No. 03-37

In The Supreme Court of the United States

INFINEON TECHNOLOGIES AG,
INFINEON TECHNOLOGIES NORTH AMERICA CORP.,
AND INFINEON TECHNOLOGIES HOLDING
NORTH AMERICA INC.,

Petitioners,

v.

RAMBUS, INC.,

Respondent.

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

BRIEF OF THE COMMONWEALTH OF VIRGINIA THE STATES OF ALABAMA, CALIFORNIA, CONNECTICUT, IDAHO, ILLINOIS, IOWA, MARYLAND, MASSACHUSETTS, MISSOURI, NEW HAMPSHIRE, OREGON, OKLAHOMA, UTAH, WEST VIRGINIA AND THE COMMONWEALTH OF PUERTO RICO AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Will this Court allow a decision of the Federal Circuit – a federal appellate court of national jurisdiction – to stand, where the court rejected a jury's factual determination in favor of its own view of the facts, on a question of state law which is outside the scope of its specialized jurisdiction, and where the decision is likely to cause substantial harm to the operation of open markets and, thus, to the public interest?

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INTEREST OF THE AMICI STATES

The Commonwealth of Virginia and the States of Alabama, California, Connecticut, Idaho, Illinois, Iowa, Maryland, Massachusetts, Missouri, New Hampshire, Oregon, Oklahoma, Utah and West Virginia (collectively "the States") have an important stake in preserving open and competitive markets and the orderly and proper administration of justice. The States' Attorneys General serve as representatives of the public interest, defending the interests of consumers in a variety of contexts, and are responsible to the public for the enforcement of antitrust law. Their position of public trust imposes upon them a unique duty to represent the public interest in cases where the resolution of a legal dispute between private parties will substantially affect the marketplace and threaten serious harm to open competition and the benefits it provides to consumers. Thus, the States have a vital role in protecting the integrity of an efficient and competitive marketplace for consumer goods and services.

This case arises out of the standard-setting work of the Joint Electron Devices Engineering Council ("JEDEC"), a voluntary association of companies that sets technical standards for electronic products. The parties, a technology development and licensing company (Rambus) and a manufacturer of computer memory devices (Infineon), both participated – as members – in JEDEC's development and adoption of standards for certain computer memory products. Members of JEDEC were expected to disclose to the group patents and patent applications "related to" the standardization work of its committees. *Rambus, Inc., v. Infineon Technologies AG*, 318 F.3d 1081, 1085 (Fed. Cir. 2003).

Approximately a year after JEDEC adopted a standard for certain computer chips, and Infineon had begun

manufacturing to that standard, Rambus accused Infineon (and other similarly situated manufacturers) of patent infringement and sought licensing fees. Infineon refused, Rambus sued, and Infineon counterclaimed for, inter alia, common law fraud, based on Rambus' alleged failure to disclose certain pending patent applications during the JEDEC standard-setting process. In the District Court, the jury found Rambus liable on two counts of fraud. Upon Rambus' motion for judgment as a matter of law, the trial court reversed the jury's finding on one count of fraud and allowed the jury verdict to stand as to the other. On appeal, the Federal Circuit reviewed the record for facts that would support a narrower duty than the duty relied upon by the jury, and reversed the remaining fraud verdict when it was able to isolate such facts from the record. It then went on to enter judgment for Rambus, rather than returning the case to the trial court for reconsideration in light of the new duty articulated on appeal. The broad consequences – for consumers, for business, and for the law – likely to flow from the Federal Circuit's clear error, argue strenuously for review and reversal by this Court.

The work of voluntary industry standard-setting organizations enhances the operation of the marketplace. The decision of the Federal Circuit, however, delivers a near fatal blow to that work by permitting industry participants to enforce patents on the technology adopted as the industry standard, in a manner contrary to the express mutual goals of the organization and its members. Voluntary industry efforts to adopt standards free of patent monopoly encourage competition and are, therefore, good for consumers, reducing the price and encouraging the broad manufacture of products, increasing the supply of products, and supporting additional investment in

innovation. The Federal Circuit's decision will discourage industry participation in standard-setting organizations, thereby harming consumers as well as the many small companies able to participate in the market only when costs remain low.

