

No. 25-_____

In the
Supreme Court of the United States

ESCAPEX IP, LLC,

Petitioner,

v.

GOOGLE 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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QUESTION PRESENTED

1. The Ninth Circuit has long held that sanctions under 28 U.S.C. § 1927 “must be supported by a finding of subjective bad faith,” and that bad faith may be inferred only when a filing is “so completely without merit as to require the conclusion that it must have been undertaken for some improper purpose such as delay.” *In re Keegan Mgmt. Co. Sec. Litig.*, 78 F.3d 431, 436–37 (9th Cir. 1996); *United States v. Blodgett*, 709 F.2d 608, 610 (9th Cir. 1983). The Ninth Circuit has further held that an attorney’s reliance on new, client provided information not previously considered by the district court, even in support of a frivolous position, may be negligent but does not constitute sanctionable bad faith under § 1927. *Caputo v. Tungsten Heavy Powder, Inc.*, 96 F.4th 1111, 1156–57 (9th Cir. 2024).

The Federal Circuit has recognized that regional circuit law governs § 1927 in patent cases. *United Cannabis Corp. v. Pure Hemp Collective Inc.*, 66 F.4th 1362, 1367 (Fed. Cir. 2023). Yet in this Ninth Circuit case it affirmed § 1927 sanctions without any express finding of subjective bad faith, applying instead an “objective” standard derived from its own precedent, *Julien v. Zeringue*, 864 F.2d 1572, 1575 (Fed. Cir. 1989).

Whether, in a case arising from the Ninth Circuit, a federal court of appeals may affirm sanctions under 28 U.S.C. § 1927 based on an “objective” recklessness standard and without an express finding of subjective bad faith, notwithstanding Ninth Circuit precedent requiring such a finding.

2. Here, the district court sanctioned petitioner’s counsel under § 1927 solely for filing and maintaining a Rule 59(e) motion to alter or amend a fee award under 35 U.S.C. § 285. The motion was supported by sworn declarations from the client’s president and engineer, setting out pre suit investigation facts not previously before the court. Appx0512–Appx0513; Appx0514–Appx0516; see Appx0504–Appx0509. The Ninth Circuit’s decision in *Caputo* held that similar reliance on new client information does not amount to bad faith for § 1927 purposes. 96 F.4th at 1156–57. The Federal Circuit nonetheless affirmed § 1927 sanctions here, reasoning that counsel “could have avoided sanction by simply not filing such a motion,” and that refraining from filing “would not by any means have constituted abandonment of their client.” Appx0004–Appx0005; *EscapeX IP, LLC v. Google LLC*, 2025 WL 3274847, at *6 (Fed. Cir. Nov. 25, 2025).

Whether an attorney’s good faith effort to challenge a fee award by filing a Rule 59(e) motion supported by client declarations not previously considered by the district court constitutes “vexatious” multiplication of proceedings sanctionable under 28 U.S.C. § 1927, in a manner that chills counsel’s willingness to defend clients against fee awards.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the court whose judgment is sought to be reviewed (the Federal Circuit Court of Appeals) are:

Petitioner

- EscapeX IP, LLC

Respondent

- Google LLC

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6 Plaintiff, EscapeX IP, LLC discloses that it has no parent corporation, and there is no publicly held corporation that owns 10% or more of any stock.

LIST OF PROCEEDINGS BELOW

- 1) Northern District of California
Escapex IP LLC v. Google LLC
Case No. 3:22-cv-08711
08/16/2023 Order by Judge Vince Chhabria
granting Dkt. No. 41 Motion for Attorney Fees
- 2) U.S. Court of Appeals for the Federal Circuit
EscapeX IP, LLC v. Google LLC
Case No. 2024-01201
11/25/2025 Judgment. Affirmed

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

The Petitioner respectfully prays that a writ of certiorari issue to review the judgment.

OPINIONS BELOW

The Federal Circuit's opinion is reprinted at App. A, and is reported at 159 F.4t 1360. The Federal Circuit's unpublished order denying full court rehearing is reprinted at App. A.

JURISDICTION

The Federal Circuit entered judgment on November 25, 2025, and denied a timely petition for rehearing en banc on January 16, 2026. (App. B) This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY
PROVISIONS**

Relevant constitutional and statutory provisions are reproduced, including:

- App. G U.S. Const. amend. V (“nor be deprived of life, liberty, or property, without due process of law”);
- App. H 28 U.S.C. § 1254(1);
- App. I 28 U.S.C. § 1927;
- App. J 35 U.S.C. § 285; and
- App. K Fed. R. Civ. P. 59(e).

