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OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

No. 24-1142

In The
Supreme Court of the United States

TARUN N. SURTI,

Petitioner,

v.

FLEET ENGINEERS, INC.,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Federal Circuit**

PETITION FOR WRIT OF CERTIORARI

TARUN N. SURTI, Pro Se
Petitioner
5928 Westheimer Drive
Brentwood, TN 37027
(615) 812-6164
vflaps@gmail.com

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

This is a petition for “Writ of Certiorari” authorized by 28 U.S.C. §1651(a) because this Court has jurisdiction over several issues that were determined adversely by the United States Court of Appeals for the Federal Circuit, which jeopardized the poorly funded individual inventors, lacking legal intelligence, “exclusive rights to their inventions” granted under 35 U.S.C. §271 and guaranteed by the U.S. Congress under Article I, Section 8, Clause 8 of the United States Constitution.

The questions presented are:

1. Whether the Court erred in denying proper compensation, including “Cease and Desist order”, requested by the patentee.

2. Whether the Court erred when it granted a “non-infringement” judgment under “Doctrine of equivalent” by **relying on non-infringing elements** while neglecting the undisputable intrinsic evidences of infringing elements.

3. Whether the Court erred when it punished non-related third party, such as Mudguard Tech. LLC, because of a public notice published by a patent owner to protect his rights required under 35 U.S. Code §287.

4. Whether the Court erred when it wrongly penalized Mudguard Tech. LLC instead of penalizing Fleet for the “Tortious Interference with Business Relations (Michigan Law)” knowing that Great Dane

QUESTIONS PRESENTED – Continued

Trailers was Mudguard's customer when Fleet interfered with Mudguard business relationship.

Therefore, the Court needs to settle these issues to protect the rights of poorly funded small inventors in the USA.

PARTIES TO THE PROCEEDING

Petitioner Tarun Surti was the Defendant-Appellant in the United States Courts of Appeal for the Federal Circuit Case No. 2022-2001 and 2018-2351

The Respondent, Fleet Engineers, Inc., was the Plaintiff-Appellant in the United States Courts of Appeal for the Federal Circuit Case No. 2022-2076 and Plaintiff-Appellee in the United States Courts of Appeal for the Federal Circuit Case No. 2022-2001 and 2018-2351.

Respondent, Fleet Engineers, Inc. was the Plaintiff and Petitioner Tarun Surti and Mudguard Technologies, LLC were Defendant in the U.S. District Court of Western District of Michigan, Southern Division.

STATEMENT OF RELATED CASES

- *Fleet Engineers, Inc. v. Tarun Surti*, No. 2022-2001, 2022-2076, U.S. Court of Appeals for the Federal Circuit, judgement entered August 15, 2023
- *Fleet Engineers, Inc. v. Tarun Surti*, No. 2018-2351, U.S. Court of Appeals for the Federal Circuit, judgement entered February 25, 2019
- *Fleet Engineers, Inc. v. Mudguard Technologies, LLC, and Tarun Surti*, No. 1-12-CV-1143, U.S. District Court of Western District of Michigan, Southern Division, judgement entered June 17, 2022

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING.....	iii
STATEMENT OF RELATED CASES.....	iii
OPINIONS BELOW.....	1
JURISDICTION.....	1
RELEVANT RULES AND STATUTE.....	2
STATEMENT OF THE CASE.....	2
1 – CEASE AND DESIST ORDER	8
2 – INFRINGEMENT UNDER DOCTRINE OF EQUIVALENT	10
3 – INDUCED AND CONTRIBUTORY IN- FRINGEMENT	16
4 – PETITIONER’S RIGHTS UNDER 35 U.S.C. §287	17
5 – PROPER DAMAGE AWARD	19
6 – WILLFUL, WANTON, WRONGFUL CON- DUCT	24
7 – REIMBURSEMENT OF ATTORNEY FEES	27
REASONS FOR GRANTING THE PETITION ...	28
CONCLUSION.....	29
 APPENDIX	
Circuit Court Opinion, August 15, 2023	App. 1
District Court Order, June 17, 2022.....	App. 28

TABLE OF CONTENTS – Continued

	Page
District Court Order, October 6, 2021.....	App. 34
District Court Order, February 25, 2021	App. 36
District Court Order, March 25, 2020.....	App. 46
Circuit Court Opinion, February 25, 2019.....	App. 51
District Court Opinion and Order, June 8, 2017.....	App. 65
Circuit Court Order Denying Rehearing, Sep- tember 21, 2023.....	App. 96

