

No. 26-392

IN THE
Supreme Court of the United States

CENTRIPETAL NETWORKS, LLC,

Petitioner,

v.

CISCO SYSTEMS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**BRIEF OF *AMICUS CURIAE* ALLIANCE OF
U.S. STARTUPS & INVENTORS FOR JOBS
("USIJ") IN SUPPORT OF PETITION BY
CENTRIPETAL NETWORKS, LLC**

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The Alliance of U.S. Startups and Inventors for Jobs (“USIJ”) submits this brief as *amicus curiae* pursuant to Rule 37 in support of the Petition for Writ of *Certiorari* by Centripetal Networks, Inc., seeking this Court’s review and reversal of a panel decision by the Federal Circuit nullifying months or years of judicial time spent in getting to a final judgement, and inflicting enormous harm on a creative and innovative small company and its entrepreneur founders and investors who, through no fault of their own, would see millions of dollars and years of hard work obliterated.¹ When one takes a close look at the facts, the Federal Circuit’s outcome appears to be highly unfair and unjust.

INTEREST OF *AMICUS CURIAE*

Amicus curiae USIJ is a coalition of 23 startup companies and their affiliated entrepreneurs, inventors and investors that depend on stable and reliable patent protection as an essential foundation for making long term investments of capital and time commitments to high-risk

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than this *amicus* made a monetary contribution to its preparation or submission.

USIJ filed an *amicus* brief supporting a petition for *certiorari* in an earlier proceeding in this case, Sup. Ct. Doc. No. 22-246. Following that filing, Centripetal became a member of the USIJ alliance, but had no role in the decision to file this brief and made no financial contribution to its preparation.

Amicus USIJ has provided proper notice to both parties and has the consent of both parties to file this *amicus* brief.

businesses developing new technologies (“USIJ Cohort”). A list of USIJ members is attached as Appendix A.

USIJ was formed in 2012 to address concerns that legislation, policies and practices adopted by the U.S. Congress, the Federal Judiciary and certain Federal agencies were and are placing startups and small technology companies at an unsustainable disadvantage relative to their larger incumbent rivals, both domestic and foreign, and others that would misappropriate their inventions. A disproportionately large number of strategically critical breakthrough inventions is attributable to individual inventors, startups, and small companies.

USIJ’s fundamental mission is to assist and help inform Members of Congress, the Federal Judiciary and leaders in the Executive branch regarding the critical role that patents play in our nation’s economic system and the particular importance of startups and small companies to our country’s continued leadership in strategically critical technologies.

SUMMARY OF ARGUMENT

Amicus Curiae USIJ urges this Court to allow Petitioner a meaningful opportunity to be heard. We support Petitioner in seeking this Court’s review of the decision of the Federal Circuit dated April 29, 2026 (opinion by Hon. Timothy B. Dyk), affirming the decision of a trial judge in the Eastern District of Virginia who had been assigned to complete the case pursuant to Rule 63, F.R.C.P. The Federal Circuit’s 2026 decision followed an earlier ruling by the Federal Circuit, also written by

Judge Dyk, disqualifying the original trial judge, Hon. Henry C. Morgan, for what the opinion said created a conflict of interest.² Hon. Elizabeth W. Hanes was appointed to complete the case.

2. 38 F.4th 1025 (Fed. Cir. 2022). It is easy to conclude, contrary to the ruling of the court, that Judge Morgan did not have an actionable conflict at all. He had caused his wife to divest 100 shares of Cisco stock as soon as he discovered that she had it. Not wishing to be accused of benefitting from an outright sale, in that he was about to release an opinion that might have had an adverse impact on the market for Cisco stock, he placed the stock in a blind trust that allowed the trustee to sell it whenever the trustee chose to do so, an entirely reasonable way to avoid any conflict. The Federal Circuit, however, held that the appearance of impropriety might undermine public confidence in the judiciary, suggesting that he should have sold it outright. (*Id.* at pp. 1030-36). The court was apparently unconcerned with how the staggering unfairness of the ruling might affect the reputation of the Federal Circuit itself in the eyes of the people and companies that make investment decisions dependent on reliable, enforceable patents.

