

United States Court of Appeals for the Federal Circuit

A.L.M. HOLDING COMPANY
and ERGON ASPHALT & EMULSIONS, INC.,

Plaintiffs-Appellants,

— v. —

ZYDEX INDUSTRIES PRIVATE LTD. and ZYDEX INC.,

Defendants-Appellees.

*On Appeal from the U.S. District Court for the District of Delaware,
in No. 1:24-cv-00363-JPM, Honorable Jon P. McCalla, Judge*

CORRECTED BRIEF OF AMICUS CURIAE GLYCOSYN LLC IN SUPPORT OF PLAINTIFFS- APPELLANTS A.L.M. HOLDING COMPANY, ERGON ASPHALT & EMULSIONS, INC. AND REVERSAL

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APRIL 15, 2025

FORM 9. Certificate of Interest

Form 9 (p. 1)
March 2023

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 2025-1317

Short Case Caption A.L.M. Holding Company v. Zydex Industries Private Ltd.

Filing Party/Entity Glycosyn LLC

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Name: Michael C. Newman

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March 2023

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input checked="" type="checkbox"/> None/Not Applicable
Glycosyn LLC		

☐ Additional pages attached

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4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

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5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☐ Yes (file separate notice; see below) ☐ No ☒ N/A (amicus/movant)

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6. Organizational Victims and Bankruptcy Cases. 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/Not Applicable ☐ Additional pages attached

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I. STATEMENT OF INTEREST OF THE AMICUS CURIAE¹

The *amicus curiae* is a company currently involved in a patent dispute in the District of Massachusetts, *Chr. Hansen HMO GmbH v. Glycosyn LLC*, 1:22cv11090. As the patent owner, Glycosyn is currently faced with defending against a challenge to its standing. Glycosyn has a vested interest in standing in patent cases and in establishing appellate guidance on standing law as it pertains to patent owners. Glycosyn has no stake in the parties or in the outcome of this case before the court.

II. SUMMARY OF ARGUMENT

A.L.M. Holding Co. v. Zydex Industries Private Ltd., No. 1:24-363-JPM, Slip Op. (D. Del. Nov. 25, 2024) (“*Zydex*”) relies upon district court cases that have been criticized by this Court for evaluating a patent owner’s standing by wrongly applying the law as it pertains to non-patent-owners. Evaluating standing as it applies to patent owners is straightforward. Owning a patent is owning a right to exclude others. Patent owners therefore have exclusionary rights, and constitutional standing, to sue anyone who practices the patented invention without permission.

¹ No counsel for a party authored this brief in whole or in part. No person or entity other than *Amicus* or its counsel made a monetary contribution to the preparation or submission of this brief. Consent for filing this *amicus* brief has been obtained from Appellants, A.L.M. Holding Company and Ergon Asphalt & Emulsions, Inc., but not from Appellees, Zydex Industries Private Ltd. and Zydex Inc.

III. ARGUMENT

A. The Zydex Case Is Based on an Interpretation of the Law that this Court Has Rejected

The District of Delaware has acknowledged that it struggles to interpret the law of standing in patent cases. And this Court has recently criticized decisions from Delaware for misapplying that law. Other courts relying on Delaware's interpretation of standing law have been reversed on appeal. *Zydex* relies upon the same decision out of Delaware that has led to other courts being reversed. The *Zydex* case, decided by a visiting judge from Tennessee sitting in Delaware by designation, confuses the law of standing by ignoring the critical distinction between patent owners and their licensees.

1. This Court has Criticized The District of Delaware's Interpretation of Standing Law in Patent Cases

The District of Delaware has expressed its difficulties in interpreting the law of standing in patent cases. For example, in *Uniloc USA, Inc. v. Motorola Mobility, LLC* (“*Uniloc*”), the court stated that “constitutional standing in a patent case is anything but straightforward” and that the “body of case law for constitutional standing in patent cases lacks coherence and breeds confusion.” No. CV 17-1658-CFC, 2020 U.S. Dist. LEXIS 244512, at *7-8 (D. Del. Dec. 30, 2020). The court even went on to suggest that “confusion about the interplay between a plaintiff's statutory right to sue in a patent case and our doctrine of standing has long persisted”

and that “[t]he standing rules in patent law appear to be as much a patchwork as Dr. Frankenstein’s monster, and only marginally more coherent.” *Id.* at *8 (citations omitted). However, the law is clear, and easy to apply, for patent owners—so clear that this Court articulated it in a single sentence: “***[e]stablishing ownership of a patent that has been infringed satisfies the requirements of Article III standing.***” *Pandrol USA, LP v. Airboss Ry. Prods.*, 320 F.3d 1354, 1368 (Fed. Cir. 2003) (emphasis added).

