No. 25-1049

IN THE

Supreme Court of the United States

GILBERT P. HYATT,

Petitioner,

v.

JOHN A. SQUIRES, Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office,

Respondents.

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

BRIEF OF NATIONAL ASSOCIATION OF PATENT PRACTITIONERS, INC. AND PTAAARMIGAN LLC AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

Amicus National Association of Patent Practitioners (NAPP) is a professional organization representing hundreds of patent attorneys and patent agents across the country who specialize in patent practice before the United States Patent and Trademark Office (USPTO). NAPP focuses on supporting practitioners who draft and prosecute patent applications. As such, NAPP members are frequent users of the United States patent system and highly knowledgeable about U.S. patent matters. NAPP's members represent startups, small businesses, and individual inventors before the USPTO. Therefore, NAPP offers insights from a perspective that may not be well-represented otherwise.

PTAAARMIGAN (Patent and Trademark Attorneys, Agents, and Applicants for Restoration and Maintenance of Integrity in Government) advocates on behalf of intellectual property attorneys, agents and owners, and on behalf of IP-owning clients. PTAAARMIGAN advocates for observance of the administrative law, focusing on issues where the substantive or procedural law provides protections

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[1] Pursuant to Rule 37.6, counsel for the *amicus curiae* certifies that no counsel for any party authored this brief in whole or in part and that no person or entity other than the *amicus curiae* or its counsel made a monetary contribution intended to fund the brief's preparation or submission.

Pursuant to Rule 37.2, counsel of record received timely notice of the intent to file the brief.

against agency overreach, and a federal agency acts in contravention of that law.

This case addresses an issue of great importance to the *amici*, whose members are harmed when the U.S. Patent and Trademark Office delays taking action on patent applications, or (even worse) takes action that does not advance progress, but only drives the application in circles.

INTRODUCTION

Congress gave the USPTO a simple instruction: to "cause an examination to be made of the application and the alleged new invention," 35 U.S.C. § 131, and "within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b). There is no dispute that Mr. Hyatt complied with the statutory and regulatory requirements to get his applications to the starting line for examination. Likewise, there is no dispute that the USPTO *didn't* follow its statutory obligations to *examine* timely. The agency had simple tools to *examine* and *reject* the applications on simple grounds that would have required Mr. Hyatt to simplify his applications (*e.g.*, the "undue multiplicity" doctrine of 35 U.S.C. § 112(b), *Carlton v. Bokee*, 84 U.S. (17 Wall.) 463, 471-72 (1873), and *In re Chandler*, 319 F.2d 211, 225 (C.C.P.A. 1963)). The USPTO created its own misery by choosing to *not* observe its statutory obligation to *examine*, and choosing to *not* use its available statutory authority to force simplification. Instead, the USPTO kept Mr. Hyatt's applications on ice for nearly fifteen years. The USPTO now argues that its bad choices should create an equitable exception to its statutory obligations.

Having lost on all statutory issues in the District Court,[2] the agency now seeks to bury the conse-

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[2] *Hyatt v. Vidal*, Cases No. 05-cv-2310-RCL, 09-cv-1864-RCL, 09-cv-1869-RCL, and 09-cv-1872-RCL (D.D.C. May 16, 2024), Appx111-12.

quences of fifteen years of inaction. The Federal Circuit handed the USPTO a non-statutory shovel—a presumption that applies to *all* patent applications, not just Hyatt's. The Federal Circuit ruled that any "delay of more than six years raises a presumption that it is unreasonable, inexcusable, and prejudicial," *Hyatt v. Hirshfeld*, 998 F.3d 1347, 1369 (Fed. Cir. 2021), so the inventor presumptively loses the patent right. As framed by the Federal Circuit, prosecution laches hands the agency immense power against *any* applicant, a power not delegated by statute, to punish applicants that have the temerity to hold out for the patent protection to which they are "entitled" by statute. 35 U.S.C. § 102(a).