TABLE OF AUTHORITIES

	Page
CASES	
<i>Bio-Rad Lab's, Inc. v. 10X Genomics, Inc.</i> , 967 F.3d 1353 (Fed. Cir. 2020)	9
<i>Commil USA, LLC v. Cisco Systems, Inc.</i> , 575 U.S. 632.....	24
<i>Disc Disease Solutions, Inc. v. VGH Solutions, Inc.</i> , 888 F.3d 1256 (Fed. Cir. 2018).....	14
<i>Erickson v. Pardus</i> , 551 U.S. 89 (2007).....	15
<i>Graver Tank & Mfg. Co. v. Linde Air Products Co.</i> , 339 U.S. 605 (1950)	11
<i>SRI Int'l, Inc. v. Cisco Sys., Inc.</i> (Fed. Cir. 2021)	22
<i>Warner-Jenkinson v. Hilton Davis Chemical Co.</i> , 520 U.S. 17 (1997)	12
STATUTES AND RULES	
Civil Rule 8	14
28 U.S. Code §1254(1).....	2
28 U.S. Code §1651(a).....	2
28 U.S. Code §2106	2
35 U.S. Code §271(a).....	6, 8, 24, 27, 28
35 U.S. Code §287	6, 17, 18, 21

PETITION FOR WRIT OF CERTIORARI

Petitioner, Tarun Surti, respectfully prays that a writ of certiorari issue to review the below judgment of the United States Court of Appeals for the Federal Circuit in this case.



OPINIONS BELOW

The published opinion of the U.S. Court of Appeals for the Federal Circuit is reported at:

- *Fleet Engineers v. Mudguard*, Tech. No. 2022-2001-2076 (Fed. Cir. Aug. 15, 2023)
- *Fleet Engineers, Inc. v. Mudguard Technologies, LLC*, 761 Fed.Appx. 989 (Fed. Cir. 2019)



JURISDICTION

The judgment of the court of appeals was entered on August 15, 2023. A petition for rehearing was denied on September 21, 2023. Petitioner filed a petition for writ of certiorari within 90 days from the denial of “timely filed petition” for rehearing. Petitioner requested an extension of time to file “petition for writ of certiorari” on December 8, 2023, Application No. 23A562, that the Chief Justice, who on December 18, 2023, extended the time to and including February 18,

2024. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

RELEVANT RULES AND STATUTE

28 U.S.C. §2106 – Determination – The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

Federal Rule of Procedure 52 reads as follows:

- (a) Harmless Error. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.
- (b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

STATEMENT OF THE CASE

This is a petition for “Writ of Certiorari” authorized by 28 U.S.C. §1651(a) because this Court has jurisdiction over several issues that were determined adversely by the United States Court of Appeals for the Federal Circuit, which are against the “Fundamental

Rights of American Patent Owners” that needs correction.

There are no cases where a Court has granted “non-infringement” by ignoring the undisputable intrinsic infringing-elements instead purely relying on non-infringing elements. Therefore, this Court needs to reestablish the criteria of “Infringement”.

The Respondent, Fleet Engineers Inc. (a major corporation), brought this lawsuit against the Petitioner, a poorly funded and legally-moron inventor-entrepreneur, and Mudguard Technologies, LLC on October 19, 2012 asking the Court for a declaratory judgment of (I) Non-Infringement, (II) Invalidity of Patent, and (III) Tortious Interference with Business Relations (Michigan Law).

The Petitioner is an individual owner of utility patent no. RE 44,755 (ECF No. 193-2 – PageID 2059-2068), formally 8,146,949 (ECF No. 1 – PageID 13-21), and a member of small group of “poorly funded and legally-unfamiliar individual inventors” in the USA, manufacturer of a competitive V-Flap brand aerodynamics mud flaps who was forced into a lengthy and expensive litigation by the Respondent, who with a premeditative intent to steal his patent rights knew the fact that neither Petitioner nor his company could afford the litigation.

No individual patent owners in the U.S.A., like the Petitioner, should be dragged by a Corporate infringer, like the Respondent, in defending his/her “patent’s exclusive rights” for

fourteen (14) years, out of twenty (20) years, only to receive a net damage award of \$25,713 (email from Fleet dated Nov. 17, 2023) against ten million dollars in revenue generated by the Respondent's unauthorized use of Petitioner's patent.

PHILIP W KLINE – Expert Report dated May 4, 2015		
FIGURE 9 – LOST PROFIT FROM LOST SALES		
\$366,001	100.0%	Lost Sales
\$(186,057)	50.8%	Total Incremental Expenses
\$179,944	49.2%	Lost Profit from Lost Sales
DAMAGE AWARDED TO FLEET (email from Fleet dated Nov. 17, 2023)		
\$179,944	49.2%	Lost Profit from Lost Sales
\$15,580	4.3%	Attorney's fees – Awarded by the Court
\$195,524	53.4%	Total Damage Awarded to Fleet
NET DAMAGE AWARDED TO SURTI		
\$(195,524)	53.4%	Total Damage Awarded to Fleet
\$(23,952)	12.3%	Post Judgment Interest as of 11/17/2023
\$228,000	4.0%	Surti Judgement against Fleet at 4%
\$17,189	7.5%	Post Judgment Interest as of 11/17/2023
\$25,713	0.5%	NET TOTAL Damage Awarded to Surti

FLEET SALES AND PROFIT		
\$10,043,911	100.0%	Fleet Sales from 2012 to 06/30/2021
\$4,941,604	49.2%	Fleet net profit based on 49.2%

