

No. 24-850

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In the Supreme Court of the United States

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ANDREW MAGDY KAMAL,  
PETITIONER,

v.

FEMTOSENSE, INC.; and SAM FOK,  
RESPONDENTS.

**ORIGINAL**

**FILED**

**JAN 15 2025**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

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ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

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**PETITION FOR WRIT OF CERTIORARI**

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Petitioner in *pro per*

### **QUESTIONS PRESENTED**

Whether the Ninth Circuit Court of Appeals misapplied the Clark v. Busey transfer requirements under 28 U.S.C. § 1631.

Whether the denial of transfer to the Federal Circuit violated the Petitioner's constitutional due process rights.

## STATEMENT OF RELATED CASES

The Petitioner is not aware of any directly related proceedings arising from the same trial-court case other than the proceedings appealed here.

This case was originally filed at the United States District Court for the Central District of California as *Andrew Magdy Kamal v. Femtosense, Inc. & Sam Fok*, Case No. 5:24-cv-00967-KK-DTB.

Andrew Magdy Kamal further appealed the District Court's decision to the United States Court of Appeal for the Ninth Circuit as *Andrew Magdy Kamal v. Femtosense, Inc. & Sam Fok*, Case No. 24-5417.

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## PETITION FOR A WRIT OF CERTIORARI

### OPINIONS BELOW

The order by the United States Court of Appeals for the Ninth Circuit dismissing the Petitioner's appeal for lack of jurisdiction and alternative request for transfer is reported as *Andrew Magdy Kamal v. Femtosense, Inc., et. al.*, 24-5417 (2024). The Court of Appeals denied the Petitioner's appeal on December 18, 2024. The order is attached at the Appendix.

### JURISDICTION

The Petitioner's appeal was dismissed on December 18, 2024. Mr. Kamal invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for writ of certiorari within ninety days of the United States Court of Appeals for the Ninth Circuit's order.

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1631:

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court

shall, if it is in the interest of justice, transfer such action or appeal to any other such court (or for cases within the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. § 1254:



Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

### **STATEMENT OF THE CASE**

This case arises from a patent infringement dispute involving U.S. Patent No. US10965315B2 ("the Patent"), which is owned by Petitioner Andrew Magdy Kamal. The Patent pertains to a novel quadtree data compression method utilizing trivial zeros, a groundbreaking technique within the field of data compression and information systems. Petitioner asserts that Respondents Femtosense, Inc. and Sam Fok have willfully infringed the Patent by making, using, selling, and/or offering for sale products that embody the invention claimed in the Patent.

The infringement allegations stem from Respondents' use of a quadtree data compression method identical to the method explicitly claimed in Petitioner's Patent. Despite receiving written notice of the infringement from Petitioner, Respondents continued their unauthorized use and commercialization of the patented invention. This conduct has resulted in significant economic harm to Petitioner, including lost sales, diminished market share, and erosion of the exclusive rights granted by the Patent.

Petitioner contends that Respondents' infringing products have directly competed with Petitioner's products in the marketplace, causing substantial harm to Petitioner's business. This harm includes, but is not limited to, price erosion, loss of goodwill, and reputational damage. The infringing products have undermined Petitioner's ability to capitalize on the exclusive rights granted by the Patent, thereby eroding the economic value of the patented invention and reducing Petitioner's competitive advantage in the data compression and information systems industry.

Petitioner initiated this action in the United States District Court for the Central District of California, asserting claims of patent infringement against Respondents under 35 U.S.C. § 271. Petitioner sought remedies including injunctive relief to halt Respondents' infringing activities, monetary damages for past and ongoing infringement, and any other relief deemed just and proper by the court.

During the proceedings, Petitioner moved for summary judgment, arguing that the undisputed evidence demonstrated Respondents' infringement of the Patent. Petitioner supported this motion with evidence of Respondents' use of a quadtree data compression method identical to the one claimed in the Patent, as well as evidence of economic harm resulting from Respondents' infringing activities. Respondents opposed the motion, disputing the allegations of infringement and asserting various defenses, including invalidity of the Patent and non-infringement.

The district court denied Petitioner's motion for summary judgment and subsequently ruled against Petitioner in its final decision. Petitioner contends that the district court erred in its findings by failing to properly apply the relevant legal standards for patent infringement under 35 U.S.C. § 271 and by disregarding critical evidence of infringement and economic harm presented by Petitioner.

