Docket No. 23-103

United States Court of Appeals for the Federal Circuit

IN RE NIMITZ TECHNOLOGIES LLC,

Petitioner.

On Petition for Writ of Mandamus to the United States District Court for the District of Delaware, Nos. Civ. No. 21-1247-CFC, Civ. No. 21-1362-CFC, Civ. No. 21-1855-CFC, Civ. No. 22-413-CFC, Hon. Colm F. Connolly

CORRECTED NIMITZ TECHNOLOGIES LLC'S COMBINED PETITION FOR PANEL REHEARING OR REHEARING EN BANC

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DECEMBER 21, 2022; CORRECTED DECEMBER 28, 2022

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CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4, Counsel for the Petitioner Nimitz Technologies LLC ("Nimitz") certifies the following:

1. The full name of every party or *amicus* represented by me is:

   Petitioner Nimitz Technologies LLC

2. The name of the real party in interest represented by me is:

   Not applicable.

3. All parent corporations and any publicly held companies that own 10% or more of the stock of the party or *amicus* represented by me are:

   None

4. The names of all law firms and the partners or associates that appeared for the party or *amicus* now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

   Raymond W. Mort, III, The Mort Law Firm, Pllc, 501 Congress Ave. Suite 150, Austin, Texas · 78701

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

(all cases pending in the District of Delaware)

Backertop Licensing LLC v. August Home, Inc.	1:22-cv-00573-CFC
Backertop Licensing LLC v. Canary Connect, Inc	1:22-cv-0572-CFC
Lamplight Licensing LLC v ABB, Inc.,	1:22-cv-0418-CFC
Lamplight Licensing LLC v Ingam Micro, Inc.,	1:22-cv-1017-CFC
Mellaconic IP, LLC v. Timeclock Plus, LLC	1:22-cv-0244-CFC
Mellaconic IP, LLC v. Deputy, Inc.	1:22-cv-0541-CFC
Creekview IP LLC v. Skullcandy Inc.	1:22-cv-00427-CFC
Creekview IP LLC v. Jabra Corp.	1:22-cv-00426-CFC

Swirlate IP LLC v. Quantela, Inc.	1:22-cv-00235-CFC
Swirlate IP LLC v. Lantronix, Inc.	1:22-cv-00249-CFC
Waverly Licensing LLC v. AT&T Mobility LLC	1:22-cv-00420-CFC
Waverly Licensing LLC v. Granite River Labs Inc.	1:22-cv-00422-CFC

6. Provide 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). Fed. Cir. R. 47.4(a)(6).

None.

TABLE OF CONTENTS

CERTIFICATE OF INTEREST I

TABLE OF CONTENTS III

TABLE OF AUTHORITIES V

STATEMENT OF COUNSEL 1

STATEMENT OF FACTS 3

A. Procedural Background 3

B. The Panel's Decision 4

REASONS FOR GRANTING REHEARING 4

I. THE DISTRICT COURT CITED BUT OVERLOOKED THE IMPORT OF THE PRINCIPLE OF PARTY PRESENTATION AS APPLICABLE TO THIS CASE 4

II. THE DISTRICT COURT HAS NOT ARTICULATED ANY LEGALLY JUSTIFIABLE CONCERN JUSTIFYING THE DOCUMENT PRODUCTION ORDER 7

A. The Federal Rules of Appellate Procedure Should Have Precluded the Panel From Considering the Memorandum 7

B. The Memorandum Is Legally Erroneous 8

III. THE PANEL'S DECISION VIOLATES ESTABLISHED LAW OF ATTORNEY CLIENT PRIVILEGE 10

ADDENDUM .... - 1 -

CERTIFICATE OF COMPLIANCE 1

TABLE OF AUTHORITIES

CASES

Dep't of Homeland Sec. v. Thuraissigiam,
140 S.Ct. 1959, 1975 (2020) ---------- 1, 5

