

No. 22-298

In the
Supreme Court of the United States

JUMP ROPE SYSTEMS, LLC,

Petitioner,

v.

COULTER SYSTEMS, INC.,

Respondent,

*On Petition for a Writ of Certiorari to the
U.S. Court of Appeals for the Federal Circuit*

**BRIEF OF *AMICI CURIAE* FAIR INVENTING
FUND IN SUPPORT OF PETITIONER**

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AMICUS CURIE'S STATEMENT OF THE QUESTION PRESENTED

The question presented is:

Whether, as a matter of federal patent law, a determination of unpatentability by the Patent Trial and Appeal Board in an inter partes review proceeding, affirmed by the Federal Circuit, has a collateral estoppel effect on patent validity in a patent infringement lawsuit in federal district court and whether the inability to determine patent infringement and validity through an Article III Court evidences a two-class system, greatly benefitting those with access to capital.

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INTRODUCTION AND INTERESTS OF *AMICUS CURIE*

Amicus Fair Inventing Fund¹ was established in 2020 to advocate for the rights of people who invent but who are not equally and/or equitably represented in the patent ecosystem. Creating, commercializing, and *patenting* new technology is capital-intensive. That poses barriers for those without access to capital—disproportionately women, people of color, veterans, and people from socioeconomically disadvantaged areas—discouraging them from engaging in the patent ecosystem.

While the above hurdles place unfair burdens on those without access to capital, they pale in comparison to the obstacles needed to be overcome to *enforce* patent rights once they have been obtained. Indeed, the American Invents Act added an entirely new layer of hurdles, which many times are unsurmountable to underrepresented innovator groups. After passage of the America Invents Act, would-be infringers recognized they no longer needed to respect patents. Instead, they could make money selling infringing products, knowing all along that if sued in federal court, they could attack patents in inter partes review proceedings, staying the district court action

¹ Under Supreme Court Rule 37.6, Amicus affirms that no counsel for any party authored this brief in whole or in part, and that no person other than Amicus, its members, and its counsel made a monetary contribution to its preparation or submission. Under Supreme Court Rule 37.3(a), the parties received timely notice and have consented to the filing of this brief. Under Supreme Court Rule 33.1, Amicus affirms that the instant brief does not exceed 6,000 words.

for infringement and providing the infringers with a greater than 84% chance of success in finding duly granted patents to be unpatentable.

The story of Molly Metz, owner of Petitioner Jump Rope Systems, LLC, is an example of a small inventor who endured these travails. She invented a new jump rope, obtained two utility patents to protect her invention, and attempted to license the right to use her invention to a large fitness company, Rogue Fitness, only to have Rogue steal her design and begin importing infringing products from overseas.² Ms. Metz fought to enforce her rights by hiring an attorney and spending significant sums to initiate and litigate a patent infringement lawsuit in the U.S. District Court for the Southern District of Ohio, only to see Rogue pay a fee to the Patent Office to have the Patent and Trial Appeal Board, under a preponderance of the evidence standard, determine that her patents were “unpatentable.”

The patent system should discourage willful infringers, not embolden them. Therefore, Amicus advocates for the Court to vacate the Federal Circuit’s holding establishing that a determination of unpatentability by the Patent Trial and Appeal Board in an inter partes review proceeding has collateral estoppel effect on patent validity claims in a patent infringement lawsuit in federal district court.

² The irony of an accused patent infringer naming itself after a word that means “corrupt” or “dishonest” is not lost on Amicus.

Or alternatively, even if a patent is held to be unpatentable by the PTAB and then affirmed by the Federal Circuit, a patent owner should be able to proceed in district court to recover for past damages that occurred prior to the PTAB's decision, where accused infringers would need to prove invalidity by clear and convincing evidence.

SUMMARY OF THE ARGUMENT

Amicus agrees with Petitioner that “the collateral estoppel issue raised in this case is one of nationwide importance in patent infringement litigation, as it affects countless patent disputes all over the country.” Pet. 14-15 (noting that the potential for collateral estoppel affects 83% of pending appeals involving the PTAB). Further, this collateral estoppel issue solely affects the rights of patent owners seeking to enforce their rights in federal courts.

