

IN THE
Supreme Court of the United States

FORTRESS IRON, LP,

Petitioner,

v.

DIGGER SPECIALTIES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF IN OPPOSITION

D. RANDALL BROWN
BARNES & THORNBURG LLP
888 S. Harrison Street,
Suite 600
Fort Wayne, IN 46802

DANA AMATO SARROS
BARNES & THORNBURG LLP
One N. Wacker Drive,
Suite 4400
Chicago, IL 60606

HEATHER B. REPICKY
Counsel of Record
BARNES & THORNBURG LLP
One Marina Park Drive,
Suite 1530
Boston, MA 02210
(617) 316-5317
hrepicky@btlaw.com

*Attorneys for Respondent
Digger Specialties, Inc.*

QUESTIONS PRESENTED

(1) Is an omitted co-inventor one of the “all parties concerned” to whom notice and an opportunity to be heard must be provided before a court may correct inventorship under 35 U.S.C. § 256(b)?

(2) Absent correction, does the nonjoinder of a proper inventor render a patent invalid?

RULE 29.6 STATEMENT

Respondent Digger Specialties, Inc. (“Digger”) has no parent corporation and no public company owns more than 10% of its stock.

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INTRODUCTION

The United States Court of Appeals for the Federal Circuit held that 35 U.S.C. § 256(b) requires a patentee to give an omitted co-inventor—as a “party concerned”—notice and an opportunity to be heard before a district court can correct inventorship. Section 256 provides:

[t]he error of omitting inventors or naming persons who are not inventors *shall not invalidate the patent* in which such error occurred *if it can be corrected* as provided in this section. *The court* before which such matter is called into question *may order correction* of the patent *on notice and hearing of all parties concerned* and the Director shall issue a certificate accordingly.

35 U.S.C. § 256(b) (emphasis added). Fortress Iron, LP (“Fortress”) did not provide an omitted co-inventor with the requisite notice and, thus, could not invoke § 256(b) to add that inventor to the patents-in-suit. Given Fortress’s failure to correct inventorship, the Federal Circuit held the patents invalid consistent with constitutional and statutory requirements and more than a century of jurisprudence.

Fortress¹ now obscures straightforward issues of statutory construction by injecting into its

¹ The petition identifies Fortified IPCO, LLC (“Fortified”) as petitioner. Pet. at ii. But Fortified was not a party to the proceedings below nor were its purported ownership rights even

questions presented unsupported and incorrect factual assertions regarding purported assignments and ownership interests. Fortress's reliance on these unproven assertions alone makes this case a poor vehicle for consideration of the questions Fortress presents.

Stripped of Fortress's distractions and as reframed *infra*, this case presents two questions: (i) is an omitted co-inventor one of the "all parties concerned" in § 256(b) and (ii) does failure to correct inventorship render a patent invalid? In answering both questions affirmatively, the Federal Circuit adhered to and applied the clear and specific language of the Patent Act in harmony with its prior holdings and Congress's intent. To fabricate a conflict in authority, Fortress (again) confounds the concepts of a "party concerned" with Article III standing and myopically focuses on the repeal of 35 U.S.C. § 102(f) under the America Invents Act ("AIA"). In doing so, Fortress attempts to rewrite § 256(b) and disregards the critical place inventors occupy in our patent system as provided for by Congress and found in case law dating back two hundred years.

Ultimately, Fortress's complaints regarding an "absurd result" arise only when a patentee uses minimal efforts to provide actual notice to an omitted inventor ***and*** also fails to remedy incorrect inventorship through the multiple means Congress

referenced before the district court or the Federal Circuit. Nevertheless, Fortress now asserts that it assigned all of its rights, title, and interest in the patents-in-suit to Fortified. Consequently, neither Fortified nor Fortress has established standing to bring this petition.

has provided. Fortress alone thus bears responsibility for any resulting “absurdity.” And this case serves as a cautionary tale to patentees who address the inventorship requirement casually or omit proper inventors for strategic purposes.

For all these reasons, the Court should deny the petition.