N.Y. State Rifle & Pistol Ass'n v. Bruen,
142 S.Ct. 2111 (2022) ---------- 1, 5

Págan-Lisboa v. SSA,
996 F.3d 1 (1st Cir. 2021) ---------- 6

Swidler & Berlin v. United States,
524 U.S. 399 (1998) ---------- 1, 12

*United States v. Jicarilla Apache Natio*n,
564 U.S. 162 (2011) ---------- 1, 12

United States v. Samuels,
808 F. 2d 1298 (8th Cir. 1987) ---------- 5

United States v. Sineneng-Smith,
590 U. S. ___, 140 S.Ct. 1575 (2020) ---------- 1, 5, 6, 7

United States v. Zolin,
491 U.S. 554 (1989) ---------- 1, 13

Upjohn Co. v. United States,
449 U.S. 383 (1981) ---------- 1, 12

STATUTES

35 U.S.C. §281 ---------- 9

OTHER AUTHORITIES

Restatement (Third) of the Law Governing Lawyers, §134(2) ---------- 9

RULES

Fed. R. App. Proc. Rule 21(b)(4) ---------- 7

Fed.R.Civ.P. Rule 17(a)(1)(G) ---------- 9

Federal Circuit Rule 21(a)(5) -- 7

STATEMENT OF COUNSEL

Based on my professional judgment, I believe the panel decision is contrary to the following decisions of the Supreme Court of the United States:

A. Failure to follow the "principle of party presentation." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S.Ct. 2111 (2022); *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S.Ct. 1959, 1975 (2020); *United States v. Sineneng-Smith*, 590 U. S. ___, 140 S.Ct. 1575 (2020).

B. Disregarding the law of attorney client privilege. *United States v. Zolin*, 491 U.S. 554 (1989); *United States v. Jicarilla Apache Natio*n, 564 U.S. 162 (2011); *Upjohn Co. v. United States*, 449 U.S. 383 (1981); and *Swidler & Berlin v. United States*, 524 U.S. 399 (1998).

Further, based on my professional judgment, I believe the present petition requires an answer to a precedent-setting question of exceptional importance: whether the district court may require that a litigant provide attorney-client privileged documents to the judge that is investigating the party, where the crime-fraud exception to the attorney-client privilege has not been, and could not be, invoked. The district court did not require production to determine *in camera* whether the documents are privileged, but to substantively consider the documents as part of the district court's investigation. At the very least, Nimitz' privileged documents would be disclosed to the district court which is admittedly investigating

the party and its counsel. This is an abrogation of the attorney-client privilege that so violates the common law of the privilege that no authority can be cited in support of the proposition. The Panel's decision is unprecedented and destructive of the venerable common law attorney client privilege. It is equivalent to allowing a federal prosecutor or grand jury to subpoena attorney-client communications from the party being investigated, for use in the investigation.

/s/ George Pazuniak
George Pazuniak, Attorney for Petitioner

STATEMENT OF FACTS

A. Procedural Background

Petitioner, Nimitz Technologies LLC ("Nimitz") filed the four litigations here in issue in the District of Delaware. In due course, the district court undertook *sua sponte* an investigation of the Petitioner ostensibly to determine "whether Plaintiff has complied with the Court's standing order regarding third-party litigation funding." (Appx359). As instructed by the court, Nimitz brought its principal, Mark Hall, from Texas to Delaware to be interrogated by the district court. (Appx360; Appx373-380).

Thereafter, the district court issued a Memorandum Order which required Nimitz and its counsel to produce a large variety of documents, including documents that were both unrelated and outside the scope of the Court's standing order. Most importantly, the district court required production of documents that were manifestly protected by the attorney-client privilege, including privileged documents related to the very hearing that had just been concluded and the investigation which the district court was conducting. (Appx1-5; hereafter "Order"). In effect, the district court demanded a "look-see" of how Nimitz and its counsel were preparing to address the district court's investigation.

