19-493

No. 19-____

In the Supreme Court of the United States

JAMES J. MAKSIMUK,

Petitioner,

v.

CONNOR SPORT COURT INTERNATIONAL, LLC,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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OCTOBER 11, 2019

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QUESTIONS PRESENTED

1. Did the CAFC, District Court, 10th Cir., TTAB Orders and Judgments and referenced Supreme Court rulings—that required corporations to be represented by legal counsel in court rooms—violate the Equal Protection Clause and Due Process of Law and; should these Supreme Court rulings be amended or over-turned so to conform with the Equal Protection Clause? If so, should the CAFC, District Court, 10th Circuit, TTAB decisions be overturned?

2. Did the Dist. Court, 10th Cir. and CAFC exclude cumulative evidence, ignore Supreme Court rulings, U.S. Codes and Fed. R. Civ. P. in a prejudicial, bias and erroneously manner so to meet abuse of discretion standards? If so, should a retrial be granted in the proper venue?

3. Did the Dist. Court violate the 5th & 14th Amendments when it ruled that the Petitioner "is enjoined from using" the domain name?

4. Owning to the errors of law committed by the CAFC, Dist. Court, 10th Cir. and TTAB and the preponderance of evidence and referenced SC rulings, should the trademark 'sport court' be cancelled and remove from the trademark Registry?

LIST OF PROCEEDINGS BELOW

The United States Court of Appeals for the Federal Circuit
USCA No. 2019-1156
James J. Maksimuk v.
Connor Sport Court International, LLC
May 13, 2019 (Judgment Affirmed)
July 15, 2019 (Petition for rehearing and rehearing *en banc* denied)

United States Patent and Trademark Office, Trademark Trial and Appeal Board
Cancellation No. 92066311
James J. Maksimuk v.
Connor Sport Court International, LLC
June 22, 2018 (Decision Entered)

RULE 29.6 STATEMENT

Petitioner James J. Maksimuk is an individual who is not subject to the corporate disclosure requirements of S.Ct. 29.6

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PROCEEDINGS BELOW ii

RULE 29.6 STATEMENT iii

TABLE OF AUTHORITIES vii

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT OF CERTIORARI 4

A. TO APPLY THE EQUAL PROTECTION CLAUSE FOR ALL CORPORATIONS WHO CAN'T AFFORD TO PAY FOR LEGAL SERVICES IN A COURT ROOM SO THEY CAN BE SELF REPRESENT IN COURT WITHOUT LEGAL COUNSEL 4

ARGUMENTS 11

TABLE OF CONTENTS – Continued

Page

I. DID THE CAFC, DISTRICT COURT, 10TH CIR., TTAB ORDERS AND JUDGMENTS AND REFERENCED SUPREME COURT RULINGS—THAT REQUIRED CORPORATIONS TO BE REPRESENTED BY LEGAL COUNSEL IN COURT ROOMS-VIOLATE THE EQUAL PROTECTION CLAUSE AND DUE PROCESS OF LAW AND; SHOULD THESE SUPREME COURT RULINGS BEAMENDED OR OVER-TURNED SO TO CONFORM WITH THE EQUAL PROTECTION CLAUSE? IF SO, SHOULD THE CAFC, DISTRICT COURT, 10TH CIR., TTAB DECISIONS BE OVER-TURNED? 11

2. DID THE DIST. COURT, 10TH CIR AND CAFC EXCLUDE CUMULATIVE EVIDENCE, IGNORE SUPREME COURT RULINGS, U.S. CODES AND FED. R. CIV. P. IN A PREJUDICIAL, BIAS AND ERRONEOUSLY MANNER SO TO MEET ABUSE OF DISCRETION STANDARDS? IF SO, SHOULD A RETRIAL BE GRANTED IN THE PROPER VENUE?..... 32

3. DID THE DIST. COURT VIOLATE THE 5TH & 14TH AMENDMENT WHEN IT RULED THAT THE PETITIONER "IS ENJOINED FROM USING" THE DOMAIN NAME? 37

TABLE OF CONTENTS – Continued

Page

4. OWNING TO THE ERRORS OF LAW COMMITTED BY THE CAFC, DIST. COURT, 10TH CIR. AND TTAB AND THE PREPONDERANCE OF EVIDENCE AND REFERENCED SC RULINGS, SHOULD THE TRADEMARK 'SPORT COURT' BE CANCELLED AND REMOVE FROM THE TRADEMARK REGISTRY? 38

PRAYER 39

CONCLUSION 40

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Opinion of the Federal Circuit (May 13, 2019) 1a

Decision of the Trademark Trial and Appeal Board (June 22, 2018) 9a

Order of the Tenth Circuit (August 22, 2017) 21a

Default Judgment (August 10, 2017) 23a

REHEARING ORDER

Order of the Federal Circuit Denying Petition for Rehearing (July 15, 2019) 27a

TABLE OF AUTHORITIES

Page

CASES

Canal Company v. Clark,
80 U.S. 311
(13 Wall. 311, 20 L.Ed.581) (1871) 38

Chastleton Corporation v. Sinclair,
264 U.S. 543 (1924) 28

Citizens United v. Federal Election Commission, 558 U.S. 310 (2010) 14, 26, 31

Commercial & RR Bank of Vicksburg v. Slocomb, Richard & Col,
39 U.S. 60 (1840) 2, 14, 21

Cottringer v. Employment Security Department, 162 Wash. App. 782 (2011) 24

Court Santa Clara County v. Southern Pacific R. Co., 118 U.S. 394 (1886) 12, 13, 32

DeVilliers v. Atlas Corporation,
360 F.2d 292 (10th Cir. 1966) 14, 24

First Nat. Bank of Boston v. Bellotti,
435 U.S. 765 (1978) 14, 23, 31

Flora Constr. Co. v. Fireman's Fund Ins. Co.,
307 F.2d 413 (10th Cir. 1962) 14

Fourco Glass Co. v. Transmirra Products Corp., 353 U.S. 222 (1957) 19

Harrison v. Wahatoyas, LLC,
253 F.3d 552 (10th Cir. 2001) 14

Hovey v. Elliott,
167 U.S. 409 (1897) 13

TABLE OF AUTHORITIES—Continued

Page

In re Micron Technology, Inc.,
875 F.3d 1091 (Fed. Cir. 2017) 20

Int'l Jensen, Inc. v. Metrosound U.S.A., Inc.,
4 F.3d 819 (9th Cir.1993) 35

Jones v. Niagara Frontier Transp. Authority,
524 F.Supp. 233 (W.D.N.Y. 1981)..... 24

Koon v. United States,
518 U.S. 81 (1996) 34

McCulloch v. Maryland,
17 U.S. 316 (1819) 27

Oahu Plumbing and Sheet Metal, Ltd. v. Kona Construction, Inc.,
60 Haw. 372, 590 P.2d 570 (1979) 28