COUNTERSTATEMENT OF THE CASE

A. Factual Background

The Federal Circuit’s opinion sets forth the few undisputed facts relevant to its holding—namely, that:

- Fortress designed and developed the purported inventions claimed in U.S. Patent Nos. 9,790,707 (the “707 patent”) and 10,883,290 (the “290 patent”) with support from Quan Zhou Yoddex Building Material Co., Ltd. (“YD”), a Chinese company;
- When it filed the applications for the patents that would ultimately issue as the ’707 and ’290 patents, Fortress failed to identify Hua-Ping Huang and Alfonso Lin—two individuals working with YD and Fortress—as inventors;
- Fortress conceded that Huang and Lin contributed to and thus were co-inventors of the purported inventions claimed in the ’707 and ’290 patents;

- Fortress located Lin and successfully added him as an inventor on the patents-in-suit through the procedures outlined in 35 U.S.C. § 256(a); and
- Although allegedly unable to locate Huang, Fortress requested that the district court correct inventorship of the '707 and '290 patents by adding Huang as an inventor under 35 U.S.C. § 256(b).

Pet. App. 2a–4a. In its petition, Fortress insists an additional essential fact exists—that is, that Fortress holds all of Huang’s rights in the patents-in-suit. *See* Pet. at 4 (“Critically, Fortress owns all of Huang’s rights in the patents.”). But, as discussed more fully below, Fortress’s characterization of the record is incorrect. *See* Pet. at 5; *supra* at 6–8, 16–17.

B. The District Court’s Holding

On September 9, 2024, the district court denied Fortress’s motion to add Huang as an inventor under § 256(b). Pet. App. 14a–23a. Applying the plain meaning of this statute, the district court determined that Huang, an omitted inventor, was a “party concerned” and thus entitled to receive notice before correction could be ordered. Because Fortress did not provide Huang notice, the district court found it could not correct inventorship under § 256(b). Pet. App. 21a–23a.

Given Fortress’s failure to correct inventorship through the United States Patent and Trademark Office (“USPTO”) for more than a decade and its inability to do so through the litigation, the district

court further held both the '707 and '290 patents invalid. Pet. App. at 23a–25a. The court expressly rejected Fortress's arguments regarding the AIA's elimination of § 102(f) and confirmed that proper inventorship remains a requirement of patentability under § 101. Pet. App. 23a–24a.

C. The Federal Circuit's Decision

On April 2, 2026, the Federal Circuit affirmed both holdings by the district court. Pet. App. 1a–13a (the "Decision").

Citing the central role of inventors, the Federal Circuit held that § 256(b)'s prerequisites of notice and an opportunity to be heard constitute "procedural protections" that transcend "mere formality." Pet. App. 7a–8a. It also declined Fortress's urging to "rewrite the language of the statute" by limiting "parties concerned" to parties whose pecuniary interests may be adversely affected. Pet. App. 8a–9a. And while acknowledging that § 256(b) acts as a "savings provision," the Federal Circuit found that it applies only when its requirements—including notice—are satisfied. Pet. App. 10a.

In addition, the Federal Circuit held that given improper inventorship, the '707 and '290 patents are invalid. It began its analysis with the language of § 256(b), itself, and further found a "historical basis for requiring a correct listing of inventors." Pet. App. 10a–11a. Like the district court, the Federal Circuit also found unpersuasive Fortress's arguments regarding the AIA's elimination of 35 U.S.C. § 102(f). Pet. App. 12a. In view of § 102(f)'s requirements, the AIA's legislative history, and caselaw pre-dating the

adoption of § 102(f) in 1952, “the repeal of § 102(f) did not eliminate invalidity due to incorrect listing of inventors.” *Id.*

On June 5, 2026, the Federal Circuit denied Fortress’s petition for panel rehearing and rehearing *en banc* without dissent. Pet. App. 26a–27a.

REASONS FOR DENYING THE PETITION

I. This case presents a poor vehicle for considering the questions Fortress presents.

Fortress’s unsupported assertions regarding ownership in the patents-in-suit render this case an ill candidate for further review of, at least, the first question Fortress presents. That question assumes not only that the omitted inventor “could not be found,” but also that he transferred away all of his rights in the patents-in-suit and “can only be benefitted, not harmed” by being listed as an inventor. Pet. at i. Fortress never established these speculative assumptions below and should not be permitted to use them as justification for further review now.

Fortress did not and could not establish that Huang held no pecuniary interest in the patents-in-suit during the pendency of this litigation. No executed employment agreement between Huang and YD exists and Huang’s employment status with YD (or lack thereof) was disputed before the district court. Yet Fortress (again) invokes Article 6 of the Patent Law of the People’s Republic of China to claim that Huang’s rights passed to YD as a matter of Chinese Law. Pet. at 4–5. According to Fortress, YD then

transferred its rights by assignment to Fortress. *Id.* But neither the district court nor the Federal Circuit adopted this conclusion, which Digger contested. As the Federal Circuit found, “[n]either the parties, nor [the court], know for certain whether Huang would be adversely affected or would benefit by being listed as an inventor on the patent.” Pet. App. at 8a.

