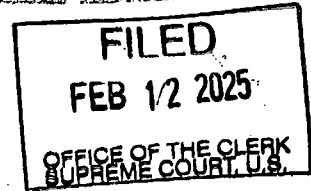


ORIGINAL

No. 25-270



IN THE

Supreme Court of the United States

NAZIR KHAN,

Petitioner,

v.

MERIT MEDICAL SYSTEMS, INC.

ARTIVION INC.

Respondents.

On Writ of Certiorari to

the The Federal Circuit Of Appeals

PETITION FOR WRIT OR CERTIORARI

PROSE ATTORNEY NAZIR KHAN.

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Questions Presented for Review

1. whether Federal circuit erred in affirming summary Judgement of non-infringement of Utah Court Judgement No 2023-2329 based on estoppel in contravention of B&B Hardware, Inc. v. Hargis, Indus ,inc 575 U.S .138(2015 and 35 U.S.C§ 315(e)(2). Also whether Federal Circuit erred in affirming the Judgement of Georgia Court in case No 2023-2347 affirming dismissal of amended Complaint and Five infringement Claims of patent US8,747,344 (344) based on Collateral estoppel (issue preclusion) in contravention of Final and written decision of Patent Trial and Appeals Board decision (Board) granting patent 344 , also in contravention of Supreme precedent B&B Hard Ware inc V. Hargis Indus inc 575 U.S 138(2015) and statute 315(e)(2)

2. Whether Respondents Merit Medical inc of Utah Court matter and Artivion inc of Georgia matter

Court Lack Constitutional standing to defend law suit given that accused product HeRO Graft is Unpatented and Respondents have failed to demonstrate any Constitutionally protected injury in violation of Lujan v. Defenders of Wild life 504 U.S.555,560(1992)

3 Whether plaintiff suffered Constitutional injury due to respondents un authorized use of USpatent344 entitling plaintiff to redress under Fifth amendment taking clause

4 Plaintiff a patent holder suffered constitution 111 injury in fact from the date of filing patent infringement case in both Georgia and Utah District courts. Plaintiff had an exclusive right to sue Respondents for making and selling the accused, copied HeRo.Graft, Respondents did not demonstrate a

concrete injury to their unpatented Product HeRO Graft and therefore can not defend their case. Was it not unfair Federal Circuit did not dismiss respondents pleading this Court to resolve plaintiff's constitution 111 injury

- 5 Plaintiff was granted patent as a new and useful art under constitution Art1 clause 8, section 8 with exclusive right to exclude others from making and selling the patented invention in the United States or importing the invention into United States. Patents are intellectual property rights of patent holder, under Patent act Both respondent's Product is an unpatented HeRO Graft, utilizing an important item venous out Flow catheter of plaintiff's patent 344 in making unpatented product HeRO

Graft, violating the intellectual constitutional rights of the patent holder. Was it not unfair that District court judges in Utah, Georgia and Federal Circuit Court of Appeals did not grant the intellectual constitutional claim of the plaintiff .this Court to resolve

6 .Plaintiff, a patent holder has exclusionary constitutional and statutory standing to exclude others from making patented invention in USA and abroad, respondents Product-HeRo Graft is a copied unpatented, device having no exclusive ,Constitutional standing to defend case, their claims should have been dismissed that did not happen this court to resolve

7. Whether this court should institute disciplinary action against both respondents and their respective attorneys for theft of plaintiff's

constitutionally protected intellectual property.
Both used Plaintiffs Venous out Flow catheter of
patent 344 in the manufacture of accused product
HeRo graft This will be act of justice under law to
institute disciplinary action. under Rule 8 of the
Court

8 There is split between 5th circuit Court of Ap-
peals and Federal Circuit Court of appeal on Con-
stitution 11 injury ,this court to resolve split un-
der Rule 10(a) there is also Split between Federal
Circuit Court of appeals and supreme Court deci-
sion in B&B Hardware on the Federal question of
Estoppel this Court to resolve the estoppel issue
under Court Rule 10(c)

9 Whether the Court should issue a permanent in-
junction, preventing Merit Medical from further
manufacturing copied unpatented HeRO Graft

in view of supreme court ruling in eBay inc v. Merc
Exchange L.L.C'547 U.S.388(2006) Merit and
Artivion has acted in violation of patent act, plain-
tiff has suffered irreparable monetary loss from
Merits and Artivions actions. This Court to order
Merit and Artivion to pay plaintiff 15 % Royalty
compensation on Hero Graft Products sold since
may,4th 2016, in same way this Court to Order
Artivion to pay 15% Royalty Compensation for all
HeRO Graft products sold from may15th 2012 till
May4th 2016.