STATEMENT OF THE CASE

This petition presents a focused but important question at the intersection of sanctions law, due process, and the administration of the federal courts: may an appellate court in a Ninth Circuit case uphold personal monetary sanctions against counsel under 28 U.S.C. § 1927 without any finding of subjective bad faith, based solely on an “objective” recklessness standard of its own devising, and for the act of filing a single Rule 59(e) motion supported by sworn client declarations?

Under long-settled Ninth Circuit law, § 1927 sanctions “must be supported by a finding of subjective bad faith.” *In re Keegan Mgmt. Co. Sec. Litig.*, 78 F.3d 431, 436–37 (9th Cir. 1996). Bad faith, in turn, may be inferred only when a filing is “so completely without merit as to require the conclusion that it must have been undertaken for some improper purpose such as delay.” *United States v. Blodgett*, 709 F.2d 608, 610 (9th Cir. 1983). Most recently, in *Caputo v. Tungsten Heavy Powder, Inc.*, the Ninth Circuit reaffirmed that even frivolous filings supported by new information supplied by a client may be negligent, but do not constitute sanctionable bad faith under § 1927. 96 F.4th 1111, 1156–57 (9th Cir. 2024).

The Federal Circuit, however, affirmed § 1927 sanctions in this Ninth Circuit case without any express finding of subjective bad faith. The district court found only “recklessness” in filing and maintaining a Rule 59(e) motion to alter or amend a § 285 fee award. Appx0004–Appx0005. That motion

was supported by sworn declarations from EscapeX’s president and engineer describing pre-suit investigation that the court had not previously considered. Appx0504–Appx0509; Appx0512–Appx0513; Appx0514–Appx0516. Rather than insist on the Ninth Circuit’s subjective-bad-faith requirement, the Federal Circuit substituted an “objective” recklessness standard derived from its own precedent, *Julien v. Zeringue*, 864 F.2d 1572, 1575 (Fed. Cir. 1989), and held that counsel “could have avoided sanction by simply not filing such a motion,” which “would not by any means have constituted abandonment of their client.” 2025 WL 3274847, at *6.

That decision cannot be reconciled with governing Ninth Circuit law, with the Federal Circuit’s own repeated acknowledgment that § 1927 issues are governed by regional circuit precedent, or with basic due process principles. Section 1927 authorizes punitive, quasi-criminal monetary sanctions, personally imposed on counsel. Congress limited that authority to conduct that “unreasonably and vexatiously” multiplies the proceedings. The Ninth Circuit has implemented that constraint for decades by requiring an express finding of subjective bad faith—“some element of wrongful purpose”—before a lawyer may be ordered to personally pay an opponent’s fees. *Keegan*, 78 F.3d at 436. That construction provides the fair notice and procedural regularity that the Due Process Clause demands when property is taken.

The Federal Circuit’s decision discards those safeguards. It allows personal sanctions to stand

without the predicate finding Ninth Circuit law requires, applies a different (and looser) standard than the regional circuit's, and does so retroactively to penalize lawyers for filing a single post-judgment motion supported by client declarations that, under *Caputo*, could not previously have been considered bad-faith conduct. The message to the bar is unmistakable: in patent cases appealed to the Federal Circuit—even those arising within the Ninth Circuit—attorneys risk personal liability under an unpredictable “objective” standard if they file Rule 59(e) motions to challenge fee awards, even in good faith and supported by new evidence.

That message chills the willingness of counsel, particularly those representing small or resource-constrained clients, to defend vigorously against fee awards and sanctions. It distorts the adversarial process by encouraging lawyers to forego lawful motions and to withhold client testimony that could correct factual misunderstandings, lest they later be accused of “vexatiously” multiplying proceedings. And it threatens to deprive attorneys of property “without due process of law.” U.S. Const. amend. V.

The conflict with Ninth Circuit authority is direct and acknowledged. The stakes for the administration of sanctions law, and for the ability of federal courts to rely on vigorous yet responsible advocacy in fee disputes, are nationwide. The questions presented are narrow, the record is clean, and the relief sought—a vacatur and remand for application of the correct

regional standard—is modest. This Court’s review is warranted.

Legal background

Section 1927 provides that any attorney “who so multiplies the proceedings in any case unreasonably and vexatiously may be required ... to satisfy personally the excess costs, expenses, and attorneys’ fees” caused by that conduct. 28 U.S.C. § 1927. Because the statute imposes personal, punitive monetary liability on counsel, courts of appeals have developed standards to ensure it is not applied in a routine or purely negligence-based fashion.