Indeed, Fortress’s own filings with the USPTO contradict its claims that Huang’s interests passed to Fortress through YD. In December 2022, Fortress petitioned the USPTO to add Lin as an inventor under 35 U.S.C. § 256(a). Therewith Fortress submitted assignments showing Lin transferred his rights to the claimed inventions directly to Fortress. In those assignments, Lin represented that he had the “full unencumbered right to sell, assign, and transfer the interests” and that he had “not executed and will not execute any document or instrument in conflict herewith.” In other words, Lin declared that no one—including YD—ever held his rights in the patents-in-suit, either by contract or operation of law, before he transferred them to Fortress. In contrast, although repeatedly characterizing Lin and Huang as similarly situated, Fortress maintained that it acquired Huang’s interests without a direct assignment, i.e., YD acquired Huang’s pecuniary rights in the ’707 and ’290 patents and then assigned those rights to Fortress. These conflicting chains of ownership involving two co-inventors occupying the same position vis-à-vis YD and Fortress have never been reconciled.²

² In April 2026, Huang executed a quitclaim patent assignment transferring what, if any, rights he had in the patents-in-suit

At bottom, the proclamations that Fortress “possesses complete ownership of the patents” and “Huang owns no rights in the patents,” Pet. at 5 & 9, find no support in—and are belied by—the record. When Fortress failed to establish that Huang actually transferred his ownership rights away, it surrendered the right to present any question to this Court that implicates its purported ownership in the patents-in-suit. *See* Pet. at i.

II. The Federal Circuit interpreted § 256(b) consistent with its prior holdings and the statute’s plain meaning.

Fortress’s attempts to manufacture a legal conflict between the Decision, on the one hand, and the Federal Circuit’s prior jurisprudence and the Patent Act, on the other hand, are unavailing. No such conflict exists.

First, Fortress’s reliance on *Larson v. Correct Craft, Inc.*, 569 F.3d 1319 (Fed. Cir. 2009), conflates whether an omitted inventor has Article III standing with whether an omitted inventor is a “party concerned” entitled to notice under § 256(b). As the Federal Circuit explained, these are “distinct issues with different requirements.” Pet. App. 9a. And courts have repeatedly held that standing to initiate an action involves a different inquiry than the one required to decide to whom notice must be given in an existing proceeding to correct inventorship. *See Chou*

directly to Fortified. Fortress thus seemingly lacks the confidence to rely on its theory that Huang’s interests in the ’707 and ’290 patents transferred to YD as a matter of Chinese law and then, by assignment in February 2023, from YD to Fortress.

v. Univ. of Chicago, 254 F.3d 1347, 1357 (Fed. Cir. 2001); *Ecojet, Inc. v. Pure Spa Components, Inc.*, No. SACV-16-01463-CJC(KESX), 2017 WL 3485780, at *4 (C.D. Cal. Feb. 10, 2017) (noting that “*Chou* simply concluded that ‘parties with an economic stake in a patent’s validity *may* be subject to a § 256 suit’—it did not establish such an economic stake as a requirement.”); *Speedfit LLC v. Woodway USA, Inc.*, 226 F. Supp. 3d 149, 159 (E.D.N.Y. 2016) (differentiating between standing requirement and notice requirement); *Fina Tech., Inc. v. Ewen*, 857 F. Supp. 1151, 1156 (N.D. Tex. 1994) (finding omitted inventor was a “party concerned” under § 256(b) despite not having standing to seek relief).

Second, Fortress’s assertion that “[a]n individual who lacks standing to participate cannot simultaneously be indispensable to the proceeding” overstates the import of the Federal Circuit’s holding. *See* Pet. at 10. For example, the Decision does not suggest that the district court could not proceed without Huang. To the contrary, the Federal Circuit underscored the statutory requirement as “notice and **opportunity** for hearing.” Pet. App. 8a (emphasis added). This emphasis comes as no surprise. Before the Federal Circuit, Fortress repeatedly characterized § 256(b) as mandating that an improperly omitted inventor be provided an opportunity to be heard; it never asserted the statute demands the actual attendance of that inventor at a hearing.