Listing of parties and related cases

1. Respondent Merit Medical Inc. of Utah
2. Respondent Artivion Inc. of Georgia

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1. The opinion of the United States Court of Appeals in the Utah matter for the Federal Circuit starts at Appendix 1a and is published.
2. The opinion of the District Court of Utah starts at Appendix 51a and is published.
3. The opinion of the Federal Circuit in Georgia matter starts at Appendix 24a and is published.
4. The opinion of Federal circuit Court of appeals denying panel rehearing and hearing enbac starts at Appendix 37a and is published

V. Jurisdictional Statements

On a writ of certiorari
on
Supreme court has jurisdiction under
28USC§1254 judgement order District
Court of Utah No2:21-cv-00337 based on es-
toppel 67&72 Report& recommendation Magis-
trate judge 67 and Court Text order 72 that re-
sulted in affirmation of grant of Merit medical
motion for summary judgement of noninfringe-
ment on counter claim 1 Judgement order of
the united states Court of appeals No 2023-2329
denying petition for rehearing and petition
enbanc dated October, 2,2024 before chief
Judge Moore ,Lourie and stark Circuit Judges.
This court also has Jurisdiction over Georgia

District Courts decision in No1:21-cv-02291-SCJ
affirming dismissal of amended complaint on
basis of collateral estoppel

1. Under rule10 Consideration governing review
on certiorari of which both (a)and (c) apply

a. A united states court of appeals has entered a decision in conflict with decision of another united states court of appeals on the same important matter has decided an important Federal question in a way that conflicts with a decision by a state court of last resort or has so far departed from the accepted and usual course of judicial proceeding or sanctioned such a departure by a, as to call for an exercise of this courts super vi-siory power.

C A state court or US Court of appeals has decided an important question of Federal Law that has not been and should be settled by this court or has decided an important Federal question in a way that conflicts with the relevant decisions of this the court.

Petitioner is seeking review of the United States Court of Appeals decision in case No. 2023-2329 and case No. 2023-2347 as a single petition under Rule 12.4 of the Supreme Court.

Constitutional and statutory provisions involved

Artr1.clause8. Section 8 of the constitution.

Congress shall have power....] to promote the progress of science and useful arts by securing for a limited times to authors and inventors, the exclusive right to their respective writing's discoveries

14th amendment of the constitution due process clause and equal protection clause expressly declares no state shall make or enforce any law which shall abridge the privilege immunities of citizens of the United States nor shall any state deprive any person, of life, liberty or property without due process of law

estoppel. does not apply to written decision of patent Trial and appeals Board decision issues litigated before the Board shall not be relitigated in Federal Courts citing B&B hardware, Nc v, Hargis Indus, Inc. 135 s.ct.1293,1303(2015)

Congress created specific IPR estoppel under 35 U.S.C§315(e)(2) to protect patent holders from

Collateral estoppel or issue preclusion, becomes effective from the date of Written decision of Patent Trial appeals Board decision to protect patent holder

Statement of the case

Introduction.

Plaintiffs Nazir Khan and Iftikhar Khan are two Illinois Physicians who invented and patented two inventions: US 8,282,591(591) issued on October 9, 2012 and US8,747,344(344) issued on June 10th, 2014. The second patent is a continuation patent in suit.