Respondent was using the profit it generated from the sale of infringing mud flaps, while Surti, a small inventor and businessman, not only had to borrow financial resources to defend the lawsuit, initiated by the Respondent, but also had to compete with Respondent infringing Aero-Flap brand mud flaps. Surti is the owner of '755 patent and its manufacturing rights but because of these double whammy, Surti continues to suffer an irreparable harm, therefore, Surti is not only entitled to a "Cease and Desist Order to protect the Inventors exclusive rights to their inventions" that could allow him to freely negotiate a proper compensation for the use of his patent rights. Respondent confirmed through their patent attorney¹ (FLEET000163) and knew that Surti design was a game changer that offered Respondent unique advantages to compete and monopolize with 49.2% profit margin against 0.09% profit margin (10% markup) available in traditional market place² (FLEET000172).

¹ See email from Walter Hill dated May 27, 2010 – "No formal update from them, although I had a telephone conversation that made me feel like they were leaning toward the opinion that they saw the holes in the Anderson Patent."

² See email from Walter Hill dated May 19, 2010 – "The real problem is the 45 brokers that are bringing in container loads of them from China and trying to make 10 points flooding the

It is therefore, Surti is entitled to the portion of 40.2% extra profit Respondent generated because of the unauthorized use of Surti's patent.

The validity of Petitioner's patent no. '755 as well as the fact that Respondent has been ignoring the 35 U.S.C. §271(a) from day one and has continued to sell the infringing products even after Jury's verdict of infringement, without a permission from the Petitioner, is not an issue.

What is at issue is the Court's adverse decision to deny the Petitioner his "Exclusive Rights of Cease and Desist", a confirmation of "infringement under Doctrine of Equivalent" by Respondent's Group-B Aero-Flap mud flaps, a "Proper Compensation" for the unauthorized use of his patent rights, competing against his V-Flap brand mud flaps in violation of "Confidentiality and Non-Compete Agreement" (SURTIO00132-133), and penalizing him and his company for posting a notice, required under 35 U.S.C. §287, to the public that the infringer, Respondent, was properly notified of the infringement and have continued the infringing activities thereafter.

The fundamental purpose of our patent laws is to promote innovation by granting inventors a period of exclusivity for their patented inventions. In this case, the Petitioner had developed a nonobvious V-Flap brand mud flap and patented its design under Patent no. '755. The novelty mud flap has two stage separation

market." . . . **"Your product is an aerodynamic sell, not a mudflap sell."**

elements providing tri-part benefits to the Semi-Trucking Industry. Its two stage separation design separates air water and debris within the channels and directs the water and debris to the ground. Its aerodynamic design saves fuel, hydrodynamic design reduces splash on the road, and structural design prevents curl-up and provides longevity, especially during extreme weather condition.

This Court is the final hope for the Pro Se Petitioner/Defendant to secure the **“Defenseless Patent Owners Rights in America”** guaranteed under our patent laws that has been aggressively violated by the “Corporate Bullies, such as the Respondent” because they are being encouraged by our judicial process that accidentally favors the patent infringer, represented by team of attorneys, at the cost of prejudicing the poorly funded and legally-unfamiliar patent owners, like the Petitioner, who are forced to defend the litigation as Pro Se.

Upon confirmation of an infringement, as in this case by Respondent Group-A mud flaps, the Court should not force random royalty but to allow an opportunity to the patent owners, such as the Petitioner, to freely negotiate a **proper compensation** for the use of their patent rights by issuing an immediate “CEASE AND DESIST” order to respect the “Inventors exclusive rights to exclude others from making, using, offering for sale, or selling their invention throughout the United States”.

Did the Court made legal errors when it (1) denied issuing the Cease and Desist order requested by Petitioner, (2) granted a “non-infringement” by Group-B mud flaps in violation of “Doctrine of Equivalent”, (3) denied Petitioner claim of Induced and Contributory Infringement, (4) denied a decision whether the Petitioner was engaged in protecting his patent rights or engaged in “Tortious Interference with Business (Michigan law)”, (5) denied proper damage award, (6) denied triple damages because of the Respondent willful, wanton, wrongful conduct, and (7) denied reimbursement of \$150,000 in attorney fees?

1 – CEASE AND DESIST ORDER (Case No. 22-2001 – Paragraph V – PageID App. 22-25)

No individual patent owners in the U.S.A., like the Petitioner, should loose fourteen (14) years out of twenty (20) years in litigating and defending his/her “patent’s exclusive rights” to receive a net damage award of \$25,713, a solid proof that Surti, a small inventor and businessman, has continued to suffer an irreparable harm as a result of Fleet’s willful patent infringement. Surti is the owner of ‘755 patent and its manufacturing rights therefore he is entitled to receive a proper compensation from the 49.2% or approx. 4.9 million dollars profit generated by the unauthorized use of Surti’s patent by Fleet.