Osborn v. Bank of the United States,
22 U.S. 9 Wheat. 738 (1824) 14, 24

Quarrier v. Peabody Insurance Co.,
10 W. Va. 507 (1877) 3, 31

Rabkin v. Oregon Health Sciences Univ.,
350 F.3d 967 (9th Cir. 2003) 35

Richard S. v. Dept. of Dev. Servs.,
317 F.3d 1080 (9th Cir. Jan. 29, 2003) 36

Richas v. Superior Court,
133 Ariz. 512 (1982) 8

Rowland v. California Men's Colony (91-1188),
506 U.S. 194 (1993)..... 24

TABLE OF AUTHORITIES—Continued

Page

Schreibman v. Walter E. Heller & Co. (In re Las Colinas Dev. Corp.), 585 F.2d 7 (1st Cir. 1978) 14

Shapiro, Bernstein & Co. v. Cont'l Record Co., 386 F.2d 426 (2d. Cir. 1967) 14

Shenandoah Sales & Service, Inc. v. Assessor of Jefferson County, 228 W.Va. 762, 724 S.E.2d 733 (2012) 27

State ex rel. Western Parks v. Bartholomew County Court, 270 Ind. 41, 383 N.E.2d 290 (1978) 28

Tal v. Hogan, 453 F.3d 1244 (10th Cir. 2006) 3, 14, 24

TC Heartland LLC v. Kraft Foods Group Brands LLC, 581 U.S. ___ (2017) 19, 20

Turner v. American Bar Assn., 407 F.Supp. 451 (ND Tex. 1975) 14, 25, 26

U.S. v. Beltran-Gutierrez, 19 F.3d 1287 (9th Cir. 1994) 36

United States v. Carolene Products Company, 304 U.S. 144 (1938) 25

United States v. Washington, 157 F.3d 630 (9th Cir.1998) 35

TABLE OF AUTHORITIES—Continued

Page

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I 29, 30, 36
U.S. Const. amend. V ..... passim
U.S. Const. amend. XIV ..... passim

STATUTES

2 U.S.C. § 441b 26
5 U.S.C. § 706(2) 35
28 U.S.C.§ 1254(1) 1
28 U.S.C.§ 1391(c) 19
28 U.S.C. § 1391(b) 19
28 U.S.C. § 1400(b) 19
28 U.S.C. § 1406(a) 20

JUDICIAL RULES

A.R.S. Sup.Ct. R. 31 ..... passim
Fed. R. Civ. P. 12(b) 3, 20
Fed. R. Civ. P. 12(h) 3
Fed. R. Civ. P. 59 32
Sup. Ct. R. 29.6 iii

TABLE OF AUTHORITIES—Continued

Page

OTHER AUTHORITIES

Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587 (2014) 9

Gillian K. Hadfield & Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 Hastings L.J. 1191 (2016) 10

Laurel A. Rigertas, *The Legal Profession's Monopoly: Failing to Protect Consumers*, 82 FORDHAM L. REV. 2587 (2014) 8

Leslie C. Levin, *The Monopoly Myth and Other Tales About the Superiority of Lawyers*, 82 FORDHAM L. REV. 2611 (2014) 9

National Center for State Courts Civil Litigation Project, The Landscape of Civil Litigation in State Courts (2015), https://www.ncsc.org/~/media/Files/PDF/Research/CivilJusticeReport-2015.ashx 7

Olabisi Onisile Whitney & Rick DeBruhl, *Attorney Survey: Arizona Lawyers Report on Economic of Practice,* ARIZONA ATTORNEY (Sept. 2016) 6

TABLE OF AUTHORITIES—Continued

Page

Tom Gordon,
Hell Hath No Fury Like a Lawyer Scorned, WALL ST. J. (Jan. 28, 2015), https://www.wsj.com/articles/tom-gordon-hell-hath-no-fury-like-a-lawyer-scorned-1422489433 7

OPINIONS BELOW

Opinion of the Federal Circuit dated May 13, 2019 is reported at App.1a. Decision of the TTAB stated on June 22, 2018 is on App.9a. Petition for rehearing en banc was denied. (App.27a).

JURISDICTION

This petition is filed within 90 days of the order dated July 15, 2019, denying a timely filed petition for rehearing. (App.27a). This Court has jurisdiction under 28 U.S.C.§ 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

- **U.S. Const. amend. I**

  Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

- **U.S. Const. amend. V**

  No person shall be held to answer for a capital, or otherwise infamous crime, unless on a pre-

sentment 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 offense to be twice put 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.

- **U.S. Const. amend. XIV, Section 1**

  All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

In 1840, when Martin Van Buren was president, *Commercial & RR Bank of Vicksburg v. Slocomb, Richard & Col*, 39 U.S. 60 (1840) decided "because, as such a corporation cannot appear but by attorney" Subject ruling has not been amended in 179 years. Consequently, this ruling has breed gross judicial disparity between wealthy and poor corporations and

resulted in non-judicial access for low income corporations.

Over the decades the legal definition of a corporate entity has been amended and should have an effect on added constitutional protections for corporations:

The rights for a corporations to self represent itself in a court of law without legal counsel.

This case presents questions related to constitutional rights of a corporation pertaining to Equal Protection Clause, Due Process and Constitutional Law, especially in the courtroom.

The issue of corporate self representation was raised by the Petitioner at the Dist. Court hearing when he stated and referenced: "*Quarrier vs. Peabody* . . . the appearance by a corporation in a plea to jurisdiction of a court should not be in person or by attorney but may be by the president." [*Quarrier vs. Peabody* is a W. VA Supreme Court ruling, 1877] (Exh."A" p.5 line 7) Court transcripts dated August 4, 2017)

Petitioner also raised constitutional issues in the Petitioner's Court of Appeals United States Courts for the Ninth Circuit dated January 15, 2018 When stated: "(The Appellant reserves the right to question the constitutionality of Utah Rules of Civil Procedure and *Tal v. Hogan*, 453 F.3d 1244, 1254 (10th Cir. 2006) that violated the Constitutional Rights of the Appellant)" (Exh. "B" p. 9 #C)

Therefore, the issue conforms to Fed. R. Civ. P. Rule 12(h) Waiving and Preserving Certain Defenses. (1) (A) and Fed. R. Civ. P., Rule 12(b) Defenses and Objections: (3) improper venue; whereas the Dist. Court Defendant—and now the Supreme Court Petitioner,

did raise the issue of corporate self-representation and venue, which was both denied by the Dist. Court. (Exb. Appendix 13a)

In addition, the venue, jurisdiction, trademark generic issue and Claim Preclusion issues including; the decisions by the Dist. Court, TTAB and CAFC did not conform to Supreme Court ruling, Due Process of Law and violated the Equal Protection Clause.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