In the Ninth Circuit, § 1927 sanctions “must be supported by a finding of subjective bad faith.” *Keegan*, 78 F.3d at 436–37. Bad faith requires “some element of wrongful purpose.” *Id.* “Bad faith is warranted where an attorney knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent,” and may only be inferred when the claim is “so completely without merit as to require the conclusion that it must have been undertaken for some improper purpose such as delay.” *Blodgett*, 709 F.2d at 610.

Most recently, in *Caputo*, the Ninth Circuit applied that standard in a case involving repetitive and frivolous filings. It affirmed § 1927 sanctions against an attorney who repeatedly recycled discredited arguments and evidence, but refused to sanction a different attorney who, although she advanced frivolous arguments, did so in reliance on new

information from her client that had not previously been presented to the court. 96 F.4th at 1156–57. The court held that such reliance might be negligent but did not amount to sanctionable bad faith under § 1927. *Id.*

The Federal Circuit has held that § 1927 sanctions are governed by regional circuit law because they are not unique to patent cases. *United Cannabis*, 66 F.4th at 1367.

Proceedings below

This case arose in the Southern District of California, within the Ninth Circuit. After Google obtained a fee award under 35 U.S.C. § 285, the district court entered judgment against EscapeX. EscapeX's counsel then filed a timely Rule 59(e) motion to alter or amend the fee award. Appx0504–Appx0509. The motion argued that the existing record did not accurately reflect EscapeX's pre-suit investigation and that it would be a manifest injustice to uphold the fee award without considering that evidence. *Id.*

To support the motion, counsel submitted sworn declarations from EscapeX's president and engineer describing in detail the pre-suit diligence the company undertook in evaluating its claims against Google. Appx0512–Appx0513; Appx0514–Appx0516. Those declarations contained factual information that had not previously been before the district court, and that went directly to the basis for the § 285 fee award.

Google opposed the Rule 59(e) motion and sent a letter threatening to seek sanctions if EscapeX did not withdraw it. Counsel declined to withdraw, explaining that they believed the motion was warranted to complete the record on a substantial fee award and that they were entitled to a ruling from the court, not their adversary. The district court ultimately denied the Rule 59(e) motion and, at Google’s urging, imposed § 1927 sanctions on EscapeX’s counsel for filing and maintaining it. Appx0004–Appx0005.

Critically, the district court did not find that counsel acted with subjective bad faith or any improper purpose. It expressly found only that counsel had “acted recklessly by filing a frivolous Rule 59(e) motion that unreasonably multiplied the proceedings,” and that refusing to withdraw the motion “constitutes recklessness.” Appx0004–Appx0005. The court did not address the sworn declarations or explain why counsel’s reliance on new client information—exactly the conduct *Caputo* protects from § 1927 sanctions—reflected bad faith.

On appeal, the Federal Circuit acknowledged that regional circuit law governs § 1927 sanctions in patent cases. See *United Cannabis*, 66 F.4th at 1367. But instead of vacating the sanctions for lack of the required subjective bad-faith finding, it affirmed. In doing so, the panel described EscapeX’s Rule 59(e) motion as “frivolous” and “baseless and made without reasonable and competent inquiry,” invoking Ninth Circuit language about arguments “so weak as to constitute objective evidence of improper purpose.”

See 2025 WL 3274847, at *5 (citing *In re Girardi*, 611 F.3d 1027, 1062 (9th Cir. 2010)).

The panel then quoted its own prior decision in *Julien* for the proposition that § 1927 sanctions are warranted where counsel’s conduct, “viewed objectively,” manifests “intentional or reckless disregard” of duties to the court. *Id.* at *5–6 (quoting 864 F.2d at 1575). Applying that “objective” standard, the panel concluded that counsel “could have avoided sanction by simply not filing such a motion,” and that not filing “would not by any means have constituted abandonment of their client.” *Id.* at *6.

EscapeX petitioned for rehearing en banc, explaining that the panel had applied the wrong legal standard and had directly conflicted with Ninth Circuit cases such as *Keegan*, *Blodgett*, and *Caputo*. The Federal Circuit denied rehearing. AppxB.