The Amici States also protest the Federal Circuit's substitution of its own view of the facts for that of a jury, thereby reversing the jury's determination of a state common law fraud claim. The Federal Circuit's interference with the province of the jury on a pendant state law claim undermines the rational and predictable administration of the law routinely relied upon by the individual and corporate citizens of the Amici States.

ARGUMENT

I. THE RESULT IN THIS CASE WILL FRUSTRATE THE GROWTH AND DEVELOPMENT OF AN IMPORTANT AND EVOLVING MARKET AND THUS RISKS SUBSTANTIAL HARM TO CONSUMERS' INTEREST IN THE READY AVAILABILITY OF INNOVATIVE AND AFFORDABLE TECHNOLOGY.

A. Voluntary Industry Standard-Setting Organizations Facilitate Industry Growth and Support Competitive Markets, Especially in the Advanced Information Technology Industry.

Countless products used by consumers today are touched by standards that govern some aspect of their construction or use. A common example is the ordinary light bulb. Whether a consumer buys a light bulb from GE,

Sylvania, Westinghouse or another manufacturer, he can take for granted that the bulb will fit into the light socket in his ceiling. He does not have to worry about whether the sizes will be slightly different or whether the screw threads will match up. Some bulbs may burn brighter. Some may burn longer. Some may be cheaper. But they all will fit. As a result, the consumer has choices about which bulb to buy. He is not the captive of whichever company's light socket is installed in his home. This sort of uniformity – and the resulting benefits to consumers – are not accidental. They are the result of an industry standard, voluntarily adopted through a standard-setting organization.

Today, telecommunications infrastructures crucial to our day to day lives – including those that support the internet – literally could not exist without agreed-upon industry standards. Hundreds of private voluntary industry associations function as standard-setting organizations and are responsible for almost 50,000 different sets of standards. National Institute of Standards and Technology Special Pub. 806, *Standards Activities of Organizations in the United States*, 2, 4 (Sept. 1996).

In high technology markets, entry into and competitive participation in the marketplace is increasingly dependent on the discovery, development, improvement, and adoption of new processes, new products, and new organizational structures and procedures. Thomas M. Jorde and David J. Teece, *The Boundaries of Horizontal Restraints: Communication and Cooperation Among Competitors*, 61 Antitrust L.J. 579, 581 (1993). The pace of the innovation that drives technology markets depends, in turn, on adoption of industry standards. *In re Dell Computer Corp.*, 121 F.T.C. 616 (1996). *See also* Carl Shapiro, *Navigating the Patent Thicket: Cross Licenses, Patent*

Pools, and Standard-Setting, at 19, http://faculty.haas.berkeley.edu/shapiro/thicket.pdf (March 2001). Only where there are agreed-upon industry standards for new technologies, not subject to the prohibitive costs of exorbitant licensing fees, will those new technologies enter the marketplace at competitive prices from numerous manufacturers in ways that maximize their availability to consumers regardless of prior purchases. Compatibility – or "interoperability" – is key.

As other industries before it, high technology markets strive to adopt voluntary, industry-wide standards because without product interoperability, markets for new technology will contract and support fewer companies. Mark A. Lemley, *Antitrust and the Internet Standardization Problem*, 28 Conn. L. Rev. 1041, 1047 (1996). Just as there is a need for a standard light socket, so that light bulbs from various manufacturers all fit, so too must there be some standardization in the realm of high technology. Communication tools such as notebook computers, personal digital assistants, cellular telephones, and pagers must be able to communicate with each other, even across manufacturers, in order to be useful. Likewise, consumers demand new software programs that will operate on all of these devices, no matter who makes them. Janice M. Mueller, *Patent Misuse Through the Capture of Industry Standards*, 17 Berkeley Tech. L.J. 623, 633 (2002). Interoperability standards, therefore, are critical to meeting consumer demand in these markets, and meeting consumer demand is what enables the industry to continue investing in the development of new innovation. Thus, the efficient growth

of the high technology industry depends in a significant way on the effectiveness of voluntary industry standard-setting organizations.[1] The ability of standard-setting bodies to develop effective industry standards is placed at substantial risk by the Federal Circuit's complete failure to conduct its review in context and by its insistence on reexamining and redetermining the facts of this case.

B. The Federal Circuit's Decision Interferes With the Work of Voluntary Industry Standard-Setting Organizations by Facilitating the Capture of Industry Standards by Participants in the Standard-Setting Process.