The Federal Circuit's presumption that prosecution laches attaches at six years disrupts policy balances set by Congress. In all fields of intellectual property (patent, copyright, trademark, and trade secret), Congress carefully balances rights between the right-holder (the author, inventor, or mark owner), against rights of the public to use nearly-similar subject matter, scope and duration of the right-holder's right to exclude vs. the public interest in the right to use, lapse dates on which the subject matter passes into the public domain, etc. As part of this policy balance, Congress directed the USPTO to measure its own delay during application pendency and to extend patent term day-for-day to compensate for USPTO delay, 35 U.S.C. § 154. Contrarily, the Federal Circuit's prosecution laches presumption disregards those policy balances, and counts USPTO delay against a six-year clock. Congress allocated the burden of proof in the applicant's favor; the Federal Circuit proposes to re-

verse that burden. When Congress draws those policy balances, they occupy the field, and courts have no discretion to coin equitable exceptions. *Milwaukee v. Illinois*, 451 U.S. 304, 316-17 (1981). Specific conflicts with statute are elaborated in §§ I.1 and I.2 below.

The Federal Circuit's six-year presumption is not narrowly tailored to the facts of the case before it; instead the presumption cuts broadly, and falls most harshly on the most-innovative and commercially-important patent applications. The presumption is imposed *even when the applicant followed the written rules and the USPTO didn't.* This presumption tarnishes validity of *nearly 30%* of all issued patents. For example, during a 63 day period in 2025:[3]

Total patents granted Aug. 2, 2025 to Oct.6, 2025	33,449
Of that population, earliest priority date at least six years earlier	9,871
Fraction of issued patents subject to the Federal Circuit's presumption	29.5%

That percentage is almost certainly higher in biotech, the area where high fixed costs, low variable costs, and low copying costs make patent protection most

[3] This is fully developed in the brief of *amicus* Small Business Technology Council, *Hyatt v. Squires*, Fed. Cir. No. 2018-2390, ECF 162 at 24 (Nov. 21, 2025), based on data from a public patent database, https://www.lens.org/.

essential to American business, and where complexity of the subject matter results in extended proceedings in the USPTO.[4] As shown in § II below, USPTO delays of over half the six-year laches period are common (so ordinary action by the applicant could easily tip the application over six years), and delays *solely attributable to the USPTO* of over six years are not unheard of. The Federal Circuit's prosecution laches presumption selectively disadvantages patent applications on complex inventions, the applications that are generally most economically-important.

Like any other area of commercial law, patent law demands the certainty of bright line rules. In balancing interests of multiple parties, Congress drew bright lines driven by simple date calculations. The Federal Circuit's "presumption" and "totality of circumstances" test replace clean statutory tests with a woolly unpredictable standard that leaves 30% of patents under a cloud until they are tested one-by-one by the Federal Circuit. That leaves both inventors and counterparties with an unacceptably-uncertain landscape.

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[4] USPTO, spreadsheet of pendency data, at https://www.uspto.gov/dashboard/data/patents/tcleveldashboard.xlsx This spreadsheet shows that the average delay to first examination in biotech is about 20% above the office-wide average. It stands to reason that the percentage of above-six-year delays to issue is likewise substantially above the office-wide average.

ARGUMENT

I. The Federal Circuit's prosecution laches presumption overrides Congress' policy balances

1. The Federal Circuit's six-year presumption trenches on patent term policy balances that Congress enacted in 35 U.S.C. §§ 154 and 156

Over the course of fifteen years late in the last century, Congress carefully tailored patent term to balance rights between inventors and the public's "right to use." Today's policy balance emerged in three statutes, the Drug Price Competition and Patent Term Restoration Act of 1984, Pub. L. 98-417, 98 Stat. 1598-99, codified at 35 U.S.C. § 156; the Uruguay Round Agreements Act (URAA), Pub.L. 103-465, 108 Stat 4984, codified in 35 U.S.C. § 154(a)(2) (Dec. 8, 1994), and Patent Term Guarantee Act of 1999, Pub. L. 106-113, 113 Stat. 1501A-557 to 560 (Nov. 29, 1999), codified at 35 U.S.C. § 154(b). The sum total of these statutes is a detailed set of balances: a patent expires (a) 20 years from its earliest filing date, with (b) patent term adjustment to compensate for delay caused by the USPTO (with a complex and precise allocation of various delays), and (c) patent term extension to compensate for delay in FDA approval.

Applicants have no control over delays interposed by the USPTO (see § II, below). Congress recognized the problem, and as part of the 1999 amendment, specified "patent term adjustment" in 35 U.S.C.

