No. 24-726

IN THE

Supreme Court of the United States

DISH NETWORK L.L.C.,
Petitioner,

v.

DRAGON INTELLECTUAL PROPERTY LLC;
ROBERT E. FREITAS,
FREITAS & WEINBERG LLP,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF THE HIGH TECH INVENTORS ALLIANCE AND THE NATIONAL RETAIL FEDERATION AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether a clear statutory statement is required for an attorney to be held liable for litigation misconduct under an attorneys' fee-shifting statute.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. The decision below deepens a federal-court split as to whether a clear—statement rule restricts awards against attorneys under fee-shifting statutes	4
II. This case presents an opportunity for the Court to clarify the prerequisites for creating new strong-form canons of statutory construction	7
A. Substituting "inherent power" for a fee-shifting statute undermines the separation of powers	9
III. The decision below is wrong; fee awards and other sanctions for unreasonable conduct should be available against an attorney when the attorney is at fault	10
IV. The decision below undermines the patent-litigation fee-shifting-statute that this Court recently reinvigorated in Octane Fitness	13
A. Section 1927 and Rule 11 are not substitutes for § 285	15
CONCLUSION	17

TABLE OF AUTHORITIES

CASES Page(s)

Alcivar v. Enhanced Recovery Co.,
17-CV-2275 (E.D.N.Y. May 20, 2020) 5

Alliance for Good Government v. Coalition for Better Government,
998 F.3d 661 (5th Cir. 2021)..................... 6

Alternative Petroleum Techs. Holdings Corp v. Grimes,
No. 3:20-cv-00040-MMD-CLB (D. Nev. Jul. 25, 2022) 12

Biden v. Nebraska,
143 S.Ct. 2355 (2023)................................ 7

Borowski v. DePuy, Inc.,
850 F.2d 297 (7th Cir. 1988)..................... 10, 11

Chamberlain Grp. LLC v. Overhead Door Corp.,
2:21-CV-00084-JRG, at 10 (E.D. Tex. Apr. 4, 2023) 16

EagleView Techs., Inc. v. Xactware Sols., Inc.,
No. 1:15-cv-07025 (D.N.J. Feb. 16, 2021).... 12

Hospira, Inc. v. Fresenius Kabi USA, LLC,
No. 16 C 0651 (N.D. Ill. Feb. 15, 2022) 16

Hyde v. Midland Credit Mgmt., Inc.,
567 F.3d 1137, 1140–41 (9th Cir. 2009)... 5

In re Crescent City Estates, LLC,
588 F.3d 822, 825 (4th Cir. 2009)............. 4, 6, 9

In re PersonalWeb Techs. LLC,
85 F.4th 1148 (Fed. Cir. 2023) 12

Iris Connex, LLC v. Dell, Inc.,
235 F.Supp.3d 826, 833 (E.D. Tex 2017).. 14

TABLE OF AUTHORITIES—Continued

Page(s)

Neft v. Vidmark, Inc.,
923 F.2d 746 (9th Cir. 1991) 5

Niazi Licensing Corp. v. St. Jude Medical S.C., Inc.,
No. 17-cv-5096 (WMW/BRT)
(D. Minn. Oct. 25, 2021) 17

Nimitz Techs. LLC v. CNET Media, Inc.,
No. 1:22-cv-00413-CFC (D. Del. Nov. 30, 2022) 14

Nogess v. Poydras Center, LLC,
No. 16-15227, at *2 (E.D.La. Jan. 30, 2017) 6

Octane Fitness, LLC v. ICON Health & Fitness, Inc.,
572 U.S. 545 (2014) 9, 10, 16

Ortiz & Assocs. Consulting, LLC v. VIZIO, Inc.,
No. 3:23-CV-00791-N (N.D. Tex. Feb. 27, 2024) 16

Peer v. Liberty Life Assurance Co. of Boston,
992 F.3d 1258, 1263 (11th Cir. 2021) 4, 9

Pfingston v. Ronan Eng'g Co.,
284 F.3d 999, 1006 (9th Cir. 2002) 5

PS Prods. Inc. v. Panther Trading Co. Inc.,
122 F.4th 893, 898 (Fed. Cir. 2024) 9