As Congress has recognized, the burden of proving patent infringement, and hence defending against unpatentability at the PTAB, has become overwhelming for underrepresented innovator groups. Data demonstrates that women, minorities, and veterans continue to show only anemic progress in realizing the economic benefits of the patent system, such as accessing capital to form new enterprises or to enforce their patent rights duly issued by the U.S. Patent and Trademark Office. Confidence degrades, and incentives to enter the patent system diminish, when an appeals court takes away via collateral estoppel an aggrieved small innovator's day in federal district court by applying a standard that is

inapplicable in that federal judicial forum. Because of the capital required to enforce a patent, underrepresented innovator groups bear the brunt of this lopsided application of collateral estoppel.

REASONS FOR GRANTING THE PETITION

Fair Inventing files this amicus brief to draw to the Court's attention the unfair results that multiply from the Federal Circuit's incorrect decision to apply collateral estoppel in patent cases after the Patent Office's administrative Patent Trial and Appeal Board (the "Board" or "PTAB") decides that a patent is unpatentable: the Board does so under the scant preponderance of the evidence standard; the Federal Circuit affirms that determination, reviewing facts under the very high abuse of discretion standard; and then collateral estoppel prevents the patentee from litigating in federal district court, even though the burden on a potential infringer for invalidating a patent in federal court requires application of the presumption of validity and the higher clear and convincing standard.

Not only does this application of collateral estoppel by the Federal Circuit prevent patentees from having their vested rights adjudicated by an Article III court, but such a ruling also disproportionately affects underprivileged patent owners who attempt to enforce their patents against well-funded, large technical institutions that are able to force patentees into the PTAB forum.

I. The Federal Circuit’s application of collateral estoppel against patent owners is contrary to established law and to the America Invents Act.

The decision here rests on a 2018 Federal Circuit decision in which the court *sua sponte* ruled that an Article III appellate court affirmance of unpatentability by an administrative board within an Article II agency estops a patent owner from pursuing an infringement action of the same patent in district court. *XY, LLC v. Trans Ova Genetics, L.C.*, 890 F.3d 1282, 1294–95 (Fed. Cir. 2018). The court described its ruling as “a straightforward application of ... Supreme Court precedent.” *Id.* at 1294.

But the court’s ruling was anything but straightforward. The court held that its affirmance of the Board’s unpatentability ruling “has an immediate issue preclusive effect on any pending or co-pending actions involving the patent.” *XY, LLC*, 890 F.3d at 1294. However, nothing in the relevant statutes or in this Court’s precedent requires the application of estoppel in this circumstance. Rather, Supreme Court precedent and equitable considerations counsel that *XY, LLC* be reversed.

A. The America Invents Act did not codify collateral estoppel against patent owners.

Nowhere in the America Invents Act, which established inter partes review proceedings, does it state that issue preclusion, or collateral estoppel, will apply against patent owners. Rather, the provisions of the act relating to the interplay between district

court actions and inter partes review proceedings curtail solely the rights of the parties challenging the validity of patents.

For example, section 315(a)(1) prohibits a party that filed a civil action challenging the validity of a patent from seeking inter partes review. 35 U.S.C. § 315(a)(1). Section (b) prevents an accused infringer from waiting more than a year to file an IPR petition. *Id.* at § 315(b).

Likewise, Section (e), titled “Estoppel,” is only directed against patent challengers. Section (e)(1) prevents a petitioner from filing a second IPR petition on the same grounds or on grounds that “reasonably could have been raised during [a prior IPR].” § 315(e)(1). And section (e)(2), the final clause of § 315, prevents an IPR petitioner who obtains a final written decision under 35 U.S.C. § 318(a) from asserting the same grounds for invalidity in a civil action or an action before the International Trade Commission. § 315(e)(2).

The specific statutory recitation of estoppel against the patent challenger, compared to the absence of such statutory language applicable to the patentee, provides clear evidence of Congressional intent not to impose collateral estoppel effect of inter partes review proceedings against patent owners in district court.

B. Supreme Court precedent counsels against application of collateral estoppel based on administrative rulings with different burdens of proof than in district court.