A. TO APPLY THE EQUAL PROTECTION CLAUSE FOR ALL CORPORATIONS WHO CAN'T AFFORD TO PAY FOR LEGAL SERVICES IN A COURT ROOM SO THEY CAN BE SELF REPRESENT IN COURT WITHOUT LEGAL COUNSEL

The state of Arizona has recognized the judicial inequities for low income corporations and therefore has acknowledged a class of burdened litigants. Arizona has taken steps to solve part of the problem: R-18-0004 Rule 31, Rules of Arizona Supreme Court has enacted or is near enactment subject amended Rule 31 which states:

> "A person who is not an active member of the state bar may represent any entity that is not an issuing public corporation" (Exh. "C")
>
> [R-18-0004] "Would amend Rule 31, Rules of the Arizona Supreme Court, to improve access

> to justice for small business litigants and to reorganize and modernize the rule." . . . the specters of legal fees or default judgments sink small business litigants before they even start." Hon. David. B. Gass, Maricopa County Superior Court, Petitioner (Exh. "D") (emp ours)

Subject amendment to Rule 31, is supported by:

- Aundrea DeGravina on behalf of Glenn Hamer, President & CEO Arizona Chamber of Commerce & Industry, 602.248.9172 (Exh "E")
- Hon. Ann Timmer, Attorney Regulation Advisory Committee, 602-452-3415 (Exh "F")
- Mark Brnovich, The Arizona Attorney General/Angelina B. Nguyen, Assistant Attorney General (Exh "G")
- Paul V. Avelar (AZ Bar No. 023078), Managing Attorney, Institute for Justice Arizona Office, www.IJ.org (Exh "H") [Note: Atty. Paul Avelar Exh. "H" is the same text in the Petitioner's "Reasons for Granting the Writ of Certiorari", FYI.]

Preface to the below COMMENT: R-18-0004 is an amendment to Rule 31, Rules of the Arizona Supreme Court to permit certain corporations to self-represent without legal counsel in courtrooms statewide.

The below Comment of Atty. Paul Avelar, Institute for Justice, Arizona Office at: https://www.azcourts.gov/Rules-Forum/aft/804 states:

> Pursuant to Rule 28(D)(b)(ii), I submit the following comments in support of R-18-0004.

This Court should adopt the changes proposed by R-18-0004 as a small but important curtailing of Arizona's unjustified restrictions on the "unauthorized practice of law."

Although "access to justice" is one of the frequently expressed goals of the organized bar, including the Arizona Bar, the United States falls far short of that goal, especially in its civil system. The World Justice Project, an organization founded as part of an American Bar Association initiative and focused on improving worldwide rule of law, publishes a yearly Rule of Law Index ranking legal systems across the globe based on eight categories and forty-four subcategories. In its recent 2017-2018 report, the United States ranked 96th of 113 countries in access and affordability of civil justice. http://data.worldjusticeproject.org/ (dataset available for download) (last accessed May 18, 2018).

One of the biggest drivers of this high cost is the monopoly on legal representation—especially in court—that lawyers enjoy and enforce through unauthorized practice of law regulations and the resulting high cost of lawyers. Arizona Attorney reported that the median hourly billing rate for Arizona-licensed attorneys was $275 in 2016, and that the rate has "steadily climbed in the four previous surveys." Olabisi Onisile Whitney & Rick DeBruhl, *Attorney Survey: Arizona Lawyers Report on Economic of Practice,* ARIZONA ATTORNEY (Sept. 2016) at 24. Nation-

ally, studies have found that a large proportion of civil cases—76%—had at least one party that was self-represented and that the costs of legal representation is one of, if not the, biggest reasons for this. *National Center for State Courts Civil Litigation Project, The Landscape of Civil Litigation in State Courts* (2015), https://www.ncsc.org/~/media/Files/ . . . 2015.ashx. [https://www.ncsc.org/~/media/Files/PDF/Research/CivilJusticeReport-2015.ashx] And it is not just individuals who cannot afford legal representation. A 2013 study by LegalShield found that the average annual expenditure for legal services by small businesses is $7,600 and, as a result, 60% of small businesses go without assistance in facing serious legal problems. Tom Gordon, *Hell Hath No Fury Like a Lawyer Scorned*, WALL ST. J. (Jan. 28, 2015), https://www.wsj.com/articles/tom-gordon-hell-hath-no-fury-like-a-lawyer-scorned-1422489433

Whatever one thinks about the advisability of foregoing an attorney and representing oneself pro se, it is at least an option under Arizona's current rules that individuals have but businesses do not. As Judge Gass's Petition notes, this Court's current Rule 31 deems the owner of a small business representing his or her own business in court to be the unauthorized practice of law. This means that only a lawyer may represent the business. Given the large number of businesses that cannot afford a lawyer, this has

the practical effect of, as Judge Gass further notes, foreclosing these businesses' access to the courts and causing loss by default. The entry of a default judgment has long been recognized by this Court as contrary to public policy. *E.g., Richas v. Superior Court*, 133 Ariz. 512, 514 (1982) ("The law favors resolution on the merits and therefore resolves all doubts in favor of the moving party" to set aside a default judgment.). Accordingly, entering a default judgment against a party because the party could not afford a lawyer must certainly be against public policy. R-18-0004 would prevent this injustice by allowing certain small businesses to self-represent.

Eventually, this Court must do more to afford the public access to justice. It should further curtail UPL regulations to allow non-lawyers to provide "legal services" in a broader variety of areas. "Many people who cannot afford a licensed attorney need some help, and many of them could probably pay something reasonable for it, but those options are not available." Laurel A. Rigertas, *The Legal Profession's Monopoly: Failing to Protect Consumers*, 82 FORDHAM L. REV. 2587, 2684 (2014). Rigid insistence that only lawyers can "practice law" is not borne out by facts. A 2013 study found that more than two-thirds of lawyers in charge of state agencies responsible for enforcing unauthorized-practice laws could not even name a situation during the past year where an unauthorized-

practice issue had caused serious public harm. Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587, 2595 (2014). Not surprisingly, the study also found that the most common source of referrals for enforcement action was attorneys, *id.* at 2591-92, who stand to profit from restricting competition. The study concluded that "unauthorized-practice law needs to increase its focus on the public rather than the profession's interest and that judicial decisions and enforcement practices need to adjust accordingly." *Id.* at 2588. And this study is just one of several now calling into question lawyers' existing monopoly on the provision of legal services. Given that there is little evidence that lawyers are more effective at providing certain legal services or more ethical than qualified nonlawyers, the primary justification for the legal profession's monopoly of the legal services market does not hold up to scrutiny. Instead, the public would be better served if more nonlawyer representatives—who were subject to educational and licensing requirements—could provide more legal services to the public.

Leslie C. Levin, *The Monopoly Myth and Other Tales About the Superiority of Lawyers*, 82 Fordham L. Rev. 2611, 2615 (2014); *see also* Gillian K. Hadfield & Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality*

of Lawyering, 67 HASTINGS L.J. 1191 (2016) (comparing non-exclusive legal regulation in the United Kingdom to the United States' monopoly regulatory model).