QuickLogic Corp. v. Konda Techs., Inc.,
No. No. 21-cv-04657-EJD (N.D. Cal. Jul. 12, 2024) 16

TABLE OF AUTHORITIES—Continued

Page(s)

Roadway Express, Inc. v. Piper,
447 U.S. 752 (1980) 2, 4, 7, 9

SAP America, Inc. v. InvestPic, LLC,
3:16-CV-02689-K (N.D. Tex. Mar. 23,
2021) 14

Saxon v. Thomas,
No. 06-2339 (W.D.La. Apr. 12, 2007) 6

Soar Tools, LLC v. Mesquite Oil Tools, Inc.,
No. 5:19-CV-243-H (N.D. Tex. Feb. 9,
2022) 12

Tacoronte v. Cohen,
654 F. App'x 445 (11th Cir. 2016) 11

Thrift v. Estate of Hubbard,
44 F.3d 348 (5th Cir. 1995) 13

Trustees of Columbia Univ. v. Gen Digital Inc.,
No. 3:13cv808 (E.D. Va. Oct. 20, 2023) 12

United States v. Int'l Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., AFL-CIO,
948 F.2d 1338 (2nd Cir. 1994) 15

United States v. Milam,
855 F.2d 739 (11th Cir. 1988) 12

Viavi Sols. Inc. v. Platinum Optics Tech. Inc.,
No. 20-cv-05501-EJD (N.D. Cal. Mar. 19,
2024) 16

TABLE OF AUTHORITIES—Continued

STATUTES AND REGULATIONS Page(s)

42 U.S.C. § 1988 4

42 U.S.C. § 2000e–5(k) 4

RULES

Federal Rule of Civil Procedure 11 15

Notes of Advisory Committee on Rules—
1967 7

TREATISES

10 Fed. Prac. & Proc. Civ. § 2675.4
(4th ed.) 8

5A Fed. Prac. & Proc. Civ. § 1336.2 (4th ed.)
Consequences of Litigation Misconduct—
Parties Sanctionable: Counsel; Law Firms;
Clients 11

OTHER AUTHORITIES

"Trends in attorney fees and sanctions
decisions in 2020 Q4," Thomson Reuters,
April 15, 2021... 17

A. Barrett, Substantive Canons and
Faithful Agency ("Substantive Canons"),
90 B. U. L. Rev. 109, 117 (2010)............ 7, 8, 10

Jeff Montgomery, "Del. Judge Continues
Probe Into Third-Party Patent Suit
Deals," Law360, Nov. 10, 2022................. 14

Ryan Davis, "5 Things We've Learned In 5
Years Since Octane Fitness," Law360,
May 14, 2019.. 12

INTEREST OF AMICI CURIAE

The High Tech Inventors Alliance (HTIA) represents leading technology providers and includes some of the most innovative companies in the world. HTIA's member companies are some of the world's largest funders of research and development, collectively investing more than $165 billion in these activities annually. They are also some of the world's largest patent owners and have collectively been granted nearly 350,000 patents.

The National Retail Federation is the world's largest retail trade association. Retail is by far the largest private-sector employer in the United States, supporting one in four U.S. jobs—approximately 52 million American workers—and contributing $3.9 trillion to the annual GDP.

Amici's member companies are frequent targets of baseless patent lawsuits and abusive litigation. In many such cases, the nominal plaintiff is an underfunded shell company whose attorney both controls the litigation and benefits from it. Amici have a strong interest in ensuring that such attorneys can be held accountable under 35 U.S.C. § 285. [1]

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[1] Per this Court's Rule 37.2, counsel for the parties were timely notified of amici's intention to file this brief. No counsel for a party wrote any part of this brief and no one other than amici made a monetary contribution in relation to the brief.

SUMMARY OF ARGUMENT

This Court briefly addressed whether a fee-shifting statute allows fees to be assessed against an attorney in *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980). The Court held that the statutes in that case did not allow for attorney liability because they did not address attorneys and were not intended to "control the conduct of litigation." *Id.* at 762.