This Court’s precedent bolsters a finding that collateral estoppel should not apply against patent owners. Because issue preclusion “can be challenging to implement,” the Court “regularly turns to the Restatement (Second) of Judgments” to begin its analysis. *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015). Although issue preclusion may apply when an issue “is before a court and an administrative agency,” there are well-known exceptions to this rule. *Id.*

Two exceptions apply here. First, as the Federal Circuit itself recently noted, an exception to issue preclusion applies “**when a statutory purpose to the contrary is evident.**” *SynQor, Inc. v. Vicor Corp.*, 988 F.3d 1341, 1347 (Fed. Cir. 2021) (quoting *B & B Hardware*, 575 U.S. at 148) (emphasis added). This contrary statutory purpose need not be an explicit statement by Congress that it intends for issue preclusion not to apply. *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 108 (1991). By codifying collateral estoppel against patent challengers but not patent owners, Congress made evident its desire. The Federal Circuit has failed to apply this statutory analysis.

The second exception to issue preclusion results from Congress’s decision to set the burden of

proof to establish unpatentability in inter partes review proceedings as a lower “preponderance of the evidence” standard rather than the higher “clear and convincing” evidence standard, which is required in the district courts. Indeed, the statutory presumption of validity that results in the clear and convincing standard in federal courts does not apply in the PTAB. *Compare* 35 U.S.C. § 282 to 35 U.S.C. § 316(e); *see also* *Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. 91, 95 (2011) (requiring an invalidity defense in district court to be proved by clear and convincing evidence).

As this Court noted in *B & B Hardware*, one well-established exception to issue preclusion results when “the second action involves application of a different legal standard, even though the factual setting of both suits may be the same.” 575 U.S. at 154 (citation omitted). Or as the Restatement (Second) of Judgments notes, when the adversary to the party against whom preclusion is sought “has a significantly heavier burden than he had in the first action,” re-litigation of an issue is not precluded. Restatement (Second) of Judgments, § 28(4). Such is the case here, where the patent challenger in the PTAB has a significantly heavier burden at the district court.

The Court has relied upon this portion of the Restatement in a previous patent case, *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 571 U.S. 191 (2014). In *Medtronic*, the Court determined whether the burden of proof regarding infringement shifts to a potential infringer when it files a declaratory judgment action of noninfringement. *Id.* at 193–94. Before answering in the negative, the Court posed a

hypothetical where it decided to shift the burden: if a potential infringer in a declaratory judgment action did not meet its burden to prove noninfringement, but it decided to continue infringing, the patent owner could bring a new action for infringement, and now faced with the burden of proof for the first time, potentially lose as well. *Id.* at 199–200.

The Court stated this conjectural example was not “fanciful.” *Id.* at 200. Under § 28(4) of the Restatement (Second) of Judgments, re-litigation of infringement in the above scenario would not induce issue preclusion, because the burden of proof had shifted from one party to another. *Id.*

The rationale in *Medtronic* is consistent with the Court’s holding in a bankruptcy case, *Grogan v. Garner*, 498 U.S. 279, 284–85 (1991). In *Grogan*, the Court applied § 28(4) of the Restatement (Second) of Judgments to note that nondischargeability, depending on the state court one was in, varied between a preponderance of the evidence standard and clear and convincing evidence, but the federal standard was clear and convincing. *Id.* If a state court had previously applied the clear and convincing standard, a federal court could apply collateral estoppel, but collateral estoppel was not available to the federal court if the state court had applied the lesser preponderance of the evidence standard. *Id.* at 284–85.

This case is similar to *Medtronic* and *Grogan*, because at the PTAB, patent challengers need only prove unpatentability by a preponderance of the evidence, but in district court, patent challengers must

prove invalidity by clear and convincing evidence, which is a “significantly heavier burden.” Therefore, applying *B & B Hardware*, *Medtronic*, *Grogan*, and concepts from the Restatement (Second) of Judgments, determinations of invalidity by the PTAB should not estop patent owners from pursuing infringement actions in district courts.

Consequently, the Court should reverse the Federal Circuit’s holding in *XY, LLC*. Any other holding would be contrary to this Court’s precedent.

C. One purpose of the America Invents Act was to aid small inventors, not erode their access to justice.

The America Invents Act was not designed to be the death knell for patent owners that it has become, particularly for small inventors. For example, the act reduced by half the fees required for small and micro entities to file, prosecute, and maintain patent applications and patents. 125 Stat. 284, § 10(b). The act also commissioned a small business study to evaluate how the change to a first-to-file system would “affect the ability of small business concerns to obtain patents and their costs of obtaining patents.” § 3(l)(2)(B)(i)–(iv).