Nimitz filed a petition for writ of mandamus to reverse the Order on November 16, 2022. (Doc.2). The next day, this Court stayed the Order and

required the Defendants in the cases to respond, but notably did not ask for any submission by the district court. (Doc.5). Defendants responded on November 29, 2022 (Doc.9), and Nimitz filed a reply on December 2, 2022. (Doc.41). Thereafter, although not requested by the Court, the district court filed an 80-page "Memorandum" in the district court to explain the Order, and filed the Memorandum in this case. (Doc.42; hereafter "Memorandum"). On December 8, 2022, Nimitz moved in the district court to have the district court withdraw the Memorandum on the grounds that Nimitz never had any opportunity to address the issues raised in the Memorandum, and also pointing to what Nimitz perceived to be the deficiencies in the document's analyses. (D.I. 34 in Case 1:21-cv-01247, District of Delaware).

Nimitz was preparing to file its district court motion with this Court, when the Panel's decision was published. (Doc.44).

B. The Panel's Decision

The Panel denied Nimitz' Petition and terminated the stay of the Order. (Doc.44). The decision relied heavily on the district court's Memorandum in denying Nimitz' Petition.

REASONS FOR GRANTING REHEARING

I. The District Court Cited But Overlooked the Import of the Principle of Party Presentation As Applicable To This Case

The inquisition leading to the district court's issuance of its Order did not result from any motion or any other action by any of the Defendants. The inquisition,

the hearing and the Order were initiated and prosecuted *sua sponte* by the district court without any involvement of the Defendants.

The Panel noted the "principle of party representation" and cited *United States v. Sineneng-Smith*, 590 U. S. ___, 140 S.Ct. 1575 (2020). (Doc.44 at 5). It is not apparent, respectfully, that the Panel considered how the principle applies here as *Sineneng-Smith* was not discussed in the briefing.

In *Sineneng-Smith*, a unanimous Supreme Court held that the appellate court had abused its discretion when the appellate panel ordered briefing and consideration of issues which were never raised by any party. The Supreme Court explained that "[i]n our adversarial system of adjudication, we follow the principle of party presentation," where "the parties … frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." 140 S.Ct. at 1579. The Court went on to hold that:

> "[C]ourts are essentially passive instruments of government." … They "do not, or should not, sally forth each day looking for wrongs to right. [They] wait for cases to come to [them], and when [cases arise, courts] normally decide only questions presented by the parties."

Id., quoting *United States v. Samuels*, 808 F. 2d 1298, 1301 (8th Cir. 1987) (Arnold, J., concurring in denial of reh'g en banc)). See also *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S.Ct. 1959, 1975 (2020) ("that is not respondent's argument, and as a general rule 'we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.'"); *N.Y. State Rifle*

& Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2130 n.6 (2022) (quoting *Sineneng-Smith*); *Págan-Lisboa v. SSA*, 996 F.3d 1, 7 (1st Cir. 2021) ("We judges work in an adversarial system, not an inquisitorial one. … Which means we rely big-time on litigants for evidence, research, and argument.")

The Panel noted that the rule has limits. That is correct, but it is not apparent that the Panel considered how far afield the district court has travelled beyond the principle of party presentation. The Supreme Court noted that exceptions to the principle of party presentation were limited. The Court stated that "[t]here are no doubt circumstances in which a modest initiating role for a court is appropriate," and gave the example of a court "correct[ing] a party's 'evident miscalculation of the elapsed time under a statute [of limitations]' absent 'intelligent waiver.'" 140 S.Ct. at 1579.

In this case, however, Defendants did not raise any issue or defense directed to anything pertinent to the district court's investigation. The investigation is wholly at the district court's initiative. After undertaking the investigation, the district court stayed all proceedings other than its investigation, so that the parties could not do anything. The court then *sua sponte* ordered Nimitz' principal to travel to Delaware to answer to the district court's interrogation under oath, without Defendants being involved in the examination at all. The district court then issued the Order without any request or input of any other party. The district court finally issued the

Memorandum without any participation of any other party. This is far more than a limited exercise outside the case as presented by the parties, but, as in *Sineneng-Smith*, the district court's "radical transformation of this case goes well beyond the pale." 140 S.Ct. at 1581-82.

