

No. 21-1876

**United States Court of Appeals
for the Federal Circuit**

MITSUBISHI TANABE PHARMA CORPORATION, JANSSEN
PHARMACEUTICALS, INC., JANSSEN PHARMACEUTICA NV, JANSSEN
RESEARCH AND DEVELOPMENT LLC, CILAG GMBH INTERNATIONAL

Plaintiffs-Appellees,

– v. –

SANDOS INC., ZYDUS PHARMACEUTICALS (USA) INC., AUROBINDO
PHARMA USA, INC.

Defendants-Appellants.

*On Appeal from the United States District Court for the
District of New Jersey, No. 3:17-cv-05319-FLW-DEA,
Honorable Freda L. Wolfson, Chief District Judge*

**BRIEF OF SAMSUNG ELECTRONICS CO., LTD. AS
AMICUS CURIAE IN SUPPORT OF NEITHER PARTY**

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July 13, 2021

CERTIFICATE OF INTEREST

Counsel for *amicus curiae* certify the following:

1. The full name of all entities represented by us are:

Samsung Electronics Co., Ltd.

2. The full names of all real parties in interest:

Not applicable.

3. All parent corporations for the entities and any publicly held companies that own 10% or more in the entities:

Not applicable.

4. All law firms, partners, and associates that appeared for the entities in the originating court or agency or are expected to appear in this court for the entities:

Willkie Farr & Gallagher LLP, Indranil Mukerji, Stephen A. Marshall,
Devon W. Edwards.

5. The title and number of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal:

The Court's decision in the pending appeal may affect *Mitsubishi Tanabe Pharma Corp. et al. v. Dr. Reddy's Laboratories, Inc., et al.*, No. 1:19-cv-18764 (D.N.J.).

6. Any information required under Fed. R. App. P.26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees):

Not applicable.

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Samsung Electronics Co., Ltd. (“Samsung”) submits this brief as *amicus curiae* pursuant to Federal Circuit Rule 29 and Federal Rule of Appellate Procedure 29. This brief argues that the District Court’s determination that U.S. Patent No. 8,222,219 (“the ’219 patent”) cannot serve as an obviousness-type double patenting reference for the later-expiring claims of U.S. Patent No. 7,943,788 (“the ’788 patent”) was contrary to law and policy, and should be reversed.

IDENTITY AND INTEREST OF *AMICUS CURIAE* AND SOURCE OF AUTHORITY TO FILE

Amicus curiae is Samsung. *Amicus* has no personal interest in the outcome of this case, but has an interest in ensuring that the law develops in a manner that ensures consistency and predictability. This brief seeks to draw to the Court’s attention practical, legal, and policy matters pertaining to patent term adjustments, double patenting, and statutory provisions aimed at ensuring that a patentee cannot effectively extend the statutorily defined term of patent by obtaining and maintaining later-expiring claims that are not patentably distinct from those of an earlier-expiring patent. This brief was not authored in whole or in part by counsel to any party in this action, and no party, party’s counsel, or any other person has contributed financial resources intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

In operation, the district court's decision would allow a patentee to effectively extend its statutory monopoly beyond the period allowed by the law. In reaching its decision, the district court erred by ignoring statutory context, this Court's case law, and the important public policy underlying the double patenting doctrine. Accordingly, this brief concerns only one issue: the interplay between the doctrine of obviousness-type double patenting (OTDP), and the statutory patent term adjustment (PTA) that may be granted, pursuant to 35 U.S.C. § 154, to compensate an applicant for Patent Office delays during prosecution.

Both precedent and statute confirm that two patents with patentably indistinct claims, absent certain limited circumstances not applicable here, must both expire with the earliest-expiring patent. Any other result would be an impermissible extension of patent term, depriving the public of its rightful use following patent expiration. Invalidation-by-OTDP is the tool by which courts enforce that principle, in the relatively rare instances when a patentee itself does not terminally disclaim any term of a later-expiring patent that extends beyond the life of earlier-expiring claims. As this Court has repeatedly affirmed, the policy against OTDP applies with equal force regardless of whether the earlier-expiring or the later-expiring claims were filed first: the focus is on patent *expiration* dates, not *filing* dates.