But overall, the act has not helped small inventors. Rather, it has all but doomed them.

According to usinventor.org, as of July 15, 2022, there have been 9361 patents involved in cases at the PTAB, and 3572 of those patents had cases pro-

ceed to final written decisions. <https://usinventor.org/assessing-ptab-invalidity-rates> (last visited Oct. 17, 2022). Of those 3572, 3000 of them have had claims held to be “unpatentable/cancelled”—a startling 84% rate of unpatentability. And in a recent turn of events, even when the PTAB has declined to institute an IPR, the Director of the Patent Office has stepped in to overturn that decision. *See Code200, UAB v. Bright Data, Ltd.*, IPR2022-00861, 2022 Pat. App. LEXIS 4272 (Aug. 23, 2022).

It is not just patent owners who are sounding the alarm. Randall Rader, former Chief Judge of the Federal Circuit, labeled the PTAB a “death squad.” <https://www.ipwatchdog.com/2014/03/24/ptab-death-squads-are-all-commercially-viablepatents-invalid/id=48642> (last visited Oct. 17, 2022).

Likewise, Paul R. Michel, another former Chief Judge of the Federal Circuit, suggested that the 84% unpatentability rate at the PTAB is not because “the USPTO is really bad at its job of deciding whether to issue a patent in the first place ... [but because] there’s a thumb on the scale ... belong[ing] to Big Tech.” Paul. R. Michel & Chris Israel, *Don’t Let Big Tech Sabotage U.S. Innovators’ Protections*, Bloomberg Law (Apr. 22, 2022, 4:00 a.m.), <https://news.bloomberglaw.com/ip-law/dont-let-big-tech-sabotage-u-s-innovators-protections>. Chief Judge Michel elaborated that “[m]ost of our tech giants ... these days ... prefer to use technology developed by smaller, more cutting-edge companies, without bothering to seek a license,” and when “they found themselves in a legal tangle, they could try to

get the disputed patent invalidated at the PTAB—with great odds of success.” *Id.*

Exacerbating this problem is the 90% rate of affirmance that the PTAB enjoys at the Federal Circuit. See <https://www.ipwatchdog.com/2020/03/16/judge-paul-michel-time-wake-preserve-patent-system/id=119874/> (last visited Oct. 25, 2022). Retired Chief Judge Michel has noted that because of that affirmance rate, “the PTAB is actually more powerful than [the Federal Circuit] in defining the reach of basic patent law doctrines.” *Id.*

Unfortunately, the Patent Office’s outsized influence on patent law jurisprudence started even before the America Invents Act. See Charles J. Cooper & Vincent J. Colatriano, *An Attack on Separation of Powers and Federal Judicial Power? An Analysis of the Constitutionality of the America Invest Act*, The Federalist Society, Vol. 13, Issue 2 (July 2012), <https://fedsoc.org/commentary/publications/an-attack-on-separation-of-powers-and-federal-judicial-power-an-analysis-of-the-constitutionality-of-section-18-of-the-america-invents-act> (last visited Oct. 26, 2022) (citing two dissents by Federal Circuit Judge Pauline Newman in which she voiced concerns about the separation of powers between the Patent Office and federal courts). Overturning the decision in *XY, LLC* would be a significant step toward reversing that trend.

Innovation is being stymied. Inventors are being hurt. Balance can be restored by applying the estoppel provisions that Congress enacted and by

declining to adopt the new estoppel provision created out of whole cloth by the Federal Circuit against patent owners.