II. The District Court Has Not Articulated Any Legally Justifiable Concern Justifying the Document Production Order

The Panel cited the four concerns listed in the district court's Memorandum to justify the district court's investigation. (Doc.42 at 75-76; Doc.44 at 5).

A. The Federal Rules of Appellate Procedure Should Have Precluded the Panel From Considering the Memorandum

The Memorandum was plainly written to address Nimitz' Petition for a Writ of Mandamus. The Memorandum was filed *sua sponte*, and was not in response to any action by any party, other than Nimitz's filing of the Petition. Federal appellate rules should have precluded the Court's consideration of the Memorandum. First, the Rules plainly disallow the district court from filing a response to a Petition unless invited to do so:

> (4) The court of appeals may invite or order the trial-court judge to address the petition …. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

Fed. R. App. Proc. Rule 21(b)(4). Further Federal Circuit Rules also state that "No response may be filed unless ordered by the court." Federal Circuit Rule 21(a)(5).

Petitioner respectfully submits that the Panel erred in considering the

Memorandum as it was apparently submitted in violation of applicable Rules, and, given that it was not presented in the normal course and out of time, Nimitz never had an opportunity to address the Memorandum.

B. The Memorandum Is Legally Erroneous

The four concerns listed in the district court's Memorandum which were relied upon by the Panel, (Doc.44 at 5, as a matter of law do not support the invasive inquisition undertaken by the district court and are insufficient for the district court to invoke *sua sponte* any inherent authority to replace the principle of party presentation with its own inquisition.

The court's inherent authority to pursue certain matters does not justify the document production Order. Even if the facts were as speculated by the district court, no issue before the district court would be affected. The district court has not explained how the outcome of its investigation could affect any question as to infringement, validity, enforceability, damages or any other issue. It cannot do so, because the four concerns are irrelevant to any issue which the district court can consider under the law.

<u>Concern 1</u>: The district court's stated it was concerned that Nimitz' counsel failed to comply with Rules 1.2 or 1.4 of the Model Rules of Professional Conduct. (Doc.42 at 75). There was no breach because the law governing professional conduct specifically allows counsel may be directed by another agent of the client.

Restatement (Third) of the Law Governing Lawyers, §134(2). More importantly, breaches of these Model Rules are matters between counsel and client and do not address any issue that a Court may consider. *Id*.

Concern 2: The district court's second concern was "Did counsel and Nimitz comply with the orders of this Court?" (Doc.42 at 75). The district court, however, has not articulated any basis for questioning the completeness or truthfulness of Nimitz' responses to the district court's Standing Orders.

Concern 3: The district court's third concern was "Are there real parties in interest other than Nimitz, such as Mavexar and IP Edge, that have been hidden from the Court and the defendants?" (Doc.42 at 75). Congress has provided that the only "real party in interest" in patent cases is the legal owner of the Patent in suit. 35 U.S.C. §281 ("patentee shall have remedy by civil action for infringement of his patent); Fed.R.Civ.P. Rule 17(a)(1)(G). Indeed, Rule 17 expressly states that patentees may sue "in their own names without joining the person for whose benefit the action is brought." Nimitz is the record title holder of the Patent in suit, and is the only entity that Congress authorized to sue. Moreover, Nimitz did not "hide" anything. The district court has not pointed to any disclosure requirement which required Nimitz to provide any more information than that which Nimitz had provided.

Concern 4: The district court asked "Have those real parties in interest

perpetrated a fraud on the Court by fraudulently conveying to a shell LLC the #328 patent and filing a fictitious patent assignment with the PTO designed to shield those parties from the potential liability they would otherwise face in asserting the #328 patent in litigation?" (Doc.42 at 76). The district court's reference to "fraud" is unjustified and unfair, as the district court has not pointed to any false statement by Nimitz or failure to disclose when required. It is equally untenable to accuse Nimitz of a "fictitious patent assignment," when there is no evidence of any forgery or other misrepresentation. Moreover, all LLCs, corporations or other artificial entities (including the Defendants in these cases) shield persons from potential liability, and no law requires that a Plaintiff LLC patent owner have some minimum capitalization. Ignoring the "fraud" and "fictious" adjectives which are utterly unsupported in the record, the district court's indictment would apply to at least some sizable swath of patent Plaintiffs.

