

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

INTERNATIONAL MEDICAL DEVICES, INC., MENOVA
INTERNATIONAL, INC., JAMES ELIST,

Applicants

v.

ROBERT CORNELL, AUGMENTA, LLC, CORNELL COSMETIC UROLOGY LLC, DAVID LOUIS
NICHOLS, HUCK MEDICAL TECHNOLOGIES INC., HANS MISCHÉ, HANS MISCHÉ LLC,
RUN WANG, ROBERT J. CORNELL, M.D., P.A., RICHARD B. FINGER,

Respondents

**APPLICATION TO THE HON. JOHN G. ROBERTS, JR.
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 FEDERAL CIRCUIT**

Pursuant to Supreme Court Rule 13(5), International Medical Devices, Inc.,*
Menova International, Inc.,† and James Elist (collectively, “IMD”) hereby moves for
an extension of time of 60 days, to and including December 14, 2026, for the filing of
a petition for a writ of certiorari. Unless an extension is granted, the deadline for
filing the petition for certiorari will be October 15, 2026. *See* Sup. Ct. R. 13(3).

In support of this request, Applicant states as follows:

* International Medical Devices, Inc. has no parent corporation, and there is no publicly held company that owns 10% or more of its stock.

† Menova International, Inc. has no parent corporation, and there is no publicly held company that owns 10% or more of its stock.

1. The United States Court of Appeals for the Federal Circuit issued its initial decision in this case on April 17, 2026 (Exhibit 1). Applicants filed a timely petition for rehearing, which the Federal Circuit denied on July 17, 2026 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. This case concerns whether the Seventh Amendment and Rule 50 of the Federal Rules of Civil Procedure allow the Federal Circuit to set aside a jury verdict of trade secret misappropriation by discounting testimony the jury chose to credit, reweighing the trial evidence, and resolving disputed facts based on a cold appellate record.

3. In this case, a jury—after a nine-day trial—found that Defendants misappropriated four trade secrets of IMD relating to improvements to the Penuma cosmetic penile implant, the only FDA-cleared device of its kind, and obtained two patents based on the secret information they learned from training with IMD’s founder, Dr. James Elist. The district court, which lived with this case for over five years, denied judgment as a matter of law (JMOL).

4. Whether information constitutes a trade secret is a question of fact. The Federal Circuit acknowledged that IMD’s technical expert testified that the internal-pockets trade secret “was not generally known or provided in the prior art references,” then declared that this testimony “cannot support the verdict” because the expert had not adequately explained how it squared with a prior patent’s disclosure. The Federal Circuit stated there was “no testimony” that cosmetic and therapeutic implants present different problems, though defendant Dr. Cornell admitted the opposite and

experts explained the distinction. The Federal Circuit held that one of the trade secrets—an instrument supply list—lost its secrecy because it was emailed without confidentiality markings—an argument Defendants never made, and one that ignores the NDAs governing both recipients. And the Federal Circuit found “no evidence” that Dr. Elist contributed the differential-hardness configuration that was claimed in the patents defendants filed based on what they learned from him, even though Dr. Elist explicitly testified that he had provided this information to defendants. This is precisely the evidence-weighting the Seventh Amendment and *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000) forbid.

5. The Federal Circuit’s practice in reviewing jury verdicts conflicts with other courts of appeals. Regional circuits, which share jurisdiction with the Federal Circuit in trade secret matters, have held that factual disputes on whether information is a trade secret are for a jury to resolve. *See, e.g., Learning Curve Toys, Inc. v. PlayWood Toys, Inc.*, 342 F.3d 714, 723 (7th Cir. 2003) (reversing grant of JMOL and reinstating jury’s misappropriation verdict; “the existence of a trade secret ordinarily is a question of fact” that is “best resolved by a fact finder after full presentation of evidence from each side”) (internal quotation marks and citation omitted); *Financial Information Technologies, LLC v. iControl Systems, USA, LLC*, 21 F.4th 1267, 1274-75 (11th Cir. 2021) (upholding jury verdict of trade-secret misappropriation; sufficient evidence permitted a reasonable jury to find plaintiff possessed at least one protectable trade secret, and jury could reasonably infer misappropriation from circumstantial evidence); *GlobeRanger Corp. v. Software AG*