This case asks the Court to resolve a clear and consequential conflict over the standard for imposing personal sanctions on attorneys under 28 U.S.C. § 1927, and to address the resulting chill on lawyers’ willingness to challenge fee awards. The questions presented also implicate fundamental due process principles. By affirming personal monetary sanctions against counsel under an erroneously relaxed standard, and for the act of filing and maintaining a single motion supported by sworn client declarations, the decision below threatens to deprive attorneys of property “without due process of law.” U.S. CONST. amend. V.

In the Ninth Circuit, § 1927 sanctions “must be supported by a finding of subjective bad faith,” and bad faith may be inferred only when a filing is “so completely without merit” as to compel the conclusion that it was undertaken for an improper purpose. *In re Keegan Mgmt. Co. Sec. Litig.*, 78 F.3d 431, 436–37 (9th Cir. 1996); *United States v. Blodgett*, 709 F.2d 608, 610 (9th Cir. 1983). The Ninth Circuit has recently reaffirmed that where an attorney relies on new information from a client that has not previously been presented to the court—even in support of a weak or frivolous position—such conduct may be negligent but does not amount to sanctionable bad faith under § 1927. *Caputo v. Tungsten Heavy Powder, Inc.*, 96 F.4th 1111, 1156–57 (9th Cir. 2024).

The Federal Circuit has itself acknowledged that regional circuit law governs § 1927 sanctions in patent cases. *United Cannabis Corp. v. Pure Hemp Collective Inc.*, 66 F.4th 1362, 1367 (Fed. Cir. 2023). Yet in this Ninth Circuit case it affirmed § 1927 sanctions against petitioner’s counsel solely for filing a Rule 59(e) motion to alter or amend a 35 U.S.C. § 285 fee award—supported by sworn declarations from the client’s president and engineer detailing pre suit investigation that the district court had never considered. Appx0504–Appx0509; Appx0512–Appx0513; Appx0514–Appx0516. The district court’s order found only that counsel acted “recklessly” and refused to withdraw the motion; it made no express finding of subjective bad faith. Appx0004–Appx0005. The Federal Circuit panel nonetheless affirmed, not under the Ninth Circuit’s subjective standard, but under an “objective” formulation derived from its own

precedent, *Julien v. Zeringue*, 864 F.2d 1572, 1575 (Fed. Cir. 1989), concluding that counsel “could have avoided sanction by simply not filing such a motion,” and that declining to file would not have “constituted abandonment of their client.” 2025 WL 3274847, at *6.

By substituting an objective recklessness test for the Ninth Circuit’s subjective bad faith requirement and upholding sanctions for submitting client declarations to complete the record on a fee award, the decision below conflicts with controlling regional precedent (*Keegan, Blodgett, Caputo*), with the Federal Circuit’s own recognition that regional law governs § 1927 (*United Cannabis*), and with the proper role of zealous advocacy. If allowed to stand, it will deter counsel nationwide—particularly those representing smaller or resource constrained clients—from filing good faith motions to challenge fee awards for fear of personal liability under § 1927. The questions presented are narrow, the record is clean, and the requested relief—a vacatur and remand for application of the correct regional standard—is modest. This Court’s review is warranted.

Due process requires that when Congress authorizes punitive or quasi-punitive monetary sanctions, courts apply the standard that Congress prescribed, as interpreted by the governing circuit, and give affected parties fair notice of the conduct that can trigger liability. Here, Congress limited § 1927 sanctions to conduct that “unreasonably and vexatiously” multiplies proceedings. The Ninth Circuit has long implemented that limit by requiring a finding of subjective bad faith—“some element of

wrongful purpose”—before an attorney may be ordered to personally satisfy another party’s fees and costs. *Keegan*, 78 F.3d at 436; *Blodgett*, 709 F.2d at 610. That settled construction cabins § 1927’s potentially severe financial consequences and provides the fair notice and procedural regularity that due process demands.

The Federal Circuit’s departure from that standard in a Ninth Circuit case raises serious process concerns on at least three fronts.

First, it imposed and affirmed personal monetary sanctions without the predicate finding that Ninth Circuit law requires. The district court expressly found only “recklessness” in filing and maintaining a Rule 59(e) motion; it did not find that counsel acted with a wrongful purpose or subjective bad faith. Appx0004–Appx0005. Under *Keegan*, that omission is dispositive. Yet the Federal Circuit allowed the sanctions to stand, substituting an “objective” recklessness standard derived from its own precedent, *Julien*, for the governing regional law. That substitution both disregards the statutory constraint in § 1927 as implemented by the Ninth Circuit, and deprives counsel of the protection that standard is designed to afford before personal property is taken.