Respondent has been ignoring the 35 U.S.C. §271(a) from day one and has continued to sell the infringing products even after Jury’s verdict of infringement and

without a permission from the patent holder, the Petitioner. Once an infringement, as in this case by Respondent Group-A mud flaps, is confirmed then the Court should not force but to allow an opportunity to the patent owners, such as the Petitioner, to freely negotiate a **proper compensation** for the use of their patent rights by issuing an immediate “CEASE AND DESIST” order to respect the “Inventors exclusive rights to exclude others from making, using, offering for sale, or selling their invention throughout the United States”.

Did the Federal Court erred when it refused to issue “Cease and Desist” and opined that, “the purpose of an injunction is to prevent future infringement. See *Bio-Rad Lab’s, Inc. v. 10X Genomics Inc.*, 967 F.3d 1353, 1377-78 (Fed. Cir. 2020). **There is no evidence in the record that Fleet continues to sell the infringing products.** The Respondent had misinformed the Court that they stopped selling the infringing mud flaps. In reality, Respondent never stopped selling the infringing mud flaps because the attached (email from Fleet dated Nov. 17, 2023) email from Respondent shows that Fleet continued to sell the infringing products even after they informed the Court that they had stopped selling those infringing mud flaps. The Court had made a legal error when it concluded, “It was therefore not an abuse of discretion for the district court to have held that, without evidence of future harm, Surti had not sufficiently established entitlement to the injunctive relief.” (CAFC Case No. 22-2001 – PageID – App. 23-24).

2 - INFRINGEMENT UNDER DOCTRINE OF EQUIVALENT (Case No. 22-2001 - Paragraph II - PageID App. 8-11)

Did the Court erred when it refused the petitioner's argument that "Group B" infringes on Petitioner patent under at least one of the three scenarios? (1) Did the Court made a legal error when it confirms the "non-infringement under Doctrine of Equivalent" by Group B mud flaps? (2) by rejecting Petitioner's claim that "infringement begins at the point of manufacturing", and (3) by rejecting "infringement of claim 19 of the Reissue patent no. 44,755?

a. "Group B" mud flaps infringes under "Doctrine of Equivalent"?

CAFC totally ignored the undisputable evidence

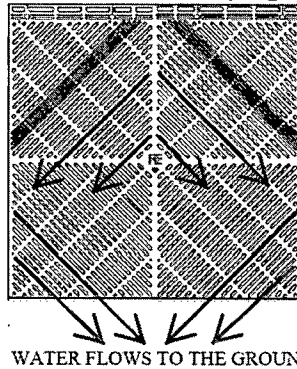


Figure 1-Aero-Flap directs water and debris to the ground

Surti had presented that even the angularly oriented mud flaps still force water and debris towards ground as shown in Figure.1 and not to the side as wrongly stated by Respondent. The Respondent Group-B mud flaps performs substantially the same function in substantially the same way to obtain the same result as the Surti's '755 patent, therefore,

Group B mud flaps infringe under "doctrine of equivalent".

CAFC adversely decided non-infringement of Respondent Group-B mud flaps based on non-infringing elements while neglecting undisputable infringing elements³, a dangerous precedent, in violation of the U.S. patent law that could hurt the “defense arguments” of poorly funded small inventors in the USA. **Therefore, this Court needs to settle the issue of “confirmation of infringement” based on infringing v. non-infringing elements to protect the rights of poorly funded small inventors.**

CAFC made a legal error when it concluded that Group B mud flaps have all the infringing elements but do not direct water and debris towards the ground, therefore, do not infringe Surti’s ‘755 patent under the “doctrine of equivalent”.

CAFC totally neglected undisputable infringing elements that confirms that Respondent mud flaps do direct water and debris towards the ground as taught by Surti’s ‘755 patent (See Figure.1).

In *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 339 U.S. 605 (1950), the U.S. Supreme Court held that a patentee may invoke this “doctrine of equivalent” to proceed against the producer of a device if it performs substantially the same function in substantially the same way to obtain the same result. This is

³ “Under the triple identity test, the difference is insubstantial if the feature in the accused product performs substantially the same function, in substantially the same way, and to yield substantially the same outcome as the limitation articulated in the patent claim.”

often referred to as the Graver Tank “triple identity” test for equivalence.

The Supreme Court enunciated the “all elements” test for equivalence in *Warner-Jenkinson v. Hilton Davis Chemical Co.*, 520 U.S. 17 (1997). Under the “all elements” rule, the doctrine of equivalents must be applied to each individual element of a claim, not to the invention as a whole. It is necessary to show that every element of the patented invention, or its substantial equivalent, is present in the accused product or process.

The doctrine of equivalents is a means by which a holder of a patent may raise a claim of infringement even though each and every element of the patented invention is not identically present in the allegedly infringing product. The purpose of the doctrine is to prevent an infringer from stealing the benefit of a patented invention by changing only minor or insubstantial details of the claimed invention while retaining the same functionality. The essential inquiry in determining equivalency is whether the accused product or process contains elements identical or equivalent to each claimed element of the patented invention.