USIJ filed a brief supporting a petition for *certiorari* as to the *vacatur* decision (Sup. Ct. Dkt. 22-246). We argued then as we do now that, properly analyzed, there was no conflict, pointing out that under binding precedents, divesting a tiny interest into a blind trust, under these circumstances, was an appropriate action by Judge Morgan. Although reasonable minds might differ, the ruling was – at the very least – a tenuous basis for stripping Centripetal of a \$2B+ verdict. 100 shares of Cisco stock in August 2020, when Judge Morgan discovered that his wife owned it, was worth about \$4,500, a *de minimis* amount when viewed in the broader context of this case, and utterly lacking in proportionality. The suggestion in the opinion that Judge Morgan might have bent over backwards to favor Centripetal is devoid of a factual basis and runs counter to the entire tenor of his 167-page opinion, most of which he had already completed. (*Id.* at pp. 1037-38).

Based on evidence of malicious copying and willful infringement of Centripetal's technology by Cisco engineers and executives, Judge Morgan had concluded that Cisco's behavior was egregious, and he awarded enhanced damages totaling more than \$2B. After a three-day hearing without fact witnesses dealing with claim construction, Judge Hanes set aside the entirety of Judge Morgan's ruling as to infringement of the three patents, adopting new claim constructions announced after the factual record was closed to the parties. This procedure was unusual and appears to be a denial of due process, as argued in the Petition. Certainly, the ruling was a harsh and unexpected outcome for Centripetal, which had invested years of effort and millions of dollars in an effort to redress the theft of its technology.

In reaching her conclusion, Judge Hanes added a claim term that neither party had requested prior to Judge Morgan's claim construction order, which had been entered before the trial and well before Judge Morgan discovered that his wife owned 100 shares of Cisco stock.³ Because of its timing, Judge Morgan's claim construction order was expressly preserved by the Federal Circuit's *vacatur* decision, and should not have been revisited by Judge Hanes, particularly in light of its signal importance to how the *Centripetal* case had been presented at trial.⁴

3. As is normal in most patent trials, the claim construction order became the foundation upon which the parties structured their presentation of evidence on infringement and validity, a point emphasized in the Petition.

4. The *vacatur* order remanded the case to the trial court with instructions to reconsider only rulings by Judge Morgan rendered after he discovered that he owned a beneficial interest

For the Federal Circuit to allow the new judge to “move the property line” after the record was closed cannot be called an objective application of the rule of law. In most cases claiming patent infringement, the specific fixation of the property line, *i.e.*, the claim construction, to the extent it is contested, is the single most important issue in the case.⁵ Also worth mentioning is that notice and a meaningful opportunity to be heard are at the core of Due Process.⁶

Rule 63 exists to allow a new judge to complete the work of another judge who is no longer able to act. The purpose of the Rule is to preserve as much of an original judge’s work as possible in a manner that does not prejudice the parties. The Rule does not contemplate that the second judge should reexamine matters previously

in Cisco stock, namely after August 11, 2020. “[T]he only rulings subject to *vacatur* are those issued after Judge Morgan learned of his wife’s financial interest in Cisco, on August 11, 2020.” 34 F.4th at 1039.

5. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996); *Retractable Techs., Inc. v. Becton, Dickinson & Co.*, 653 F.3d 1296 (Fed. Cir. 2011) (Moore, J. dissenting from denial of *en banc* hearing) (“Claim construction is the single most important event in the course of a patent litigation. It defines the scope of the property right being enforced, and is often the difference between infringement and non-infringement, or validity and invalidity.”)

6. *E.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”).

resolved.⁷ The *vacatur* order stated clearly that only those actions by Judge Morgan taken **after** he discovered the conflict were vacated. For Judge Hanes to ignore that limitation was unfair to Centripetal, which spent years and millions of dollars seeking redress for the blatant theft of its technology. USIJ urges this Court to reverse the harsh decision of the Federal Circuit, or at least provide Petitioner with its day in court.