To be clear, *amicus* takes no position on the ultimate issues in this case—the validity of the ’788 patent, whether the ’219 patent falls into the double patenting “safe harbor” of 35 U.S.C. § 121, or whether the claims of the two patents are, in fact, patentably indistinct. But *amicus* does seek to ensure that the patent laws develop in a way that is fair, logical, and predictable; reflect Congress’ statutory intent; and are applied in a manner consistent with the public bargain that undergirds the patent system. *Amicus* also advocates a holding by this Court that will maintain the viability of the double patenting defense, a defense which operates to police against impermissible grabs of unwarranted temporal patent monopoly, and disincentivize crafty patent prosecution in pursuit of such grabs. Those goals will be accomplished only by reversing the district court’s erroneous determination that patents extended by PTA cannot be found invalid for OTDP.

The result sought by *amicus*, while important, is also quite specific, and would be limited to a relatively rare set of facts, like the one in the instant appeal. Here, the ’788 and ’219 patents both claim priority to the same original application, filed July 30, 2004. *See* Appx182, Appx300. The inventors filed for the ’788 patent in 2005, and it issued in May 2011; just weeks later, the same inventors filed for the ’219 patent, which subsequently issued in 2012. *Id.* Absent any PTA, or patent term extension (PTE) based on the FDA’s regulatory review, both the ’788 and ’219 patents would have expired on the same date, in 2024. *See*

Appx65. Yet, because the Patent Office accorded 1,079 days of PTA to the '788 patent, Appx61, the net result¹ is that it facially expires more than two years following the expiration of the '219 patent. That is, the '788 patent's claims—which Defendants-Appellants argue are essentially the same as those of the '219 patent—will live on for years after the expiration of the '219 patent.

In light of this disparity, Defendants-Appellants argued below that the '788 patent is invalid for obviousness-type double patenting; that is, to the extent its claims are not patentably distinct from those of the '219 patent,² the additional 823 days of protection afforded to the claims of the '788 patent would effectively constitute an unwarranted extension of the term of the '219 patent. *See* Appx60-66. However, the district court held that the earlier-expiring patent could not be used to invalidate the later-expiring patent. *Id.* In so doing, the district court incorrectly rejected the application of OTDP to the '788 patent, holding that this judicial doctrine could not cut short a statutorily-provided PTA.

The district court erred. First, by express statute promulgated by Congress decades ago, where a patent application is subject to a terminal disclaimer—that is,

¹ The Patent Office also accorded the '219 patent an additional term of 256 days as PTE (not PTA). Appx61.

² As noted *supra*, *amicus* takes no position on the merits of Defendants-Appellants' double patenting argument, but for purposes of this brief, assume *arguendo* that the claims of the '219 and '788 patents are not patentably distinct.

where the Patent Office has rejected its claims due to OTDP—its term cannot be extended through PTA. 35 U.S.C. § 154(b)(2)(B). There is no reason to deviate from this basic principle, that double patenting concerns trump PTA. Second, although this Court identified certain circumstances under which OTDP is unavailable in *Novartis Pharms. Corp. v. Breckenridge Pharm. Inc.*, 909 F.3d 1355 (Fed. Cir. 2018) (“*Breckenridge*”) and *Novartis AG v. Ezra Ventures LLC*, 909 F.3d 1367 (Fed. Cir. 2018) (“*Ezra*”), those cases do not suggest that PTA term is immune from a double patenting challenge; to the contrary, they expressly hold that outside of their narrow contours, OTDP remains a viable avenue for challenging patent validity. Third, the district court’s decision erodes the consistency and predictability of the application of the patent laws, and encourages gamesmanship before the Patent Office to secure unwarranted PTA, all in contravention of Congress’ intent and to the detriment of the public.

In view of the foregoing, and as set forth below, *amicus* respectfully asks this Court to clarify that PTA cannot save two patentably indistinct patents from a double patenting challenge, and that such patents must expire simultaneously irrespective of any PTA.