Given these studies, there is little reason to believe that R-18-0004 will leave those affected by it—small businesses who want or need to self-represent—in worse circumstances. Rather, given what is happening to small businesses in Arizona Courts because of Rule 31's unauthorized practice of law restrictions, there is every reason to believe they will be better off. Until this Court meaningfully addresses "access to justice" and the monopoly on legal representation enjoyed and enforced by lawyers through unauthorized practice of law regulations, R-18-0004 is the next-best solution to the problems identified by Judge Gass. For these reasons, this Court should adopt R-18-0004. [(emp ours)]

Paul V. Avelar (AZ Bar No. 023078)
By:
Managing Attorney
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ARGUMENTS

I. DID THE CAFC, DISTRICT COURT, 10TH CIR., TTAB ORDERS AND JUDGMENTS AND REFERENCED SUPREME COURT RULINGS-THAT REQUIRED CORPORATIONS TO BE REPRESENTED BY LEGAL COUNSEL IN COURT ROOMS-VIOLATE THE EQUAL PROTECTION CLAUSE AND DUE PROCESS OF LAW AND; SHOULD THESE SUPREME COURT RULINGS BEAMENDED OR OVER-TURNED SO TO CONFORM WITH THE EQUAL PROTECTION CLAUSE? IF SO, SHOULD THE CAFC, DISTRICT COURT, 10TH CIR., TTAB DECISIONS BE OVER-TURNED?

Government's judicial actions has produced and imposed a burden against the low income corporation and conferred benefit to other class-wealthy corporations. Nor is there permissible government interest or purpose to deny corporate self-representation in courtrooms. The burdens imposed by the government are documented in this Writ of Certiorari, Dist., court transcripts and other filings at the Dist. Court, 10th Cir. and CAFC. These government actions warrant Strict Scrutiny because fundamental constitutional right was infringed and that the Equal Protection Clause was violated.

Since a corporation is a person under the Equal Protection Clause it shall be interpreted as subject person will not be required to be represented by a lawyer in a courtroom-just like a physical person. And, yes, the Petitioner is also a physical person.

"The Court does not wish to hear argument

> on the question whether the provision in the Fourteenth Amendment to the Constitution which forbids a state to deny to any person within its jurisdiction the equal protection of the laws applies to these corporations. We are all of opinion that it does."....." The defendant Corporations are persons within the intent of the clause in section 1 of the Fourteenth Amendment to the Constitution of the United."

Court Santa Clara County v. Southern Pacific R. Co., 118 U.S. 394 (1886) (emp ours)

The violation of Equal Protection and Due Process against the Petitioner is also documented in the Dist. Court transcripts: (Exh "A")

> THE COURT: "Yeah. You're welcome to observe, but you're not going to be able to participate." (Exh "A" Page 3, line 18)
>
> THE COURT: "I won't listen to you, and I'll tell you why. I'll tell you why." (Exh "A" Page 3, line 22)
>
> THE COURT: Three times you have been told that an entity can't represent itself. (Exh "A" Page 3, line 25)
>
> THE COURT: You're not a lawyer. Our local rule requires a lawyer to represent the entity." (Exh "A" Page 4, line 3)
>
> THE COURT: And that's fine. So sit down, and you may observe, but you're not going to participate." (Exh "A" Page 4, line 14)
>
> THE COURT: "Sit down" (Exh "A" Page 4, line 18)

THE COURT: "Sit down" (Exh "A" Page 4, line 20) [twice stated 'sit down']

THE COURT: "Sit down. We'll consider that, but I'm going to listen to the motion first" (Exh "A" Page 4, line 23 &24)

THE COURT: "Sit down".

THE COURT: "Sit down. I don't want to have to have the marshal have you sit down" (Exh "A" Page 5 line 1 & 4)

MR. MAKSIMUK: "Do I have any opportunity to refute that, Your Honor?" (Exh "A" Page 12, line 24 (last line)

THE COURT: "No. You sit there. You listen." (Exh "A" Page 13, line 1)

This Petitioner was never heard by the Dist. Court. The essence of due process is "due process of law signifies a right to be heard in one's defense," *Hovey v. Elliott* (1897)

Entrenched in our jurisprudence that grant Constitutional Rights to corporate entities are the following:

- U.S. Constitution 1st Freedom of Speech, The 5th Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." and 14th Amendments, Section 1 Due Process.
- *U.S. Supreme Court Santa Clara County v. Southern Pacific R. Co.*, 118 U.S. 394 (1886)

- *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)
- *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 778 (1978)

These ruling require legal representation for corporations:

- *Tal v. Hogan*, 453 Fed. 1244, 1254 (10 Cir. 2006)
- *Harrison v. Wahatoyas, L.L.C.* (2001)
- *DeVilliers v.Atlas Corporation* (1966)
- *Osborn v. President of Bank of United States*, 9 Wheat. 738, 829 (1824)
- *Turner v. American Bar Assn.*, 407 F.Supp. 451, 476 (ND Tex. 1975) *Schreibman v. Walter E. Heller & Co. (In re Las Colinas Dev. Corp.)*, 585 F.2d 7 (1st Cir. 1978) (cert. denied)
- *Shapiro, Bernstein & Co. v. Cont'l Record Co.*, 386 F.2d 426 (2d. Cir. 1967)
- *Flora Constr. Co. v. Fireman's Fund Ins. Co.*, 307 F.2d 413, 414 (10th Cir. 1962)
- *Commercial & R.R. Bank of Vicksburg v. Slocomb, Richard & Co.*, 39 U.S. 60 (1840)

The legal disconformities between the above Supreme Court rulings that on one hand state that corporations must be represented by a lawyer; and other Supreme Court rulings state the U.S. Constitution applies to corporations is antitheoretical to law. As well, it is impossible to apply both ruling concurrently without one litigant being deprived of Equal

Protection. When applying both of these rulings synchronously in the real-life court room the end result is that the Constitution would only apply if you pay for a lawyer/if the corporation had legal counsel. This is unequal access to our courts and is a violation of the Equal Protection Clause.

The above rulings have NOT classified corporations between rich, small or indigent corporations. However, the Dist. Court/government have definitively identified and assigned the Dist. Court Defendant to a classification: The Low Income Corporation. Subject classification by the government against the Dist. court defendant was accomplished by applying a requirement; that legal counsel is required for corporations. That involuntary requirement was impossible to comply with due to economics. It is the fault of the U.S. government and U.S. courts to impose this requirement; that too often result in unfavorable Default Judgments against low income corporations to the advantage of wealthier corporation who can afford legal counsel.

This has created a class of low income corporate litigants that were routinely denied equal access to justice. Consequently, this resulted in Default Judgments. The Default Judgment ratio between low income and wealthy corporations can be quantified. This is clear evidence that the burdens of low income corporations are higher/more unequal than high income corporations. Consequently, the benefits are unequal.