Second, the decision below retroactively expands the range of conduct that can trigger § 1927 liability in the Ninth Circuit. Before this case, Ninth Circuit law made clear that reliance, even negligent reliance, on new client-provided information not previously presented to the court did not amount to sanctionable

bad faith under § 1927. *Caputo*, 96 F.4th at 1156–57. Counsel here proceeded in conformity with that understanding: they filed a Rule 59(e) motion supported by new sworn declarations from their client’s president and engineer, specifically to complete an incomplete record on issues central to a substantial § 285 fee award. Appx0504–Appx0509; Appx0512–Appx0513; Appx0514–Appx0516. To then impose personal liability on counsel for doing exactly what Ninth Circuit precedent permitted—and, in important respects, encouraged—denies the fair notice that due process contemplates.

Third, the decision creates a systemic distortion in the procedures surrounding fee and sanctions litigation. The Federal Circuit expressly reasoned that counsel “could have avoided sanction by simply not filing such a motion,” and that declining to file “would not by any means have constituted abandonment of their client.” 2025 WL 3274847, at *6. That reasoning encourages attorneys to forgo otherwise proper motions and to withhold client evidence that might correct factual misunderstandings, because invoking Rule 59(e) to challenge a fee award now risks personal financial punishment under an unpredictable “objective” standard. When attorneys must choose between protecting their own property and presenting their clients’ evidence, the integrity of the adversarial process is compromised in a way that due process does not tolerate.

The due process concern here is modest but real. Petitioner does not ask the Court to constitutionalize

every disagreement over § 1927's application. It asks the Court to restore the procedural safeguards Congress and the Ninth Circuit have built around this sanctions regime: a clear, subjective bad faith standard; express findings before imposing personal liability; and a legal environment in which attorneys can, without undue fear of personal financial ruin, file good-faith motions supported by client testimony to challenge fee awards. By vacating the judgment below and requiring application of the Ninth Circuit's established standard, this Court would not only resolve an important conflict over § 1927, but would also vindicate the basic due process guarantee that attorneys will not be deprived of their property under a shifting, judicially redefined standard applied after the fact to ordinary acts of advocacy.

REASONS FOR GRANTING THE PETITION

I. The decision below squarely conflicts with controlling Ninth Circuit precedent requiring a finding of subjective bad faith for § 1927 sanctions

1. The Ninth Circuit's standard is clear and demanding

For more than four decades, the Ninth Circuit has required a finding of subjective bad faith as a precondition to § 1927 sanctions. *Keegan*, 78 F.3d at 436–37; *Blodgett*, 709 F.2d at 610. In *Keegan*, the court vacated § 1927 sanctions expressly because the district court “did not make a finding of subjective bad faith.” 78 F.3d at 436–37. Bad faith, the court

emphasized, “is not simply bad judgment or negligence,” but requires “some element of wrongful purpose.” *Id.* at 436 (quotation marks omitted).

Blodgett likewise held that bad faith may be inferred only when a claim is “so completely without merit as to require the conclusion that it must have been undertaken for some improper purpose such as delay.” 709 F.2d at 610. That standard deliberately distinguishes between negligent or even reckless advocacy, on the one hand, and the kind of abuse of the judicial process that justifies imposing personal monetary liability on counsel, on the other.

Caputo confirms and refines that approach in the precise context at issue here: allegedly vexatious filings. There, the Ninth Circuit:

- affirmed § 1927 sanctions against one attorney who repeatedly advanced arguments and evidence that had been squarely rejected; but
- refused to sanction another attorney who relied, even in pursuit of frivolous positions, on new information from her client that had not previously been presented to the court. 96 F.4th at 1156–57.

Caputo’s holding is explicit: good-faith reliance on new client-provided information, not previously before the court, may be negligent but does not amount to sanctionable bad faith under § 1927. *Id.* There is no dispute that this body of law governs § 1927 sanctions in the Ninth Circuit, including in patent cases. *United Cannabis*, 66 F.4th at 1367.

2. The District Court Made No Subjective Bad Faith Finding

The district court's order here contains no finding that EscapeX's counsel acted with subjective bad faith. Instead, the court stated that "the attorneys for EscapeX acted recklessly by filing a frivolous Rule 59(e) motion that unreasonably multiplied the proceedings," and that refusing to withdraw the motion "constitutes recklessness." Appx0004–Appx0005.

The court did not find that counsel knew the motion was frivolous, intended to harass or delay, or otherwise acted with wrongful purpose. Nor did it address that the Rule 59(e) motion was supported by client declarations detailing pre-suit diligence that had not previously been before the court. See Appx0512–Appx0513; Appx0514–Appx0516.