ARGUMENT

I. CONGRESS INTENDED DOUBLE PATENTING CONCERNS TO OUTWEIGH ANY PTA.

For its part, Congress has already effectively resolved the tension between PTA and OTDP by recognizing that claims that are not patentably distinct from those of another patent should not qualify for PTA in the first instance. This rule is established in Title 35 itself: where a patent application is subject to a terminal disclaimer—that is, where a patentee addresses the Patent Office’s OTDP rejection by disclaiming any patent term extending beyond the earliest expiration—its term cannot be extended through PTA. 35 U.S.C. § 154(b)(2)(B). That clear bright line codification confirms that Congress did not intend PTA to operate in a way that overcomes double patenting concerns.

Despite this, the district court essentially held that the inverse applies outside of the Patent Office: that once issued, PTA takes precedence over the application of OTDP. Appx64-66. That simply cannot be the case. Where two patentably indistinct patents are concerned, the two competing policy goals are, on the one hand, ensuring that a patentee enjoys the full benefit of a statutory patent term of one of the patents, and on the other, that the two patents are not used to effectively extend the statutory term of the first claims to expire. Here, neither side has argued that the patentee should not enjoy the full term of the ’219 patent; rather, the

danger is that the patentee will get the benefit of the '219 patent's full term, impermissibly augmented by the PTA of the '788 patent. Given the preservation of the patentee's interest by the life of the '219 patent, and given Congress' express intention to ensure that PTA not override OTDP terminal disclaimers, the district court's reasoning serves neither law nor policy.

The district court further erred by improperly conflating PTA with PTE, which is separately governed by 35 U.S.C. § 156. Appx65 (erroneously rejecting Defendants-Appellants' argument that this Court's precedent "distinguishes PTEs and PTAs in the context of obviousness-type double patenting"). Congress carefully delineated between PTA and PTE, imposing different requirements and limitations on each. *See Ezra*, 909 F.3d at 1373-74 ("not[ing] the contrast between § 156 for PTE with the language of § 154 for patent term adjustments"). As this Court has previously held, patents subject to a terminal disclaimer can receive PTE without implicating OTDP concerns because § 156 provides only for a limited extension of term, under certain circumstances, to one patent per drug, medical device, or method of using or manufacturing the same. *Id.* As a result, either a first-expiring or later-expiring patent (or one of two simultaneously-expiring patents) could qualify for, and be granted PTE. Even if its claims were patentably indistinct from those of a related patent, it is irrelevant, as a practical matter, which patent's term the patentee chooses to extend.

Moreover, unlike in § 154, Congress did not disqualify terminally-disclaimed patents from receiving PTE, a distinction (as discussed *infra*) this Court has previously relied on in adjudicating the interplay between PTE and OTDP. *Ezra*, 909 F.3d at 1373-74; *see also Merck & Co v. Hi-Tech Pharmacal Co.*, 482 F.3d 1317, 1322 (Fed. Cir. 2007) (noting that unlike § 154(b)(2) “[t]here is no similar provision that excludes patents in which a terminal disclaimer was filed from the benefits of [PTE] extensions”). Indeed, this Court recognized that the lack of such language in § 156 demonstrated that Congress prioritized PTE over the application of OTDP, but the inclusion of § 154(b)(2) can only signify the opposite with respect to PTA. In short, the district court misinterpreted Congress’ careful statutory regime that is designed to preclude the precise result here: the unwarranted effective extension of patent term for patentably indistinct claims.

II. THIS COURT HAS REPEATEDLY RECOGNIZED THAT A LATER-ISSUED, EARLIER-EXPIRING PATENT IS A SUITABLE OBVIOUSNESS-TYPE DOUBLE PATENTING REFERENCE.

A. *Gilead* Controls the Double Patenting Inquiry, and Ensures that All Obvious Variations on Patent Claims Have the Same Expiration Date.

The OTDP doctrine exists to uphold the “bedrock principle of our patent system that when a patent expires, the public is free to use not only the same invention claimed in the expired patent but also obvious or patentably indistinct modifications of that invention.” *Gilead Scis., Inc. v. Natco Pharma Ltd.*, 753 F.3d

1208, 1214 (Fed. Cir. 2014). “[T]hat principle is violated when a patent expires and the public is nevertheless barred from practicing obvious modifications of the invention claimed in that patent because the inventor holds another later-expiring patent with claims for obvious modifications of the invention.” *Id.*; *see also Abbie Inc. v. Mathilda & Terence Kennedy Inst. of Rheumatology Trust*, 764 F.3d 1366, 1374 (Fed. Cir. 2014) (a patentee is “not entitled to an extra [term] of monopoly solely because it filed a separate application unless the two inventions are patentably distinct”).