In the intervening decades, federal courts have adopted conflicting interpretations of *Roadway Express*. Some have read it to create a clear-statement rule that no fee-shifting statute can allow for attorney liability unless the statute expressly states that attorneys may be liable (which few if any do). Other courts have allowed for attorney liability when the attorney is solely responsible for litigation misconduct—for example, when a lawyer files harassing lawsuits without his supposed client's knowledge or involvement. These courts have recognized that in such circumstances, allowing the attorney to be held liable is the only reasonable way to enforce a statute directed at abusive litigation behavior. And every Court of Appeals has recognized that attorneys may be held liable for fees under Federal Rule of Appellate Procedure 38, despite the Rule's lack of a clear statement to that effect.

This case also presents an opportunity for the Court to address when it is appropriate for federal courts to create strong-form canons of construction that strain a statute's text to serve extra-statutory goals. A clear-statement rule shielding attorneys from fee-shifting liability does not meet any of the bases that have been proposed for adopting such substantive canons: there is no evidence that Congress ever legislated with such a canon in mind, nor does shielding attorneys from the consequences of their misconduct protect constitutional

values. Indeed, by relying on inherent authority to assess fees against attorneys rather than applying the statutes that Congress enacted, courts adopting the attorney clear-statement rule undermine the constitutional principle of separation of powers.

A rule shielding lawyers from fee liability also ignores a principle that federal courts have recognized in every other context when applying sanctions and remedies for litigation misconduct: that much of the abusive or unreasonable conduct that occurs in the courtroom is the fault of the lawyers. Courts thus presumptively shield *clients*, not *lawyers*, when sanctioning litigation misconduct. The decision below flips this understanding on its head.

Finally, the decision below carves a freight-train sized loophole through the patent fee-shifting statute. Anyone who acquires a patent can sue to enforce it and lawyers frequently do so. In many patent-infringement actions, the plaintiff is a limited-liability company that is controlled by the lawyers and that has no assets. Courts have recognized that attorneys create such shell companies *precisely* for the purpose of evading accountability under 35 U.S.C. § 285. The decision below now empowers them to do so. And finally, the Federal Circuit is mistaken in concluding that Rule 11 and 28 U.S.C. § 1927 will fill the gap that the decision below creates: those provisions do not reach the combined course of unreasonable conduct for which § 285 is intended to provide compensation and deterrence.

ARGUMENT

I. The decision below deepens a federal-court split as to whether a clear—statement rule restricts awards against attorneys under fee-shifting statutes.

This Court briefly addressed whether an attorney can be held liable for attorneys' fees under a fee-shifting statute in *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980). *Roadway Express* interpreted 42 U.S.C. §§ 2000e–5(k) & 1988, the fee-shifting statutes for civil rights cases. The Court held that an award against an attorney was not permitted under these statutes because they do not "make[] any mention of attorney liability"—and there is "nothing in the legislative records of those provisions that suggests that Congress meant to control the conduct of litigation." *Id.* at 762.

In the ensuing years, *Roadway Express* has been read differently by different courts. Some courts have interpreted it to impose a clear statement rule that applies to all fee-shifting statutes, regardless of the standard for liability under the statute. Under this approach, an attorney is immune from any fee award unless the statute expressly states that attorneys may be liable—regardless of the attorney's role in misconduct or whether the statute was "meant to control the conduct of litigation." *See, e.g.*, *Peer v. Liberty Life Assurance Co. of Boston*, 992 F.3d 1258, 1263 (11th Cir. 2021) ("Because ERISA is silent about who must pay a fee award, the statute does not allow a court to award fees against a party's lawyers."); *In re Crescent City Estates, LLC*, 588 F.3d 822, 825 (4th Cir. 2009) ("The proper presumption is that when a fee-shifting statute does not explicitly permit a fee award against counsel, it prohibits it.") (federal removal

statute); *Hyde v. Midland Credit Mgmt*., Inc., 567 F.3d 1137, 1140–41 (9th Cir. 2009) ("[T]here is a general presumption that an attorney is generally not liable for fees unless that prospect is spelled out.") (Federal Debt Collection Practices Act); *Pfingston v. Ronan Eng'g Co*., 284 F.3d 999, 1006 (9th Cir. 2002) (same) (False Claims Act); *Neft v. Vidmark, Inc*., 923 F.2d 746 (9th Cir. 1991) (no attorney liability for fees absent an indication "in the language of [the statute] or . . . its legislative history that Congress intended [such liability]") (Copyright Act).