Patent 344 is a hemodialysis device (an artificial kidney) for use in kidney failure patients to clean blood of toxins and return purified blood back to patient. Great advantage of patent 344 is that it prevents 80% hemodialysis shunt failure which Results from vein damage.in Currently available hemodialysis Devices. In these devices blood flows in to vein causing Vein damage resulting in 80 % shunt failure. This problem of high failure rate was solved by Khan's patent 344 ,591where the venous outflow catheter

deposits blood into the right atrium bypassing the vein and hence reduces the 80% shunt failure rate as happens classical shunt. plaintiff invented a long catheter in hemodialysis apparatus patents 591 and 344

Pet.App.104a see Exhibit A Fig1 where vein is bypassed so that blood is directly deposited in to the Right atrium of Heart. In prior art of Squitieri blood flows in to vein see.pet.App.106a,

Exhibit A Fig3. This device has a 80% Failure rate. Merit Medical Inc and Artivion Inc both made an unpatented hemodialysis device (HeRO graft) utilizing Khan's venous outflow catheter in the construction of their accused product (HeRO graft) .EXHIBITA FIG2 Pet.App.105a. plaintiff solved along felt need of 80 %failure rate of current hemodialysis devices where blood flows in to vein causing vein wall damage

(like Squitieri device). Khan nazir and Iftikhar were First inventors who solved 80% failure rate by making a long venous out flow that reaches right atrium ,bypassing vein in their claim 13of patent 344 see pet App 104 (AppendixF) solving High failure rate from March 29,2004 the filing date the patent application that was submitted by inventors to the united States Patent and Trade mark office, the functionality of claim 13 of patent 344 is related to Right atrial limitation, under Supreme Court ruling in KSR International Co v.Teleflex inc 550 U.S398(2007) if inventor has solved a long felt problem ,yield is more than predictable, inventors invention is unobvious inventor becomes winning and prevailing party. So khans are the winning and prevailing party in this litigation., Respondents Merit Medical and Artivion are assignee of Squitieri patent see petApp 106a (Appendix F) US6, 102,884 (884) where blood flows in to vein

meeting a complication of 80% failure rate of Squitieri device. Respondents Artivion (formerly called CryoLife Life) stole the venous outflow catheter of claim 13 of patent 344 in making a copied similar product HeRO Graft. See paragraph 105a, the functionality of accused HeRO Graft is related to the venous outflow catheter of claim 13 of patent 344. HeRO Graft thus infringes claim 13 of patent 344. See Federal Circuit Court of Appeals decision in Provisur Technologies Inc v. Weber Inc et al No 2023-1438 decided (Oct 2, 2024). Court held if functionality of accused product is related to a component of asserted patent, accused product infringes on the asserted patent. Here, function of accused HeRO is related to the venous outflow component of claim 13 of patent 344. Hence HeRO graft of Merit Medical and of Artivion infringes claim 13 of patent 344.

Merit medical and Artivion inc accused device
HeRo Graft violated constitution Art1 Clause 8 Sec
8 of constitution, statue35C §271(c) and
35U.S.C271(a).Khans patent 344 is new and useful
invention with exclusive right under constitution to
exclude others in making selling patented invention
in the USA or import patented invention into USA
during patent term (2028) see U S P T O letter
Pet.Appx.100a Plaintiff filed a law suit in Federal cir-
cuit courts of Utah and Georgia on June 6,2021 seek-
ing remedy under 35 U.S.C §281 on five infringement
claims of patent344 and constitutional claims Dis-
trict Court of Utah dismissed amended complaint
with all claims on the basis of estoppel, but later
struck out the decision on jan3, 2023 and later
granted Merit Medical Inc's Counter Claim 1

Summary DeclaratoryJudgement of non-infringement on the basis of estoppelsee.Pet.App.51a. Plaintiff appealed the decision under Docket. No 2023-2329 But Appeals Court affirmed district court of Utah decision on the basis of estoppel ,in Georgia Court District Judge dismissed plaintiffs amended complaint and five infringement claims on the basis of collateral estoppel also called issue preclusion see- App.Pet53a ,the estoppel decision of Utah court which was later struck out by District Judge of Utah , District Judge of Georgia did not correct its error,plaintiff appealed underDocket No 2023-2347 ,Federal circuit affirmed District Courts decision plaintiff filed law suit against Merit medical in the Utah District Court on June1,2021, asserting Merits HeRo graft infringed Claim13ofpatent344 sought remedy under statue 35USC§281.plaintiff alleged Five infringement claims with relief that were entered in amended