An important reason for this Court to examine the details leading to the judgment is the impact that this case and its mantle of unfairness is having within the USIJ Cohort and numerous other small companies similarly situated.

Cybersecurity is today one of the most strategically critical areas of technology. Our nation should be encouraging inventors and their investors to create better protection for a vast array of digital processing that affects nearly every aspect of American life. From the standpoint of the entrepreneurs and inventors who start new companies and the investors who back them, the reliability and integrity of their property rights are essential requirements to avoid the risk of having the new technology simply copied by much larger companies, as happened here. Few things do more to undermine the perception of patent reliability in this community than letting a small startup company spend millions of dollars and years of effort to get to a final judgment, as Centripetal did, and then stripping it away after the startup has prevailed.

7. See Advisory Committee Notes re 1991 Amendment to Rule 63.

These two decisions by the Federal Circuit, if allowed to stand, will add to the perception held by many in the inventor and entrepreneurial community that the Federal Circuit favors infringers over patent owners and favors technology giants over smaller companies.⁸ The U.S. patent system only works to incentivize investment in new technology if the entrepreneurs and their investors **believe** that their patents are reliable. The perception that patent owners are unlikely to prevail in litigation, particularly where the new technology is likely to have a high value, makes patents irrelevant. Growing pessimism adds to the inherent risk facing entrepreneurs and investors considering the pros and cons of developing a new and better digital technology in a strategic area dominated by one of the corporate giants.

Over the last 20 years, the reality is that many inventors and investors have already abandoned the belief that the U.S. patent system provides any protection at all for their technology. When these small companies have tried to enforce their exclusive rights, they often were

8. For litigants before the Federal Circuit, the court as a whole is viewed as highly panel-specific in terms of likely outcomes and is therefore not reliable. The court also rarely accepts cases *en banc*, other than to reverse holdings favoring patent owners; compare, e.g., *EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333 (Fed. Cir. 2025) (*en banc*) reversing panel decision favoring patent owner with *Athena Diagnostics, Inc., et al v. Mayo Diagnostic Services LLC*, 915 F.3d 743 (Fed. Cir. 2019) (2019) (*per curiam* order denying *en banc* review sought by patent owner (8 separate concurrences and dissents consuming 82 pages) and *American Axle & Manufacturing, Inc. v. Neapco Holdings LLC*, Docket No. 2018-1763 (*per curiam* order filed 7/31/2020 denying *en banc* rehearing sought by patent owner (6 separate concurring and dissenting opinions consuming 46 pages)).

shocked to discover that protection is largely illusory. In Section III, *supra*, we show that many American investors have abandoned U.S. patents as the basis for building a new business. Our nation is the primary loser here, and we may never know what investments were not made or what new products or technologies were never created. Outcomes such as the instant case are high on the list of reasons that inventors and investors are abandoning the playing field.⁹ Furthermore, the Federal Circuit’s history of rarely enforcing awards over \$100 million and never enforcing damage awards of more than \$500 million, as discussed in Section IV, *supra*, adds further to this perception.

ARGUMENT

I. Centripetal Networks Exemplifies American Innovation.

Centripetal Networks is a poster child for many of the things our country believes about invention and

9. From the point of view of many patent owners, particularly startups and small companies, there are numerous aspects of Federal Circuit jurisprudence in need of revision to restore a truly functional patent system, including the extreme difficulty of obtaining injunctive relief in light of the Federal Circuit’s interpretation of this Court’s decision in *eBay v. MercExchange LLC*, (547 U.S. 388 (2006)), the Federal Circuit’s expansion of ineligibility for inventions that clearly fall under Section 101, the Federal Circuit’s panel-specific outcomes that overall favor infringers over inventors, and the susceptibility of all patents to repetitive attacks in the PTAB. We call attention to these matters because they are part of the court’s larger reputational problem, but such issues are not before the Court specifically in this petition.

innovation. The company was founded by experts in cybersecurity who could have taken jobs with large established incumbents, such as Cisco or Google or Apple, but who chose instead to form their own company and address security problems that larger companies were not able to solve. The company was highly successful in its efforts to improve the defense of computer networks, and owns over 100 issued U.S. patents to show for its efforts, with many more applications in the pipeline.