It is evident by the Dist. Court transcripts that the wealthy Plaintiff corporation, Connor Sport Court International, "World's largest Court Builder"™ had access to justice while the less affluent Defendant

was told to 'sit down' or "Sit down. I don't want to have to have the marshal have you sit down." (Exh. "A" p.5 line 1&2) Dist. Court Judge Bruce Jenkins referred to 'the local rule' (a rule of the government) to justify his judicial disparity. (Exh. 'A' p. 28 line 17) Judge Jenkins states:

> THE COURT: You're not a lawyer. Our local rule requires a lawyer to represent the entity." (Exh. "A" p. 4 line 3)
>
> THE COURT: " . . . that the local rule involving lawsuits in Federal Court in Utah require an appearance by a company through counsel." (Exh. 'A' p. 28 line 17)

There exists no compelling government interest or purpose to disfavor low income corporation and to favor wealthy corporations in a court room. There is no rational basis to deny James Maksimuk, a business owner, CEO, corporate board member or designated spokesperson to represent their company in court without legal counsel. Government action at the Dist. Court and Cir. Court substantially infringed on the Constitutional Rights, Due process of Law and the Equal Protection Clause against this Petitioner and thousands of low income corporations in court rooms nationwide. The Supreme Court is more competent to quantify the number of small corporations that have been 'legally out-gunned' by rich corporations than this Petitioner can speculate.

The Supreme Court can remedy this 'institutional' judicial inequity against low income corporations by amending and over-turning court Rules and rulings that conflict with the Equal Protection Clause and

enact new rulings that are in conformity with the Equal Protection Clause and Due Process of Law.

If the court fails to level the playing field between low income and wealthy corporations, this would be tantamount to promoting and enriching lawyers by forcing all businesses to hire lawyers. This will not uphold Equal Protection but only promote more opportunity for lawyers.

The U.S. courts by their actions place favor to the law industry resulting in unequal access for low income corporations.

The Dist. Court did in fact treat the Petitioner unequally and caused great harm:

(a) Denied the right to speak in court

(b) Due Process was denied

(c) Private property was "enjoined from using"

(d) That the Petitioner can't participate in the hearing

(e) Adjudicated in the wrong venue

(f) Adjudicated in the wrong jurisdiction because the TTAB case was ongoing.

(g) Was ordered to pay Plaintiff's legal fees.

If the Petitioner was granted Due Process and Equal Protection was granted at the Dist. Court, 10th Cir. & CAFC the results would have been different because the Dist. Court would have adjudicated on the merits.

The merits of the Petitioner's TTAB Petition for Cancellation (Exh. "I") are on record dated 06/13/2017

and the Petitioner's Appellant's Opening Brief (Exh. "J") Petition for Rehearing En Banc & Request for Oral Rehearing En Banc (Exh. "K") to the CAFC dated June 03, 2019 are also on record.

This Petitioner asks the Supreme Court to review the merits of these submissions.

If given the opportunity by granting access to The Courts-and if adjudicated on the merits; the case would of:

1. Been adjudicated in California.
2. Trademark 'Sport Court' would have been cancelled.
3. Claim Preclusion issue would have not been applied against the Petitioner.
4. Order to pay legal fees would have not been ordered.

If Due Process and Equal Protection was applied at the Dist. Court The Defendant would have:

(1) Addressed the court

(2) Questioned the VENUE

(3) Questioned the jurisdiction

(4) Submitted exculpatory evidence

(5) Referenced legal citations favorable to the Defendant

(6) Motioned to move the VENUE from Utah to California (which was done on deaf ears)

(7) Not been threatened and intimidated by the Dist. Court to have the marshals sit me down.

Petitioner did not motion the court for a free lawyer, but instead just–among other requests-asked the court to move the venue to California, per 28 U.S.C. 1391(b) and 28 U.S.C. § 1400(b) [Amended May 22, 2017 *TC Heartland LLC v. Kraft Foods Group Brands*] [interpreted in *Fourco Glass Co. v. Transmirra Products*] and to rebut allegations against the Dist. Court Defendant in the proper venue.

The patent venue statute, 28 U.S.C. § 1400(b), provides that "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business."

Mr. Justice WHITTAKER delivered the opinion of the Court.

> The question presented is whether 28 U.S.C. 1400(b), 28 U.S.C.A. § 1400(b), is the sole and exclusive provision governing venue in patent infringement actions, or whether that section is supplemented by 28 U.S.C. 1391(c), 28 U.S.C.A. § 1391(c).
>
> Section 1400 is title 'Patents and copyrights,' and subsection (b) reads:
>
> '(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.'
>
> Section 1391 is titled 'Venue generally,' and subsection (c) reads:

> '(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.' [emp ours]

The Petitioner's company is incorporated in the state of California. The Dist. Court docketed and adjudicated the case in the wrong venue. This cause alone merits a retrial.

Subject case CAFC In Re: Micron Technology, Inc. Case # 2017-138 Decided November 15, 2017 resulted in the CAFC to transfer a case V.E. Holding to *TC Heartland* states:

Section 1406(a) of Title 28 of the United States Code provides that "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." A defendant objecting to venue may file a motion to dismiss for improper venue under Federal Rule of Civil Procedure 12(b)(3). (emp ours)

The Dist. Court, Utah docketed and adjudicated the case in the wrong venue. The Petitioner asks the Supreme Court to dismiss the case or transfer the case to the proper venue: California

Any such law or court ruling that requires all businesses to be represented by a lawyer is a violation of the Equal Protection Clause because all businesses can't afford a lawyer. It's not Equal Protection if a ruling presents burdens on some and not others.

And these government actions, enacted Rules and ruling are an action by the U.S. Government that imposed a burden against low income corporations; and to the benefit to wealthy corporations. Consequently, this creates a two-class judicial system.

What clearer way to prove that the government imposed a burden against the Petitioner and prove the benefits (due process, equal protection, etc.) was applied unequally against the Petitioner than the Dist. Courts own transcripts. In addition, the action of the government created the classification (corporation) starting in 1840 with *Commercial + RR Bank of Visksburg v. Slocomb, Richard & Col*:

> " . . . an aggregate corporation, and there could be no appearance but by attorney."

This case also proves that the low income corporate class is not illusory. There is no way to date the low income classification but the evolution of the low income corporate class evolved from government backing through court ruling and Rules. It is not the road that determines whether or not the government complied with the Equal Protection Clause it is the end result that in fact created a disadvantage to the Petitioner; and an advantage to another. This obviously caused the Petitioner harm.