In order to function as intended to expand markets and competition, and to lower costs – all of which inure to the benefit of consumers – it is important that either:

[1] For instance, interoperability is vital for the silicon chips that comprise the components of a computer. They must be able to communicate with each other in order to make the computer run. Where the performance of one type of chip is significantly enhanced by innovation, other chips that interact with the improved chip must keep pace in order to realize the full potential of the improved chip. If this does not happen, the benefit of that innovation will not be realized. Such an impediment – a "memory bottleneck" – existed as the result of computer memory chips that operated at a relatively slow speed when communicating with a relatively faster central processing unit. The slow speed chips hindered technological progress in the computer industry. *In the Matter of Rambus, Inc.*, Federal Trade Commission Docket No. 9302 ¶ 11 (June 18, 2002) (complaint). A faster method of communication was developed between these two types of chips, but the success of the innovation depended on the development and adoption of industry standards for the design and implementation of the innovation. *Id.* at ¶¶ 12, 13.

(i) adopted standards not be subject to patents; or (ii) if they are the subject of a participant's patent, the standard-setting body's participants know about it, before the standard is adopted, so that alternatives can be considered and informed choices made. A standard-setting organization can only avoid standardizing patented technology if industry participants disclose relevant and necessary information concerning their patent portfolios as the standard is developed. The duty of participants to the organization – and reliable enforcement of that duty – are at the crux of effective standard-setting efforts.

In order to achieve the goal of adopting open standards that members of the industry can use or apply without the costs associated with technology licensing, and to manage the concomitant risk that an industry participant will pursue adoption of a standard on which it holds the patent, the standard-setting body must be able to require disclosure of information even among horizontal competitors or, in the alternative, impose licensing terms on participants' patents not disclosed. Competitors will not be willing to participate, or to share information as necessary to avoid adopting a standard that utilizes patented technology, unless they have a reasonable expectation that the law will protect them from a participant who would take advantage of the process to "capture" the standard – that is, to have the body unknowingly adopt a standard that includes patented technology owned by the participant. Lemley, 28 Conn. L. Rev. at 1086. Therefore, standard-setting organizations and their individual participants must be able to rely on the law to enforce the duty of each participant to share openly relevant information

concerning its development of the technology at issue. Such disclosure is inherent in the standard-setting effort.

The Federal Circuit's analysis of the JEDEC members' duty to disclose relevant patent information ignores all of this. Instead, the Court below engaged in a strained parsing of the language of two documents to conclude that the disclosure duty imposed on participants in JEDEC's standard-setting efforts was a very narrow one. The court reached this conclusion in spite of substantial evidence to the contrary and even though the duty it articulated is hostile and counterproductive to the goal of adopting open standards.

The clear message in the Federal Circuit's decision is that the interests of potential patent holders are superior to the public interest in open standards and to the reasonable expectations of participants in standard-setting efforts. That message is profoundly anticompetitive and adverse to the public interest. Nothing in the law requires such a result. To leave the court's ruling undisturbed would be to undermine and inhibit the valuable and necessary work of voluntary standard-setting organizations.

C. The Federal Circuit's Analysis Supports Anticompetitive Conduct to the Detriment of Consumers and the Industry.

The minimal duty described by the Federal Circuit would allow industry participants in standard-setting organizations to circumvent entirely the procompetitive goals of the organization. It would permit participants to withhold information about pending patent applications that might then be inadvertently incorporated into the standard. Such conduct, permitted unchecked by the

courts, would transform standard-setting organizations and trade associations into safe havens for members seeking to monopolize the industry by anticompetitive conduct. Absent an effective duty of disclosure in the standard-setting context, the shield that protects intellectual property rights – and thus provides an incentive for investment in the development of new technology – becomes a sword with which to exclude the competition. Participants in standard-setting organizations ought not be permitted to wield that sword to subvert the innovation-enhancing and market-support purposes of the organization.[2]

Just as a system of law that under-protects intellectual property rights can harm an industry's incentives to innovate, a system of law that over-protects those same rights harms consumers. Over-protecting intellectual property rights reduces competition, which eventually also reduces incentives to innovate, Pitofsky, 16 Berkeley Tech. L.J. at 542-43, and it disadvantages consumers by leaving them with fewer choices at higher prices. The Federal Circuit's decision tips the balance so far in favor of intellectual property rights that it invites anticompetitive overreaching by patent holders to flourish unimpeded by

[2] As the former Chairman of the Federal Trade Commission has explained:

> Intellectual property rights subsidize investments in innovation by granting substantial, but time-limited, market power. Antitrust ensures that firms compete, and by competing, seek new roads to innovation. It also prevents dominant firms from harming and retarding innovation.