Following the district court's decision, Petitioner filed a timely notice of appeal to the United States Court of Appeals for the Ninth Circuit. Petitioner's appeal challenged the district court's denial of summary judgment and its adverse final decision on the merits. However, Respondents moved to dismiss the appeal for lack of jurisdiction, arguing that the Federal Circuit, not the Ninth Circuit, has exclusive jurisdiction over appeals arising under patent laws pursuant to 28 U.S.C. § 1295(a)(1).

In response to the motion to dismiss, Petitioner argued that the Ninth Circuit could exercise jurisdiction over the appeal or, in the alternative, transfer the appeal to the Federal Circuit under 28 U.S.C. § 1631. Petitioner emphasized the need for judicial efficiency and fairness in resolving the appeal and avoiding undue delay. Despite these arguments, the Ninth Circuit granted Respondents' motion to dismiss the appeal for lack of jurisdiction. The Ninth Circuit held that it lacked authority to hear the appeal under 28 U.S.C. § 1295(a)(1) and denied Petitioner's alternative request for transfer under 28 U.S.C. § 1631, citing the decision in *Clark v. Busey*, 959 F.2d 808 (9th Cir. 1992).

The Patent at issue, U.S. Patent No. US10965315B2, represents a significant advancement in the field of data compression, particularly within applications related to data science and AI. The patented method leverages a quadtree data structure and trivial zeros to achieve efficient compression and storage of large datasets. This innovation has been widely recognized for its potential to enhance data processing and storage capabilities across various industries.

Petitioner's products, which incorporate the patented method, have been well-received in the marketplace and have established Petitioner as a potential leader in the geographic information systems industry. However, Respondents' unauthorized use and commercialization of the patented invention have undermined Petitioner's market position and caused substantial harm to Petitioner's business.

Respondents' infringing products employ a quadtree data compression method identical to the one claimed in the Patent. This method enables Respondents' products to achieve comparable performance and functionality, allowing them to compete directly with Petitioner's products. The resulting competition has eroded the market share and pricing power of Petitioner's products, causing significant economic harm. Furthermore, the continued presence of Respondents' infringing products in the marketplace has tarnished Petitioner's reputation as an innovator and has undermined the value of the exclusive rights granted by the Patent.

This case presents important questions concerning the enforcement of patent rights and the proper application of jurisdictional and procedural rules in patent litigation. The issues raised by Petitioner have significant implications for the protection of intellectual property rights, the fair and efficient resolution of patent disputes, and the proper allocation of appellate jurisdiction under federal law.

First, this case provides an opportunity for this Court to reaffirm the importance of judicial efficiency and fairness in resolving patent disputes. The Ninth Circuit's refusal to transfer the appeal to the Federal Circuit under 28 U.S.C. § 1631 has resulted in unnecessary delay and expense for Petitioner, undermining the principles of justice and equity that underpin the federal judicial system.

Second, the Ninth Circuit's dismissal of the appeal, and its denial of the alternative request for transfer, amounted to a denial of due process rights. Petitioner asserts that the Ninth Circuit's refusal to hear the appeal or transfer it to the Federal Circuit, despite clear precedent and Petitioner's arguments for judicial efficiency and fairness, deprived Petitioner of a meaningful opportunity to have the appeal heard on the merits. The Ninth Circuit's actions ignored the fundamental principle of fair judicial proceedings, denying Petitioner an avenue to resolve the patent infringement claims that directly affect their business and intellectual property rights.

In light of the significant legal and economic stakes involved in this case, Petitioner argues that the Ninth Circuit's procedural decisions unduly hindered Petitioner's right to a full and fair adjudication,

violating constitutional due process protections afforded under the Fifth Amendment.

## **REASONS FOR GRANTING THE PETITION**

### **1 The Ninth Circuit Abused its Discretion in Declining to Transfer the Case to the Federal Circuit**

The Ninth Circuit's refusal to transfer this case to the Federal Circuit under 28 U.S.C. § 1631 represents a clear abuse of discretion that undermines both judicial efficiency and fairness. Section 1631 mandates that a court lacking jurisdiction "shall, if it is in the interest of justice, transfer such action or appeal to any other such court...in which the action or appeal could have been brought at the time it was filed." This provision is meant to ensure that litigants are not penalized for filing in an incorrect forum, particularly when the error is not of their making and the substantive issues at stake remain unresolved.