It is evident by the Dist. Court transcripts that the wealthy Plaintiff Corporation, Connor Sport Court International, "World's largest Court Builder™" had access to justice while the less affluent Defendant was told to 'sit down' or "Sit down. I don't want to have to have the marshal have you sit down." (Exh. "A" p. 5 line 1&2)

The government's action to enact a prerequisite-which all businesses must be represented by a lawyer in order to defend itself in a court of law-has created 'institutional injustice.' In addition, the high cost of legal representation has scared away small corporations from even filing lawsuits against wealthy corporations.

This is the definition of UNEQUAL ACCESS. This has emboldened wealthy corporations and enriched lawyers all at the expense of low-income corporations.

Referenced Rules and antiquated Supreme Court rulings can't usurp or conflict with the Equal Protection Clause. And if one corporate defendant can't afford a lawyer it shall NOT mean Equal Protection shall NOT apply.

Hypothetically, let's say there's a new ruling that requires all individual entities in all civil cases involving more than $50,000 in damages are required to hire lawyers. Would that give a disadvantage to the litigant who can't afford to pay a lawyer? And what if, the wealthier litigant won by Default Judgment because the other litigant can't afford legal counsel.

Is this a violation of Equal Protection Clause?

If you answered 'yes' then this Petitioner asks for consistent rulings, intent, interpretation and applications of the Equal Protection Clause by granting this Writ of Certiorari.

The same hypothetical situation would apply to wealthy corporations versus poor corporations.

It is evident; access to equal justice was accorded the wealthy litigants but was not accessible to the less affluent litigant. This is a violation of the Equal

Protection Clause, Amendment XIV to the United States Constitution:

> "nor shall any State [. . .] deny to any person within its jurisdiction the equal protection of the laws".

And this judicial disparity and non-accessibility did not apply to wealthy corporations.

Just like low income individual entities, low income corporate entities are subject to limited 'access to justice' because they can't afford lawyers/can't afford to be heard. Nor is a corporation permitted to represent itself without a lawyer. The common outcome is a Default Judgment that almost always favors the wealthier corporation. This has created a judicially disenfranchised corporate classification against the advantage of a wealthier corporate class. Our nation's laws, esp. Constitutional Law would not permit this inequality if it was rich person-vs-a poor person in a court room. Nor should the Supreme Court accept this disparity between rich corporations-vs-small corporations.

That the limit of wealth of a corporation (CWF Flooring, Inc.)-in fact and documented in court record-has caused limited access-by existing law-to First Amendment rights due to the legal requirement for corporations to hire legal counsel. "The Court has recognized that the First Amendment applies to corporations", *e.g., First Nat. Bank of Boston v. Bellotti* (1978)

The documented fact is; limited corporate funds of CWF Flooring, Inc. suppressed speech inside a court room. This is clearly a violation of the 1st Amendment

and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The CAFC-Panel cites, *Rowland v. Cal. Men's Colony*, Unit II Men's Advisory Council, which states:

> "The Federal courts have maintained for generations that corporations must be represented by counsel" "(It has been the law for the better part of two centuries . . . that a corporation may appear in federal courts only through licensed counsel." *Osborn v. Bank of the United States*; *Tal v. Hogan*

The CAFC and Cir. Court referenced of *Osborn v. Bank of the United States* and *Tal v. Hogan.* Subject reference is based on tradition. Legal tradition has no place in the science of law. If tradition is the legal rationale then our 'Living Constitution' is dead.

The end result of implementing *Tal v. Hogan* and the current (below) Supreme Court rulings:

- *Osborn v. Bank of the United States*
- *Tal v. Hogan*
- *Cottringer v. State, Dept. of Employment Sec.*
- *Jones v. Niagara Frontier Transp. Authority*
- *DeVilliers v. Atlas Corp.*

. . . have created an unfair playing field for corporations, especially for small corporations, for generations . . . for the better part of two centuries.

It is evident that low income corporations-just like low income individuals-historically, have been and continue to be subjected to discrimination, judicial disparity, non-access, violations of Due Process &

Equal Protection. As well, prone to legal threats by wealthy corporation; "I'm going to sue you if you don't [blank blank]" A common scenario encountered by low income corporations.

Requiring a corporate litigant to hire a lawyer serves no compelling state interest. Under Strict Scrutiny, a law will be struck down unless it serves a compelling governmental interest and is necessary to achieve that end. *United States v. Carolene Products Co.* Footnote 4 (1938)

The fundamental right to due process and equal protection warrants Strict Scrutiny Review by the Hon. Supreme Court.

The government is prohibited from imposing restrictions on due process and liberty that service NO government interest or constitutional legitimate end.

The non-lawyer Petitioner pleas with the Supreme Court; to set legal precedence and rule that corporations are people too and shall have the right to defend itself in court without being required to hire a lawyer.

Now I ask the Supreme Court to "secure or maintain uniformity of the court's intentions" Which is to provide "any person within its jurisdiction the equal protection of the laws". 14th Amendment, Equal Protection Clause, U.S. Constitution, whether a person or corporate entity.

Turner v. American Bar Assn. states "Corporations and partnerships, both of which are fictional legal persons"

Turner v. American Bar Assn is no longer valid because *Citizens United v. Federal Election Commission* has re-clarified the constitutional protections of a corporate entity that now includes freedom of speech and is a now considered a legal 'person.' This new personal entity must apply in a court of law. A corporation is no longer a 'fictional legal person.'

It is obvious that the First amendment has granted corporate entities constitutional rights. These rights will not be denied if a corporation is in a court room/nor will these rights be denied if a corporation can't afford legal counsel.

The Dist. Court, 10th Cir. and CAFC violated U.S. Supreme Court *Santa Clara County v. Southern Pacific Rail* and *Citizens United v. Federal Election Commission*, decided January 21, 2010 that the First Amendment, Freedom of Speech and Equal Protection applies to a corporations:

> "(a) Although the First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech," § 441b's prohibition non corporate independent expenditures is an outright ban on speech . . ."

Certainly if the 1st Amendment is applied to a corporation, applying the 5th, 14th Amendment and entire U.S. Constitution, all its Amendments and Sections should also apply to Corporations. "Corporations are people too."

Fifth Amendment: "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"

14th Amendment, Section 1: "Section 1.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

A judge in a lower court can't restrict Constitutional amendments/protections; that's a violation of Constitutional articles. Chief Justice Marshall's classic opinion in *McCulloch v. Maryland*, 17 U.S. 316-1819

> "Let the end be legitimate," he wrote, "let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

Outdated rulings requiring corporations to hire lawyer is based more on status quo and 'economics.'