§ 154(b) to *insulate* applicants from the consequences of USPTO inaction or misfeasance, day-for-day.

In contrast, the Federal Circuit created a "presumption" that any "delay of more than six years … is unreasonable, inexcusable, and prejudicial." *Hyatt*, 998 F.3d at 1369-70. That "presumption" casts aside Congress' balances. 35 U.S.C. §§ 154 and 156 detail who bears what costs for which delay—the statutes carefully differentiate delay due to USPTO inaction, and delay by the applicant. The Federal Circuit's "presumption" sets aside Congress' policy balancing by sweeping aside that differentiation. The Federal Circuit identified no statutory basis for penalizing applicants for USPTO delay, or any statutory basis for carving back § 154(b) patent term adjustment.

This presumption has an immense practical and economic effect on startups and similarly-cost-constrained inventors, and on inventors of complex inventions, for two reasons.

First, the most-delayed patents tend to be the most innovative, and most-commercially important. For more important patents, the disclosures tend to be longer and more complex. The USPTO's scheduling prioritizes less-complex applications over more-complex ones—thereby tending to delay more-innovative applications. Then, when more-complex, cutting-edge applications do come up for examination, they face another hurdle—examiners are more likely to misunderstand the technology. Resolving basic technological misunderstanding often adds multiple years to proceedings. Finally, for more-

innovative, more commercially-important inventions, patent applicants are generally less willing to compromise if the examiner's rejection is not well founded.

These factors tend to lengthen pendency for the patent applications that are most important to the economy. In contrast, the Federal Circuit's six-year presumption penalizes those very patents.

Since June 1995, when the URAA's twenty-year-from-filing term took effect, patent applicants have operated in accordance with the rules established by Congress. The Federal Circuit's presumption retroactively turns the law against both those who exercised the options Congress gave them, and those that suffered extraordinary delay by the USPTO (explained in § II, below).

2. Congress' burden of proof favors the applicant; the Federal Circuit's presumption disfavors the applicant without statutory authorization

35 U.S.C. § 102(a) reads "A person shall be entitled to a patent unless…" This has long been understood to allocate the burden of proof during application processing in favor of the applicant. *In re Warner*, 379 F.2d 1011, 1016 (C.C.P.A. 1967) ("We think the precise language of 35 USC 102 that 'a person shall be entitled to a patent unless,' … clearly places a burden of proof on the Patent Office"). On some rebuttal issues, a burden of production shifts to the applicant, but the ultimate burden of persuasion always

rests with the Office. *In re Oetiker*, 977 F.2d 1443, 1449 (Fed. Cir. 1992) (Plager, J., concurring).

In contrast, the Federal Circuit creates a presumption in favor of withholding a patent, merely because negotiation with the USPTO takes six years or more. *Hyatt*, 998 F.3d at 1369-70 ("a delay of more than six years raises a 'presumption that it is unreasonable, inexcusable, and prejudicial.'"). The Federal Circuit identified no statutory basis for creating this carve-out from the statutory burden of proof.

The Federal Circuit's "presumption" operates contrary to Congress' policy balances, and should be set aside.

II. Patent applications are often delayed for *years* by the USPTO, at no fault of the applicant

1. Empirically, extended delays are common

A patent application is like a tennis point—the ball is always either in the USPTO's court for the USPTO to return, or in the applicant's. Congress specified maximum limits on an applicant to take action—no more than six months. 35 U.S.C. § 133. Likewise, Congress specified aspirational deadlines for USPTO action: after initial filing: Congress expects the USPTO to take its first action within fourteen months, 35 U.S.C. § 154(b)(1)(A)(i)(I), and four months for each successive action. § 154(b)(1)(A)(ii).