Third, notice to an omitted inventor under § 256(b) guarantees that any interest—pecuniary or reputational—is given due consideration in a proceeding to correct inventorship. Here, as explained more fully below, Huang’s interests in the ’707 and

'290 patents were unknown. In fact, the Federal Circuit expressly held that Fortress's characterization of Huang's interests in the patents-in-suit were unsupported. Pet. App. 8a; *see also infra* at 7. This case, thus, exemplifies the importance of guarding against overreach by patentees seeking to exploit exclusivity rights without giving an inventor notice and an opportunity to be heard regarding her interests in those very rights.

Finally, a patentee's ability to correct inventorship with substitute declarations under 35 U.S.C. §§ 115 and 116 reflects Congress's decision to encourage early diligence in identifying and naming the correct inventors. Once the patent issues, Congress provided different means—e.g., 35 U.S.C. § 256—to effectuate inventorship changes. Regardless of Fortress's belief that these pre-and post-issuance provisions "create[] an irrational asymmetry," Pet. at 12, no basis exists for the Court to override Congress's unambiguous choices.³

III. The Federal Circuit correctly recognized that Congress has preserved the proper-inventorship requirement.

Both the district court and the Federal Circuit properly rejected Fortress's assertion that Congress's enactment of the AIA—converting our patent regime

³ In addition, ample authority for the differing treatment of patents before and after issuance exists throughout the Patent Act. As just one example, after patent issuance, the ability to amend patent claims other than for evident typographical or clerical errors is generally limited to reissue proceedings or supplemental examination before the USPTO. *See* 35 U.S.C. §§ 251, 257.

from a first-to-invent system to a first-to-file system—represented the death knell of the improper inventor defense. Pet. App. 12a; Pet. App. 23a–24a. Not only does the survival of the remedies in, for example, § 256(b) attest to the continued viability of the defense, but patent validity has always depended on identifying the true inventors. The principle springs from the Constitution, is supported by 35 U.S.C. § 101, and has been recognized by case law both before and after passage of the AIA.

A. The repeal of 35 U.S.C. § 102(f) did not eliminate the need to name all proper inventors.

The Federal Circuit, like the district court, disagreed that the AIA’s repeal of § 102(f) eliminated the incorrect listing of inventors as an invalidity basis. Pet. App. 12a. Although § 102(f) had been cited frequently as the source of the inventorship requirement, it only provided that “[a] person shall be entitled to a patent unless he did not himself invent the subject matter sought to be patented.” *Id.* (quoting pre-AIA § 102(f)). Consequently, it merely barred non-inventors from obtaining a patent.

In addition, prior to § 102(f)’s enactment in 1952, “[w]ell established caselaw . . . mandated that nonjoinder of an actual inventor would render a patent invalid.” *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1349 (Fed. Cir. 1998) (collecting cases). That significant body of law dates back to the 19th Century. *See, e.g., City of Milwaukee v. Activated Sludge, Inc.*, 69 F.2d 577, 587 (7th Cir. 1934) (“When a number of persons make an invention jointly, a valid patent cannot be taken out in the name of one of them.”);

Joseph Ross & Co. v. Widger, 290 F. 788, 789 (3d Cir. 1923) (“[I]f the novelty of the patent was the joint work of both, of course, a valid patent could not be granted to one.”); *McKinnon Chain Co. v. Am. Chain Co.*, 268 F. 353, 360 (3d Cir. 1920) (invalidating patent where invention was a joint invention and the patent issued in the name of a single inventor); *William R. Thropp & Sons Co. v. De Laski & Thropp Circular Woven Tire Co.*, 226 F. 941, 947 (3d Cir. 1915) (“A patent for an invention claimed to be the joint conception or invention of two, when in truth it is the separate invention of but one, cannot be issued to both, or, if issued, is void as to both.”); *Smart v. Wright*, 227 F. 84, 87 (8th Cir. 1915) (where inventorship is joint, neither inventor “could secure a valid patent as sole inventor”); *Welsbach Light Co. v. Cosmopolitan Incandescent Gaslight Co.*, 100 F. 648, 650–51 (N.D. Ill. 1900) (denying preliminary injunction based on the rule “prevailing in this country” that a patent issued in the name of joint inventors when there is only a sole true inventor renders the patent void); *Stewart v. Tenk*, 32 F. 665, 666 (S.D. Ill. 1887) (dismissing case because asserted patent that named two inventors had a claim that was invented by only one inventor). Just as Congress did not intend the passage of § 102(f) “to effect a change in existing law,” *Pannu*, 155 F.3d at 1349–50 (citing legislative history), its repeal did not abolish or alter the proper-inventor requirement.