Patent infringement disputes fall under the exclusive jurisdiction of the Federal Circuit. As such, the Ninth Circuit's decision not to transfer this case to the Federal Circuit deprived Petitioner of the opportunity to have his claims adjudicated by the appropriate forum, thereby violating his constitutional right to a fair and impartial hearing. The Federal Circuit, as the specialized appellate court for patent cases, possesses unique expertise in the interpretation and application of patent law. Its involvement is crucial to ensuring consistency and

predictability in the resolution of patent disputes. By refusing to transfer the case, the Ninth Circuit disrupted the uniformity of patent law jurisprudence and denied Petitioner access to a court equipped to handle the complex issues presented in this matter.

This Court has emphasized the importance of judicial efficiency and fairness in cases involving jurisdictional transfers.

In *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800 (1988), the Court held that when a jurisdictional decision involves patent law, careful consideration must be given to whether transfer to the Federal Circuit is appropriate. The Court stated that transfer decisions should be guided by "the interest of justice," which directly parallels the language in § 1631.

In *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130 (2008), the Court emphasized that jurisdictional rules should be interpreted to preserve rather than defeat claims.

In *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428 (2011), the Court emphasized that procedural rules should be interpreted in favor of preserving a litigant's right to have their claims heard.

These precedents reinforce the idea that jurisdictional transfers are not merely procedural formalities but essential mechanisms to ensure justice. The Ninth Circuit's decision to dismiss this case outright, rather than transfer it to the Federal Circuit, represents a failure to uphold these principles and constitutes a grave miscarriage of justice.

In addition to statutory and case law, the Ninth Circuit's decision undermines the equitable principle that litigants should not be penalized for procedural missteps when they have acted in good faith. Petitioner's reliance on the judicial system to resolve his patent dispute in a fair and timely manner was thwarted by the Ninth Circuit's refusal to transfer the case. The resulting dismissal effectively deprived Petitioner of his right to seek redress for the harm caused by Respondents' ongoing patent infringement. This denial of access to justice not only harms Petitioner but also sets a dangerous precedent that could deter other litigants from pursuing legitimate claims in cases involving jurisdictional uncertainty.

The Ninth Circuit's decision also disrupts the balance of responsibilities among federal appellate courts. The Federal Circuit's exclusive jurisdiction over patent cases is designed to promote uniformity and expertise in the interpretation of patent law. By refusing to transfer this case, the Ninth Circuit undermined this carefully calibrated system, creating the potential for conflicting rulings and legal uncertainty. Such outcomes are detrimental not only to the parties involved but also to the broader patent law community, which relies on the Federal Circuit's guidance to navigate complex legal and technical issues.

Finally, this Court's intervention is necessary to address the broader implications of the Ninth Circuit's decision. If left uncorrected, this ruling could encourage other appellate courts to dismiss cases involving jurisdictional ambiguities rather than transferring them to the appropriate forum. This



trend would erode the fundamental fairness of the judicial process and disproportionately harm litigants in complex cases, such as those involving patent law, where the stakes are high, and the issues require specialized knowledge. To prevent such outcomes, this Court should grant certiorari to clarify the proper application of 28 U.S.C. § 1631 and to reaffirm the importance of jurisdictional transfers in ensuring justice.

**2      The Ninth Circuit Denied Petitioner His  
         Constitutional Right to Due Process  
         When it Declined to Transfer His Appeal  
         to the Federal Circuit**

The Ninth Circuit's dismissal of this case and its refusal to transfer it to the Federal Circuit constitute a violation of Petitioner's constitutional right to due process, as guaranteed by the Fifth Amendment. The right to due process encompasses both substantive and procedural protections, including the right to a fair and impartial hearing before a competent tribunal. By denying Petitioner the opportunity to have his claims heard by the appropriate appellate court, the Ninth Circuit deprived him of these fundamental protections.

Due process requires that all litigants be afforded a meaningful opportunity to present their claims and defenses. In *Griffin v. Illinois*, 351 U.S. 12 (1956), this Court held that procedural barriers should not prevent litigants from pursuing legitimate claims, particularly when the issues at stake involve

fundamental rights. The Ninth Circuit's decision to dismiss this case, rather than transfer it to the Federal Circuit, imposed an insurmountable procedural barrier that effectively denied Petitioner access to justice.