The USPTO often fails to meet these deadlines. Only about 10% of patent applications receive a first

action within fourteen months.[5] Over 60% of issued patents have at least some patent term adjustment due to USPTO delay.[6] For about five percent of all issued patents, the USPTO's delay (measured against the timelines of § 154) exceeds 1000 days—that is, the USPTO's unexcused delay exceeds half the Federal Circuit's laches period.[7] For about 1%, it exceeds four years. And about 30% of patents issue more than six years after their earliest filing date, and are therefore presumptively unenforceable.[8]

Section 154(b) sets a timeline of fourteen months for first Action (the first time an examiner looks at an application after filing). In practice, in February 2026, the average pendency for applications receiving their first action is 22 months,[9] 150% of Congress' aspiration. In Technology Center 1600 (the examining group for biotech inventions), the *average* is 26.9 months.[10] As with any other average, about half are higher, and some are *much* higher. Of the six-year laches period set by the Federal Circuit, a sizeable

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[5] Dennis Crouch, *The 14-Month Fiction: Only 10% of First Actions Arrive on Time*, PATENTLY-O (Mar 20, 2026), available at https://patentlyo.com/patent/2026/03/the-14-month-fiction-only-10-of- first-actions-arrive-on-time.html

[6] Mark A. Lemley & Jason Reinecke, *Our More-Than-Twenty-Year Patent Term*, 29 BERKELEY TECH. L. J., 681, 683 (2024).

[7] Lemley, note 6 *supra*.

[8] See note 3 *supra*.

[9] USPTO, Patents Pendency Data February 2026, available at https://www.uspto.gov/dashboard/patents/pendency.html

[10] See note 4, *supra*.

fraction of all applications burn a third to half of that time sitting in the backlog before the USPTO takes its first look at an application.

One commercial database[11] shows long delays of USPTO action. From that database, *amici* obtained a list of the 1000 longest-delayed actions since January 2020. In that six-year sample, 1000 decisions were delayed by 830 days or more—830 days is over two years. Taking half the Federal Circuit's laches period, three years or 1095 days, over 400 decisions of the USPTO consumed half the laches period in a single decision. Over 60 took over 2192 days, the full six-year period. The longest that was not attributable to lost mail or a malformed request took 4768 days, *over thirteen years*. The Federal Circuit's presumption that six-year delays are "unreasonable, inexcusable, and prejudicial," *Hyatt*, 998 F.3d at 1369, does not reflect the reality of USPTO delay.

The USPTO's Open Data Portal[12] allows one to ask for a list of applications that have an examiner action that has been written, counted for examiner compensation credit, and queued for mailing to the appli-

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[11] https://petition.ai is a commercial database of petition decisions. Petition under 37 C.F.R. § 1.181 is the path of review for examiner actions that are not direct decisions on the merits—filing of color drawings, seeking relief from miscomputed dates, sealing confidential trade secret documents, etc. This database is not a complete collection of all decisions; no doubt there are other long-delayed decisions that are not captured in this database.

[12] https://data.uspto.gov/

cant, but not yet mailed. As of March 24, 2026, over fifty applications have been held suspended in this state for over a year, twelve applications for over two years, and three for over three years.

An applicant may petition for "special" accelerated handling if the invention will materially contribute to the development or conservation of energy resources. 37 C.F.R. § 1.102(c)(3)(ii). The average decision time for these petitions is 603 days, nearly two years.[13]

In an example that reached the Federal Circuit, the applicant and examiner reached impasse four times. Four times the applicant filed an intra-agency appeal. Four times, the applicant's mere act of initiating the appeal was sufficient to convince the examiner to back down before the matter reached the Board—but three times the examiner switched position to raise a new rejection. The applicant then appealed the fourth time. Finally, on the fourth appeal, the examiner allowed the application, after the applicant made some alterations. *Chudik v. Hirshfeld*, 987 F.3d 1033, 1037 (Fed. Cir. 2021). This application took eleven and a half years from filing to issue. In the *Chudik* case, the Federal Circuit ruled that Chudik was entitled to six years of term adjustment for delay by inaction and delay by erroneous misfeasance. *Chudik*, 987 F.3d at 1033; U.S. Pat. No. 9,968,459 (2066 days of patent term adjustment). But under the Federal Circuit's presumption,

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[13] USPTO, Advancement of examination petitions, https://www.uspto.gov/patents/apply/petitions/timeline/advancement-examination-petitions (viewed Mar. 26, 2026)

Chudik's patent is presumed to be "unreasonable, inexcusable, and prejudicial." *Hyatt*, 998 F.3d at 1369. *Chudik* demonstrates that the Federal Circuit's presumption of "unreasonable, inexcusable, and prejudicial" is contrary to the policy balance in § 154(b) term adjustment.

The Federal Circuit's prosecution laches presumption shifts the consequences of USPTO delay onto applicants, without statutory justification.