Under *Keegan*, that omission is dispositive. 78 F.3d at 436–37 (vacating § 1927 sanctions where the district court "did not make a finding of subjective bad faith"). Under *Blodgett*, the mere fact that a motion is weak or even frivolous does not itself establish the sort of improper purpose required for bad faith, absent a record showing conduct "so completely without merit" as to compel an inference of improper motive. 709 F.2d at 610. The district court applied a different, lower standard: recklessness alone.

3. The Panel Likewise did not apply the correct standard

The panel’s decision compounded the error. While acknowledging that regional law applied (citing *United Cannabis*, 66 F.4th at 1367), the panel did not correct the absence of a subjective bad faith finding or make such a finding itself. Instead, it affirmed based on an objective assessment of frivolousness and recklessness.

The panel:

- Described EscapeX’s Rule 59(e) motion as “frivolous” because it was “baseless and made without reasonable and competent inquiry” and contained arguments “so weak as to constitute objective evidence of improper purpose,” invoking *In re Girardi*, 611 F.3d 1027, 1062 (9th Cir. 2010).
- Then cited and quoted a Federal Circuit case—*Julien v. Zeringue*, 864 F.2d 1572, 1575 (Fed. Cir. 1989)—for the proposition that sanctions are warranted where counsel’s conduct, “viewed objectively,” manifests “intentional or reckless disregard” of duties to the court. See *EscapeX IP, LLC v. Google LLC*, 2025 WL 3274847, at *5–6; Pet. En Banc at 7–10 & n.6.

That is precisely the “objective recklessness” formulation this Court of Appeals developed in *Julien*—and it is irreconcilable with the Ninth

Circuit's requirement of a subjective bad faith finding in § 1927 cases.

The result is a direct conflict:

- The Ninth Circuit demands an express finding of subjective bad faith as a precondition to § 1927 sanctions. *Keegan*, 78 F.3d at 436–37; *Blodgett*, 709 F.2d at 610; *Caputo*, 96 F.4th at 1156–57.
- The Federal Circuit, in a Ninth Circuit case, affirmed § 1927 sanctions with no such finding, using *Julien's* objective standard instead.

Under Rule 10(a), that is exactly the sort of inconsistency in the application of federal law warranting this Court's review.

4. The Federal Circuit affirmed under an “objective” standard, not the Ninth Circuit's subjective standard

As *Keegan* and *Blodgett* explain, bad faith is not synonymous with objective error or even recklessness in the abstract. It requires “some element of wrongful purpose.” *Keegan*, 78 F.3d at 436. “Bad faith is warranted where an attorney knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent,” and bad faith may be inferred only when the claim is “so completely without merit as to require the conclusion that [it] must have been undertaken for some improper purpose such as delay.” *Blodgett*, 709 F.2d at 610 (emphasis added).

In *Caputo*, the Ninth Circuit further clarified the application of this standard in the very context at issue here—sanctions for repetitive or frivolous filings:

- It affirmed § 1927 sanctions against an attorney who repeatedly advanced the same discredited arguments and evidence that had been squarely rejected. 96 F.4th at 1156–57.
- But it refused to impose § 1927 sanctions on another attorney in the same case whose frivolous arguments relied in good faith on information provided by her client that had not previously been presented to the court, holding that such reliance could be negligent but not sanctionable bad faith. *Id.* at 1156–57.

That is the governing regional law for § 1927 in this case.

The Federal Circuit’s decision compounded this error and created the conflict that warrants this Court’s intervention. While reciting that regional law governs, the panel neither required an express finding of subjective bad faith nor made one. Instead, it affirmed based on an “objective” assessment of recklessness and frivolousness, invoking Julien’s standard that sanctions are proper when counsel’s conduct, “viewed objectively,” shows “intentional or reckless disregard” of duties to the court. 2025 WL 3274847, at *5–6 (quoting 864 F.2d at 1575).

That “objective recklessness” formulation is not Ninth Circuit law. It is the Federal Circuit’s own gloss on § 1927—a gloss that the Federal Circuit has elsewhere acknowledged must give way to regional precedent. *United Cannabis*, 66 F.4th at 1367. The panel’s reliance on Julien, and its omission of any subjective bad-faith analysis, put the Federal Circuit in direct conflict with *Keegan*, *Blodgett*, and *Caputo*.