Respondent’s engineer Mr. Stuart James Anderson⁴ testimonies confirmed that Respondent Group B mud flaps contained all the infringing elements of Group A mud flaps rotated at 45 degrees. Petitioner had submitted undisputable intrinsic evidences that

⁴ (ECF No. 394 – PageID 57-82).

Group B mud flaps performs substantially the same function in substantially the same way to obtain the same result covered under Petitioner's patent no. '755. Group B mud flaps have vanes, channels, slotted through holes, rear-walls, a dual stage separation system, to stop and separate water-debris and directs them towards the ground and not to the side of the mud flap (see Figure.1) as taught by Petitioner's patent no. '755 claims.

(note: Surti is challenging Fleet's unsupported statement, an absolute lies, that has confused the Court, therefore, request Fleet to provide an in-person demonstration to prove their statement that "their mud flap does not force water and debris to the ground".)

b. "Group B" mud flaps "infringement begins at the point of manufacturing".

The Federal Circuit Court totally ignored the undisputable fact that infringement first begins at the point of manufacturing. It is an undisputable fact that Fleet "induced" the mold maker, Viking Tool & Die, and the injection molder, H & S Tool and Die, to manufacture Group a mud flaps only and never submitted a separate proof of manufacturing of Group B mud flaps. It is undisputed fact that Group B mud flaps are nothing but a modified version, by cutting its length, of Group a mud flaps. Therefore, if the Court had followed the Jury's unanimous verdict than both Group A and Group B are directly infringing Surti's '755 patent at the point of manufacturing.

This Court also needs to decide whether the Respondent modification, after being manufactured, of infringing Group-A mud flaps into Group-B mud flaps still constitute an Infringement?

c. “Group B” mud flaps infringes claim 19⁵ of Petitioner’s patent no. RE 44,755.

The Petitioner had filed his second amended counterclaims under FRCP 15 (ECF No. 115) to amend “validity” and “infringement” of Surti’s reissued ‘755 patent and its newly added claims, including claim 19, which was in compliance with Civil Rule 8 and supported by the Federal Circuit decision in *Disc Disease Solutions, Inc. v. VGH Solutions, Inc.*, 888 F.3d 1256 (Fed. Cir. 2018) where it reads, “Declaring that Plaintiff has directly infringed, contributorily infringed, and induced infringement of one or more claims of ‘755 patent, including claim 19”. The Federal Circuit held that the allegations in *Disc Disease* were “enough to provide [defendant] fair notice” because the case “involve[d] a simple technology” and the plaintiff attached copies of the asserted patents and “photos of the product packaging.”

Surti had timely filed his “Defendants’ Second Amended Counter Claims in response to the proposed

⁵ Fleet sought and was granted leave to file an amended complaint, which is the controlling pleading. (ECF No. 99). Fleet did not add any additional claims. Surti filed amended counterclaims, but did not add any new claims. (ECF No. 115) and (ECF No. 255 – PageID 3033).

modified/amended scheduling order filed by Fleet, which was granted by the District Court with consent, “Fleet subsequently moved to amend its complaint to reference the reissued patent, and the district court found that good cause existed to do so.” However, the District Court ignored Surti’s request to amend “validity” and “infringement” of Surti’s reissued “755 patent and its newly added claims, including claim 19.

Surti had identified Claim 19 in his request for declaratory judgment, however, the Court made a legal error when it allowed the second amended complaint of the Respondent while disallowing the second amended complaint of the Petitioner.

The CAFC agreed with Surti in its own opinion (CAFC Case No. 18-2351 – PageID App. 59-60) that suggested that,

“Following the issuance of RE’755, Mr. Surti amended his counterclaim and asserted infringement of “the claims of the [RE]’755 reissue [p]atent.” J.A. 395. And in his summary judgment briefing below, Mr. Surti specifically discussed infringement of claims 1 and 19 of the RE’755 patent.”

“Without deciding infringement as to this claim, we note that at least claim 19 appears to lack each of the limitations that formed the basis for granting summary judgment. Courts are required to liberally construe pleadings filed pro se. Erickson v. Pardus, 551 U.S. 89, 94 (2007). Under this standard, Mr. Surti’s amended counterclaim could be treated as

asserting all newly issued claims of the RE'755 patent, including claim 19, which he specifically argued in his summary judgment briefing."

This Court needs to decide because Respondent Group-B mud flaps have all the elements of claim 19, therefore, does it directly infringes Surti's '755 patent.

3 - INDUCED AND CONTRIBUTORY INFRINGEMENT (Case No. 22-2001 - Paragraph III - PageID App. 11-15)

Induced or contributory infringements should have been decided only after, not before as the Court did, the confirmation of infringement by Respondent Aero-Flap brand Group-A mud flaps. It is an undisputable facts that Fleet "induced" the mold maker, Viking Tool & Die (ECF No. 193-7 - PageID 2115), and the injection molder, H & S Tool and Die (ECF No. 193-9 - PageID 2119), to manufacture Respondent Aero-Flap brand Group-A mud flaps knowing the fact that they infringe Surti's '755 patent. It is also undisputable that Fleet enticed Great Dane Trailers, Inc. in "contributory infringement" when they entered into "an indemnity agreement" (Fleet000963-967) and offered to sell the infringing Aero-Flap brand Group-A mud flaps to be used on their trailers.