2. Delay is USPTO agency policy

Applicants have no control over delay by the USPTO because the USPTO does not enforce the laws that require examiners to fully articulate the basis for rejections, and that allow applicants a fair and efficient opportunity to respond. For example, 5 U.S.C. § 555(e) requires examiners to explain any adverse action with a "brief statement of the grounds." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (failure of an agency to "articulate a satisfactory explanation for its action" is arbitrary and capricious). 37 C.F.R. § 1.104(c)(2) requires examiners to designate evidence "as nearly as practicable," and "clearly explain" the basis for all rejections, so the applicant can respond effectively.

However, examiners often give unhelpful statements of rejection that neither designate specific evidence nor explain a rational connection between the evidence and legal conclusion. For example, an applicant who is a member of NAPP received this rejection:

> As to claim 25, Please see (paragraph [0026]).
>
> As to claim 26, Please see (paragraph [0026]).

That's *all* the explanation the examiner gave. Paragraph [0026] of the prior art reference is 276 words—the examiner gave no hint of what specifically in those 276 words was relevant, and no "rational connection between the facts found and the choice made." The applicant requested supervisory intervention to obtain further clarification. The USPTO supervisor claimed that designation of a single large paragraph with no further explanation was sufficient, and asserted USPTO policy that examiners have no obligation to provide the explanation required by § 555(e) and § 1.104(c)(2).[14] In other similar situations, USPTO supervisors hold that examiners have no obligation to address all issues in dispute, and no obligation to respond to applicants' arguments,[15] *contra* § 555(e) and *State Farm*. In too many cases, patent applications make no progress for a year or more, because USPTO management does not require examiners to engage, instead allowing examiners to play hide-the-ball with information necessary to advance prosecution. Applicants are often simply stuck: when the examiner provides no ex-

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[14] U.S. Pat. App. 18/628,749, Decision on Petition (Dec. 31, 2025) at 4-5.

[15] U.S. Pat. App. 15/288,860, Decision on Petition (Sep. 27, 2019) at 3-4.

planation, progress with the examiner is impossible, and no meaningful appeal is possible—when the examiner's silence or *non sequitur* makes it impossible to narrow to a specific point of disagreement, appeal is *very* difficult. An unfocused scatter-shot appeal, addressing all possible points that *could* be in dispute, creates still more delay.

Thus, as a result of USPTO *policy* of *not* enforcing basic obligations to explain rejections, delay accumulates through no fault of the applicant. Nonetheless, the Federal Circuit's presumption accumulates that delay against the six-year laches period.

3. Delay is in the USPTO's financial interest

The USPTO has a unique fee-per-step fee structure, 35 U.S.C. § 41; 37 C.F.R. § 1.114. This contrasts to other agencies, that either charge a single fee for "a ticket to the end of the line" (e.g., for Food and Drug Administration approval or Department of Justice merger review), or charge an annual fee that is proportional to asset value (most transportation and energy regulators). To our knowledge, the USPTO is the only agency that charges per-step fees. In the USPTO's financial disclosure documents, the USPTO admits that the per-step fees it charges to continue the negotiation between applicant and examiner escalate faster than the USPTO's cost of de-

livering that service[16]—*delay is a profit center for the USPTO*. It is financially advantageous for the USPTO to keep applicants in go-around loops, paying fees at each step. Likewise, examiners have a compensation structure that rewards each action, whether well considered or not, and examiners are incentivized to reject allowable applications, but with weak reasoning that suggests to the applicant that allowance is just around the corner, if the applicant pays the go-around per-step fee one more time.[17] Thus, at both the agency level and examiner level, the agency has incentives that reward "churning" and delay. Applicants have no control and no meaningful leverage or remedy.

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[16] USPTO, Setting and Adjusting Patent Fees During Fiscal Year 2024, Proposed Rule, 89 Fed. Reg. 23226, 23247 Table 12 (Apr. 3, 2024) (proposing fee of $3600 for a go-around that costs the USPTO $2169); Final Rule, 89 Fed. Reg. 91898, 91928 Table 12 (Nov. 20, 2024) (setting fee of $2860 when a go-around costs the USPTO $2258, and admitting (at 91929) that historic practice has been to set the go-around fee at 19% above cost).