B. Section 256(b), itself, confirms a patent may be invalid for incorrect inventorship.

The very statute Fortress invoked to add Huang as an inventor proves that patent validity

depends on proper inventorship. *See* Pet. App. 10a–11a. Section 256(b) states that “[t]he error of **omitting inventors . . . shall not invalidate** the patent in which such error occurred **if it can be corrected** as provided in this section.” *See id.* (third emphasis added). Tellingly, by using the word “if,” Congress understood that there may be situations under which inventorship is uncorrectable. And, as a “savings provision,” § 256(b)’s very existence evidences that patent invalidity logically follows when its requirements cannot be met. Pet. App. 11a. When Congress through the AIA enlarged the scope of § 256 by removing the limitation that correction could only be made where the error occurred “without any deceptive intent,” it left no doubt that errors in naming proper inventors, absent correction, still will result in invalidity.

Moreover, at least one individual directly involved in the AIA—from its initial introduction through enactment—has discredited attempts to view Section 102(f)’s repeal as a repudiation of the proper inventor requirement. Joe Matal, who served as counsel to members of the Judiciary Committee in each Congress responsible for the AIA, notes:

Some may think that, because § 102(f) has been repealed, there is no longer any legal requirement that a patent for an invention be obtained by the inventor. Not so. Both the Constitution and § 101 still specify that a patent may only be obtained by the person who engages in the act of inventing.

Joseph Matal, *A Guide to the Legislative History of the America Invents Act: Part I of II*, 21 Fed. Cir. B.J. 435, 451 (2012) (citations omitted).

C. The requirement to properly name inventors is fixed in the Constitution and embedded in 35 U.S.C. § 101.

Of all the enumerated powers granted to Congress, its power with respect to copyrights and patents is the only “instance wherein the delegates prescribed a specific mode of accomplishing the particular authority granted.” Edward C. Walterscheid, *To Promote the Progress of Science and Useful Arts: The Background and Origin of the Intellectual Property Clause of the United States Const.*, 2 J. Intell. Prop. L. 1, 33 (1994); *see also Goldstein v. California*, 412 U.S. 546, 555 (1973) (“The clause [] describes both the objective which Congress may seek and the means to achieve it.”). That specific mode not only provides that the grant of a monopoly be limited in time, but it attaches exclusivity rights to inventors—not owners, employers, or assignees. U.S. Const. art. I, § 8, cl. 8 (empowering Congress “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive rights . . .”).

Given the plain language of the Intellectual Property Clause and its focus on inventors, courts have deemed the Constitution as a source of the validity requirement regarding naming inventors. For example, the Federal Circuit previously has stated:

[T]he **Constitution** authorizes awarding patent exclusivity only to an inventor. U.S. Const. art. I, § 8, cl. 8. ***And so courts have historically held that if a patent does not reflect its true inventorship, it is invalid.*** See *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1349–50 (Fed. Cir. 1998) (collecting cases).

Egenera, Inc. v. Cisco Sys., Inc., 972 F.3d 1367, 1376 (Fed. Cir. 2020) (emphasis added); see also *Iowa State Univ. Rsch. Found. v. Sperry Rand Corp.*, 444 F.2d 406, 408 (4th Cir. 1971) (citing the Constitution as the source of the proper inventorship requirement).

For centuries, Congress has obeyed the Intellectual Property Clause’s mandate with respect to inventors. This obedience is reflected in several sections of the Patent Act, including § 101. Since 1790, Congress has made clear that rights in an invention belong to the inventor and this canon of patent law has not changed in the intervening 234 years. See *Bd. of Trustees of the Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 563 U.S. 776, 780 (2011). Today, 35 U.S.C. § 101 provides that “[w]hoever invents any new and useful process, machine, manufacture, or composition of matter . . . may obtain a patent thereof, . . .” 35 U.S.C. § 101 (emphasis added). Without identification of all true inventors, the “whoever invents” directive cannot be met. See, e.g., *Belcher Pharms. LLC v. Hospira, Inc.*, C.A. No. 17-1775-LPS, 2019 WL 2503159, at *1 n.1 (D. Del. June 5, 2019); *Bd. of Trs. of the Univ. of Ill. v. Micron Tech., Inc.*, 245 F. Supp. 3d 1036, 1041 n.1 (C.D. Ill. 2017); *Cubist Pharms, Inc. v. Hospira, Inc.*,

75 F. Supp. 3d 641, 673 n.14 (D. Del. 2014); *see also* Manual of Patent Examining Procedure (“MPEP”) § 2157 (9th ed. Rev. 1, Nov. 2024) (directing USPTO personnel to reject claims under §§ 101 and 115 for improper inventorship).