complaint see pet App 108a. On the same day on June 1, 2021 plaintiff filed law suit in District Court of Georgia with identical five infringement claims, that were entered with relief in amended complaint see App. pet 111a., The infringement claims were as (1) Literal infringement of claim 13 of patent 344 under 35 USC 112(f) based on identical function of hemodialysis between claim 13 of patent 344 and accused HeRO graft of merit and Artivion and equivalent structure of HeRO Graft and claimed device, claim 13 of patent 344. Claimed device has three parts Graft 6mm in diameter, Cuff connector Disposed About and Venous out flow catheter 5mm that reaches Right atrium of Heart see pet Appx 104a (appendix F.). Accused Copied unpatented HeRO Graft see Pet Appx 105a (Appendix F) has 3 parts , Graft 6mm in Diameter, a Metallic Connector Disposed in, Venous out Flow catheter 5mm in Diameter

that reaches Right atrium of Heart the Connectors whether disposed about or Disposed in, perform identical function of transmitting blood from the Graft to venous out flow catheter see petAppx104aEXHIBIT A Fig1 and Pet Appx 105a EXHIBITA FIG2 , under supreme Court ruling in warner-Jenkinson Co v Hilton Davis Chemical Co 520 US 17 (1997) Court held under insubstantial difference test if substituted element performs same function as an element of claimed invention ,both are equivalent ,and one skilled in art will find under interchangeability test both are equivalent ,as both perform same function.. therefore HeRO Graft literally infringes upon claim 13ofpatent 344, under statue 112(f) Statue states an element in a claim for a combination may be expressed as a means or step for performing a specified function without recital of structure material or acts in support thereof and such claim shall be construed to cover the

corresponding structure ,material or acts described in the specification and equivalents thereof" claim 13 of patent 344 was written in means plus function Formate , describing identical function of hemodialysis between claim 13 of patent 344 and accused HeRo graft ,and structure that performs the acts of hemodialysis is described as corresponding structure Fig 2 of Specification of patent 344 ,which describes acts of hemodialysis ,as shown in specification column 5 line 45-65 in patent 344 specification.as shown Diagrammatically by Exhibit A Fig 1 Pet Appx 104a ,blood is taken from the graft with with needle cannula to Dialysis Machine after filtration of Toxins ,returned back to Graft , and from graft it is transmitted to venous out flow catheter via cuff connector disposed about for deposition into Right atrium of heart for distribution to body of patients .blood does not come in contact with vein and 80% device failure rate is avoided. Accused

unpatented HeRO Graft of Merit and Artivion perform acts of hemodialysis in the same way as as described in patent344 specification, by structural equivalent, blood is transmitted from the Graft to Venous outflow catheter by Metallic connector disposed in as shown Exhibit A Fig2 Pet Appx 105a. Herograft of Merit and Artivion infringes upon Claim 13of patent344 under statue 35 USC112(f) .see Federal Circuit Court ruling(Fed,cir1999) Odetics inc v Storageteck corp 1851.3d 1259 ,1267,51USPQ2d,1229 (fed .cir1999) and Pennwalt Corp v. Durand waylandinc 83 F2d,931,934,41USPQ 2d,1737,1739(Fed cir,1987) under law Festo restriction does not apply to literal claim ,District court Utah got dismissed claim 13 ofpatent344 under 35 U.S.C 112 (f) under disclaimer of Squitieri disposed in limitation and estoppel against disposed about ,limitation of claim 13 of patent344 . Federal Circuit erred in Dismissing

claim on ground of estoppel against disposed about
limitation of claim13 of patent344 and disclaim of dis-
posed in limitation seePetApp1a-23a.

The Federal District of Georgia dismissed
amended complaint on the basis of collateral estoppel
PetApp.53a. Plaintiff appealed. Federal circuit Court
of appeals erred in affirming the Judgement of both
district courts based on estoppel, rehearing and hear-
ing enbanc was denied by federal Circuit Court of ap-
peals on oct,2,2024 seePet.App.37a,40a . plaintiff now
seeks to file a petition for writ of Certiorari .plaintiff
request supreme Court Justices to grant extension
till May 15,2025 which was granted by Chief Justice
in Application No24A661 in Merit Medical inc case on
January7,2025 and in Artivion ,inc case Application
No24 A662 dated Jan 6,2025 There are genuine issues
of facts in the questions presented that warrants

