

In The  
Supreme Court of the United States

————— ♦ —————  
PHAZZER ELECTRONICS, INC.,  
*Petitioner,*

v.

TASER INTERNATIONAL, INC.,  
*Respondent.*

————— ♦ —————  
ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

————— ♦ —————  
PETITIONER'S SUPPLEMENT TO  
REPLY BRIEF IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI

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*Dated: October 8, 2020*

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## CORPORATE DISCLOSURE STATEMENT

Petitioner, PHAZZER ELECTRONICS, INC. (“Petitioner”), is a privately held corporation that has no parent company and, as of the date of this filing.

### SUPPLEMENT REGARDING DISTRICT COURT RULING

Petitioner Phazzer Electronics, Inc. (“Phazzer”) submits this supplement pursuant to Rule 15.8 of the Supreme Court Rules, in order to inform the Court of an intervening district court’s order regarding a Rule 72(a) Motion (D.E. 409) which is only relevant to this pending Petition, as Respondent, Taser International Inc. (“Taser”) has filed that irrelevant order in a supplement to its brief in opposition in the pending matter.

#### Respondent Rule 15.8 Filing Was Improper As It Merely Was Included to Cite To Dicta

Respondent’s supplement and brief in opposition is yet another attempt to mislead. The patent was found to be *void ab initio* only after the appeal period expired from the first appeal but not subsequent to the judgment becoming final and the second appeal being taken for which the matter is currently before this Court on a petition for writ of certiorari. The judgment hasn’t yet become final and the patent has now been found to be *void ab initio*. See *Fresenius USA, Inc. v. Baxter Int’l., Inc.*, 712 F.3d 1330 (Fed. Cir. July 2, 2013).

Respondent disingenuously argues that the permanent injunction order falls under *res judicata*; however, that order is separate, and apart, from the appealed Damages Order, which is still not final because of this direct petition. “[L]ooking to general *res judicata* principles governing the preclusive effect of a judgment, it is well-established that where the scope of relief remains to be determined, there is no final judgment binding the parties (or the court): ‘Finality will be lacking if ... the amount of the damages, or the form or scope of other relief, remains to be determined.’” *Fresenius USA, Inc. v. Baxter Int’l, Inc.* at 721 F.3d 1330, 1341-42 (Fed. Cir. 2013).

Respondent further argues that Petitioner did not challenge the amount of the patent infringement damages; however, the facts clearly do not support a good faith basis for making such an assertion. (Respondent’s brief at 9). Petitioner unquestionably challenged the amount of these damages on a number of grounds, including the amount, form and scope. For example: “Phazzer contends that it is impossible for the Enforcer without dataport to infringe upon Taser’s ’262 patent, and thus, damages for the sale of the Enforcer without dataport are improper.” (Appl. D.E. 019 at 16). **Hence, the amount of damages was directly appealed under *Fresenius* and remains not final since it is pending before this Court for remand to the U.S. Court of Appeals for the Federal Circuit.**

The Appeal to this Honorable Court was timely taken as a result of the bankruptcy stays which have been acknowledged by both Taser and the district court. The Supplementary Response is another demonstration, like Taser's Response Brief, wherein they acknowledge that the patent is *void ab initio*, that they knew it was going to be found void when the initial complaint was filed in the district court, and regardless, filed the case and patent claims anyway in the hope to manipulate substantive due process and justice by running out an alleged procedural clock and running up litigation costs against a competitor in the marketplace. This Court should simply grant the Petition for Certiorari and remand the judgment as a result of the patent being found *void ab initio* prior to the judgment in the case becoming final.

The District Court's Dicta Was Improper  
And Not an Issue Pending Before the District Court

The decision of a single district court judge to order and opine, in *dicta*, on jurisdictional issues pending before this Honorable Court, is an effrontery to the entire system of justice. Regardless of a district court's *dicta*, the discretion of granting certiorari lays solely with this Honorable Court. It is readily apparent that lower court's *dicta* does not supersede this Honorable Court's jurisdictional review.

Furthermore, the Rule 72(a) motion, in the lower court, only concerned a Florida Statute for impleading third parties in proceedings supplementary, and the information relied upon in the Respondent's Supplemental Brief was not relevant to the issues of the motion. The order was provided by Respondent in an attempt to argue that the lower court's *dicta* should be binding upon this Court. Respondent's argument would usurp the authority of this Honorable Court to determine its own jurisdiction, and therefore should be entirely rejected.

Regardless of the language in the recently submitted order, the Petition for Certiorari and/or Remand to the Circuit Court of Appeals for the Federal Circuit of the Damages Order has been fully briefed and, as a matter of law, should be granted with regard to the patent damages as the subject patent claims have been cancelled voiding *ab initio* all patent damages based upon the voided claims. *See Oil States Energy Oil Servs., LLC v. Greene's Energy Grp, LLC*, 138 S. Ct. 1365, 1374 (2018).

### CONCLUSION

Petitioner respectfully requests that this Honorable Court reject the argument advanced in Respondent's Supplement to its Brief in Opposition. Further Petitioner respectfully requests that this Honorable Court grant the petition for writ of certiorari and/or, preferably, enter an order remanding the Damages Order to the Federal Circuit for dismissal of the patent damages.

The patent at issue is *void ab initio* and the voidness is not disputed by Respondent. Petitioner

could not file the pending petition for writ of certiorari in this pending matter while the bankruptcy stays were still in effect. Once the bankruptcy stays were no longer in effect, Petitioner proceeded to file its Writ of Certiorari timely in this Court. Respondents only challenge the procedural timeliness of the petition, and do not advance any argument as to why Respondents should be entitled to a continued damages judgment under a void patent.

Respectfully submitted,

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