To ensure this result, *Gilead* is clear: “it is the comparison of [] patent expiration dates that should control,” and later-filed, earlier-expiring claims can serve as an OTDP reference for an earlier-filed, later-expiring patent. *Id.* at 1214-16. To allow otherwise would result in “significant vacillations in an inventor’s period of exclusivity over his invention and its obvious variants,” an outcome that “is simply too arbitrary, uncertain, and prone to gamesmanship.” *Id.* at 1216. Applying this basic rule, the earlier-expiring claims of the ’219 patent can serve as an OTDP reference, potentially rendering invalid the later-expiring claims of the ’788 patent. The district court’s determination to the contrary—that a PTA term is immune from an OTDP challenge—only promotes the same ambiguity and uncertainty and permits the exact sort of gamesmanship cautioned in *Gilead*.

Notably, the PTA statute specifically reflects the goals of OTDP, as reflected in *Gilead*. By enacting § 154(b)(2), Congress prohibited patents subject to a terminal disclaimer from qualifying for PTA. Because terminal disclaimers are typically “filed to obviate judicially created double patenting [rejections] in a patent application or reexamination proceeding,” 37 C.F.R. § 1.321(c); MPEP § 1490, this provision precludes a patentee from receiving PTA in connection with a first patent, and essentially extending the term of other, patentably indistinct claims in another. But the district court purported to find a loophole in § 154—one that this Court now has the opportunity to definitively close.

Had the '788 and '219 patents been simultaneously pending before the Patent Office, the Examiner could have held that their claims were not patentably indistinct and issued OTDP rejections in either or both applications. In response, the applicants likely would have filed terminal disclaimers, foregoing any potential PTA for either patent. But instead, the applicants did not file for the '219 patent until the '788 patent had already issued. Thus, there was no chance for the Examiner to issue an OTDP rejection during the '788 patent prosecution, no need for the applicants to file a disclaimer, and no trigger of the statutory bar precluding the '788 patent from receiving PTA. Even though the '219 patent could still have been rejected for OTDP over the by-then-issued '788 patent, its term could still be effectively extended by any PTA received by the first-issued patent (to the extent

its claims are not patentably indistinct)—even if the ’219 patent properly would have expired earlier than the ’788 patent. Put another way, by careful orchestration of prosecution, the claims of the ’219 patent (according to Plaintiffs-Appellees and the district court) would achieve the perverse result of an effective term beyond the statutorily mandated 20 years from the earliest filing date. And, under the district court’s reasoning, despite the Patent Office having had no opportunity to restrict the term of the ’788 patent, its PTA term became immunized from any subsequent OTDP challenge in litigation. Appx65-66.

Consequently, the district court’s holding runs the risk of incentivizing patent applicants to wait until a first patent has issued, take advantage of whatever PTA is granted, and only then file a second application with patentably indistinct claims—just as the Plaintiffs-Appellees did by staggering their filings of the ’788 and ’219 patents—secure in the knowledge that their first-filed but later-expiring patent can never be invalidated for OTDP. Contrary to the district court’s finding that “the granting of a PTA does not present the potential for gamesmanship by inventors,” Appx65, allowing such careful orchestration of patent prosecution to effectively extend patent term flies in the face of *Gilead* and the very purpose of OTDP. Quite simply, the appropriate length of a patent’s term cannot be, and should not be, dependent upon the order in which it was filed, or how its issuance date relates to the filing date of another patent with indistinct claims.

Perhaps recognizing these implications, the only other court to address this question found that the general rule of *Gilead* applies, and that a patent extended by PTA can still be invalidated for obviousness-type double patenting. *Magna Elecs., Inc. v. TRW Auto. Holdings Corp.*, No. 12-cv-654, 2015 WL 11430786, at *2-4 (W.D. Mich. Dec. 10, 2015). Indeed, even the patentee in *Magna* recognized that the purpose of “double patenting is to prevent unjustified timewise extension of the right to exclude granted by a patent no matter how the extension is brought about.” *Id.* at *4. Because the district court’s decision condones such an “unjustified timewise extension,” *id.*, it should be reversed.