review by this court, accused Copied unpatented HeRO Graft should not defeat Constitutionally granted intellectual property i.e.patent344.decisions in District Courts and Federal circuit Court are Wrong , under Supreme Court Rule10 (a) and (c) there is split between Opinion of 5th Circuit and Federal Circuit on important Federal question of Claim111 injury and also under Supreme Court Rule 10(c) there is Split Federal Circuit and supreme court on important Federal question of prosecution history estoppel .these important Federal questions are to be resolved on review by Justices of Supreme Court. patent 344, a hemodialysis device is of national importance it is being used allover united states and in Europe in the name of Copied accused product HeRo Graft for cleaning blood in Kidney Failure Patients. plaintiff provides compelling reasons for justices of

supreme court to review the case and Grant petition
for writ of Certiorari

11. Direct infringement claim under §271(a)

Direct infringement occurs because Merit and Artivion used an element, venous outflow catheter of claim 13 of patent 344 without authorization from patent holder Nazir Khan. Patent 344 was granted as a new and useful art in pursuit of progress of science under Art 1 clause 8, section 8 of constitution with exclusive right to exclude others from making patented invention during patent term see letter of Deputy director United States Patent and Trade Mark Office (USPTO) see pet App 100a. Thus Merit and Artivion directly infringed claim 13 of patent 344 by taking venous outflow catheter of the patented invention to make accused unpatented HeRO Graft. Patent 344

was issued by patent Trial Appeals Board as unobvious invention under §103 .Novel,under§101 . Merits and Artivion actions violated constitution Art1, clause 8 sec 8 of constitution under intellectual property clause, Merit and Artivion are selling plaintiffs venous outflow catheter at \$ 1000 ,plaintiff patent holder suffered constitution 11injury , warranting compensation under Fifth amend ment taking clause

111 Indirect infringements. under§ 271(b) and 271(c)

Artivion sold HeRO graft to Merit medical on may4,2016, for 18.2 million dollars and caused Merit to have liability under Direct infringement. Merit selling Hero graft kit to Hospitals and Clinics to make HeRO graft to be implanted by Hospital physicians topatients leading to Direct infringement by physicians in addition Merit and Artivion are using Venous

out flow catheter of claim 13 of patent 344 in the manufacture of accused HeRO Graft causing infringement under §271 (c).

1v copying the claim 13 of patent 344 by stealing venous out flow catheter ,in making accused HeRo Graft.Merit and and Artivion company are both copyist liable for infringement .

V will infringement.

Merit and Artivion, willfully used venous out flow catheter of claim 13 of patent 344 in making accused Hero graft. ,leading to willful infringement, all five infringement claims were entered in amended complaint in Utah District Court and Georgia District court with relief see Pet App 108a, and 111a.

District Court of Utah and Georgia erred in dismissing all Five infringement claims on

the ground of estoppel in contravention of patent Trial Appeals Board decision, final and written decision of July 27, 2012 Supreme precedent in *B&B Hard wireman, v Hargis indus inc* 575 U.S. 138 (2015) and statute 315 (e)(2)

Before PTAB the issue of claimed Connector Disposed about limitation and Right Atrial limitation of depositing blood directly into right atrium, were discussed against examiners rejection of squitieri Disposed in Limitation and deposition of blood into vein. Patent Holder NAZIRKHAN discussed two limitations at oral hearing in July 2012 see pet App 81a, the PTAB Board reversed examiner on two limitations of Disposed in connector and Blood flow deposition in to vein that leads to 80% device failure. Board issued Final written decision on July 27, 2012, reversing examiner, claims 1-20 of

patent 591,(parent patent) and Continuation patent 344 were issued by USPTO. Respondent Merit Medical improperly relitigated Disposed in and disposed about limitation violating 35USC§ 315(e)(2) and Supreme Court precedent in B&B Hardware, nc v. Hargis Indus ,Inc. 575 U.S138(2015), Supreme Court Justice, John Alito delivered opinion ,stated issues Litigated before PTAB ,should not be relitigated in District Courts, issue preclusion apply .under Statue 315 (e)(2) issue preclusion (collateral estoppel) applies from the day the Board issues Final and Written decision Here merit medical through its Brent Lorimer relitigated Disposed about and Disposed in connector disposition creating estoppel against disposed about limitation of claim 13 of patent 344, making a case of non-infringement violating PTAB decision , Supreme Court ruling in B&B Hardware and statue 315(e)(2). District Court Judge of Utah erred in