Other courts have declined to adopt a clear statement rule shielding attorneys from fee awards. These contrary decisions are driven not so much by abstract legal reasoning as a common-sense approach to fee shifting when the attorney alone is responsible for gross litigation misconduct. For example, in *Alcivar v. Enhanced Recovery Co*., 17-CV-2275 (E.D.N.Y. May 20, 2020), the court assessed fees under the Federal Debt Collection Practices Act (FDCPA) against a law firm that brought harassing nuisance actions without the knowledge or participation of its putative plaintiff. *See id.* at *3-4. While acknowledging caselaw holding that FDCPA fees can only be assessed against parties and not attorneys, the court felt compelled to adopt "an application of the statute consistent with reality." *Id.* at *3; *see also id.* at *4 ("Imelda Alcivar did not bring this case. Her lawyers brought it without her participation, and in spite of the fact that she was not subjected to any abusive debt collection practices.") (citations omitted). Departing from the Ninth Circuit's contrary construction of the same statute, *see Hyde v. Midland Credit Mgmt*., 567 F.3d at 1140-41, the court assessed fees against the attorneys rather than the plaintiff for this misconduct.

Similarly, in *Saxon v. Thomas*, No. 06-2339 (W.D.La. Apr. 12, 2007), the court assessed fees against a law firm that had repeatedly improperly removed local tort actions to federal court. The court noted that "[a]lmost every notice of removal filed by the firm in recent years has been defective." *Id.* at 5; *see also Nogess v. Poydras Center, LLC*, No. 16-15227, at *2 (E.D.La. Jan. 30, 2017) ("This case is not one involving an isolated improvident removal by a law firm . . . . Rather, it is the latest in a long line of fraudulent and improper removals.") (citation omitted) (same firm). Contrary to the Fourth Circuit's interpretation of the removal statute in *Crescent City Estates*, 588 F.3d 822, the court assessed fees against the attorneys rather than the represented parties.[2]

And in *Alliance for Good Government v. Coalition for Better Government*, 998 F.3d 661 (5th Cir. 2021), the Court of Appeals assessed fees against an attorney under the Lanham Act. The court overrode the objections of the dissent, which cited caselaw holding that such an award may not be made "absent . . . [an] explicit authorization to impose attorneys' fees against a party's counsel." *Id.* at 680. Contrary to the Federal Circuit's interpretation of an identical statute in this case, the Fifth Circuit held the lawyer jointly liable for attorneys' fees, emphasizing her personal role in litigation misconduct. *See id.* at 666 (noting that the attorney personally signed papers pressing multiple meritless defenses and insisting on unnecessary depositions after the entry of summary judgment).

[2] *See also Crescent City Estates*, 588 F.3d at 825 (noting that "the district courts that have addressed [the question] are badly divided" as to whether the federal removal statute allows a fee award to be entered against an attorney) (citing cases).

Finally, as Petitioner DISH Network has noted, every U.S. Court of Appeals has ruled that attorneys can be held liable for an award under Federal Rule of Appellate Procedure 38 for filing a frivolous appeal, *see* Pet. at 15—even though that rule does not expressly state that attorneys may be held liable, and it has long been understood to include an award of attorney's fees. *See* Notes of Advisory Committee on Rules—1967 ("[T]he courts of appeals quite properly allow damages, attorney's fees and other expenses incurred by an appellee if the appeal is frivolous.").

Litigants and jurists would benefit from a decision from this Court establishing whether an attorney's liability under a fee-shifting statute always requires a clear statement in the statute—or whether such liability is permitted when the statute is "meant to control the conduct of litigation," *Roadway Express*, 447 U.S. at 762, and it is the attorney alone who is responsible for the litigation misconduct.

II. This case presents an opportunity for the Court to clarify the prerequisites for creating new strong-form canons of statutory construction.