Robert Pitofsky, *Antitrust and Intellectual Property: Unresolved Issues at the Heart of the New Economy*, 16 Berkeley Tech. L.J. 535, 542 (2001).

the countervailing legal protections offered by state statutory and common law and relied upon by the other participants in standard-setting organizations.

The magnitude of this problem has become increasingly clear since this Court decided *American Soc. Of Mechanical Engs. v. Hydrolevel Corp.*, 456 U.S. 556 (1982). In that case, the Court held that an industry association violated antitrust law by allowing a participant to unduly influence the association's officers to issue an informal statement about a competitor's non-compliance with its standards. The result reflects the understanding that the association's standards could "affect the destinies of businesses and thus [gave] them the power to frustrate competition in the marketplace." *Id.* at 570-71.

This Court next considered the potential for subversion of a trade association's standards for an anticompetitive purpose in *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492 (1988). There, this Court upheld a jury verdict against an industry participant, finding that the organization's consensual standard-making process was corrupted by a member who had an economic interest in stifling competition for its product. *Id.* at 497-98, 499, 511. This Court agreed with the Second Circuit that hijacking the purposes of the standard-setting organization created an unreasonable restraint of trade by preventing competition by all manufacturers of products that did not meet the restrictive code passed. *Id.* at 498, 499.[3]

[3] This Court originally granted cert. on the issue of whether the subversion of the standard-setting process also violated the Sherman Act, but vacated that grant as "improvident." *Allied Tube*, 486 U.S. at

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Lower courts also have held that patents obtained through manipulation of the disclosure rules of standard-setting bodies are unenforceable because of the anticompetitive effect that such an unwarranted extension of a member's patent rights would have on the relevant market. In *Potter Instrument Co., Inc. v. Storage Technology Corp.*, the patent holder was estopped from asserting its patent rights because it intentionally concealed its intellectual property rights despite the standard committee's policy to the contrary, thus allowing the patent holder to gain "a monopoly on the . . . industry standard without any obligation to make its use available on reasonable terms to competitors in the industry." 207 U.S.P.Q. 763, 769 (E.D. Va. 1980). In *Braun v. Abbott Laboratories*, the Federal Circuit itself noted that the patent misuse doctrine limits abuse of patent rights separately from the antitrust laws by estopping the assertion of patent rights where the patentee has achieved an anticompetitive effect by improperly broadening the scope of the patent grant. 124 F.3d 1419, 1426 (Fed. Cir. 1997).[4]

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499 n.3. The Court later noted, however, that the purpose behind the manipulation of the standard-setting body was anticompetitive. *Id.* at 511.

[4] In *Atl. Richfield Co. v. Union Oil Co. of Cal.*, 581 U.S. 1183 (2001), several major oil refiners failed to obtain declaratory judgment to invalidate the patents Unocal claimed were infringed by the new clean-burning regulations issued by the California Air Resources Board ("CARB"). Expressing great deference to the jury, the Federal Circuit refused to overturn the verdict in that case and this Court denied cert. The Federal Trade Commission, however, has since issued an antitrust complaint against Unocal for illegally monopolizing the market for clean-burning gasoline under the CARB standards because of its manipulation of the CARB standard-setting process. *See In the Matter*

(Continued on following page)

Unfortunately, the Federal Circuit in this case ignored the principles that underlie this line of cases and instead overturned a jury's factual findings in order to protect the interests of the patent holder in a manner altogether inconsistent with the purposes of all standard-setting organizations. The Federal Circuit, by analyzing these non-patent issues with a patent enforcement approach, undermines the principles of equity embodied in state fraud and antitrust law. *See* James B. Gambrell, *The Evolving Interplay of Patent Rights and Antitrust Restraints in the Federal Circuit*, 9 Tex. Intell. Prop. L.J. 137, 138 (2001). Instead of permitting patent rights to be circumscribed by basic fraud and antitrust principles, the Federal Circuit has weakened the influence of these two areas of law in the patent context. *Id.,* at 139.