Despite this Court’s clear guidance, *Uniloc* incorrectly held that, where a licensee had an unfettered right to sublicense, the patent owner lacked exclusionary rights and thus lacked standing. *Id.* at *25. This Court strongly criticized the *Uniloc* decision. While *Uniloc* was ultimately affirmed, it was affirmed based on an ***estoppel*** argument first raised on appeal. This Court ***did not*** affirm the district court’s conclusions on standing. In fact, one Federal Circuit Judge, Judge Lourie, was so troubled by *Uniloc*’s misconstrued standing analysis that he was moved to explicitly criticize it, notwithstanding the panel’s ultimate affirmance. *See Uniloc USA, Inc. v. Motorola Mobility LLC*, 52 F.4th 1340, 1351 (Fed. Cir. 2022) (Lourie, J., additional views) (“We normally do not opine on issues that are not necessary to decide a case, and our panel soundly affirms the district court on the ground of estoppel. But here, I believe the district court so misconstrued the license issue [relating to standing] that something further needs to be said about it.”). Judge Lourie went on to highlight

a critical flaw in *Uniloc*, noting that “[i]t is true that the licensee could preempt such a suit by granting a sublicense, immunizing the purported infringer. But that is a far cry from holding that the patent owner, simply by having granted a non-exclusive license with the right to sublicense, loses the power to sue an unlicensed infringer.” *Id.*

Judge Lourie’s comments align with this Court’s unfavorable view of *Uniloc*. This Court has reversed district courts that followed *Uniloc*’s interpretation of standing law. For example, this Court recently reversed and remanded a case in which the Western District of Texas relied upon the *Uniloc* decision. *See Intell. Tech. LLC v. Zebra Techs. Corp.*, 101 F.4th 807, 812 n.5 (Fed. Cir. 2024) (“*Zebra Techs*”) (“The reasoning of the [District of Delaware’s] standing determination in *Uniloc* has not been endorsed by this court.”). This Court reversed *Zebra Techs* because the district court failed to recognize the critical distinction between patent owners and their licensees for the purposes of standing. *Id.* at 812-17 (reversing where the district court relied upon the “*Uniloc* opinions, and their extension of the [Federal Circuit decision in] *WiAV*, to find a lack of constitutional standing” because “[t]he **licensee-versus-patentee distinction** between *WiAV* and this case **is critical**”) (referring to *WiAV Sols. LLC v. Motorola, Inc.*, 631 F.3d 1257, 1266 (Fed. Cir. 2010)) (emphasis added).

Like the reversed *Zebra Techs* decision, *Zydex* also relies on the erroneous *Uniloc* reasoning. *See Zydex* at 4-5 (repeatedly citing *Uniloc*). Unless this Court departs from its logic in *Zebra Techs*, which it should not, *Zydex*'s standing conclusion should be reversed. *See Zebra Techs* at 816.

2. Standing in Patent Cases Is Straightforward When One Understands the Critical Distinction Between Patent Owners and Their Licensees

For over a hundred years, the Supreme Court has repeatedly stated the obvious—a patent owner has exclusionary rights because it has the right to exclude. *Patterson v. Kentucky*, 97 U.S. 501, 507 (1878) (“The sole operation of the statute is to enable him to prevent others from using the products of his labors except with his consent.”); *see also Bowman v. Monsanto Co.*, 569 U.S. 278, 283 n.2 (2013) (The Patent Act grants a patentee the “right to exclude others from making, using, offering for sale, or selling the invention.”); *Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC*, 584 U.S. 325, 335 (2018) (“[a patent gives] the patent owner the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States”) (citations omitted); *Impression Prods. v. Lexmark Int'l, Inc.*, 581 U.S. 360, 370 (2017) (“The Patent Act grants patentees the right to exclude others from making, using, offering for sale, or selling their inventions”) (citations omitted); *cf. WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407, 418 (2018) (Gorsuch and Breyer dissenting) (“Under the Patent Act, a patent owner

enjoys the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States”) (citations omitted). The rule is clear that “[a] patentee shall have remedy by civil action for infringement of his patent.” 35 U.S.C. § 281. Thus, a patentee has constitutional standing to sue infringers. Even the district court in *Uniloc* noted, before getting tangled in inapposite case law, that the statute appears straightforward. *Uniloc* at *7 (“The language of [35 U.S.C.S.] § 154 appears to be straightforward. The right that comes with a patent is the right to exclude others from making, using, offering for sale, and selling an invention.”).