Shenandoah Sales & Service, Inc v. Assessor of Jefferson County, (2012) Angela Banks states:

> (Chief Justice John Marshall, writing for the majority, stated, "[a] corporation, it is true, can appear only by attorney[.]"). (1840) Courts have offered a number of policy reasons why a corporation must be

> represented by a lawyer in a court of record. One court observed that, "unlike lay agents of corporations, attorneys are subject to professional rules of conduct and thus amenable to disciplinary action by the court for violations of ethical standards." *Oahu Plumbing and Sheet Metal, Ltd. v. Kona Construction, Inc.*, 60 Haw. 372, 378, 590 P.2d 570, 574 (1979). A lawyer purportedly has the legal expertise necessary to participate in litigation and other proceedings. Conversely, a non-lawyer corporate agent's lack of legal expertise could "frustrate the continuity, clarity and adversity which the judicial process demands." *State ex rel. Western Parks, Inc. v. Bartholomew County Court*

The above, is old school folks~! That a 'non-lawyer' could "frustrate the continuity, clarity and adversity which the judicial process demands" There's NO evidence to prove this claim. Even if a 'non-lawyer' did 'frustrate the continuity . . ." this does not justify an outcome of unequal access to our courts. As if only a non-lawyer can "frustrate the continuity, clarity and adversity which the judicial process demands" These are not quantifiable 'facts' and have less probative value than conjecture.

And if *Western Parks, Inc. v. Barthomloew Court* is 'factual' the Petitioner "may be challenged by showing to the court that those facts have ceased to exist. *Chastleton Corporation v. Sinclair*, 264 U.S. 543"

The requirement that all corporations must hire legal counsel does not further any government

compelling interest. An examination of all germane jurisprudence is absent of reason for this requirement.

The benefits a corporation would receive if they can self-represent without legal counsel are:

1. Would have access to the judicial system that otherwise would not.
2. Lessen Default Judgments that are often disfavor able to low income corporations.
3. Won't be 'forced' to pay for legal services that resulted in Default Judgments.
4. Improve the win/lose ratio of low income corporations.
5. Be less prone and less intimated to legal threats by wealthy corporations.
6. Low income corporations would compete more even handedly against large corporations because judicial access is available.
7. Won't be forced to settle because they can't afford a lawyer because they can self-represent.
8. More likely that the merits of the case will be addressed.

Law, especially Constitutional law evolves with society:

> "In United States constitutional interpretation, the living Constitution (or loose constructionism) is the claim that the Constitution has a dynamic meaning or it has the properties of an animate being in the sense that it changes. The idea is associated

> with views that contemporaneous society should be taken into account when interpreting key constitutional phrases.[1]" By Wikipedia.org, on the Living Constitution

It's also old school that "*Woman Are Too Sentimental for Jury Duty*"–Anti-Suffrage argument/Kenneth Russell Chamberlain, 1891-1984

And, its old school that layperson does not possess the skills to self-represent in a court of law or that a lawyer has higher moral standards than a non-lawyer.

With current technologies, Westlaw and the Internet's access to laws, court decisions, procedures, rules and a vast quantity of legal templates online have resulted in more *pro se* litigants than ever. In addition, the high cost of lawyers has priced the common person out of the 'justice market', even small corporations.

However, the judicial disparity gap between corporations is being address by the Supreme Court of Arizona but only stagnant by the U.S. government.

- Rule 31(d)(9) Rules of the Supreme Court of Arizona, [Amendment pending] Jan. 2018 which states: "public corporation may be represented by "a person who is not an active member of the state bar" before any court and in any proceeding." Author of amended Rule 31, Hon. David. B. Gass Maricopa County Superior Court, Arizona states: "Would amend Rule 31, Rules of the Arizona Supreme Court, to improve access to justice for small business litigants and to reorganize and modernize the rule"

- *Citizens United* (2010) states: . . . the rule that political speech cannot be limited based on a speaker's wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker's identity." . . . "Political speech is "indispensable to decision making in a democracy, and this is no less true because the speech comes from a corporation." *Bellotti, supra*, at 777 (footnote omitted). This protection is inconsistent with Austin's rationale, which is meant to prevent corporations from obtaining "'an unfair advantage in the political marketplace'" by using "'resources amassed in the economic marketplace.'" 494 U.S., at 659. First Amendment protections do not depend on the speaker's "financial ability to engage in public discussion." *Buckley, supra*, at 49. *Citizens United v. Federal Election Commission*
- *Quarrier v. Peabody*, W. VA 507 (1877) states: "*Quarrier vs. Peabody* . . . the appearance by a corporation in a plea to jurisdiction of a court should not be in person or by attorney but may be by the president." [*Quarrier vs. Peabody* is a W. VA Supreme Court ruling]
- *First National Bank of Boston v. Bellotti* (1978) states: "whether its rights are designated 'liberty' rights or 'property' rights, a corporation's property and business interests are entitled to Fourteenth Amendment protection. . . . [A]s an incident of such protection, corporations also possess certain rights of

speech and expression under the First Amendment."

- *U.S. Supreme Court Santa Clara County v. Southern Pacific Rail Co* (1886) states: "The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution which forbids a state to deny to any person within its jurisdiction the equal protection of the laws applies to these corporations. We are all of opinion that it does."

2. **DID THE DIST. COURT, 10TH CIR AND CAFC EXCLUDE CUMULATIVE EVIDENCE, IGNORE SUPREME COURT RULINGS, U.S. CODES AND FED. R. CIV. P. IN A PREJUDICIAL, BIAS AND ERRONEOUSLY MANNER SO TO MEET ABUSE OF DISCRETION STANDARDS? IF SO, SHOULD A RETRIAL BE GRANTED IN THE PROPER VENUE?**

With Application to the Fed. R. Civ. P., Rule 59. New Trial; Altering or Amending a Judgment, though a 28 day limit for the Dist. Court has passed, for the reason to fulfill the purpose of substantial justice we PRAY the Supreme Court will override this 28 day rule and issue a new trail. The 28 day limit to file was not possible because the Dist. Court Defendant did not have legal counsel/was denied Due Process. This is not the fault of the Petitioner.

It is clear by the preponderance of misjudgments and legal errors that the Dist. Court, 10th Cir and CAFC made does meet the abuse of discretion standards. Alleged abuse of discretions was against established law, legal reason and evidence.

The legal errors are:

1. Dist. Court Clerk docketed case in wrong venue. [see Petitioner's "Corrected Response Brief, p. 11 dated Feb. 12, 2019 (Exh."L") and Petitioner's "Petition for Rehearing En banc and Request for Oral Rehearing En banc, dated June 03, 2019 (Exh."K" p. 5 #2)
2. Dist. Court judge adjudicated case in wrong venue despite the Defendant questioning the venue nine times (Exh. "A" p. 4, 5, 7, & 8, yellow highlight) [see Petitioner's "Corrected Response Brief, p. 11 dated Feb. 12, 2019 (Exh."L") and Petitioner's "Petition for Rehearing En banc and Request for Oral Rehearing En banc, dated June 03, 2019 (Exh. "K" p. 5#2]
3. Dist. Court unlawfully ruled 'sport court' is NOT generic term WITHOUT legal citations.
4. Dist Court and TTAB unlawfully Ruled 'sport court' is NOT generic which is in conflict of referenced Supreme Court ruling. (*see* Exh."I" & "J" p. 4-8)
5. Erroneously applied the Claim Preclusion issue against the Dist. Court Defendant without a legal basis and arbitrarily. Petitioner had only ONE case vs. Connor Sport Court International. One case can't produce two causes of action hence, Claim Preclusion can't apply. As well, the Default Judgment by the Dist. Court can't be applied probatively because the judgment was of a different cause