Similarly, in *Douglas v. California*, 372 U.S. 353 (1963), this Court emphasized the importance of appellate review as a safeguard against errors and injustices in the trial process. By denying Petitioner's appeal and refusing to transfer the case, the Ninth Circuit undermined this essential safeguard, leaving Petitioner without recourse to challenge the district court's rulings. This denial of appellate review is particularly egregious in a case involving complex patent issues, where the expertise of the Federal Circuit is critical to ensuring a fair and accurate resolution.

The Ninth Circuit's actions also violate the principle of equal protection, as guaranteed by the Fourteenth Amendment. Equal protection requires that similarly situated litigants be treated equally under the law. By refusing to transfer this case, the Ninth Circuit treated Petitioner differently from other litigants whose cases are routinely transferred to the Federal Circuit when jurisdictional issues arise. This disparate treatment is unjustified and constitutes a violation of Petitioner's constitutional rights.

Moreover, the Ninth Circuit's decision undermines the broader goals of the judicial system, including the fair and efficient resolution of disputes. As this Court has recognized, procedural fairness is essential to maintaining public confidence in the judiciary. In *Mullane v. Central Hanover Bank &*

*Trust Co.*, 339 U.S. 306 (1950), the Court held that due process requires notice and an opportunity to be heard in a meaningful manner. The Ninth Circuit's dismissal of this case deprived Petitioner of both notice and an opportunity to have his claims heard on the merits, thereby violating his due process rights.

Finally, the Ninth Circuit's refusal to transfer this case has broader implications for the administration of justice. If appellate courts are permitted to dismiss cases involving jurisdictional ambiguities without transferring them to the appropriate forum, litigants will be left without meaningful access to the courts, and the principle of procedural fairness will be eroded. This Court's intervention is necessary to reaffirm the constitutional rights of litigants and to ensure that the judicial system operates in a manner that is fair, efficient, and consistent with the principles of due process and equal protection.

### **3 Unprofessional Conduct of Respondents' Attorney**

Ryan Malloy is the attorney hired to represent Respondents in these proceedings. His conduct, including his attempts to claim California liability privilege for defamation, duress, and discreditation in Delaware during the case, further complicates the pursuit of justice.

Malloy's actions suggest a pattern of obstruction and avoidance of responsibility, which undermines the integrity of the legal process.

Femtosome's role in this conduct, particularly in its attempts to thwart justice through procedural maneuvers, exemplifies how parties can manipulate the legal system to avoid accountability.

In *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), the Supreme Court held that courts have the inherent power to sanction parties for bad faith conduct, including actions that obstruct justice. Malloy's conduct, which includes seeking to evade liability and obstruct the process in Delaware, fits within this category of misconduct, warranting judicial scrutiny and action.

Ryan Malloy's claim of California liability privilege in Delaware, in an attempt to avoid responsibility for his defamatory and obstructive actions, is a clear tactic to evade justice. This new development, combined with the ongoing obstruction in Delaware, illustrates how Femtosome and its counsel are actively working to thwart the judicial process. Allowing such actions to go unaddressed further undermines the integrity of the legal system and sets a dangerous precedent for future cases.

In *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), the Court established factors for determining when forum choices constitute manipulation. Strategic exploitation of different jurisdictional rules can constitute abuse.

*Professional Real Estate Investors v. Columbia Pictures*, 508 U.S. 49 (1993) establishes the "sham exception" test for determining when litigation conduct loses protection and Applies to Malloy's alleged pattern of obstruction and avoidance.

Ryan Malloy's conduct, which involves exploiting procedural privileges to shield himself from accountability, reflects a broader pattern of obstruction that must be corrected.

#### **4      Impact of Dismissal on Intellectual Property Owners and the General Public**

The Ninth Circuit's decision, coupled with its subsequent refusal to transfer the case, will have wide-ranging and profound consequences for intellectual property (IP) owners and the general public. Central to this issue is the detrimental impact on the enforcement of patent rights, which serves as a cornerstone for innovation and economic growth. Patent systems are designed to protect inventors by granting them exclusive rights to their creations, incentivizing investment and fostering technological advancements. However, when these rights are undermined by judicial inefficiencies or decisions that disregard the principles of fairness, the ramifications extend far beyond the immediate parties involved in the case.

One of the most significant effects of the Ninth Circuit's decision is the erosion of patent holders' ability to defend their intellectual property effectively. Patent litigation is often complex, time-sensitive, and resource-intensive. Any undue delay or procedural hindrance can result in irreparable harm to patent owners, particularly smaller entities or individual inventors who may lack the financial resources to endure protracted legal battles. In this case, the

refusal to transfer the matter to a more appropriate jurisdiction exacerbates these challenges by imposing additional barriers to achieving a resolution.