Thus, the Panel considered the Memorandum that it should not have considered under the Rules. If the Memorandum is to be considered, so should Nimitz response that demonstrates the many legal defaults in the district court's analyses.

III. The Panel's Decision Violates Established Law of Attorney Client Privilege

The Panel's decision as to the attorney-client privilege challenges in the most profound fashion the most cherished and venerable common law of attorney client

privilege.

Petitioner argued that the district court's document production Order erroneously required Nimitz to disclose its attorney-client privileged communications, including counsel's communications directed to the investigation. That is, the district court gave itself the opportunity to look over the shoulder of counsel representing the party it was investigating.

The district court's Memorandum agreed that it was seeking Nimitz' privileged documents, but simply stated that Nimitz can provide the privileged documents to the court with a "request" that the court "maintain the records under seal." (Doc.42 at 75). The Panel held that Nimitz did not show "a clear right to preclude *in camera* inspection under these circumstances." (Doc.44 at 5). In effect, the Panel required Nimitz to produce to the investigating party its privileged documents relating to the investigation. The Panel erred as a matter of law.

Nimitz clearly demonstrated a "clear right." The attorney-client privilege is as clear a right as may be found anywhere in the law, and the district court was plainly violating that privilege. Thus, without any substantive discussion, the Panel has allowed the district court to require Nimitz to produce privileged documents directed to the very investigation which the district court is conducting. That the submission may be *in camera* is irrelevant. The *in camera* submission is not to determine whether the documents are privileged, but the district court intends to

substantively consider the privileged documents in its investigation. Thus, the *in camera* aspect is a moot point.

The process demanded by the district court and approved by the Panel is unheard of in the annals of the common law from all that appears in diligent review of the law. That the district court may not disclose the documents to the Defendants or the public is meaningless. First, the disclosure to the district court is itself a violation of the privilege because the privileged documents are intended to be considered on their merits. Second, the district court is conducting the investigation, and, thus, is in an adversarial relationship with Nimitz, and is in the same relationship *vis-à-vis* Nimitz as would any Defendant.

The Supreme Court has consistently explained that

> The attorney-client privilege "is the oldest of the privileges for confidential communications known to the common law." Its aim is "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice."

*United States v. Jicarilla Apache Natio*n, 564 U.S. 162, 169 (2011) (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981)); *Swidler & Berlin v. United States*, 524 U.S. 399, 403 (1998) ("The attorney client privilege is one of the oldest recognized privileges for confidential communications.")

The privilege precludes disclosure of privileged communications to any third party. If there is a dispute as to whether a document or other communication is

privileged, a court may order that the documents be produced *in camera* solely "for purposes of determining the merits of a claim of privilege." *United States v. Zolin*, 491 U.S. 554, 568 (1989).

Documents may also be submitted to a court to determine whether they may be subject to the crime/fraud exception. But the law is that such review can only be conducted upon a factual showing which has not even been attempted to be made here:

> Before engaging in *in camera* review to determine the applicability of the crime-fraud exception, "the judge should require a showing of a factual basis adequate to support a good faith belief by a reasonable person," … that in camera review of the materials may reveal evidence to establish the claim that the crime-fraud exception applies.

United States v. Zolin, 491 U.S. 554, 572 (1989).