As can be seen in Judge Morgan's decision, after beginning to sell its innovative improvements in network security installations, Centripetal made the business mistake of expecting Cisco to behave honorably and in good faith when the smaller company made an effort, pursuant to an NDA, to sell Cisco on the idea of incorporating one of its inventions into Cisco products. Cisco went through the motions of negotiating a business arrangement until its engineers knew enough to copy the innovations, after which Cisco ended the discussions and proceeded to do just that – copy Centripetal's technology. Cisco essentially ignored the NDA, interpreting it as covering only what was protected by the Centripetal patents, and copied what it had been shown.¹⁰ Centripetal brought this patent infringement case against Cisco and, after running the usual PTAB gauntlet of IPRs, motion practice and a lengthy trial, prevailed. The size of the award – \$2+ billion – was a royalty based on the enormous profitability to Cisco in passing off the patented technology as its own, enhanced to address Cisco's behavior..

10. Opinion and Order, Docket No. 2:18cv94 (E.D.Va October 5, 2020), pp. 149 - 157, 160 (Morgan, J.)

Dozens of American companies have been started in a similar fashion since the founding of this country, many of them harboring the belief that their U.S. patents would protect their innovative work from being copied by large incumbents selling similar products. Patents are critical, if not existential, in this respect; large corporations such as Cisco are not particularly innovative, but do enjoy the advantage of established manufacturing infrastructure and distribution channels and the economies of scale that accompany these operations, all of which diminish their need for patents at all. Patents, on the other hand, are essential to encourage entrepreneurs, inventors and investors to assume the risks associated with starting a new company and developing a new technology, particularly one that is easily copied once the feasibility of new technology is established.

It is against this backdrop that the reputational impact of the ruling below must be measured. Cybersecurity is one of several key strategic technologies of the 21st Century, and it is unarguably critical to our nation's security. If we are to maintain our prominence as the world's leading developer of new science and technology, the nation must energize, on a nationwide basis, as many of its inventive scientists and engineers as possible to participate in this task, not just the engineers and inventors who choose to work for the corporate giants that dominate the digital technology industries.¹¹

11. A recent book by Jonathan M. Barnett, professor of law and economics at the University of Southern California, entitled "Innovators, Firms, and Markets: The Organizational Logic of Intellectual Property" (2020), details how corporate giants over the last few years have lobbied intensely for a weakening of patent enforcement so as to insulate themselves from the forces

Maintaining a properly functioning patent system is not merely a legal or economic problem, it is a matter of grave concern to our national security. In 2021, the National Security Commission on Artificial Intelligence issued its report on, *inter alia*, the preparedness of the U.S. to compete on a global basis with our most important competitor nations. <https://www.nscai.gov/2021-final-report>. The report includes the following cautionary observations about the state of U.S. patent law (p. 201):

“China is both leveraging and exploiting intellectual property (IP) policies as a critical tool within its national strategies for emerging technologies ... The United States has failed to similarly recognize the importance of IP in securing its own national security, economic interests, and technology competitiveness. ... China is poised to ‘fill the void’ left by weakened U.S. IP protections, particularly for patents, as the U.S. has lost its comparative advantage in securing stable and effective property rights in new technological innovation.”

Rather than strengthening our patent system to promote innovation, the message to be inferred from the Federal Circuit in this case is to discourage entrepreneurial activities. By nullifying Centripetal’s litigation success, first by finding a conflict that was,

of competition from smaller, more nimble and more creative companies, with the relatively predictable effect that the R&D needed for developing new technologies and for improving old ones has become increasingly the sole domain of some of the corporate giants whose motivations are to retain the status quo at all costs.

at the very least, questionable,¹² then by affirming the quirky procedure used by Judge Hanes to find a lack of infringement, the panel in effect said:

“Do not rely on your U.S. patents to protect your investments of time and money in developing new technologies that would challenge incumbents in the digital technology industries.”

