

No. 26A\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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MICROSOFT CORPORATION,

*Applicant,*

v.

EXAFER LTD.

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Application 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

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APPLICATION TO THE HONORABLE JOHN G. ROBERTS, JR.,  
CHIEF JUSTICE OF THE UNITED STATES  
AND CIRCUIT JUSTICE FOR THE FEDERAL CIRCUIT

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## **CORPORATE DISCLOSURE STATEMENT**

Microsoft Corporation is a publicly traded corporation whose common stock trades under the ticker symbol MSFT. Microsoft Corporation has no parent corporation, and no publicly held corporation owns 10% or more of Microsoft Corporation's stock.

## APPLICATION FOR EXTENSION OF TIME

In accordance with Rules 13.5 and 30.2 of the Rules of this Court, Applicant Microsoft Corporation respectfully requests a 60-day extension of time, to and including December 28, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case. The court of appeals entered its judgment on March 6, 2026, and denied a timely combined petition for panel rehearing and rehearing en banc on July 27, 2026. Unless extended, the time for filing a petition for a writ of certiorari will expire on October 26, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). The opinion of the court of appeals is reported at *Exafer Ltd. v. Microsoft Corp.*, 169 F.4th 1089 (Fed. Cir. 2026), and is attached at App., *infra*, 1a-9a. The order denying panel rehearing and rehearing en banc, which is unreported, is attached at App., *infra*, 10a-11a.

1. The Patent Act entitles a plaintiff who proves infringement to recover compensatory damages, “in no event less than a reasonable royalty for the use made of the invention by the infringer \* \* \*.” 35 U.S.C. § 284. This Court’s longstanding precedents prohibit patentees from using patent rights to claim the full value of devices, processes, etc., in which their inventions are only a part. See, *e.g.*, *Garretson v. Clark*, 111 U.S. 120, 121 (1884). Following that rule, the Federal Circuit has long required plaintiffs seeking a reasonable royalty to identify a royalty base that excludes non-infringing parts or activities, unless a plaintiff proves the infringement proximately caused non-infringing sales or solely caused the entire market value.

See, e.g., *VirnetX, Inc. v. Cisco Systems, Inc.*, 767 F.3d 1308, 1326–1328 (CAFed 2014).

2. In this case, Respondent owns patents covering methods for increasing network efficiency. Respondent claims that Applicant’s cloud-computing service (Microsoft Azure) includes features that infringe the patents and that enable Applicant to host more virtual machines per Azure server. Despite conceding that Applicant’s virtual machines do not themselves infringe Respondent’s patents, Respondent’s expert witness used Applicant’s virtual-machine revenues as the royalty base for calculating a royalty of more than \$500 million. The district court excluded the expert’s testimony, finding the royalty base violates the Federal Circuit’s precedents requiring patentees to apportion between infringing and non-infringing products and uses. The court then granted Applicant summary judgment.

3. A panel of the Federal Circuit (Moore, C.J., joined by Taranto and Stoll, JJ.) reversed in part, vacated in part, and remanded. The court concluded that a royalty base can include non-infringing products and uses whenever the plaintiff demonstrates a mere “causal connection” between infringing and non-infringing products and uses. The panel replaced the settled requirement of proximate (or sole) causation with a mere but-for causal connection. Under the new rule, a royalty base may include non-infringing products whenever the plaintiff shows any causal link to the infringement. Applying the new standard, the court found that Respondent’s expert articulated a causal connection, insofar as the alleged infringement of Respondent’s patents enabled Applicant “to sell more virtual machines without the

need for additional network infrastructure.” According to the court, “[t]his methodology is tethered to the patented invention and does not expand [Respondent’s] patent monopoly to unpatented technology.”

4. The Federal Circuit’s stark and sudden departure from its prior precedents on patent damages, which had faithfully implemented this Court’s longstanding rules on apportionment, as well as the statutory text of Section 134, presents important questions that warrant further review. Because of the Federal Circuit’s exclusive jurisdiction over patent appeals, the conflict among Federal Circuit precedents on the proper standard for including non-infringing products in the royalty base is the kind of conflict this Court can and should resolve. As amici in support of rehearing persuasively argued below, the consequences of loosening the strict requirements for patentees seeking a reasonable royalty have nationwide importance. Because Congress decided that a reasonable royalty is the minimum damage award in every case of infringement, the panel’s rewriting of the rules for determining a royalty base will matter in every case of infringement.

5. Applicant respectfully requests a 60-day extension of time to file the petition in this case. Applicant retained the undersigned counsel to assist with the preparation of a petition for certiorari only recently. Counsel have been familiarizing themselves with the record and issues while simultaneously handling other pressing obligations for other clients, including: (1) participating in oral argument in *Kuentz v. CACI Int’l Inc.*, No. 25-7171 (CADDC), held September 10, 2026; (2) preparation for oral argument in *Hamburg Sudamerikanische Dampfschiffahrts-Gesells v. FMC*,

No. 25-1156 (CADC), scheduled for October 16, 2026; (3) preparation of the appellant reply brief in *Kuraray America, Inc. v. Sekisui Chemical Co., Ltd.*, No. 26-1934 (CAFed), which is due October 7, 2026; (4) preparation of the appellee brief in *Multimedia Technologies Pte. Ltd. v. LG Electronics Inc.*, No. 26-1705 (CAFed), which is due October 13, 2026; (5) preparation of the appellee brief in *Monolithic Power Systems, Inc. v. Reed Semiconductor Corp.*, No. 26-1598 (CAFed), which is due October 21, 2026; and (6) preparation of the appellant reply brief in *Trove Brands, LLC v. CamelBak Products, LLC*, No. 26-1293 (CAFed), which is due October 26, 2026.

6. For all these reasons, Applicant respectfully requests that the time within which to file a petition for a writ of certiorari be extended by 60 days, to and including December 28, 2026.

Respectfully submitted,

s/ Bryan Killian

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