The above are exceptions to the otherwise well-established common law principle that a client can withhold privileged communications from any third-party, including courts. The district court is not acting as a neutral factfinder determining whether a communication is privileged, but the district court demands the right to use the privileged communications in its investigation. The Panel's decision is equivalent to a holding that a grand jury could demand that parties produce privileged documents for the grand jury's consideration so long as the grand jury may choose to keep the information under seal. The only difference is that the district court has *sua sponte* constituted itself as the investigating body. The district

court and the Panel's destruction of the attorney-client privilege is an unprecedented and unsupportable exception to the Supreme Court's consistent protection of the privilege.

Respectfully Submitted,

December 21, 2022;
corrected December 28, 2022

/s/ George Pazuniak

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ADDENDUM

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In re: NIMITZ TECHNOLOGIES LLC,
Petitioner

2023-103

On Petition for Writ of Mandamus to the United States District Court for the District of Delaware in Nos. 1:21-cv-01247-CFC, 1:21-cv-01362-CFC, 1:21-cv-01855-CFC, and 1:22-cv-00413-CFC, Chief Judge Colm F. Connolly.

ON PETITION

Before LOURIE, REYNA, and TARANTO, *Circuit Judges*.

PER CURIAM.

O R D E R

Nimitz Technologies LLC ("Nimitz") petitions for a writ of mandamus directing the United States District Court for the District of Delaware to vacate its November 10, 2022, order directing Nimitz to turn over certain documents for the district court's inspection and to order an end to "the district court's judicial investigation of" Nimitz. Pet. at 27. We deny the petition.

I

A

Two standing orders of the district court, dating from April 2022, form the backdrop of the court's November 10, 2022, order.

One standing order requires that, in all cases assigned to Chief Judge Connolly "where a party is a nongovernmental joint venture, limited liability corporation, partnership, or limited liability partnership, . . . the party must include in its disclosure statement filed pursuant to Federal Rule of Civil Procedure 7.1 the name of every owner, member, and partner of the party, proceeding up the chain of ownership until the name of every individual and corporation with a direct or indirect interest in the party has been identified." Appx352.

A separate standing order requires that, in all cases assigned to Chief Judge Connolly "where a party has made arrangements to receive from a person or entity that is not a party (a 'Third-Party Funder') funding for some or all of the party's attorney fees and/or expenses to litigate this action on a non-recourse basis in exchange for (1) a financial interest that is contingent upon the results of the litigation or (2) a non-monetary result that is not in the nature of a personal loan, bank loan, or insurance," "the party receiving such funding shall file a statement . . . containing . . . a. [t]he identity . . . of the Third-Party Funder(s); b. [w]hether any Third-Party Funder's approval is necessary for litigation or settlement decisions in the action, and if the answer is in the affirmative, the nature of the terms and conditions relating to that approval; and c. [a] brief description of the nature of the financial interest of the Third-Party Funder(s)." Appx353–54.

B

In May 2022, in the cases that are the subject of the mandamus petition before us, the district court ordered Nimitz to certify compliance with the above-described standing orders. After Nimitz failed to timely respond, the district court ordered Nimitz to show cause why it should not be held in contempt. Two days later, Nimitz filed an amended disclosure statement identifying Mark Hall as the sole owner and LLC member of Nimitz and a statement representing that Nimitz "has not entered into any arrangement with a Third-Party Funder, as defined in the Court's Standing Order Regarding Third-Party Litigation Funding Arrangements." Appx357.

The district court thereafter became aware of information, initially from an exhibit in a separate case before it, indicating that an entity called IP Edge LLC was arranging assignments of patents to different LLCs that were plaintiffs in actions filed in the District Court for Delaware and that Mr. Hall seemed, from the email address given to the PTO, to have a connection with IP Edge. ECF No. 42-1 at 15–16, 28–29. The district court ordered Mr. Hall and Nimitz's counsel, George Pazuniak, to appear at a hearing. *See* Appx9. At that hearing, which took place on November 4, 2022, Nimitz's relationship with an entity called Mavexar (among other topics) was explored. Afterwards, on November 10, 2022, the court ordered the production of various documents, including communications and correspondence between (1) Mr. Hall, Mavexar, and IP Edge and (2) Mr. Pazuniak, Mavexar, and IP Edge, relating to, among other things, the formation of Nimitz, Nimitz's assets, Nimitz's potential scope of liability resulting from the acquisition of the patent, the settlement or potential settlement of the cases, and the prior evidentiary hearing. The court also asked for monthly bank statements held by Nimitz.