i. Sorting through the cases responsible for some of the confusion in the District of Delaware

There are several prior cases that seem to have caused confusion in Delaware, and four that seem most responsible. The *Uniloc* decision traces its confusion back to a Supreme Court decision from 1926. *See Uniloc* at *7 (suggesting the courts abandon the text of the Patent Act after *Independent Wireless Telegraph Co. v. Radio Corp. of America*, 269 U.S. 459 (1926)). That case held that “[u]nder certain circumstances, a *licensee* may possess sufficient interest in the patent to have standing to sue as a co-plaintiff with the patentee.” *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1552 (Fed. Cir. 1995) (en banc) (citing *Independent Wireless Telegraph Co.*, 269 U.S. 459) (emphasis added). After this ruling, licensees started bringing patent infringement suits, even though they were not patent owners. Courts then had to evaluate whether a licensee’s interest was sufficient to allow it to sue alongside

the patent owner. Much of the case law concerning standing in patent cases arose in this context—deciding whether a licensee had standing.

This Court has since clarified that a “non-exclusive licensee has no standing to sue for infringement...[but a] licensee with exclusive right to sell licensed products may sue for and obtain relief from infringement in conjunction with patent owner.” *Abbott Labs. v. Diamedix Corp.*, 47 F.3d 1128, 1131 (Fed. Cir. 1995) (citations omitted). This concept, that exclusive licensees have standing to sue alongside patent owners, does not abandon the text of the Patent Act as *Uniloc* suggests. It simply recognizes that some exclusive licensees suffer a legally redressable harm when an infringer enters their market without authorization. That is, an exclusive licensee can have constitutional standing, but the patent owner still needs to seek the redress since it is the only one with the statutory right to exclude.

The second case that seems responsible for some confusion is *Morrow v. Microsoft Corp.*, 499 F.3d 1332 (Fed. Cir. 2007) (“*Morrow*”). *Zydex* started and ended its constitutional standing analysis by citing to *Morrow* (twelve times). *Zydex* at *4, 5, 9-12. In *Morrow*, this Court introduced the concept of “exclusionary rights” into the standing lexicon when deciding whether a party, other than the patentee or exclusive licensee, had suffered an injury in fact. *Morrow*, 499 F.3d at 1339-40. *Morrow* was a unique case in which a bankruptcy court had divided various patent rights among several trustees. *Id.* at 1334-36. The plaintiff was neither a patent

owner nor an exclusive licensee. *Id. Morrow* can fairly be read to mean that only patent owners and exclusive licensees can have standing because only they possess exclusionary rights. *Id.* at 1345 (Prost J., dissenting) (“the majority equates exclusionary rights with the right to practice and right to license...it does not follow that **only** exclusive licensees (and patentees) may hold those rights.”) (emphasis in original). Since *Morrow*, courts have grappled with the concept of “exclusionary rights” which has caused confusion, especially with *Morrow*’s dicta that a non-patent owner’s right to sue is not an exclusionary right if the patent owner still holds the right to settle. *Id.* at 1341-1342 (no standing “because [non-patent owner] did not have the right to settle litigation it initiated without prior written consent of the [patent owner]” where only the patent owner had “the right to sell the patent, grant exclusive and nonexclusive licenses, grant the right to sublicense, or transfer any of the rights...to another party.”) (citations omitted). The District of Delaware has struggled with the concept of “exclusionary rights.” See *Uniloc* at *14 n.2 (“The parties did not cite and I have not found a Federal Circuit case that defines what the ‘exclusionary rights’ are.”). But *Morrow* itself states that a patent owner’s right to exclude is an exclusionary right, and that exclusionary rights are “rights and interests created by the patent statutes.” *Morrow*, 499 F.3d at 1339-1340.

