

IN THE SUPREME COURT OF THE UNITED STATES

No. \_\_\_\_\_

COMET TECHNOLOGIES USA, INC., ET AL.,  
*Applicants,*

v.

XP POWER, LLC,

*Respondent.*

ADVANCED ENERGY INDUSTRIES, INC.,

*Intervenor-Respondent.*

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**APPLICATION TO THE HON. ELENA KAGAN FOR AN EXTENSION  
OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF  
CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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## **CORPORATE DISCLOSURE STATEMENT**

Comet Holding AG (a publicly held corporation) is the parent corporation of Comet AG, Yxlon International GmbH, and Comet Technologies USA, Inc. Comet Holding AG owns 100% of Comet AG, Yxlon International GmbH, and Comet Technologies USA, Inc.

Pursuant to Supreme Court Rules 13.5, 30.2, and 30.3, Petitioners Comet Technologies USA, Inc., Comet AG, and Yxlon International GmbH (“Petitioners”) respectfully request that the time to file a petition for a writ of certiorari in this matter be extended for 20 days, to and including November 2, 2026. Unless an extension is granted, the petition will be due on October 13, 2026. *See* S. Ct. R. 30.1 (extending 90-day deadline to account for Columbus Day holiday). Petitioners have sought an extension at least ten days before that date. *See* S. Ct. R. 13.5.

1. A jury found that Respondents had misappropriated Petitioners’ trade secrets and awarded \$40 million in damages to Petitioners. On July 14, 2026, the Ninth Circuit issued a published opinion reversing and remanding for a new trial. *See* Exhibit 1. It held that one of the district court’s jury instructions was erroneous and that Petitioners (as appellees) had failed to show that the error was harmless. Judge Bumatay dissented on the ground that the instructional error was harmless. The Ninth Circuit also issued a separate memorandum disposition affirming the exclusion of certain evidence under Federal Rule of Evidence 403. *See* Exhibit 2.

2. The district court had jurisdiction under 28 U.S.C. § 1331 and 18 U.S.C. § 1836(c), and the Ninth Circuit had jurisdiction under 28 U.S.C. § 1291. This Court has jurisdiction under 28 U.S.C. § 1254(1).

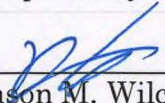
3. This case presents an important question of appellate procedure: when a jury instruction is erroneous, who has the burden on appeal for harmless error? The Ninth Circuit, standing alone, places the burden on the appellee defending the judgment to show that the instructional error was harmless. *See* Exhibit 1 at 16; *BladeRoom Grp. Ltd. v. Emerson Elec. Co.*, 20 F.4th 1231, 1243–44 (9th Cir. 2021).

That rule conflicts with guidance from this Court that the burden should be on the appellant to show that the error was *not* harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009). It also diverges from the majority of other circuits, which have followed the Court’s guidance. *See, e.g., A.K. ex rel. Kocher v. Durham Sch. Servs., L.P.*, 969 F.3d 625, 630 (6th Cir. 2020). This issue extends beyond the trade-secrets dispute here and impacts when an erroneous jury instruction requires retrial in civil cases writ large.

4. Good cause exists for an extension due to counsel’s substantial obligations in other matters between now and the petition’s due date. Among other obligations, Jason Wilcox, counsel of record for Petitioners, has a bench trial followed by a jury trial in the District of Delaware, which together will last several weeks in September and early October. *See Qualcomm Incorporated et al v. ARM Holdings PLC*, No. 1:24-cv-00490-MN (D. Del.).

For the foregoing reasons, Petitioners respectfully request that an order be granted extending the time to file a petition for a writ of certiorari for 20 days, up to and including November 2, 2026.

Respectfully submitted,

  
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September 3, 2026