4 - PETITIONER'S RIGHTS UNDER 35 U.S.C. §287 (Case No. 22-2001 - Paragraph VI - PageID App. 25-26)

Did the Court err when it prematurely ordered the Petitioner's company, who had nothing to do with the "posting of the Notice" and or of an "interference", to pay the Respondent for their lost sales plus attorney's fees totaling \$195,523.58 (53.4% of gross sales) for "Tortious Interference with Business (Michigan law)"?

- (4.1) The Court stated that Mudguard Tech. LLC is default and cannot raise this issue, however, Surti is not in a default who has preserved his rights to raise this issue.
- (4.2) *In the instant case it is an issue that this Court needs to decide whether Surti posting a public notice, required under 35 U.S.C. §287, be considered as a protection of his patent rights or "Tortious Interference with Business (Michigan law)" because all individual patent owners in the USA are dependent on the clarification of this law.*
- (4.3) In the instant case the "Dismissal without prejudice" is a legal term indicating that charges have been dismissed but can be refiled at some point

by the Petitioner⁶ once the infringement is confirmed. The Court “DISMISSED WITHOUT PREJUDICE”⁷ Respondent claim for tortious interference against Petitioner, Defendant Tarun Surti (ECF No. 255 PageID 3035). Once the infringement was confirmed, Petitioner requested the Court to decide whether Surti had exercised his patent rights by posting a notice, required under 35 U.S.C. §287, warning the public that the infringer, Respondent, was notified of the infringement and have continued the infringing activities thereafter that Respondent’s Aero-Flap mud flaps are in violation of Petitioner’s patent (ECF No. 1 PageID 66).

- (4.4) In the instant case the Petitioner, a patent owner, and not his company, Mudguard Technologies LLC, posted a notice, required under 35 U.S.C. §287, through the personal account of the Petitioner warning the public under Petitioner’s right that the infringer, Respondent, was notified of the infringement and have continued the

⁶ The Respondent had filed a claim of “Tortious Interference with Business (Michigan law)” against the Petitioner as individual and Mudguard Technologies, LLC as a company.

⁷ Therefore, Fleet Engineer’s motion for voluntary dismissal of Count 3 against Surti (ECF No. 243) is GRANTED. Fleet Engineer’s claim for tortious interference against Defendant Tarun Surti is DISMISSED WITHOUT PREJUDICE. (ECF No. 255 – PageID 3035).

infringing activities thereafter in violation of Petitioner's patent.

- (4.5) In the instant case the Respondent in support of their false claim of "Tortious Interference with Business (Michigan law)" cited the Great Dane Trailers Inc. as their customer and failed to disclose to the Court that the Great Dane Trailers Inc. was an active customer (ECF No. 252-2 – PageID 3019-3022) of Mudguard Technologies, LLC and a distributor of Petitioner's V-Flap brand mud flaps long before Respondent approached them and enticed them to purchase Respondent Aero-Flap brand mud flaps by offering "Indemnity Agreement dated December 19, 2012".
- (4.6) In the instant case actually it was Respondent who had engaged in "Tortious Interference with Business (Michigan law)" against Mudguard Technologies, LLC and the Petitioner when it signed an "Indemnity Agreement with Great Dane Trailers" to entice them to purchase Respondent infringing Aero-Flap brand mud flaps.

5 – PROPER DAMAGE AWARD (Case No. 22-2001 – Paragraph IV – PageID App. 16-22)

This Court needs to decide whether the damage award of \$25,713 is proper or not after knowing the fact that Respondent engaged in "Willful

& Egregious Conduct” and knowing that Petitioner had taken necessary steps to protect his patent rights by properly and timely informing the Respondent to stop their infringing activities?

Recently the Respondent submitted (see attached) their calculation that Petitioner should get net of \$25,713 in total damages, including royalty fees, post-interest and attorney’s fees. In contrast, the Court’s adverse decision allowed the Respondent to keep almost ten million dollars plus in sales at 49.2% profit margin while their attorneys earned millions of dollars in legal fees.

- (5.1) The Court failed to consider that Respondent had gathered Petitioner’s proprietary information including parts drawing and patent application under the protection of “Confidentiality and Non-Compete Agreement” dated April 27, 2010 (SURT000132-133) where Article 2 reads, “*Non-Compete Agreement: The Recipient agrees not to solicit, canvas or to engage, directly or indirectly, any business or transaction for any other person, firm, corporation, or business in any manner similar to, or in competition with, the Company or its affiliated or successor business, such business being defined as V-Flap mud flap by Mudguard Technologies, LLC for a period of Seven (7) years from the date of the termination of this contract.*” And Article 8 reads, “*Term: The*

restrictions and obligations contained herein shall continue for a period of seven (7) years from the termination of this contract.”