> of action than at the TTAB (*See* Appeal for En banc to CAFC Exh. "K" p. 14-17)

The Dist. Court's Plaintiff's corrected response brief and motion to dismiss from appellee Connor Sport Court International, LLC. with appendix pursuant to Fed. Cir. R. 30(e) IV. Factual Background Filed: 02/19/2019 states:

> "8. CWF never asserted a claim or defense in the Federal Action that the '328 Registration was invalid or should not have been registered, including without limitation any claim or defense that the subject mark of the '328 Registration was descriptive, not distinctive, or generic. (Exh. "M" p.4 #8 dated Feb. 19, 2019)

The reason the Dist. Court defendant did NOT state a claim regarding the trademark generic issue with the Dist. Court was because this issue was pending with the TTAB. If-which the defendant did NOT-motioned the Dist. Court and motioned the TTAB both to cancel the trademark, then that would meet the claim preclusion requirements.

It is evident that the Dist. Court judge made substantial errors in law. An error of law is an abuse of discretion.

Koon v. United States (1996) states:

> "A district court by definition abuses its discretion when it makes an error of law." . . . "The abuse-of-discretion standard includes review to determine that the discretion was not guided by erroneous legal conclusions."

Rabkin v. Oregon Health Sciences Univ. (9th Cir. 2003) states:

> "An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found."

United States v. Washington, 157 F.3d 630, 642 (9th Cir.1998) states:

> "The district court abuses its discretion when its equitable decision is based on an error of law or a clearly erroneous factual finding."

Int'l Jensen, Inc. v. Metrosound U.S.A., Inc., 4 F.3d 819, 822 (9th Cir.1993) states:

> "An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found." (internal quotations and citation omitted)

Petitioner motions the Supreme Court to set aside the TTAB, Dist. Court, 10th Cir and CAFC decisions because they all were not in conformity with the above SC ruling and 5 U.S.C. 706(2) which states:

> "5 U.S.C. 706(2) provides that a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be-"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; "(B) contrary to con-

> stitutional right, power, privilege, or immunity; "(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; "(D) without observance of procedure required by law; "(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of any agency hearing provided by statute; or [490 U.S. 360, 376] " (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. "In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error." (emp ours)

The TTAB, Dist. Court and 10th Cir. and CAFC also abused its discretion by erroneously interpreting the law. *U.S. v. Beltran-Gutierrez* (9th Cir. 1994) and by resting its decision on an inaccurate view of the law or the application of an absence of law. *Richard S. v. Dept. of Dev. Servs.* (9th Cir. 2003)

And the erroneous interpretations / errors of the laws were:

1. That 'sport court' was a generic term.

   [No law was cited to support the non-genericness term decision of the Dist. Court]

2. That the proper Venue is Utah.

3. The adjudication of a trademark issue while a trademark case was pending with the TTAB. Petitioner never had his day in court at the

TTAB because the Claim Preclusion issue was erroneously applied.

4. Due Process was denied.

5. Claim Preclusion allegation was contrary to law because Petitioner did not have two causes of action against Connor Sport Court International.

6. Equal Protection was NOT accorded.

The Petitioner motions the Supreme Court to set aside all adverse rulings against the Petitioner for reasons stated; and in the furtherance of justice rule for a retrial.

3. DID THE DIST. COURT VIOLATE THE 5TH & 14TH AMENDMENT WHEN IT RULED THAT THE PETITIONER "IS ENJOINED FROM USING" THE DOMAIN NAME?

Obviously, the Dist. Court violated the 5th & 14th Amendments to the United States Constitution when it ruled in its Default Judgment:

> "CWF is hereby permanently enjoined from using the plasticsportcourtiles.com" domain name in connection with the marketing or sale of flooring products and services, including redirecting visitors from plasticsportcourtiles.com to other internet domains having website marketing or selling flooring products or services." (Emp ours) (Exh. Appendix 13a, p. 3)

The District Court ordered the privately owned property of James J. Maksimuk (a domain name: www.

plasticsportcourttiles.com) (Exh. "N")—not the corporate defendant—to "permanently enjoined from using."

This is without a doubt a violation of the U.S. Constitution. 'Enjoined from using' is tantamount to being deprived of property without Due Process.

> 'We hold these truths to be sacred & undeniable; that all men are created equal & independent, that from that equal creation they derive rights inherent & inalienable, among which are the preservation of life, & liberty, & the pursuit of happiness'
>
> 5th Amendment: "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."

4. **OWNING TO THE ERRORS OF LAW COMMITTED BY THE CAFC, DIST. COURT, 10TH CIR. AND TTAB AND THE PREPONDERANCE OF EVIDENCE AND REFERENCED SC RULINGS, SHOULD THE TRADEMARK 'SPORT COURT' BE CANCELLED AND REMOVE FROM THE TRADEMARK REGISTRY?**

Special attention needs to be given to:

"*Canal Company v. Clark*, 80 U.S. 311 (13 Wall. 311, 20 L.Ed.581) (1871)." which states,

"No one can claim protection for the exclusive use of a trade-mark or trade-name which would practically give him a monopoly in the sale of any goods other than those produced or made by himself. If he could, the

> public would be injured rather than protected, for competition would be destroyed. Nor can a generic name, or a name merely descriptive of an article of trade, of its qualities, ingredients, or characteristics, be employed as a trade-mark and the exclusive use of it be entitled to legal protection." (emp ours)
>
> This citation clearly warrants the cancellation of the trademark 'sport court'

See Petitioner's CAFC "Appellant's Opening Brief, dated Oct. 06, 2018 (Exh. "J" p.1-8)

PRAYER

1. Overturn and/or amend Supreme Court rulings and Rules so to CONFORM to Due Process of Law and the Equal Protection Clause.

2. Overturn and/or amend all Supreme Court rulings that deny the right for corporations to self-representation.

3. Overturn TTAB, Dist. Court, 10th Cir. and CAFC Orders/Decisions/Mandates because they violated the Petitioner's Equal Protection Clause.

4. Overturn TTAB Cancellation Case Number: 92066311, Dist. Court, 10th Cir. and CAFC Orders/ Decisions/Mandates because abuse of discretion standards have been met.

5. Refer Dist. Court Case #2:17-cv-00042-BSJ to the proper Venue, California for retrial or dismiss or

to transfer for lack of venue and/or rule that 'sport court' is a generic term and cancel the trademark.

CONCLUSION

For reasons stated above this Petitioner respectfully urge the Hon. Supreme Court to grant this Writ of Certiorari.

Respectfully submitted,

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