B. Neither *Ezra* nor *Breckenridge* Suggest that PTA Can Render a Patent Immune to a Double Patenting Challenge.

Since deciding *Gilead*, this Court has since recognized two exceptions to its general rule, declining to find OTDP where the later-expiring patent only expired later due to either (1) the URAA’s general extension of patent term, *Novartis Pharms. Corp. v. Breckenridge Pharm. Inc.*, 909 F.3d 1355 (Fed. Cir. 2018); or (2) a grant of PTE under § 156, *Novartis AG v. Ezra Ventures LLC*, 909 F.3d 1367 (Fed. Cir. 2018). The case at bar presents neither circumstance, and both *Breckenridge* and *Ezra* expressly suggest that OTDP should be available where, as here, the term of a post-URAA patent has been adjusted under § 154.

First, by its plain language, *Breckenridge* applies only to the specific scenario where one patent application was filed before the URAA and the other

was filed after. Indeed, the *Breckenridge* court recognized that “where both patents [are] post-URAA, a patent that issues after but expires before another patent can qualify as a double-patenting reference against the earlier-issuing, but later-expiring patent,” *id.* at 1363; only where patent applications straddled an intervening change in law was a different approach warranted. Notably, far from the potential for gamesmanship cautioned in *Gilead*, “Novartis did not seek to extend its patent rights over its [] invention beyond one patent term.” *Id.* at 1367. Instead, Novartis sought to take advantage of Congressional action, which ensured that “patent owners who filed patent applications before the transition date to the new patent term law [could] enjoy the maximum possible term available for their resulting patents under either patent term regime.” *Id.* at 1366-67. Thus, rather than sanctioning a lengthening of patent term (as under § 154), the *Breckenridge* court reasoned that to apply OTDP “would abrogate Novartis’s right to enjoy one full patent term on its invention.” *Id.* On its face, *Breckenridge* suggests that the ’788 patent is subject to OTDP for two reasons: first, because both the ’788 and ’219 patents are post-URAA; and second, because it was not an intervening change of law, but rather the timing of Plaintiffs-Appellees’ patent filings that resulted in the different expiration dates for the two relevant patents.

Even more clearly, the *Ezra* court predicated its decision in part on the distinction between § 154 PTA and § 156 PTE. As it recognized, 35 U.S.C. § 156

“allows an extension of up to five years, equal to the regulatory review period, on a patent covering a product subject to regulatory review.” *Ezra*, 909 F.3d at 1369.

The patent owner “makes a choice among its qualifying patents,” any of which may be selected for the extended term. *Id.* This choice was integral to the PTE statute: Congress specifically opted for a “flexible approach” that “gives the patentholder the flexibility to select the most important patent for extension.” *Id.* at 1369-70 (citations omitted). Indeed, “nothing in the statute restricts the patent owner’s choice for patent term extension among those patents whose terms have been partially consumed by the regulatory review process.” *Id.* at 1372. That earlier-expiring, patentably indistinct claims could not be practiced during the PTE period was “a permissible consequence of the legal status conferred . . . by § 156,” which is nothing less than a “government-granted de jure exclusionary right for an extended time period.” *Id.* at 1373. “[A] straightforward reading of § 156 mandates a term extension so long as the other enumerated statutory requirements for a PTE are met.” *Id.* This statutory regime protects a patent extended under § 156 from invalidation for OTDP, even if it was subject to a terminal disclaimer.

In reaching that conclusion, the *Ezra* court specifically “noted the contrast between § 156 for PTE with the language of § 154 for patent term adjustments: ***§ 154 expressly excludes patents in which a terminal disclaimer was filed from the benefit of a term adjustment for PTO delays***, but § 156 contains no similar

provision that excludes patents in which a terminal disclaimer was filed from the benefits of Hatch-Waxman extensions.” *Ezra*, 909 F.3d at 1373-74 (quoting *Merck & Co. v. Hi-Tech Pharm. Co.*, 482 F.3d 1317, 1322 (Fed. Cir. 2007)) (internal quotations omitted) (emphasis added). This clear distinction “support[ed] the conclusion that a patent term extension under § 156”—unlike PTA—“is not foreclosed by a terminal disclaimer.” *Id.* at 1374. The same principle compels the opposite conclusion here.