- (5.2) The Court failed to consider the fact that Petitioner attorney, Edward S. Wright, precisely explained in his email dated September 27, 2012 to the Respondent that their Aero-Flap brand mud flaps are in violation of Petitioner’s patent (ECF No. 1 PageID 62-64).
- (5.3) The Court failed to consider that the Petitioner had exercised his patent rights by posting a notice, required under 35 U.S.C. §287, warning the public that the infringer, Respondent, was notified of the infringement and have continued the infringing activities thereafter that Respondent’s Aero-Flap mud flaps are in violation of Petitioner’s patent.
- (5.4) The Court failed to consider many of the Georgia-Pacific factors that grants additional damage amounts when Petitioner is not only the owner of a patent ‘755 but also a manufacturer of competitive V-Flap brand mud flaps. Respondent knew that Mudguard is only a distributor but falsely claims that Mudguard is a manufacture of V-Flap brand mud flaps.

- (5.5) The Court failed to consider that Respondent made extra ordinary profit because the Petitioner's patent no. '755 prevented competition and allowed Respondent an exclusive marketing opportunities. Petitioner would have made that profit if Respondent had not entered the market not only to compete but also to destroy his ability to compete by dragging him into a lengthy expensive litigation.
- (5.6) The Federal Circuit's recent precedential decision in *SRI Int'l, Inc. v. Cisco Sys., Inc.* (Fed. Cir. 2021) clarified the test for willful infringement. In this decision, the Federal Circuit clarifies that there are two different tests for willfulness and enhanced damages. Willfulness is the lower standard of the two, and requires "no more than deliberate or intentional infringement." While enhanced damages flows from a finding of willfulness it requires egregious conduct on the part of an infringer. The conduct is measured from the date an adjudged infringer has notice of infringement.
- (5.7) Based on the mutual "Exclusive Distribution Agreement" dated July 20, 2010 (FLEET000022-000028) between the Respondent and Petitioner, the average sale price of V-Flap brand mud flaps was agreed at \$12.20 each earning \$5.81 net (47.6%) revenue per mud flap

for petitioner. According the Respondent's expert report by Phillip W Kline the Aero-Flap brand mud flaps sold for an average price of \$18.42 generating \$9.06 in profit (Fleet's Expert Report by Philip W Kline dated May 4, 2015). Petitioner should be compensated for the unauthorized use of his patent minimum of \$5.81 per mud flaps if not the entire \$9.06 profit generated per mud flap. Respondent sold approximately 660,134 mud flaps, therefore, Petitioner should receive minimum of \$3,835,378 in proper compensation instead of \$25,713.

- (5.8) Respondent misstated to the Court that, "Mr. Surti is the active defendant in this matter, and he is a non-practicing entity. He personally owns the '755 Patent and does not manufacture mud flaps covered by the patent. There is no evidence of economic harm to Mr. Surti individually." The truth is Surti not only owns the '755 patent but also owns its manufacturing rights for mud flaps covered under the patent. No individual patent owners in the U.S.A., like the Petitioner, should loose fourteen (14) years out of twenty (20) years in litigating and defending his/her "patent's exclusive rights" to receive a net damage award of \$25,713, a solid proof that Surti, a small inventor and businessman, has continued to suffer an irreparable harm as a result of Fleet's

willful patent infringement. Surti is the owner of '755 patent and its manufacturing rights therefore he is entitled to receive a proper compensation from the 49.2% or approx. 4.9 million dollars profit generated by the unauthorized use of Surti's patent by Fleet.

**6 - WILLFUL, WANTON, WRONGFUL CONDUCT
(Case No. 22-2001 - Paragraph IV - PageID
App. 19-21)**

35 U.S.C. §271 requires the Petitioner to prove that Respondent had knowledge of Petitioner's patent no. '755. The undisputable intrinsic evidences proves that the Petitioner had given multiple warnings, including Cease and Desist, to the Respondent that their Aero-Flap brand mud flaps design infringes Petitioner's patent no. '755 that constitute (a) Infringement of patent (b) induced infringement and (c) contributory infringement.

As explained by the Supreme Court in *Commil USA, LLC v. Cisco Systems, Inc.*, 575 U.S. 632 at 642; "Global Tech requires proof that the defendant knew the acts were infringing." Respondent knew the infringing activities from the day one.

Did the Court err when it rejected award of triple damages when it concluded, against all undisputable evidences of obviousness to PHOSITA, that the infringement was not willful, wanton and egregious?