USIJ respectfully submits that this Court should not permit the Federal Circuit to send such a sweeping message to the investment and invention communities and the public in general.

II. Individual Inventors, Entrepreneurs and Small Companies Are Critical to American Innovation.

Startups and small companies are extremely important to the long-term future of our nation, and these companies need reliable patent protection for their high-risk business endeavors to a far greater extent than do established incumbents. The latter group enjoys the benefits of a brand and customer base, market share, essential infrastructure for engineering and manufacturing, an existing sales and marketing team, and other benefits of size, all of which in many cases obviate the need for patents altogether. Small companies, however, except for the existence of their patents, are unable to compete with larger ones for just those reasons.

12. As noted in fn.2, *infra*, USIJ filed a brief supporting a petition for *certiorari* following the *vacatur* decision of the Federal Circuit (Sup. Ct. Dkt. 22-246).

A substantial body of literature points out that many large companies with established markets, despite the pronouncements of their public relations departments, are largely incapable of genuine breakthrough innovation, because it risks disrupting existing revenue streams and bonus structures.¹³ Many large companies can do some things very well – refine the engineering and exterior design of products, create and expand infrastructure needed for scaling, distribute products through worldwide networks, etc., all of which are important. What this group does not do well is genuine breakthrough innovation. It is smaller, more nimble companies that want to challenge the large entrenched incumbents that are the real drivers of breakthrough innovation. It is worth emphasizing that this is a cohort strategically critical to the future of this nation.

13. Numerous studies have shown that the internal profit and bonus dynamics of large companies rarely tolerate disruptive innovation, so that what they call “innovation” is really just marginal improvements on existing technologies. *See, e.g.*, Clayton Christensen, “INNOVATORS DILEMMA,” Harvard Business Review Press (1997), whose studies describe a number of industries where disruptive innovation caused the company’s failure.

Accord: Chris Miller, “CHIP WARS,” Simon & Schuster (2022), pp. 191-97, describing Intel’s inability to innovate and enter the market for mobile processing until after smaller companies were able successfully to develop low power microprocessors necessary for smartphones.

Accord: Michael Hiltzik, “DEALERS OF LIGHTNING,” Harper Collins Publishing (1999), describing how the senior management at Xerox recognized in 1970 that the dawn of digital imaging ultimately would destroy its analog copier business, and so created Xerox Parc, staffed with some of the most brilliant young inventors and scientists in the world, only to discover that the institutional forces within the company still would not allow most of the resulting innovation to come to market.

A 2023 report of the National Economic Council entitled, “The Economics of Investing in America,” notes that startups and small to medium sized companies are a significant driver of innovation in this nation – not the entrenched corporate giants that falsely claim that role. The NEC report states:

“The evidence is clear that new small and medium-sized businesses are drivers of innovation. Yet when a few firms (or one single firm) dominate a market, they can stifle and stymie disruptive startups and other new businesses.”¹⁴

A similar observation was made by the House Judiciary Subcommittee on Antitrust, Commercial and Administrative Law entitled “Investigation of competition in digital markets,” which in 2022 released a 451-page assessment of the state of competition in the digital technologies (“House Report”).¹⁵ An important finding of the Subcommittee confirms the substantial decline in the number of startups and entrepreneurs willing to start companies to compete with large incumbents:

“In recent decades, however, there has been a sharp decline in new business formation as well as early-stage startup funding. The number of new technology firms in the digital economy

14. <https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/07/Economics-of-Investing-in-America.pdf> (p.12).

15. https://democrats-judiciary.house.gov/sites/evo-subsites/democrats-judiciary.house.gov/files/migrated/UploadedFiles/Competition_In_Digital_Markets.pdf.

has declined, while the entrepreneurship rate—the share of startups and young firms in the industry as a whole—has also fallen significantly in this market. Unsurprisingly, there has also been a sharp reduction in early-stage funding for technology startups.” House Report at pp. 46-47.