dismissing plaintiffs amended complaint and all five infringement claims on the basis of estoppel and district Judge of Georgia erred in dismissing amended complaint and all five infringement claim on the basis of collateral estoppel. Federal circuit court erred in affirming Utah district court summary judgement of non-infringement and dismissing all five infringement claims on the ground of estoppel ,in case No2023-2329 see Pet App 1a also District court Judge in Georgia Court erred in dismissing plaintiffs amended complaint and Five infringement claims on the ground of collateral estoppel , Federal Circuit erred in its judgement in case No2023-2347 affirming district court on collateral estoppel see Pet App24a. Supreme Court Justices are requested to resolve issue of estoppel under Rule 10 (c) on Consideration of petition of writ of certiorari.

Reasons for granting writ of Certiorari

I patent US8,747,344(344) in suit is nationally and internationally recognized as a super Central hemo-dialysis Shunt for Public use in Kidney Failure ,Pa-tients to clean blood of Toxins in Kidney failure pa-tients, it is used when Conventional shunts utilizing vein are exhausted. .patent 344 is used in the name of Copied unpatented HeRO Graft in USA and Europe is of national importance it saves lives of kidney

failure patients when no other access is available for dialysis.

11 Hero Graft infringes claim 13 of patent 344 based on ruling Federal Circuit ruling in Provisur Technologies, Inc. v. Weber et al. in case No. 2023-1438 decided on October 2, 2024 holding if functionality of accused product and consumer demand is related to an element of asserted patent accused product infringes upon on asserted patent. Here Function and consumer demand of HeRO graft is related to the element of Venous out Flow catheter of claim 13 of patent 344 HeRO product of Merit and Artivion infringes upon claim 13 of patent 344 This court Should upheld decision on petition of Certiorari

III. Federal Circuit court made errors in its Judgement

**Of Order of July16, 2024 in the Utah Appeal
brief 2023-**

**2329 and the Georgia matter Appeal 2023-2347
based on estoppel**

**. The court misapplied the law in violation
of Supreme court ruling in B& Hardware and
statue**

**35USC 315(e)(2) This court should reverse de-
cision on considering petition for writ of certi-
orari**

**IV. Merit Medical Inc. and Artivion Inc. through
their attorneys engaged in Fraud and misrepre-
sented Facts on Both Courts . Estoppel did not
exist! Attorneys for both respondents deceived the
judges in District Courts of Utah and Georgia. In the
District Court Of Utah, the Order of Dismissal of the
Functional claim35 USC 112(f) on grounds of dis-
claimer of prior art Squitieri disposed in Limitation
was an error in law and the declaratory Judgement
on counter claim I based on estoppel was also an error
in law under Rule 60(b) (1). After Final written**

decision of Patent Trial appeals Board issues are not to be relitigated in view of Supreme Court ruling in B&B Hardware and statute 35USC315(e)(2) issue preclusion or collateral estoppel applies. The Federal circuit court of appeal affirming the district court's order of summary judgement of non infringement based on estoppel was an error in law, also dismissal Of Functional claim claim13 of patent344 under 35U.S.U.S.C 112(f) on the ground of estoppel was an error in law and also affirmance of dismissal of plaintiffs amended complaint in Georgia Court on the basis of collateral estoppel was an error in law. This court should reverse Federal Circuit, on the Ground that estoppel application was wrong. Plaintiff is entitled for relief under Federal Rule 60(b)(1) and Rule 60(b)(3)., Merit Medical and its two attorneys, Artivion and its two attorneys attorney committed Fraud with misrepresentation of facts on both courts of Utah and

Georgia on the Federal question of estoppel . Both District Courts and the Federal Circuit decisions are in violation of Supreme court precedent in B&B Hardware and Statute 35USC 315(e)(2). Plaintiff is Entitled to relief Under Rule 60(b)(1)and 60(b)(3)

Khans Patent 344 issuance was unrelated to prior art of Squitieri's Disposed In limitation, hence estoppel does not apply. Supreme court ruled in Festo Corp V. ShoKetsu Kinki Zoku Kogyo Kabushiki Co. 535 US 722(2002) that if Prior art elements are not used for issuance of patent, there in is no estoppel. Plaintiff did not surrender subject matter to Prior art Disposed in Limitation. Patentability was unrelated to prior art hence there was no estoppel, under Festo decision also..