This Court recently considered the role of clear statement rules in *Biden v. Nebraska*, 143 S.Ct. 2355 (2023), which applied the major-questions doctrine. As the concurrence noted, the "[s]ubstantive canons are rules of construction that advance values external to a statute," *id.* at 2376 (Barrett, J., concurring)—and they can be "'in significant tension with textualism.'" *Id.* (quoting A. Barrett, Substantive Canons and Faithful Agency ("Substantive Canons"), 90 B. U. L. Rev. 109, 117 (2010)).

Historically, courts have sometimes justified these substantive canons as "background assumptions against which Congress legislates." Substantive Canons, *supra*, at 159. In this view, these canons are rules that "the legislature presumably has . . . in mind when it chooses its language," *id.* (citation omitted), and they thus serve as "proxies for congressional intent." *Id.* at 182.

An alternative view is that "[a]t least when a substantive canon promotes constitutional values, the judicial power to safeguard the Constitution can be understood to qualify the duty" to faithfully interpret the law. *Id.* at 181. Importantly, under this view of the substantive canons' role, "the Constitution provides the most important limit on the canons that courts can apply to deviate from a statute's most natural reading." *Id.* at 179. "A canon cannot moderate the obligation of faithful agency unless it actually advances the constitutional value it purports to protect." *Id.*

Under either of these justifications for the strong-form canons of statutory construction, the clear statement rule adopted in the decision below falls short. There is no reason to believe that the Congresses enacting fee-shifting statutes intended that lawyers alone among the participants in a lawsuit should be immunized from the consequences of their misconduct. Congress has never indicated that it regards attorneys as special favorites of the law. Moreover, there are now hundreds of fee-shifting statutes in force, *see* 10 Fed. Prac. & Proc. Civ. § 2675.4 (4th ed.)—many of which long predate the recent decisions creating a clear statement rule. It strains credulity to suppose that Congress "had in mind" a substantive canon excluding attorneys from every one of these statutes' reach.

Nor does any constitutional value require exempting attorneys from liability under the typical fault-based

fee-shifting statute. Section 285 allows fees to be awarded when a case is "exceptional" because of "the substantive strength of a party's litigating position . . . or the unreasonable manner in which the case was litigated." *Octane Fitness, LLC v. ICON Health & Fitness*, Inc., 572 U.S. 545, 554 (2014). No constitutional value is threatened by a statute that "advance[s] considerations of compensation and deterrence," *id.* n.6, in response to attorney conduct of this nature.

A. Substituting "inherent power" for a fee-shifting statute undermines the separation of powers.

The clear-statement approach to attorney liability under fee-shifting statutes does not *protect* constitutional values—it *offends* them. Courts confronted with the manifest inequity of exempting an attorney from accountability for his conduct often cite in response that fees can nevertheless be awarded against the attorney under the courts' inherent authority. *See, e.g.*, *Peer*, 992 F.3d at 1265; *Crescent City Estates*, 588 F.3d at 831.

Indeed, shortly after the Federal Circuit exempted attorneys from liability under § 285 in this case, the court attempted to plug the gap that it had created by ruling that a district court still can hold patent plaintiffs and their attorneys jointly and severally liable "under its inherent powers"—"in addition to awarding attorney fees and costs under § 285." *PS Prods. Inc. v. Panther Trading Co. Inc.*, 122 F.4th 893, 898 (Fed. Cir. 2024).

This Court has emphasized, however, that "[b]ecause inherent powers are shielded from direct democratic controls, they must be exercised with restraint and discretion." *Roadway Express*, 447 U.S. at 764. When

Congress has enacted a fee-shifting statute, it has chosen the standards and procedures under which it wants fee shifting to be available. The judiciary best "accommodate[s] the norm of legislative supremacy," Substantive Canons, *supra*, at 182, by respecting that legislative choice—not by overriding it with a clear-statement rule and replacing Congress's regulatory scheme with one of its own creation.

III. The decision below is wrong; fee awards and other sanctions for unreasonable conduct should be available against an attorney when the attorney is at fault.