Additionally, a 2022 report of the National Bureau of Economic Research entitled, “Of Academics and Creative Destruction: Startup Advantage in the Process of Innovation,” finds:

“First, startup innovation will be more valuable and ultimately more impactful than that of either universities or large firms, and second, startups will generate innovations that are more radical and disruptive than those of incumbent firms.” ... Overall, our findings suggest that startup innovation is qualitatively different from the innovation in other organizational settings: there is a clear ‘startup advantage’ in the quality and impact of startup patents relative to established firms.”¹⁶

An essay by Professor Jonathan Barnett at USC,¹⁷

16. https://www.nber.org/system/files/working_papers/w30362/w30362.pdf (pp. 4-5).

17. Barnett is the Torrey H. Webb Professor of Law at the Gould School of Law at the University of Southern California. He has written extensively about the importance of intellectual property to innovation and the creation of disruptive new technologies.

entitled “Why Big Tech Favors Weak IP,” explains how strong enforcement of IP allows entrepreneurs and investors to develop disruptive new innovation that challenges the entrenched incumbents and why weak IP rights diminish such innovation. Spring 2021 Issue of *REGULATION*, pp. 16 -18.

III. Inventor and Investor Confidence in the Reliability and Predictability of U.S. Patents Is Declining.

The longer-term economic impact of the current state of patent jurisprudence is ominous although predictable. Faced with the likelihood that a much larger incumbent or other company will successfully steal newly developed and more effective technology, fewer and fewer entrepreneurs and their investors can justify the commitments needed to develop such technologies, especially those that compete with the digital technology giants or that will have value only if the new technology can be licensed to such companies. By walking rampant over the technologies of small companies, these corporate giants have established themselves as either monopolies or duopolies and have no room for upstarts that would challenge their dominance, which in turn has led to a sharp decline in the formation of startups willing to do so.¹⁸

It should therefore come as no surprise that an increasing number of entrepreneurs and their investors have simply abandoned the U.S. patent system as a foundation for developing new technologies that are easily copied. Some have stopped investing time and resources

18. *See*, fn.13, re “House Report” on Competition in Digital Industries, pp. 46-47)

in enterprises whose value depends on patents, choosing instead to invest in consumer products and services that do not require patents, such as restaurants, hotels, fashion design and the like.¹⁹ This is a double loss for America, first, because it is the IP intensive industries that create strategically important new technologies, and second because these companies also create the best jobs and largest amount of GDP growth, a fact that has been true for several decades.²⁰

In addition, a growing number of small companies that innovate in areas dominated by tech giants no longer look to the U.S. to enforce their patent rights, but instead are bringing their patent infringement cases in other countries – most notably the Unified Patent Court

19. In 2020, USIJ published a Policy Report entitled “The Importance of an Effective and Reliable Patent System to Investment in Critical Technologies,” confirming the serious adverse economic effect of a weakened U.S. patent system. https://usij.org/wp-content/uploads/2024/07/USIJFullReport_Final_2020.pdf. The study found that as U.S. patents became less reliable, the share of venture capital funding going to firms in patent-intensive industries fell from over 50% in 2004 to about 28% in 2017. Funding for semiconductors, medical devices, and pharmaceuticals declined sharply in relative terms, while capital flowed toward less patent-dependent sectors such as social networking and consumer finance. Interviews with leading investors and inventors traced this shift to the growing unpredictability of the U.S. patent system.

20. *See, e.g.*, USPTO, “Intellectual Property and the U.S. Economy 2024” concluding that IP intensive companies account for 44% of both GDP and private sector employment, 53% higher wages and 82% of exports. <https://www.uspto.gov/sites/default/files/documents/uspto-aug2026-report-ip-intensive-industries.pdf> (2026).