This petition followed, and we stayed production of the documents pending further action by this court. The district court subsequently issued a memorandum that,

among other things, stated the concerns of the November 10, 2022, order:

> The records sought are all manifestly relevant to addressing the concerns I raised during the November 4 hearing. Lest there be any doubt, those concerns are: Did counsel comply with the Rules of Professional Conduct? Did counsel and Nimitz comply with the orders of this Court? Are there real parties in interest other than Nimitz, such as Mavexar and IP Edge, that have been hidden from the Court and the defendants? Have those real parties in interest perpetrated a fraud on the court by fraudulently conveying to a shell LLC the [patent-in-suit] and filing a fictitious patent assignment with the [United States Patent and Trademark Office] designed to shield those parties from the potential liability they would otherwise face in asserting the . . . patent in litigation?

ECF No. 42-1 at 77–78.

II

"As the writ [of mandamus] is one of the most potent weapons in the judicial arsenal, three conditions must be satisfied before it may issue": the petitioner must show (1) there is "no other adequate means to attain the relief he desires," (2) the "right to issuance of the writ is clear and indisputable," and (3) "the writ is appropriate under the circumstances." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004) (internal quotation marks and citations omitted). Nimitz's petition has not shown entitlement to the "drastic and extraordinary remedy" of a writ of mandamus. *Id.* at 380 (internal quotation marks and citation omitted).

Nimitz contends that the district court's November 10, 2022, order would force it to turn over "highly confidential litigation-related information, including materials protected by the attorney client privilege and

work-product immunity." Pet. at 1. The district court, however, has made clear that its order "does not require Nimitz to docket these records or otherwise make them public" and is "free to submit and to publicly file at the time of its production of the records in question an assertion that the records are covered by the attorney-client privilege and/or work product doctrine and a request that for that reason (and perhaps other reasons) the Court maintain the records under seal." ECF No. 42-1 at 77. Under such circumstances, Nimitz has not shown that mandamus is its only recourse to protect privileged materials. Nor has Nimitz shown a clear right to preclude *in camera* inspection under these circumstances.

Nimitz makes clear that it is "not ask[ing] th[is] Court to reverse either Standing Order." Reply at 14. And it is clear that a direct challenge to those standing orders at this juncture would be premature, as Nimitz has not yet been found to violate those orders and will have alternative adequate means to raise such challenges if, and when, such violations are found to occur. While Nimitz asks the court to terminate the district court's inquiry under the standing orders, it has not shown a "clear and indisputable" right to such relief. *Cheney*, 542 U.S. at 381 (citation omitted).

The district court identified four concerns as the basis for its information demand. All are related to potential legal issues in the case, subject to the "principle of party presentation," *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) (discussing the principle and its limits), or to aspects of proper practice before the court, over which district courts have a range of authority preserved by the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 83(b); *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). The district court did not seek information simply in order to serve an interest in public awareness, independent of the adjudicatory and court-functioning interests reflected in the stated concerns. In denying mandamus, we express

no view on whether there has been any violation of the particular legal standards that correspond to the concerns recited by the district court or, if so, what remedies (*e.g.*, against Nimitz, its counsel, or others) would be appropriate.

Accordingly,

IT IS ORDERED THAT:

The petition is denied, and the stay is lifted.

FOR THE COURT

December 8, 2022 /s/ Peter R. Marksteiner
Date Peter R. Marksteiner
Clerk of Court

CERTIFICATE OF COMPLIANCE

The foregoing Petition filing complies with the relevant type-volume limitation of the of Fed. R. App. P. 21(d)(1) because this petition has been prepared using a 14-point proportionally-spaced typeface and includes 2,963 words.

December 28, 2022

/s/ George Pazuniak
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