The inconsistency is not semantic; it changes outcomes. Under Ninth Circuit law:

- sanctions must be vacated where the district court has not found subjective bad faith, *Keegan*, 78 F.3d at 436–37;
- personal liability cannot be imposed based merely on negligence or objective recklessness, *Id.*; and
- reliance in good faith on new client-provided information, not previously before the court, does not qualify as sanctionable bad faith, *Caputo*, 96 F.4th at 1156–57.

Here, by contrast, sanctions were upheld in the absence of any subjective bad-faith finding, based on an “objective” standard, and specifically for counsel’s reliance on new client declarations.

That divergence satisfies Rule 10(a): the same federal statute is being applied differently depending on which court of appeals hears the case. It also undermines uniform administration of § 1927 within the Ninth Circuit by allowing a specialized court to override the regional circuit’s controlling standard.

5. The Federal Circuit's own precedent heightens the need for review

The tension between this case and *United Cannabis* makes the problem acute. In *United Cannabis*, the Federal Circuit squarely held that “the imposition of sanctions under § 1927 is not unique to patent law,” and therefore “we apply the law of the regional circuit.” 66 F.4th at 1367. That promise of deference to regional law is essential to the proper functioning of the Federal Circuit’s limited subject-matter jurisdiction. Yet in this case, after acknowledging that Ninth Circuit law governs, the panel did precisely the opposite: it applied *Julien’s* Federal Circuit-specific “objective” standard in place of *Keegan’s* subjective-bad-faith requirement. Litigants in patent cases within the Ninth Circuit are thus left to guess which rule will apply to them. This Court’s intervention is warranted to restore the primacy of regional precedent on non-patent issues, to prevent the Federal Circuit from displacing that precedent with its own, and to confirm the standard for imposing severe, personal monetary sanctions under § 1927.

II. The decision below raises serious due process concerns and threatens to chill zealous advocacy in fee and sanctions litigation nationwide

- 1. Due process requires adherence to clear, pre-existing standards before depriving attorneys of property**

Section 1927 authorizes courts to deprive attorneys of their own property—their fees and resources—by requiring them to satisfy an opposing party’s costs and fees. The Due Process Clause demands that such punitive or quasi-punitive sanctions be imposed only under clear, pre-existing standards and after the required factual findings. U.S. Const. amend. V (“nor be deprived of life, liberty, or property, without due process of law”).

Congress limited § 1927 sanctions to conduct that “unreasonably and vexatiously” multiplies proceedings. The Ninth Circuit has long implemented that limit by requiring a finding of subjective bad faith—“some element of wrongful purpose”—before personal liability may be imposed. *Keegan*, 78 F.3d at 436. That construction cabins § 1927’s potentially severe consequences and ensures that lawyers have fair notice of the conduct that crosses the line.

By affirming § 1927 sanctions without any subjective bad-faith finding, and under an alternate “objective recklessness” standard that the Ninth Circuit has rejected, the Federal Circuit deprived counsel of those protections. The panel’s approach not only disregarded the statutory limit as interpreted by the appropriate regional court, but also effectively expanded § 1927’s reach after the fact, exposing counsel to personal liability for conduct that previously would not have been sanctionable in the Ninth Circuit.

2. The decision retroactively expands sanctionable conduct beyond what Ninth Circuit law permits

Before this case, Ninth Circuit precedent gave attorneys clear guidance: good-faith reliance on new client-provided information, not previously presented to the court, did not constitute sanctionable bad faith under § 1927, even if the resulting arguments were weak or frivolous. *Caputo*, 96 F.4th at 1156–57.

Counsel here acted in accordance with that understanding. They filed a Rule 59(e) motion to ensure that the district court considered detailed evidence of EscapeX’s pre-suit investigation before upholding a substantial fee award. Appx0504–Appx0509. They supported that motion with sworn declarations from EscapeX’s president and engineer—information that had never been part of the record, but that went to the heart of the § 285 analysis. Appx0512–Appx0513; Appx0514–Appx0516. Absent the Federal Circuit’s decision, nothing in Ninth Circuit law suggested that filing such a motion, supported by new client evidence and expressly aimed at correcting an incomplete record on a fee award, could trigger personal § 1927 sanctions. To impose sanctions now for that precise conduct is to deny counsel the fair notice that due process contemplates.