Section 285 authorizes fee awards based on "the substantive strength of a party's litigating position . . . or the unreasonable manner in which the case was litigated." *Octane Fitness*, 572 U.S. at 554.

Allowing such a fault-based award to be entered against an offending attorney is consistent with the overwhelming weight of authority holding that when the litigation is abusive or frivolous, it is often the attorney who is to blame. For example, when Rule 11 sanctions are required, "[c]ourts seek to allocate sanctions between the attorney and the client according to their relative responsibility for the Rule 11 violation." *Borowski v. DePuy*, Inc., 850 F.2d 297, 305 (7th Cir. 1988). As the Federal Practice and Procedure treatise emphasizes, the *attorney alone* should be held liable for those aspects of the litigation that are subject to his control and expertise:

> [W]hen the offending conduct concerns the scope or quality of the counsel's competence—especially when the material is beyond the understanding of the client or when the client

> is unaware of the attorney's wrongful conduct—counsel alone should be sanctioned.

5A Fed. Prac. & Proc. Civ. § 1336.2 (4th ed.) Consequences of Litigation Misconduct—Parties Sanctionable: Counsel; Law Firms; Clients.

The decision below at least accepted that making counsel liable for fees makes sense when a § 285 award is based on "counsel's manner of litigating," *Dragon*, 101 F.4th at 1373, but it suggested that the client rather than the attorney should be liable where (as here) the award is based on the party's "substantive litigation position." *Id.* Courts have recognized, however, that the lawyer rather than the client bears responsibility for legal arguments and theories. Thus "[c]ourts generally impose sanctions entirely on counsel when the attorney has failed to research the law or is responsible for sharp practice." *Borowski*, 850 F.2d at 305; *see also id.* ("[T]he attorney and not the client should bear the sanction for filing papers which violate Rule 11 by being unsupported by existing law, or as an attempt to modify well-settled law.") (citations omitted); *Tacoronte v. Cohen*, 654 F. App'x 445, 451 (11th Cir. 2016) (holding that when a party's legal theories are not supported by existing law, it is improper to sanction the client rather than the attorney).

Indeed, in the ordinary case, an attorney's control over litigation is so pervasive that some courts have held that the lawyer is *presumptively* liable for baseless or frivolous litigation, with sanctions against the client permitted only in exceptional circumstances. *See* Fed. Prac. & Proc. § 1336.2 ("Imposing a sanction on a represented client has been met with disfavor by some courts, even though the plain wording of Rule 11 expressly allows sanctions to be imposed on the client as well as the signing attorney."); *United States v.*

Milam, 855 F.2d 739, 743 (11th Cir. 1988) ("Although we have approved in general the practice of levying a fine on the represented party in addition to ordering a party to pay attorney's fees, we suggest that fining a represented party is a very severe sanction that should be imposed with sensitivity to the facts of the case and to the party's financial situation.") (citation omitted).

Finally, a review of § 285 awards entered in the last few years makes clear that many of them are based on conduct that is attributable to the litigating attorneys, not the client. *See, e.g.*, *Trustees of Columbia Univ. v. Gen Digital Inc*., No. 3:13cv808, at 19 (E.D. Va. Oct. 20, 2023) (awarding § 285 fees based on the "extensive and unprecedented record before this Court as to the disquieting conduct of both sets of [the party's] attorneys"); *In re PersonalWeb Techs. LLC*, 85 F.4th 1148, 1154 (Fed. Cir. 2023) (affirming award of fees for advancing legal arguments that were "clearly untenable based on established Federal Circuit precedents"); *Alternative Petroleum Techs. Holdings Corp v. Grimes*, No. 3:20-cv-00040-MMD-CLB, at 5 (D. Nev. Jul. 25, 2022) (awarding § 285 fees on account of the "unreasonable litigation tactics Plaintiffs' counsel employed in this case").[3]