The Federal Circuit's narrow and grudging reading of the disclosure duty created by JEDEC's written rules gives inordinate weight to patent protection in the balancing process between the intellectual property rights of the respondent and the antitrust principles that govern the memory chip industry. In addition, the Federal Circuit's endorsement of Rambus' acquisition of market power over the industry standard and subsequent effort to establish its own *ex post* royalty rate invites a host of anticompetitive outcomes: monopolization of the market by the patent holder; discriminatory licensing among competitors; conditioning of a license on extortionate terms, such as cross-licensing or exorbitant royalty rates; and generally

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of Union Oil Co. of Cal., Federal Trade Commission Docket No. 9305 (March 4, 2003) (complaint).

allowing the patent holder to extend its market power beyond the scope of the patent grant itself, adding to it the leverage of the adopted standard. *See generally*, Pitofsky, 16 Berkeley Tech. L.J. at 546; Mueller, 17 Berkeley Tech. L.J. at 669. All these effects sacrifice and subvert competition, and thus reduce industry output and raise prices to consumers, to a degree far in excess of what is necessary to generate incentives to innovate.

Allowing a single participant in a standard-setting organization to capture an industry standard not only causes anticompetitive disruptions in the marketplace, but also discourages industry members from voluntary participation in such organizations. This is so whether the industry standard is captured by fraudulent means or by a Federal Circuit decision construing the disclosure duty so narrowly as to be meaningless. In turn, this inhibits the vital work of standard-setting bodies and, thus, inhibits innovation, all of which is often more valuable to consumers than competitive pricing among products. *See* 13 Phillip Areeda & Herbert Hovenkamp, *Antitrust Law*, ¶ 2202b, at 218 (1999).

II. THE FEDERAL CIRCUIT'S INTERFERENCE WITH A JURY'S VERDICT ON A STATE COMMON LAW CLAIM UNDERMINES THE RATIONAL AND PREDICTABLE ADMINISTRATION OF THE LAW THAT IS NECESSARY TO SUPPORT THE REASONABLE BUSINESS EXPECTATIONS OF THE STATES' CITIZENS.

The Federal Circuit's decision turns upside down the rules governing appellate review of jury verdicts. Instead of focusing on whether there was substantial evidence to support the jury's verdict in favor of Infineon, the Court of

Appeals substituted its own view of the facts for that of the jury. Such a marked departure from the rules merits certiorari for several reasons, especially in this case. First, the ill-conceived precedent thus created, by a court of nationwide jurisdiction, tends to undermine fidelity to the pertinent rules throughout the federal court system. Second, by disdaining the jury's role in a claim involving business expectations, the decision tends to undermine the confidence on which business depends, a result all the more disturbing because standard-setting activity cannot succeed absent confidence in the process. Third, by disdaining the jury's role in a claim arising under state law, the decision tends to undermine principles of federalism.

The decision of the Federal Circuit in this case breaches the most fundamental principles of appellate review. Where a jury verdict survives a motion for judgment as a matter of law, the trial court's decision on appeal is subject to the same Rule 50 standard that applied to the motion itself. *See e.g., City Nat. Bank v. American C'wealth Financial Corp*., 801 F.2d 714, 718 (4th Cir. 1986), *cert. denied*, 479 U.S. 1091 (1987). Thus, a jury's verdict should be overturned only if "there is no legally sufficient evidentiary basis for a reasonable jury to find" as it did. Fed. R. Civ. P. 50. The appellate court is not free to reweigh the evidence, but must view the evidence in a light most favorable to the party that won the jury verdict. *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554-55 (1990). An appellate court must resist the temptation to substitute its own view of the facts for that of the jury,

except where the law demands it.[5] *Weisgram v. Marley Co.*, 528 U.S. 440, 447-48 (2000); C. Wright and A. Miller, Federal Practice and Procedure § 2521 (2d Ed. 1995). But the Federal Circuit in this case could not resist: substituting its own view of the facts for that of the jury is precisely what it did.