3. The decision creates a nationwide chill on the ability of counsel to challenge fee awards

The Federal Circuit’s reasoning sends a troubling signal to the bar. The panel explicitly stated that counsel “could have avoided sanction by simply not filing such a motion,” and that declining to file would not have “constituted abandonment of their client.” 2025 WL 3274847, at *6. In other words, the panel

deemed it preferable—and ethically acceptable—for attorneys not to file a Rule 59(e) motion to alter or amend a fee award, even when the client offers new, material testimony about pre-suit diligence. That logic inverts the proper incentives in fee and sanctions litigation. If lawyers understand that filing a good-faith, evidence-supported motion to challenge a fee award may later be labeled “vexatious” and punished under a malleable “objective” § 1927 standard, many will simply choose not to file. The chill will be especially acute for attorneys representing small entities, individual inventors, or other clients least able to absorb adverse fee awards—and least able to indemnify their counsel for sanctions.

The harm is not limited to this case. Fee awards under § 285 and sanctions under § 1927 have become increasingly common in patent and complex civil litigation. The decision below encourages a nationwide pattern in which:

- counsel are discouraged from correcting factual misunderstandings in the record governing a fee award;
- clients are deprived of a meaningful opportunity to challenge such awards; and
- courts receive a skewed view of post-judgment motions, filtered by counsel’s fear of personal financial exposure rather than by the merits.

The panel’s reliance on counsel’s refusal to withdraw the Rule 59(e) motion after receiving Google’s letter further exacerbates this chill. Treating an adversary’s threat letter as a quasi-authoritative marker of

sanctionable conduct pressures lawyers to surrender their clients' positions whenever an opponent accuses them of frivolousness, instead of awaiting a reasoned judicial ruling. That dynamic is fundamentally at odds with the adversarial system and with due process.

4. The due process issues are modest in scope but important to resolve

Petitioner does not ask this Court to constitutionalize every disagreement over § 1927's application. It asks only that when a court imposes personal monetary sanctions on counsel:

- it apply the standard that Congress enacted and the regional circuit has interpreted;
- it require the predicate subjective bad-faith finding that the Ninth Circuit demands; and
- it not retroactively punish lawyers for engaging in the very conduct that regional precedent characterizes as non-sanctionable. By vacating the judgment below and remanding with instructions to apply Ninth Circuit law, this Court would vindicate the basic due process guarantee that attorneys will not be deprived of property under a shifting, judicially redefined standard applied after the fact to ordinary acts of advocacy.

III. This case is an excellent vehicle, and the requested relief is narrow

This case presents the federal questions cleanly and without entangling complications:

- The § 1927 sanctions are based solely on the filing and maintenance of a single Rule 59(e) motion, and the relevant record—motion, declarations, opposition, and orders—is straightforward. Appx0004–Appx0005; Appx0504–Appx0509; Appx0512–Appx0516.
- Petitioner does not seek review of the underlying § 285 “exceptional case” determination or of the denial of the Rule 59(e) motion on the merits. The petition challenges only the legal standard applied to § 1927 sanctions and the absence of the required subjective bad-faith finding.
- The conflict between Ninth Circuit law (*Keegan, Blodgett, Caputo*) and the Federal Circuit’s decision (relying on *Julien’s* “objective” standard despite *United Cannabis*) is explicit and outcome-determinative.

The relief sought is both familiar and modest: vacatur of the Federal Circuit’s affirmance of § 1927 sanctions and a remand with instructions to apply the Ninth Circuit’s subjective bad-faith standard, as recognized in *United Cannabis*, and to make explicit findings, if possible, under that standard in light of the sworn client declarations and *Caputo’s* reasoning.

That limited intervention would:

- restore uniformity in the application of § 1927 across circuits and within the Ninth Circuit;
- reinforce the principle that the Federal Circuit may not supplant regional law on issues not unique to patent law;

- protect the due process interests of attorneys facing personal sanctions; and
- clarify that counsel may, consistent with their ethical duties, file good-faith motions supported by client testimony to challenge fee awards without automatically risking personal sanctions under an amorphous “objective” standard.

IV. CONCLUSION

The petition for a writ of certiorari should be granted. The appropriate relief is narrow and familiar:

- Vacate the Federal Circuit’s affirmance of § 1927 sanctions; and
- Remand with instructions to apply the Ninth Circuit’s subjective bad faith standard under *Keegan* and *Blodgett*, as recognized in *United Cannabis*, and to make explicit findings whether counsel acted with subjective bad faith in light of the client declarations and the reasoning of *Caputo*.

That limited intervention would restore uniformity in the application of § 1927, protect the integrity of regional circuit law in patent cases, and clarify that attorneys may, consistent with their ethical duties, submit client evidence to challenge fee awards without automatically risking personal sanctions under an objective standard.

Respectfully Submitted,

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