D. Infringers simply pay a fee to the Government to obtain a lower burden to prove unpatentability.

Under the current U.S. system, if a large company, foreign or domestic, is infringing a patent, it need only pay a fee to have access to a venue without the statutory presumption of patent validity and offering a lower evidentiary threshold to remove patents. Currently, the fees to file a petition for IPR are \$19,000.00, 37 C.F.R. § 42.15(a)(1), and an additional \$22,500.00 is due once the IPR is instituted. 37 C.F.R. § 42.15(a)(1). While \$41,500 may be steep for small entities, it is a drop in the bucket for the companies most often enjoying the brutal power of the PTAB to kill off competitors. Thus, for virtually nothing, an infringer is able to buy a “preponderance of the evidence” burden to prove unpatentability, rather than have to do the hard work real justice requires: the “clear and convincing evidence” burden to show invalidity at the district court.³

In contrast to the fee reduction programs available to small or micro entities to file and prosecute patents before the Patent Office, there are no such fee reductions for small or micro entities for filing at the

³ It seems ironic that the very agency that provides the statutory presumption of validity to an issued patent can then be used to remove the same patent without applying that same statutory presumption of validity.

PTAB. This dichotomy also supports the view that IPRs are not for micro or small inventors, but rather for companies—including willful infringers—seeking to remove a patent under a lower burden of proof.

Yet, more bothersome than the fee dichotomy is the purposeful action of the U.S. Government via the U.S. Patent Office selling a lower evidentiary standard to remove a patent to benefit infringers, along with a likely stay of any copending infringement action against those infringers. Small inventors accessing the court system to prove infringement must now understand that first, they have to go back to the Patent Office via IPR and defend the patent they secured from the same patent office. Defense of a patent in this IPR procedure costs several hundred thousand dollars to these patentees and, regardless of the outcome, usually halts their first-filed infringement action in its tracks. This harms small inventors, who have spent their life savings protecting their innovations only to find that they cannot assert their hard fought patents until they survive yet another procedure at the Patent Office. This system denies justice to those without equal access to capital. Any law can be misused, but the America Invests Act has proven itself to be particularly susceptible to abuse.

II. Willful infringement can be discouraged by clarifying that unpatentability findings by the Patent and Trial Appeal Board are not retroactive.

Even if this Court does hold that findings of unpatentability in inter partes review proceedings will have collateral estoppel effect against patent owners,

the Court should clarify that, after an adverse decision from the PTAB, patent owners can still seek damages for infringement that occurred *before* the determination of unpatentability. The result would be that, in the district court, infringement and validity actions could be maintained for damages that occurred before the unpatentability determination. Hence, an accused infringer seeking to avoid paying past damages would have to prove that the patent is invalid by clear and convincing evidence.

Title 35, section 318 of the United States Code directs that, if the PTAB institutes an inter partes review proceeding, and it is not dismissed, it must “issue a final written decision with respect to the patentability of any patent claim challenged...” 35 U.S.C. § 318(a). If any claims are deemed unpatentable, the Director of the Patent Office must “issue and publish a certificate canceling” those claims. *Id.* at § 318(b). Similarly, any new or amended claim issuing from the inter partes review proceeding cannot be enforced against accused infringers for conduct that preceded the issuance of the new or amended claim. 35 U.S.C. § 315(c).

These provisions make clear that findings by the PTAB are not retroactive. A patent is deemed unpatentable after the final written decision, not before. Accordingly, when a patentee files a lawsuit for patent infringement, an accused infringer should not be able to avoid damages for past infringement, even if it is successful in an unpatentability determination under a preponderance of the evidence standard. Instead, to avoid having to pay for prior damages, the

accused infringer should have to defend past infringement and/or invalidate the patent at the district court, under the higher clear and convincing evidence standard.⁴

Equities favor such a ruling. The current patent landscape tells would-be infringers that it is economically sound—efficient even—to infringe patents rather than engage in negotiations and ultimately take a license. This is particularly true when the patent owner is a solo inventor or a small entity—parties who typically do not have large budgets to initiate and litigate patent infringement lawsuits. If an infringer happens to copy the invention of someone willing and able to enforce their patent rights, a detour to the PTAB will likely let the infringer off the hook for damages—including treble damages for willfulness. *See* 35 U.S.C. § 284; *see also Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 106 (2016) (indicating that

⁴ The status of a patent is treated differently in the district court than it is in the PTAB. For example, determinations by the PTAB are for “unpatentability,” and determinations by the district court are for “invalidity.” *Compare e.g., XY, LLC*, 890 F.3d at 1294 (referring to “invalidity” arguments of U.S. Patent No. 7,820,425 (the “freezing patent”) made by defendant in district court), with *ABS Global, Inc. v. XY, LLC*, 2016 Pat. App. LEXIS 6850, *44, IPR2014-01550, Paper 25 (April 15, 2016) (PTAB determination of “unpatentability” of U.S. Patent No. 7,820,425), *aff’d XY, LLC v. ABS Global, Inc.*, 723 Fed. Appx. 1000 (Fed. Cir. May 23, 2018) (summarily affirmed under Fed. R. App. P. 36).

enhanced damages under § 284 are generally appropriate in egregious cases “typified by willful misconduct”).

