

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

NATURAL ALTERNATIVES INTERNATIONAL, INC.,

Petitioner-Plaintiff,

v.

ANDREI IANCU, Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office,

Respondent-Intervenor.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

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Natural Alternatives International, Inc.

RULE 29.6 STATEMENT

Petitioner, Natural Alternatives International, Inc., is a publicly traded company and no publicly held company owns 10% or more of its stock.

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

Pursuant to Rules 13, 22 and 30 of the Rules of the Supreme Court of the United States, petitioner-plaintiff, Natural Alternatives International, Inc. ("NAI") respectfully requests an extension of time of 60 days up to, and including February 28, 2019, to file a petition for a writ of certiorari to the U.S. Court of Appeals for the Federal Circuit to review that Court's decisions in *Nat. Alternatives Int'l, Inc. v. Iancu*, 904 F.3d 1375 (Fed. Cir. 2018), and *Nat. Alternatives Int'l, Inc. v. Iancu*, 738 F. App'x 1016, 2018 WL 4697147 (Fed. Cir. 2018) (copies attached as Exhibits 1 and 2). The Federal Circuit issued its judgments on October 1, 2018 (copies attached as Exhibits 3 and 4). NAI's petition is currently due December 30, 2018. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

This case presents a substantial and important questions of federal patent law. The issues in the Federal Circuit were whether, under 35 U.S.C. § 120, a patent owner may change priority in an application without affecting the priority of applications that have already vested priority and whether the Patent Trial and Appeal Board erred in denying two NAI patent priority back to original filings by failing to determine that priority under 35 U.S.C. § 120 is determined at the time of filing and is not revoked by later amendments to a different application. The Federal Circuit decided those issues adverse to NAI. The two decisions erroneously

interpreted 35 U.S.C. § 120, departed from the accepted and usual course of judicial proceedings in failing to base an affirmance of an agency action on the record, and contravened established patent and property law.

An extension of time for filing a petition for certiorari is warranted. An extension to February 28, 2019 will allow NAI sufficient time to fully address the complex patent, factual, and procedural issues presented by the Federal Circuit decisions. In addition, counsel for petitioner has an oral argument in an appeal before the Federal Circuit scheduled for January 7, 2019, in which NAI is the appellant. That case may impact the decision regarding the petition for a writ of certiorari because the patents share similar or identical disclosures. Further, counsel for NAI has a brief due on January 2, 2018, in a motion to dismiss based on the Foreign Sovereign Immunities Act in U.S. District Court for the Southern District of New York and a court conference on January 4, 2019, which will require preparation and travel. These concurrent matters will interfere with the preparation and submission of the certiorari petition.

The government and counsel for respondent-intervenor do not oppose the requested extension. This is NAI's first request for an extension of time, and no extensions of time have been granted.

Accordingly, NAI respectfully requests the Court grant this application for an extension of time, up to and including February 28, 2019, to file a petition for a writ of certiorari.

Dated: December 13, 2018

Respectfully submitted,

/s/ Scott A.M. Chambers

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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2018, I served this application by electronic mail and first class mail on:

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