[17] The financial misincentives for examiners, and how they lead to the USPTO's backlog, is explained at length in a presentation to the Office of Management and Budget, at https://georgewbush-whitehouse.archives.gov/omb/oira/0651/meetings/619-3.pdf (Jun. 15, 2007) at pages F-2 to F-3; Shine Tu, *Patenting Fast and Slow: Examiner and Applicant Use of Prior Art*, 38 CARDOZO ARTS & ENT. L.J. 391, 425 (2020) ("If an examiner generates a continuous stream of rejections, they can maximize their counts by forcing the applicant to [file new applications]. Each new family member creates a new stream of counts. Thus, if the examiner continues to reject the application, the applicant may be forced to file child applications, which allows the examiner to garner even more counts in the future.")

Delay arises from USPTO inaction, and by ill-founded rejections to induce the go-around per-step fee. To be sure, applicants sometimes delay too. However, 35 U.S.C. § 154 apportions the two sides' delays and consequences fairly. In contrast, the Federal Circuit's presumption triggers at six years, with no differentiation between the two. The Federal Circuit's prosecution laches presumption shifts consequences onto applicants, without statutory justification. Even if prosecution laches can be justified as an exercise of equity, the Federal Circuit's presumption fails to account for USPTO-created delay that affects a high fraction of applications.

III. This case is exceptionally important—the Federal Circuit's laches presumption undermines the incentives at the heart of the patent system

Howard Markey, the Chief Judge of the Court of Customs and Patent Appeals and Federal Circuit from 1972 to 1990, explained in a presentation to the Federal Judicial Center Workshops for District Judges:

> [The patent system] is built on human nature and the role of incentive in the lives of human beings. It involves many incentives: the incentive to invent, the incentive to disclose, and the incentive to invest the average of 14 years and one million dollars [in 1978 dollars] which it takes to

> bring a useful invention to the marketplace at a reasonable price.[18]

The incentive to invest is crucial, especially for complex inventions. Gary Lauder, a venture capitalist, explained:

> Patents are not about technology. Patents are about investment, and getting innovative products off the drawing boards and into consumers' hands. Initial ideas are usually cheap. But turning an idea into a product—proof-of-concept testing, identifying the best chemical compound out of a large genus, engineering, debugging, prototype-to-product engineering, ruggedizing and reliability engineering, testing for "safe and effective," building a production facility, building a distribution and sales channel, marketing to develop demand—those steps are *expensive*.[19]

The patent system exists to make technologically-risky ideas less commercially-risky. Like any other area of commercial law, the patent system depends on predictable rules. The Federal Circuit's presumption sweeps about 30% of patents into presumed unenforceability.[20] As explained in § I.1, the uncer-

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[18] Howard T. Markey, *Some Patent Problems*, Presentation at the Federal Judicial Center Workshops for District Judges, reprinted 80 F.R.D. 203, 205-06 (1978).

[19] Gary Lauder, *Venture Capital—The Buck Stops Where?* 2 MED. INNOVATION & BUS. 14, 18 (Summer 2010), available at http://ipadvocatefoundation.org/mibj/pdfs/Lauder_Buck%20Stops.pdf

[20] See note 3 *supra*.

tainty falls hardest on the most-innovative inventions.

When a patent applicant files a patent application, in most cases that application publishes at 18 months. 35 U.S.C. § 122(b). That published application gives competitors a detailed roadmap of how to make and use the invention. 35 U.S.C. § 112(a). Patenting imposes real costs and real downside risks for inventors: at publication, the applicant loses the benefit of both formal trade secret law and informal commercial confidentiality. Under the Federal Circuit's prosecution laches presumption, it's impossible to know *a priori* whether a particular application will be subject to prolonged examination delays—if that delay reaches six years, the resulting patent issues under the taint of presumptive unenforceability. For these applications, the inventor bears the cost and risk of disclosing the invention to competitors, only to have the resulting patent rights effectively withdrawn. When patent rights are less certain, some applicants will forego patent protection altogether and instead rely on trade secret law. If patent rights are less predictable, the public will lose the benefit of technological disclosure. The Federal Circuit's decision undercuts the patent system as a whole.

CONCLUSION

The Court should grant *certiorari*.

Respectfully submitted,

April 3, 2026

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