In Molly Metz’s case, there are allegations that if true would establish Rogue’s willful misconduct. *See Jump Rope Sys., LLC v. Coulter Ventures, LLC*, 2:18-cv-00731-MHW-CMV (S.D. Ohio filed July 26, 2018) (ECF No. 1). For instance, Jump Rope Systems alleged that Ms. Metz reached out to the owner of Coulter Ventures, doing business as Rogue Fitness, in August 2011 to discuss a potential business relationship related to her patented speed jump ropes. *Id.* at PAGEID #: 4, ¶ 18. Within a few months, Rogue began marketing and then selling a jump rope that infringed Ms. Metz’s ’809 patent, yet when she contacted the owner of Rogue again, he directed her to his attorney. *Id.* at ¶¶ 19–22. An attorney for Jump Rope Systems then sent two letters to Rogue notifying it of its infringing activities, yet as alleged in the complaint, Rogue continued to use Ms. Metz’s technology unabated. *Id.* at PAGEID # 4–5, ¶¶ 23–25.

Rogue should have to face the consequences if it indeed willfully infringed the patent owned by Jump Rope Systems, LLC. Requiring it to prove invalidity of the patent by clear and convincing evidence before it was absolved of having to pay past damages—and any associated enhanced damages—would be a step toward restoring balance to the patent system, and it would make federal court decisions conform to this Court’s precedent.

III. The purpose of the Patent Act has been abandoned.

In the third Act of Congress ever passed, Congress decreed that any person who “invented or discovered any useful art, manufacture, engine, machine, or device, or any improvement therein not before known or used,” could be granted a patent. Patent Act of 1790, Ch. 7, 1 Stat. 109–112 (Apr. 10, 1790).

President Washington highlighted the act in his State of the Union speech to Congress on January 8, 1790, emphasizing the need to promote ingenuity from all corners of the country:

The advancement of agriculture, commerce, and manufactures by all proper means will not, I trust, need recommendation; but I cannot forbear intimating to you the expediency of giving effectual encouragement as well to the introduction of new and useful inventions from abroad as to the exertions of skill and genius in producing them at home, and of facilitating the intercourse between the distant parts of our country by a due attention to the post-office and post-roads.

From George Washington to the United States Senate and House of Representatives, 8 January 1790, available at <https://founders.archives.gov/?q=1790%20state%20of%20the%20uion&s=1111311111&sa=&r=119&sr=> (last viewed Oct. 18, 2022).

The importance of patent rights, to all people regardless of their station in life, continues to this day. Indeed, just four years ago, Congress demonstrated this belief in passing the SUCCESS Act, 132 Stat. 4158 (2018):

It is the sense of Congress that the United States has the responsibility to work with the private sector to close the gap in the number of patents applied for and obtained by women and minorities to harness the maximum innovative potential and continue to promote United States leadership in the global economy.”

Id. at § (2)(b).

But the act of obtaining a patent, in and of itself, has lost its luster and value. Without value, it is hard for small inventors and companies to justify the ever-increasing cost of patents. Some companies no longer respect them. And why should they? If accused infringers do not bury smaller inventors and companies in the marketplace, eliminating the latter’s ability to be able to afford to enforce their rights, then infringers can bury them in inter partes review proceedings, where patents go to die.

It is no stretch of the imagination, no leap of logic, to believe that the current patent system has discouraged some inventors from seeking patent rights. Nor is it hyperbole to suggest that others threw in the towel before they had even finished working on their novel ideas. The patent system is

failing inventors and our country. And as Mark Twain wrote over 130 years ago, “a country without a patent office and good patent laws was just a crab, and couldn’t travel any way but sideways or back-ways.” Mark Twain, *A Connecticut Yankee in King Arthur’s Court*, at 68 (1889).

CONCLUSION

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