Reading the panel opinion together with the dissent establishes that this case epitomizes a situation in which the jury's conclusions of fact are entitled to traditional appellate deference. The dissent discusses the facts supporting the jury verdict and explains why they are legally sufficient. The majority, on the other hand, does not attempt to discuss those facts, or to negate their legal sufficiency, so much as it discusses other facts that would have entitled the jury to decide the *other* way. In other words, each opinion recites evidence legally sufficient to support different conclusions of fact. It is in precisely this posture that proper application of the rules of appellate review demands that the jury's verdict be sustained on appeal. Where reasonable minds can reach different conclusions based on the evidence, the verdict of the jury ought not be disturbed. *See, e.g., Boeing Co. v. Shipman*, 411 F.2d 365, 374-75 (5th Cir. 1969).

[5] The Federal Circuit itself has acknowledged this rule in other cases. *See, e.g., Riles v. Shell Exploration & Production Co.,* 295 F.3d 1302, 1308 (Fed. Cir. 2002) (affirming JMOL by trial court on one claim and jury's verdict on another); *Ultradent Products, Inc. v. Life-Like Cosmetics, Inc.*, 127 F.3d 1065, 1070 (Fed. Cir. 1997) (examining the evidence that supported the jury's verdict and affirming the district court's denial of JMOL). However, in this case, it ignored the rule altogether.

Nonetheless, the panel majority granted no deference at all to the facts implicitly relied upon by the jury, or to the determination of the trial judge, though both enjoyed the benefit of the entire trial, hearing first hand and in person the testimony of the witnesses. Instead, even after acknowledging that both the existence and scope of a duty to disclose were questions of fact, the Federal Circuit reevaluated the record on its own. In so doing, the court answered the wrong question. Instead of reviewing the record to confirm that it contained sufficient facts to support the jury's verdict, it looked for, and found, evidence that could have supported a contrary conclusion. Although it recited the words, the Federal Circuit did not explain *why* there was no legally sufficient evidence to support the jury's verdict. Nor did it explain why the law required a result contrary to that reached by a jury. The review was improper and wholly inadequate to support the reversal of a jury verdict on appeal.

Under the rules of this Court, certiorari is appropriate where "a United States court of appeals . . . has so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power." Sup. Ct. R. 10(a). The exercise of the Court's supervisory authority is especially important here because of the particular nature of this case. The decision at issue was not rendered by a regional court of appeals, but by a court having nationwide, albeit specialized, jurisdiction. Thus, the need for supervision is more urgent, both to ensure adherence to the rules by that tribunal and to avoid the nationwide precedent that an uncorrected departure would establish.

Moreover, the decision of the Federal Circuit has the effect of disrupting the settled expectations of citizens,

both corporate and individual, who rely upon an orderly system of laws in their daily commerce. The Court's decision interferes with recourse to, and discourages reliance on, state common law principles to protect business interests and expectations in the face of the substantial market power bestowed on the developers of intellectual property by federal patent law. In effect, the decision below stands for the proposition that a business may – in the name of intellectual property rights – engage in conduct that a jury has branded as fraud, and that it may do so even in the standard-setting arena, where honest disclosure and cooperation are essential to competition, progress and the public good.

Finally, concerns for the Federal Circuit's misguided decision are exacerbated by the fact that the claim at issue is a state law claim, heard by the federal district court in the exercise of its pendent jurisdiction. As a matter of comity between sovereigns, federal appellate courts, particularly the Federal Circuit, should be especially scrupulous not to thwart the application of state law by disrupting jury verdicts on such claims.

The States depend on their citizens' respect for and trust in the fair and reasonable application of the States' laws. That trust depends, in turn, on a system of justice that is credible and reasonably predictable. "Faith in the ability of a jury, selected from a cross-section of the community, to choose wisely among competing rational inferences in the resolution of factual questions lies at the heart of the federal judicial system." *Wratchford v. S.J. Groves & Sons Co.,* 405 F.2d 1061, 1065-66 (4th Cir. 1969). When a court acts outside the rules that ordinarily govern the system, that trust and respect are at risk. Moreover, by its decision in this case, the Federal Circuit has so

elevated the rights of patent holders that they eclipse the duty to comply with generally applicable state law of fraud – the law that serves to vindicate the reasonable reliance and expectations of businesses and individuals on a common standard of forthrightness. This court must not countenance such a result.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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