- (6.1) The Petitioner provided samples of his mud flaps and the brochures to the Respondent that had "PATENT PENDING" warning molded into the mud flaps.
- (6.2) The Petitioner provided his know how and patent pending application under the protection of "Confidentiality and Non-Compete Agreement" because the Respondent had shown extreme concern⁸ about not infringing Andersen's Eco-Flap patent no. 6,851,717 (FLEET000153).
- (6.3) Respondent attorney researched the Petitioner's patent against prior mud flap patents and confirmed its uniqueness that could have provided protection against any infringement claims, especially by Andersen (ECF No. 136).
- (6.4) The patent application US 2011/0049858 A1 was published by the USPTO for opposition on March 3, 2011 that the Respondent knew or should have known.
- (6.5) Petitioner attorney, Edward S. Wright, sent a "cease and desist" letter dated June 28, 2012 (ECF No. 1 PageID 35-36).
- (6.6) Petitioner attorney, Edward S. Wright, precisely explained in his email dated September 27, 2012 to the Respondent

⁸ See email from Walter Hill dated April 21, 2010 - "Are you positive that you're not infringing on Anderson's IP. If you're not please explain how. We want to understand our liability."

that their Aero-Flap brand mud flaps are in violation of Petitioner's patent (ECF No. 1 PageID 62-64).

- (6.7) Petitioner, as a patent owner, and not his company, Mudguard Technologies LLC, announced through the personal account on MailChimp to his list of customers warning them that Respondent's Aero-Flap mud flaps are in violation of Petitioner's patent. (ECF No. 1 PageID 66).
- (6.8) Great Dane Trailers was distributing Petitioner's mud flaps when Respondent approached them with their Aero-Flap brand mud flaps. Great Dane communicated their concern of infringement with the Petitioner, therefore, forced Respondent to provide and "Indemnity Agreement" in case of infringement is confirmed.
- (6.9) In the instant case prior to developing the Aero-Flap brand mud flaps the Respondent gathered, under the protection of "Confidentiality and Non-Compete Agreement", all proprietary information from the Petitioner (SURTI000132-000133), including part drawings for V-Flap brand mud flaps, and access to patent pending application no. 12/552,926. Respondent's patent attorney investigated and confirmed Petitioner patent no. '755 and V-Flap brand mud flaps superiority against prior patents

(FLEET000163) before entering into an exclusive distribution agreement.

- (6.10) Respondent used Petitioner's proprietary information to develop their Aero-Flap brand mud flaps. Aero-Flap brand mud flaps contained each limitation of the Petitioner patent claim or its equivalent, and an element in the Aero-Flap brand mud flaps contain each limitation of the patent claim or its equivalent, and an element in the Aero-Flap brand mud flaps is equivalent to a claim element if the differences between the two are insubstantial to one of ordinary skill in the art. Respondent and their attorney willfully engaged in violation of 35 U.S.C. §271 that states, "whoever without authority makes, uses, offers to sell, or sells any patented invention within the United States during the term of the patent therefor, infringes the patent" (1) directly or under Doctrine of Equivalent, (2) Induced Infringement, and (3) Contributory Infringement.

**7 - REIMBURSEMENT OF ATTORNEY FEES
(Case No. 22-2001 - Paragraph V - PageID
App. 22-25)**

In the instant case did the Court err when it prematurely and falsely awarded the Respondent \$15,579.58 in attorney's fees, however, refused the **Patentee** a reimbursement of \$150,000 in attorney

fees, for decade long litigation, that the Petitioner had incurred?

Did the Court failed to recognize the cost of Pro Se time in litigating the case over a decade, and loss of 14 years of exclusive market opportunity?

This Court has an authority to protect the interest of individual patent owners in the USA who are forced to protect their patent rights as Legally-Moron Pro Se litigator. Should they be compensated for their time defending the uninvited litigation initiated by the Respondent, a willful infringer?

◆

REASONS FOR GRANTING THE PETITION

The question presented in this case are of critical importance to the individual inventors who could not afford lengthy and expensive litigation yet are forced to litigate as a pro se to protect the “Inventors exclusive rights to their inventions”, **especially for small individual inventors in the USA**, granted under 35 U.S.C. §271 and guaranteed by the U.S. Congress under Article I, Section 8, Clause 8 of the United States Constitution that needs correction by this Court.

The CAFC correctly confirmed the infringement by Respondent Group-A mud flaps, however, it adversely decided non-infringement of Respondent Group-B mud flaps based on non-infringing elements while

neglecting undisputable infringing elements,⁹ a legally wrong president, in violation of the U.S. patent law that could hurt the “defense arguments” of poorly funded small inventors in the USA.

Once an infringement, as in this case by Respondent Group-A and Group-B mud flaps, is confirmed then the Court should not force the Patentees, such as the Petitioner, but to allow them an opportunity to freely negotiate a proper compensation for the use of their patent rights by issuing an immediate “CEASE AND DESIST” order to respect the “Inventors exclusive rights to exclude others from making, using, offering for sale, or selling their invention throughout the United States”.

◆

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,

Originally filed: Feb. 16, 2024
Re-filed: Apr. 10, 2024

TARUN N. SURTI, Pro Se
Petitioner
5928 Westheimer Drive
Brentwood TN 37027
(615) 812-6164
vflaps@gmail.com

⁹ “Under the triple identity test, the difference is insubstantial if the feature in the accused product performs substantially the same function, in substantially the same way, and to yield substantially the same outcome as the limitation articulated in the patent claim.”