* * *

While there is no dispute that through the AIA Congress converted our patent system to a first-to-file model and made correction of inventorship easier, it did not intend to make inventorship inconsequential. The principle that a valid patent must name all true inventors is cemented within the general legal framework governing patents and the U.S. Constitution. Congress’s abrogation of 35 U.S.C. § 102(f) is simply inapposite when viewed in the context of the literal terms of 35 U.S.C. § 256(b), the Framers’ mandate to Congress with respect to patents, the requirements of 35 U.S.C. § 101, and long-standing jurisprudence.

IV. Fortress’s warnings about the potential fallout from the Decision are unfounded.

A. Fortress’s meager attempts to provide Huang notice undercut its exhortations.

While Fortress conceded that it neither provided notice to Huang, scant mention is made of Fortress’s efforts to do so. This paucity reflects the record.

Critically, § 256(b) requires only “notice” to “parties concerned.” Yet Fortress never argued that it

undertook reasonable efforts to locate and provide notice such that it satisfied the statute by giving Huang constructive notice. Instead, Fortress asserted that, because Huang did not provide his contact information to YD, it could not locate him. *See* Pet. App. at 4a. Aside from its limited outreach to YD, Fortress identified no additional measures to find Huang to provide him with actual notice.

In addition, Fortress, itself, has now proven that its efforts to provide Huang notice and comply with § 256(b) were perfunctory. In its petition for rehearing to the Federal Circuit, Fortress announced that after the Decision issued on April 2, 2026 it “renewed its efforts to find Huang and was successful in doing so.” Fortress further noted that it sought to correct inventorship of the patents-in-suit under § 256(a). Fortress’s filings with the USPTO to support that request show that, within eight days, Fortress located Huang and obtained a written statement from him. Thus, contrary to Fortress’s assertions that it “could not find Huang,” *see* Pet. at 11, it simply did not find him during the proceedings below.

Fortress’s omission of Huang as a co-inventor when it applied for the patents-in-suit, its failure to investigate and correct inventorship in the years leading up to this action, and its minimal efforts to locate Huang while the litigation was pending are extraordinary. They do not warrant further review of Fortress’s purported failure to meet § 256(b)’s notice requirement.

B. Congress has provided several remedies to correct improper inventorship.

The Patent Act enables patentees to name proper inventors—even when omitted inventors cannot be found—both before and after a patent issues.

During prosecution of a patent application before the USPTO, § 116 specifically provides that if a joint inventor “cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself and the omitted inventor.” 35 U.S.C. § 116(b); *see also* 35 U.S.C. § 115(d) (allowing substitute inventor statements for individuals who are deceased, incapacitated, or cannot be found after diligent effort). The USPTO Director may also permit the application to be amended to add an omitted inventor “under such terms as he prescribes.” 35 U.S.C. § 116(c). Nothing in the Decision subjects these USPTO procedures to attack or renders them unavailable. *Cf.* Pet. at 16. Rather, it encourages patentees to identify all proper inventors at the outset and to exercise reasonable efforts in locating them.

Once a patent issues, Fortress does not assert that § 256 constitutes the only means to correct inventorship. It does not because it cannot. For example, Fortress never attempted to seek correction under 35 U.S.C. § 251. *See* MPEP § 1412.04 (instructions that § 251 can be used to correct inventorship where § 256 is inadequate). Consequently, contrary to Fortress’s suggestion, the Decision does not hold that “patents are permanently

invalid when an agreed co-inventor cannot be located.” Pet. at 10. Rather, it only makes unavailable one of many remedies Congress provided to correct improper inventorship when the patentee does not satisfy the requirements of that remedy.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

Heather B. Repicky
Counsel of Record
BARNES & THORNBURG LLP
One Marina Park Drive,
Suite 1530
Boston, MA 02210
(617) 316-5317
hrepicky@btlaw.com

D. Randall Brown
BARNES & THORNBURG LLP
888 S. Harrison Street,
Suite 600
Fort Wayne, IN 46802

Dana Amato Sarros
BARNES & THORNBURG LLP
One N. Wacker Drive,
Suite 4400
Chicago, IL 60606

Attorneys for Respondent