The economic implications for patent holders are particularly troubling. Patents often represent a substantial portion of an inventor's or company's value. They are not merely legal instruments but essential assets that underpin business strategies, attract investments, and generate revenue. When patent rights cannot be enforced efficiently, their value diminishes, leading to potential financial losses for patent owners. Moreover, the uncertainty surrounding patent enforcement may deter investors from supporting innovative ventures, particularly in industries reliant on robust IP protections, such as technology, pharmaceuticals, and biotechnology.

The Ninth Circuit's decision also has broader implications for innovation and technological progress. The Supreme Court, in *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722 (2002), underscored the importance of protecting intellectual property as a means to encourage innovation. The Court recognized that strong patent protections are essential to incentivize inventors to develop new products and technologies, thereby benefiting society as a whole. By undermining the enforceability of patent rights, the Ninth Circuit's decision contradicts this fundamental principle, creating a chilling effect on innovation.

Small businesses and startups, in particular, stand to suffer disproportionately from this decision. Unlike large corporations with extensive legal resources, smaller entities often rely on the

enforceability of their patents to compete in the market. For these companies, a single infringement can have devastating consequences, potentially jeopardizing their entire business. The Ninth Circuit's refusal to transfer the case denies these entities the procedural fairness necessary to safeguard their innovations, leaving them vulnerable to exploitation by larger, better-funded competitors.

Beyond the immediate impact on patent holders, the Ninth Circuit's decision has far-reaching consequences for the general public. The patent system is not solely about protecting inventors; it is also about promoting the public good. By granting inventors exclusive rights for a limited period, patents encourage the disclosure of new inventions, thereby contributing to the collective pool of knowledge. This, in turn, drives further innovation and ensures that society reaps the benefits of technological advancements. However, when the enforcement of patent rights is compromised, the incentives for inventors to share their knowledge diminish, ultimately depriving the public of these benefits.

Furthermore, the decision undermines public trust in the judicial system's ability to uphold the principles of fairness and justice. Intellectual property disputes are inherently technical and require specialized knowledge to adjudicate effectively. By refusing to transfer the case to a more suitable jurisdiction, the Ninth Circuit has disregarded the importance of ensuring that such disputes are resolved by courts with the requisite expertise. This not only disadvantages the parties involved but also

erodes confidence in the judiciary's ability to provide fair and impartial resolutions in complex cases.

The broader policy implications of the Ninth Circuit's decision cannot be ignored. The United States has long been a global leader in innovation, driven in large part by its robust IP protections. Weakening these protections threatens the country's competitive edge in the global economy, particularly in emerging fields such as artificial intelligence, renewable energy, and biotechnology. Other nations, recognizing the economic benefits of strong IP protections, may capitalize on this vulnerability, potentially outpacing the United States in critical areas of innovation.

Additionally, the decision raises questions about forum shopping and the consistency of patent enforcement across jurisdictions. Forum shopping—where parties strategically choose venues perceived as more favorable to their case—undermines the uniformity and predictability of patent law. By refusing to transfer the case, the Ninth Circuit has inadvertently incentivized this practice, creating a fragmented legal landscape that benefits no one. Uniformity in patent enforcement is essential to maintaining the integrity of the IP system and ensuring that inventors and businesses can operate with confidence.

In conclusion, the Ninth Circuit's decision and its refusal to transfer the case represent a significant setback for intellectual property owners and the general public. By undermining the enforceability of patent rights, the decision threatens to discourage innovation, harm small businesses, and deprive



society of the benefits of technological advancements. To protect the integrity of the patent system and promote the public good, it is imperative that these issues are addressed through targeted judicial and policy reforms. Only by reaffirming the importance of strong IP protections can the United States continue to foster innovation and maintain its competitive edge in the global economy.

### CONCLUSION

For the reasons outlined above, Petitioner respectfully requests that this Court grant certiorari to review the jurisdictional, procedural, and substantive issues raised in this case. Petitioner seeks a fair and just resolution of the patent infringement claims asserted against Respondents, as well as appropriate remedies to address the ongoing harm caused by Respondents' infringing activities. This Court's intervention is essential to ensure the proper enforcement of patent rights, the fair allocation of appellate jurisdiction, and the equitable resolution of disputes involving valuable intellectual property.

Dated: January 15, 2025

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Petitioner in *pro per*