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[3] *See also Soar Tools, LLC v. Mesquite Oil Tools, Inc*., No. 5:19-CV-243-H, at 9-10 (N.D. Tex. Feb. 9, 2022) (awarding § 285 fees "based on . . . misrepresentations, unforthcoming conduct, and repeated failures to correct [an] error despite numerous warnings" and "litigation conduct [that] was negligent beyond excusable attorney error"); *EagleView Techs., Inc. v. Xactware Sols., Inc*., No. 1:15-cv-07025, at 56 (D.N.J. Feb. 16, 2021) (awarding § 285 fees because of an attorney's repeated efforts to introduce "impermissible evidence, either directly or in the form of innuendo and inference," despite "repeated admonitions" from the court); Ryan Davis, "5 Things We've Learned In 5 Years Since Octane Fitness," Law360, May 14, 2019 (noting that "scenarios [that] are likely to

There is no basis for creating a clear-statement rule that shields attorneys under the fee-shifting statutes from the consequences of their litigation misconduct. Every court in every other litigation-regulating context has recognized that when a statute sanctions unreasonable or abusive litigation, an award may potentially—if not presumptively—be entered against the attorney who is responsible.

IV. The decision below undermines the patent-litigation fee-shifting-statute that this Court recently reinvigorated in *Octane Fitness*

The Federal Circuit's approach rips a gaping hole in § 285. It is a reality of modern patent litigation that much of it is conducted via limited liability companies that have no substantial assets and that are funded via non-recourse loans provided by their attorneys. The lawyer *is* the plaintiff in these cases.

These lawyers structure their business to ensure that there can be no recovery from the nominal plaintiff. In a recent case, when an HTIA company indicated that it would seek § 285 fees after the plaintiff conceded that its infringement theory was frivolous but continued to litigate, counsel responded: "Good luck collecting money from a rock."

In all cases, it is nearly impossible to make the showing of actual fraud that is required to pierce the corporate veil.[4] If § 285 cannot be enforced against an

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result in fee awards" include "changing legal theories multiple times without a good reason, submitting numerous arguments only to abandon them late in a case, . . . reasserting theories a judge has rejected," and "filing numerous lawsuits and reaching for low value settlements without regard to the merits of the case.").

[4] *See Thrift v. Estate of Hubbard*, 44 F.3d 348, 353 (5th Cir. 1995) ("Proving that a corporation is the alter ego of a

attorney who controls and benefits from the litigation, in many cases it cannot be enforced at all.

A recent decision from the Northern District of Texas illustrates this phenomenon. The court awarded fees against the plaintiff's law firm because the plaintiff was an underfunded shell company that was structured to evade accountability under § 285:

> Th[e] post-judgment evidence indicates that InvestPic is a sham or shell entity that is designed and intended to avoid liability. Allowing a party to purposefully use a shell company to pursue patent infringement claims unacceptably circumvents that attorney fee provisions of § 285. With InvestPic owning essentially no assets and maintaining a near-zero balance in its bank account, the members of InvestPic made InvestPic judgment-proof and insulated themselves from any liability caused by their actions.

SAP America, Inc. v. InvestPic, LLC, 3:16-CV-02689-K, at 5 (N.D. Tex. Mar. 23, 2021).[5]

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shareholder alone is not enough; in order to pierce the corporate veil, the obligee must also demonstrate fraud by and direct personal benefit to the obligor.").

[5] *See also Iris Connex, LLC v. Dell, Inc.*, 235 F.Supp.3d 826, 833 (E.D. Tex 2017) ("The Court is persuaded that Mr. Yates and those in active concert with him exploited the corporate form to operate largely in secret and to insulate the true party in interest from the risk associated with dubious infringement suits—that risk being fee shifting under Section 285."); *Nimitz Techs. LLC v. CNET Media, Inc.*, No. 1:22-cv-00413-CFC (D. Del. Nov. 30, 2022) (noting the use of a food-truck operator to serve as the nominal plaintiff in patent infringement lawsuits); Jeff Montgomery, "Del. Judge Continues Probe Into Third-Party Patent Suit Deals," Law360, Nov. 10, 2022.

In that case, the court was able to fashion a remedy that ensured that the conduct prohibited by § 285 was punished. Under the decision below, this will no longer be possible. Absent review by this Court, the next time that a plaintiff like InvestPic—a "shell entity that is designed and intended to avoid liability"—brings baseless or abusive patent litigation, it will be impossible to enforce § 285 against the actors who directed and benefited from such litigation.