(“UPC”) in Europe.²¹ The UPC was established in June 2023 and almost overnight became the jurisdiction of choice for many American companies that want to sue one of America’s international digital technology companies. The reasons are readily apparent; unlike our own U.S. courts, the UPC grants permanent injunctions in 60% of the cases it decides on the merits and preliminary injunctions in more than half of them. Injunctions are the default remedy for patent infringement.²²

Still other inventors have simply given up inventing, which is a significant loss of talent and creativity that our country can ill afford to lose.²³ It is difficult to measure

21. Exemplary is R2 Technologies Corporation which invented technology that minimizes the likelihood that a voltage spike will damage an expensive semiconductor chip. Intel began infringing the R2 patents and was successful in persuading the PTAB to invalidate some of them. After Intel informed R2 that the company never took patent licenses from small companies, R2 sued in Europe and was successful in obtaining injunctions as to several of its patents, which in turn led Intel to take a license. *Compare*, Business Wire, 3/18/24 <https://www.businesswire.com/news/home/20240317595568/en/R2-Semiconductor-Announces-Two-Important-Updates-in-Intel-Patent-Infringement-Case>; with <https://newsroom.intel.com/corporate/update-litigation-2024> dated 8/30/24 showing that Intel ultimately did agree to a license. The case is powerful evidence that reliable enforceability is essential to prevent the blatant theft of IP covering valuable technology developed in America.

22. *See, e.g.*, UC Berkeley Forum, “How US Patent Enforcement Decline Elevated the UPC as the Global Forum for Injunctive Relief, November 20, 2025. <https://www.law.berkeley.edu/research/bclt/bclt-legal-analysis/upc-p1>.

23. Exemplary is Dr. Gregory G. Raleigh, one of the founders of USIJ, who is listed as an inventor on more than 340 U.S. patents.

the size of this group, but the realization that any talented scientists and engineers are giving up their primary pursuits over the inability to protect their work should be troubling indeed.

IV. The Federal Circuit’s Refusal to Enforce Large Damage Awards Further Diminishes the Reputation of That Court in the Eyes of Inventors and Investors

Most patent cases do not lead to very large damage awards, but when the defendant enjoys sales in the tens or hundreds of billions of dollars, it does occur from time to time. In today’s economy, this is more likely to occur in one of the digital technology industries, as it did in the instant case. In his concurring opinion in the *eBay* case, Chief Justice Roberts noted the difficulty of trying to make damages a substitute for injunctive relief.²⁴ A recent empirical study of damage awards that had been reviewed by the Federal Circuit revealed a fundamental reality – the Federal Circuit does not enforce damage awards above a certain size, irrespective of what factors

Based on some of his patents, at a time when patents could be enforced against large companies, Mr. Raleigh was able to start two companies based on his inventions and ultimately sell them to larger companies. Given the changes in the patent system over the past 20 years, however, he has abandoned that pursuit for an entirely different business.

24. “From at least the early 19th century, courts have granted injunctive relief upon a finding of infringement in the vast majority of patent cases. This ‘long tradition of equity practice’ is not surprising, **given the difficulty of protecting a right to exclude through monetary remedies that allow an infringer to use an invention against the patentee’s wishes ...**,” (547 U.S. 388, 395 (2006) (Roberts, J, concurring).

may have prompted a jury (or judge in a bench trial) to grant a larger award.²⁵ The report states as one of its conclusions:

“Patent damages awards are most vulnerable at the upper end of the spectrum. Billion-dollar verdicts consistently collapse on appeal, and damages exceeding \$500M have no survival record in the modern era. The relationship between award size and appellate damages survival is robust, providing a better understanding of the real outcomes of patent litigation as empirical input for policy debates on patent enforcement.”

V. Conclusion.

The reputational loss of the U.S. patent system over the last 20 years among the cohort that needs it the most has become palpable. The Federal Circuit has not made the necessary adjustments to level the playing field and repair that reputation. USIJ urges the Court to grant the petition for *certiorari* and hear from Centripetal Networks on this matter. The original trial judge is now dead, but it would be a genuine tragedy from the standpoint of the entrepreneurial and investor community to allow the Federal Circuit’s rulings to stand.

25. Dr. Bowman Heiden “The Survival of U.S. Patent Damages on Appeal: An Empirical Study of Award Size and Affirmance Rates” (September 20, 2025). Available at SSRN: <https://ssrn.com/abstract=5513538> or <http://dx.doi.org/10.2139/ssrn.5513538>.

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