In the Georgia matter, Appeal No 2023-2347, The Federal Circuit Court affirmed the Judgement of the

District Court of Georgia dismissing plaintiffs amended complaint and all Five infringement claims Pet.App..111a on the basis of Collateral estoppel. Court did not recognize that Patent 344 was issued by the Patent Trial & Appeals Board. Issues litigated before the Board cannot be relitigated in District court. Georgia District Court's dismissal of amended complaint and all five infringement claims on the basis of collateral estoppel was wrong since issues of Disposed about limitation and Right Atrial limitation against prior art of Squitieri were already litigated before the Board. The Final written decision of the Board was issued on July 27, 2012 which was also affirmed by the Federal circuit court of appeals No 2012-2207(Feb,15,2018),

Artivion Inc., was Collaterally estopped to bring a claim of dismissal of plaintiffs amended claim and five

infringement claims in Georgia court on the basis of collateral estoppel in view of B&B Hardware and Statute 35USC 315(e)(2). The Federal Circuit courts' affirmation of the dismissal of Plaintiffs amended complaint and Five infringement claimswas an error in law. This court should reverse.

V This Court should resolve split bewen federa Circuits and Federal circuit court decesion on estoppel and supreme court precedent in B&B Hardware

Estoppel is an important Federal question under Supreme Court Rule 10(c). There is a split between the Federal Circuit Court of appeals and the Supreme Court ruling in B&B Hardware regarding the preclusion of PTAB decision barring the Federal District Court and Federal Circuit of Appeals from making estoppel decisions. This Court should resolve the split

under consideration of Writ of Certiorari. Honorable Justice Alito, writing for the majority in B&B Hardware stated that if issues adjudicated before PTAB proceeding are the same as those before the District Court, issue preclusion should apply. Federal circuits reliance on estoppel contradicts Supreme Court precedent in B&B Hardware and statutory provisions under 35 USC § 315(e)(2) this court to resolve issue of estoppel under Rule 10(C). Circuit split between 5th Circuit Court of appeals and Federal Federal Circuit Court of appeals on question of Constitution 111 injury .

V. Constitution 111 injury

Plaintiff's Venous out Flow catheter in Patent 344 was stolen by manufacturing companies Artivion Inc. and Merit Medical Inc. Both companies used

patent 344 venous out flow catheter in manufacturing the accused HeRO Graft Both companies sold a kit with no patent No ,consisting of three parts : Graft, Metallic disposed in connector and venous outflow catheter, to Hospitals for \$3000. Each component costs \$1000, venous outflow catheter costs \$1000

. Because these companies used the Plaintiff's Patent 344 venous outflow catheter, the Plaintiff suffered injury in fact on his protected interest of Patent 344. Plaintiff also suffered Constitutional 111 injury in fact as a result of the mis conduct companies' . This court should redress the Plaintiffs constitution 111 injury . The 5th circuit ruled in Jones v. Reeves No 260371 (Nov 20, 2024) that if a party does not demonstrate injury to legally protected interest, they lack Article 111 standing and their claims should be dismissed. Merit Medical Inc. and Artivion Inc.'s

accused product HeRO graft is unpatented. They have not shown any injury to a protected interest. They both lack Article111 standing to defend the case. On this basis Federal Circuit Court of appeals should have reversed Merit Medical Inc.'s baseless Counter claim and allowed Plaintiff's means plus function Claim 13 of Patent 344 and further infringement claims of patent 344Pet.App,108a and also Federal-circuit should have reversed the Georgia Courts order of Dismissal of amended Complaint and Five infringementclaims on the basis of Collateral Estoppel. That did not happen Under Rule 10 (a) of Supreme Court. Constitution111 injury is an important Federal question. There is a split between the 5th Circuit Court of Appeals and the Federal Circuit Court of Appeals on Constitution111 injury. This Court should resolve the split on consideration on writ of certiorari .under Rule 10(a) The 5th circuit court of appeals