United States of America, Inc., 836 F.3d 477, 496-98 (5th Cir. 2016) (affirming denial of JMOL following trade-secret verdict; evidence was sufficient for the jury to find defendant used plaintiff's trade secrets, and weaknesses in plaintiff's proof went "to the weight, not the admissibility" of the evidence and were for the jury to evaluate). Those courts recognize that deference to the fact-finder is especially important in trade secret cases because a "trade secret" is "one of the most elusive and difficult concepts in the law to define." *Learning Curve Toys, Inc.*, 342 F.3d at 723; *see also Syntel Sterling Best Shores Mauritius Ltd. v. The TriZetto Grp., Inc.*, 68 F.4th 792, 801 (2d Cir. 2023) ("The existence of a trade secret, including whether it was adequately identified, is 'a fact-specific question to be decided on a case-by-case basis.'").

6. The Federal Circuit's decision in this case is not an isolated panel decision. In the last two years the court has repeatedly set aside JMOL denials by reweighing evidence—in both patent and trade secret matters. *See Insulet Corp. v. EOFlow, Co. Ltd.*, 176 F.4th 1347 (Fed. Cir. 2026) (setting aside a jury verdict of trade secret misappropriation on the fact question of when the plaintiff should have discovered the theft); *Orange Elec. Co. v. Autel Intelligent Tech. Corp.*, No. 2024-1876, 2026 WL 184341, at *4-5 (Fed. Cir. Jan. 23, 2026) (setting aside a jury verdict finding patents not obviousness); *Smartrend Mfg. Grp. v. Opti-Luxx Inc.*, 159 F.4th 1322, 1334 (Fed. Cir. 2025) (setting aside a jury verdict finding infringement); *Finesse Wireless LLC v. AT&T Mobility LLC*, 156 F.4th 1221 (Fed. Cir. 2025) (setting aside a \$166.3 million verdict because the Federal Circuit deemed the patentee's expert self-

contradictory); *Top Brand LLC v. Cozy Comfort Co.*, 143 F.4th 1349, 1362 (Fed. Cir. 2025) (setting aside a jury verdict finding design patent infringement). Review of the Federal Circuit’s JMOL practice is needed.

7. Applicants’ petition for a writ of certiorari to the Federal Circuit is currently due on October 15, 2026—90 days from the denial of en banc rehearing on July 17, 2026. *See* Sup. Ct. R. 13(3).

8. There is good cause to grant an extension. Between the Federal Circuit’s denial of rehearing in this matter and the current due date of the petition, Applicants’ counsel of record, Nathan S. Mammen, has had substantial briefing obligations, including a brief for attorneys’ fees with accompanied evidence in *AGI SureTrack LLC v. Farmers Edge Inc.*, Case No. 8:22-cv-00275-JFB-SMB (D. Neb.), filed July 24, 2026; an opening brief with a detailed evidentiary submission for exceptional case determination in *AGI SureTrack*, filed August 14, 2026; and additional filings and discovery deadlines in the Eastern District of Texas and Western District of Washington.

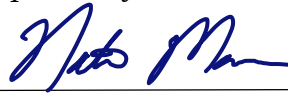
9. In addition, Applicants’ counsel of record has substantial upcoming obligations including preparing for and appearing for a jury trial in *CardWare Inc. v. Google LLC*, Case No. 7:24-cv-00278-DC-DTG (E.D. Tex.), scheduled for November 2-7; an opposition to a motion to dismiss in *Malkie Innovations Ltd. v. Abbott Labs. Inc.*, Case No. 2:26-cv-00597, to be due October 23, 2026; a reply brief in *AGI SureTrack*, due October 23, a response brief in *Attia v. United States*, Case No. 26-2045 (Fed. Cir.) (opening brief expected on October 30, 2026).

10. Applicants thus request a modest extension to prepare a petition that fully addresses the important issues raised by the decision below and that frames those issues in a manner that will be most helpful to the Court.

WHEREFORE, for the foregoing reasons, Applicants requests that an extension of time to and including December 14, 2026, be granted within which Applicants may file a petition for a writ of certiorari.

September 25, 2026

Respectfully submitted,



Nathan S. Mammen

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