A. Section 1927 and Rule 11 are not substitutes for § 285

The Federal Circuit grounded its holding that attorneys are immune from liability under § 285 partly in its judgment that 28 U.S.C. § 1927 and Federal Rule of Civil Procedure 11 "are more appropriate vehicles to recover fees from counsel." *Dragon*, 101 F.4th at 1373. This is a mistake. Section 1927 and Rule 11 are different statutes that serve different purposes than § 285—most importantly, they do not address the combined course of unreasonable conduct that § 285 targets.

Rule 11 sanctions focus on individual filings signed by an attorney. As the Second Circuit has explained, "Rule 11, perforce, cannot be invoked unless some signed pleading, motion, or other paper is filed." *United States v. Int'l Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., AFL-CIO*, 948 F.2d 1338, 1344 (2nd Cir. 1994) (citation omitted).

Section 1927 addresses the undue *multiplication* of litigation. "By its terms, § 1927 looks to unreasonable and vexatious multiplications of proceedings; and it imposes an obligation on attorneys throughout the entire litigation to avoid dilatory tactics." *Id.* at 1345 (citations omitted). In addition, § 1927 employs an

elevated standard: "Bad faith is the touchstone of an award under this statute." *Id.*

Section 285, by contrast, targets unreasonable "litigation position[s]" or the "manner in which the case was litigated." *Octane Fitness*, 572 U.S. at 554. In practical terms, this means that § 285 can proscribe a course of behavior that does not amount to bad faith and in which no single act, standing alone, would be sanctionable. Rather, § 285 allows a court to consider the entire course of a party's unreasonable conduct. *See, e.g.*, *Chamberlain Grp. LLC v. Overhead Door Corp.*, 2:21-CV-00084-JRG, at 10 (E.D. Tex. Apr. 4, 2023) ("[M]uch of the conduct [the opposing party] complains of would not give rise to an exceptional case status if considered alone and separately but the Court finds that taken together within the totality of the circumstances, this case stands out and is exceptional."); *Hospira, Inc. v. Fresenius Kabi USA*, LLC, No. 16 C 0651, at 2 (N.D. Ill. Feb. 15, 2022) (finding that the weakness of a party's litigation position alone did not justify § 285 award, but that the combination of litigation acts did).

The different roles played by § 285, § 1927, and Rule 11 are confirmed by the fact that courts awarding § 285 fees frequently find that the same course of conduct does *not* justify an award under § 1927 or Rule 11. *See, e.g.*, *QuickLogic Corp. v. Konda Techs.*, Inc., No. No. 21-cv-04657-EJD, at 8, 11 (N.D. Cal. Jul. 12, 2024) (entering a § 285 award but finding that the elevated threshold for a § 1927 award was not met); *Viavi Sols. Inc. v. Platinum Optics Tech. Inc.*, No. 20-cv-05501-EJD, at 8-9 (N.D. Cal. Mar. 19, 2024) (same); *Ortiz & Assocs. Consulting, LLC v. VIZIO, Inc.*, No. 3:23-CV-00791-N, at 2 (N.D. Tex. Feb. 27, 2024) (same); *Pop Top Corp. v. Rakuten Kobo Inc.*, No. 0-cv-04482-

DMR, at 5-7 (N.D. Cal. Jan. 28, 2022) (awarding § 285 fees for advancing baseless theories but declining to enter § 1927 sanctions because the party did not multiply proceedings); *Niazi Licensing Corp. v. St. Jude Medical S.C., Inc.*, No. 17-cv-5096 (WMW/BRT), at 4-5 (D. Minn. Oct. 25, 2021) (denying Rule 11 sanctions for substantive and procedural reasons but awarding § 285 fees for unreasonably prolonging litigation and advancing unreasonable arguments).[6]

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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[6] *See also* "Trends in attorney fees and sanctions decisions in 2020 Q4," Thomson Reuters, April 15, 2021 (noting that sanctions under § 1927 and Rules 11, 30, and 37 are awarded at a lower rate, which "reflect[s] the higher bars and procedural impediments associated with non-§ 285 motions").