is supported by Supreme court ruling in Spokeo, Inc v Robins 578US330 decided on May16, 2016. In this ruling concrete injury is essential for any party to have standing in filing a lawsuit under Article 111 injury. Further support to the 5th circuit ruling is provided by Supreme court in 504U.S,555,560(1992) in Lujan v, Defenders of Wildlife and in Spokeo, Inc v. Robins, 578 U.S,330 decided on May 16, 2016. Plaintiff has suffered Constitution 111 injury this court should redress plaintiffs Violation of Constitutional claim under Art1 clause 8 of constitution and Taking clause of 5th amendment of constitution , and redress Five infringement claims of patent 344. Respondents have no patent on HeRoGraft lack constitutional standing to defend case violating Lujan v. Defenders of wild life, 504 U.S 555,560(1992)

VI. Patent ownership: HeRO graft accused product is unpatented, plaintiff has valid Patent 344.

District Court judges make an inquiry as to which party has a patent. A party without a patent has no constitutional standing. The party without a patent should be dismissed with prejudice and sanctioned under §285. For example, in the Northern District of Texas Court, in *Ranieri v Microsoft Corp*, Ranieri had no patent and the Court dismissed Ranieri case with prejudice and sanctioned Ranieri under §285. See Case No 15-0540 and 15-2298, 2016WL4626584 (Northern District of Texas September 2, 2016). On appeal the Federal Circuit Court of Appeals affirmed the District Courts decision on April 18, 2018. See 887 F3d 1298(Fed.Cir.2018). Plaintiff has Patent 344 and this has exclusive constitutional standing to file the

lawsuit and defend it. Respondents have no patent on accused product HeRO graft, have no constitutional standing to defend the case and thus their claims should have been dismissed by the District Courts and Federal Circuit of Appeals. In Plaintiff's petition for Rehearing and en banc hearing Plaintiff notified court Respondents have no patent no exclusionary ,constitutional standing to defend the case their case should be dismissed . The Federal Circuit court ignored plaintiffs' assertion of exclusive constitutional standing and the respondent's lack of constitutional standing and ruled in favor of Respondents by denying the rehearing in contravention of its own ruling in *Ranieri v Microsoft Corp.*

In summary Estoppel did not exist Federal circuit reliance on estoppel contradicts supreme court precedent in *B&B Hardware* and statutory provision

under 35 USC § 315(e)(2). This Court should reverse Federal circuit. Congress wants America to be leader in Medical innovations but Federal circuit court of appeals and district Court of Utah and Georgia are working in opposite way making America inferior in Medical technology. This Court's decision is in national interest to make America leader in medical technology, reverse Federal circuit of appeals ruling in both courts Utah and Georgia. Patents are protected by constitution and statutory laws, unpatented device should not prevail (HerO Graft of Merit and Artivion)

CONCLUSION

In view of foregoing, petition for writ of Certiorari should be granted and Federal circuit court of appeals decision in both courts be reversed. And remand with instructions

Prayer for Relief

1 grant 10 million \$ damage for violation intellectual property clause under Art1 clause 8 section 8 of constitution.from Merit medical and Artivion each

2 Grant 5million dollars compensatory damage for violation of 5th amendment taking clause of constitution from merit and Artivion companies each.

3 Grant relief on five infringement claims entered in amended complaints in Utah and Georgia court

4 Take disciplinary action against attorneys in Utah court and Georgia Court for workingwith

Fraud on Court, misrepresenting facts on frivolous theory of estoppel

5 issue permanent injunction, stop Merit medical from making Hero Graft, allow 15 % Royalty on all Hero Graft products sold by Artivion and Merit Medical

6 issue order to District Court Judges in Utah court and Georgia court not to sanction plaintiff patent hold under rule § 285 such actions are unconstitutional and will cause irreparable harm to plaintiff, in both courts attorneys have filed motions for attorneys fee under § 285

7 declare HeRo Graft infringes claim 13 of patent 344 in the light of decision of Federal circuit decision in Provisur v. Weber et al and Supreme Court decision in KSR international Co V. Teleflex

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