Union, except the State of Ohio, contains a provision that allows their trial courts to relieve a litigant from a court Judgment or Order when it is found to be in want of jurisdiction or of due process. Similarly, the denial of Petitioner’s Motions for Summary Judgment in spite of Respondents’ failure to identify and specify a genuinely disputed material fact or alternatively to file a meritorious Affidavit or Declaration pursuant to the Fed. R. Civ. P. Rule 56(d) is in conflict with *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986), *Mandawala v. Baptist Sch. of Health Professions, All Counts*, No. 23-50258 (5th Cir. Apr. 4, 2024), *Fed. Deposit Ins. Corp. v. Arciero*, 741 F.3d 1111 (10th Cir. 2013), who all held that Summary Judgment is appropriate when the non-movant failed to either specify a genuinely disputed material fact or

alternatively to file an adequate Affidavit or Declaration pursuant to the Fed. R. Civ. P. Rule 56(d).

## VI. CONCLUSION AND REQUEST FOR RELIEF

In a case like this where it is clear that the inferior courts flagrantly trampled Jurisdictional mandates codified by the US Congress and ruthlessly dismissed two relevant Supreme Authorities, namely the USPTO and the PCT, the Supreme Court is REQUIRED to intervene because the Jurisdiction of Article III Courts is limited.

Shockingly, even though Petitioner filed a Motion to Request Judicial Notice of the Records and Decision of the USPTO, the US Court Appeals for the Third Circuit literally and publicly refused to do so although 35 U.S.C. §2(b)(1) requires it. Even more shocking is the fact that after the Supreme Court provided an unambiguous reading and interpretation of 28 U.S.C. §1446(d) in the matter of *Roman Catholic Archdiocese, supra*, the inferior courts obstinately refused to enforce 28 U.S.C. §1446(d) and chose instead to publicly substitute 28 U.S.C. §1446(d) for their so-called “**RATIONALE**”, which evidently is something improper. Based upon all the above, the Petitioner prays that the court allows a Writ of Certiorari.

Respectfully Submitted



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