Just as importantly, *Ezra* expressly holds that any portion of patent term that is not subject to statutory PTE—such as the PTA term of the ’788 patent—may still be subject to an invalidity challenge for OTDP. “[I]f a patent, under its original expiration date without a PTE, should have been (but was not) terminally disclaimed because of obviousness-type double patenting, then this court’s obviousness-type double patenting case law would apply and the patent could be invalidated.” *Id.* at 1374. To the extent its claims are not patentably distinct from those of the ’219 patent, the ’788 patent-at-issue “should have been but (but was not) terminally disclaimed,” *id.*, and general OTDP principles apply. In sum, far from countenancing against the application of OTDP here, as the district court erroneously held, *Ezra* specifically condones it.

III. THE DISTRICT COURT COMPOUNDED ITS ERROR BY CONFLATING PTA AND PTE TO FIND THAT THE EARLIER-EXPIRING '219 PATENT COULD NOT SERVE AS A DOUBLE PATENTING REFERENCE FOR THE LATER-EXPIRING '788 PATENT.

Misapplying precedent, the district court concluded that as a matter of law the '219 patent could not serve as an OTDP reference against the '788 patent. Appx65-66. That holding failed to consider the distinct statutory regimes differentiating PTA from PTE, the general rule of *Gilead*, the limited scope and plain language of this Court's decisions in *Breckenridge* and *Ezra*, and the policy implications of allowing two patents, which claim obvious variations of one another, to have different expiration dates. It should be reversed.

In deciding the issue, the district court wrote that it was “swayed by the Federal Circuit’s observation that ‘a judge made doctrine’ should not be used to ‘cut off a statutorily-authorized time extension.’” Appx66 (quoting *Ezra*, 909 F.3d at 1375). But as set forth above, and as this Court has repeatedly recognized, what is “statutorily-authorized” by § 156 differs markedly from the scope of § 154. Congress intended to proscribe PTA from patents subject to terminal disclaimers, not to insulate patents that receive PTA from an OTDP invalidity challenge in subsequent litigation.

Moreover, although § 154(b)(2)(B) was integral to this Court’s decisions in *Ezra* and *Merck*, the district court dismissed it in a footnote, noting that the

defendants did not “contend that a terminal disclaimer was required here.”

Appx65. But this is of no moment: the applicants had no need to file a terminal disclaimer during prosecution of the '788 patent because it *had already issued* by the time the '219 application was filed. There was nothing for the applicants to terminally disclaim during prosecution of the '788 patent, as no OTDP issue could even have arisen until the filing (and issuance) of the '219 patent.

Finally, the district court’s conclusion that “the granting of a PTA does not present the potential for gamesmanship” cautioned in *Gilead*, Appx62, likewise misses the mark. As set forth above, Plaintiffs-Appellees waited until the '788 patent had issued to file the '219 patent application, and in doing so avoided both having to file a terminal disclaimer and § 154’s prohibition against granting a PTA in such circumstances. The district court’s interpretation encourages other applicants to commit a similar end-run around § 154, waiting for a first patent to issue (with the possibility of PTA) before filing patentably indistinct claims, because once granted by the Patent Office, a PTA term could never be overcome by an OTDP challenge in litigation. Such a result undermines both the policy aims underlying double patenting and § 154.

In short, contrary to the district court’s determination, when properly framed, there should be no “statutorily-authorized time extension” to “cut off.” Appx66. Regardless of whether an OTDP issue arises during prosecution

(necessitating a terminal disclaimer) or in litigation (resulting in the invalidity of the later-expiring claims), it must take precedence over PTA. This is the only logical interpretation of § 154, is consistent with the precedent and Congressional intent, and the Court should take this opportunity to confirm it.

IV. CONCLUSION

Thus, for the reasons set forth above, this Court should reverse the district court's determination that the earlier-expiring '219 patent can be used as an obviousness-type double patenting reference against the later-expiring '778 patent.

Dated: July 13, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations under Fed. R. App. P. 32(a)(7)(B)(i) and Fed. Cir. R. 32(b), and contains 4,129 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 32(b).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Federal Circuit Rule 28.1 and the type style requirements of Fed. R. App. P. 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Indranil Mukerji
Indranil Mukerji