Another case that caused some confusion originated at the Court of Claims, where the court ruled that, for tax purposes, a license could effectively transfer title

in the patent to the licensee if the “parties intended that the patentee surrender all his substantial rights to the invention.” *Bell Intercontinental Corp. v. United States*, 381 F.2d 1004, 1011, 180 Ct. Cl. 1071 (1967). This idea, that a license could transfer ownership of a patent, was applied to patent standing in *Vaupel Textilmaschinen KG v. Meccanica Euro Italia S.P.A.*, 944 F.2d 870 (Fed. Cir. 1991). Since *Vaupel*, courts have been grappling with what “all substantial rights” means and when a license transfers ownership of a patent. Compare *Propat Int’l Corp. v. RPost US, Inc.*, 473 F.3d 1187, 1194 (Fed. Cir. 2007) (licensee lacked all substantial rights and could not sue without joining the patent owner) with *Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336, 1347 (Fed. Cir. 2014) (patent owner transferred all substantial rights and was no longer the patent owner and could not join suit). After *Vaupel*, courts must determine when a license constitutes a transfer of title, because patent owners do indeed lack standing if they transfer ownership to someone else, at which point they are no longer patent owners at all. The transferee is the new patent owner, and therefore has standing.

The final case that seems responsible for some confusion is *Lone Star Silicon Innovs. LLC v. Nanya Tech. Corp.*, 925 F.3d 1225 (Fed. Cir. 2019) (“*Lone Star*”). See *Zydex*, at *12 (repeatedly citing *Lone Star*). In *Lone Star*, the district court had dismissed a case that a licensee brought without joining the patent owner. *Lone Star*, 925 F.3d at 1227. The district court held that because the patent owner had not

transferred “all substantial rights” to the licensee, the licensee lacked standing. *Id.* at 1228-1229. The district court did not allow the licensee to cure this by joining the patent owner. *Id.* While this Court agreed that the licensee lacked “all substantial rights” and was not therefore the patent owner with the ability to bring suit under § 281, it vacated the decision to dismiss because the district court failed to afford the licensee an opportunity to join the patent owner and cure the deficiency. *Id.* at 1239. In its decision, this Court held that the licensee had constitutional standing (it sustained a redressable injury in fact) so long as it had an “exclusionary right” even if it was not the patent owner with authority to bring suit under § 281. *Id.* at 1234-36. This Court thus separated the Article III constitutional standing analysis from the § 281 statutory authority analysis. This mattered because Article III constitutional standing needs to be present at the inception of the lawsuit, but § 281 authority could have been cured by adding the patent owner. Because a licensee can have constitutional standing without becoming the patent owner, this Court held that there was no need to evaluate whether the licensee received “all substantial rights” to decide the constitutional standing issue. *Id.* at 1235-1236 (“[W]hether a party possesses all substantial rights in a patent does not implicate standing or subject-matter jurisdiction.”). That is, the “all substantial rights” inquiry relates only to whether a licensee has become the patent owner for the purposes of statutory

authority under §281. The “all substantial rights” inquiry has no role in determining whether a licensee has constitutional standing.

Separating the constitutional standing inquiry from statutory authority that § 281 provides patent owners has caused confusion. For example, the District of Delaware has mistakenly interpreted *Lone Star* as requiring courts to pore over language in license agreements to discern what rights *a patent owner retained*. See e.g., *Zydex* at *6,7,12 (relying upon *Lone Star* to mistakenly conclude that when evaluating whether *a patent owner* had constitutional standing, the court did not need to consider whether the license agreement transferred all substantial rights to the licensee). This confusion clears when one remembers the “critical” distinction between patent owners and their licensees for the purposes of standing. *Zebra Techs* at 816. A patent owner has standing by virtue of owning the patent, which comes with the attendant right to prevent others from practicing the patent without permission. There is no reason whatsoever to evaluate what rights the patent owner retained to decide whether a patent owner has constitutional standing. A patent owner has standing unless the patent owner transferred ownership of the patent by transferring all substantial rights to someone else—at which point the former patent owner is no longer the patent owner at all.

ii. There is a critical distinction between patent owners and licensees when considering constitutional standing

There are some common fact patterns that help demonstrate standing law in patent cases. First, a patentee who has never licensed its patent may bring suit. “Unquestionably, a patentee who holds all the exclusionary rights and suffers constitutional injury in fact from infringement is one entitled to sue for infringement in its own name.” *Morrow*, 499 F.3d at 1339-40.

Next, a patent owner that has granted a non-exclusive license allowing another party to practice its patent may bring suit. *Uniloc*, 52 F.4th at 1351 (“A non-exclusive license only grants a licensee freedom from suit; it does not divest the licensor of its right to sue or license other parties”). The non-exclusive license is a mere promise that the patentee will not exercise its exclusionary rights against the licensee. In these cases, only the patent owner can bring suit, and the licensee has no right to participate. *Sicom Sys., Ltd. v. Agilent Techs., Inc.*, 427 F.3d 971, 976 (Fed. Cir. 2005) (“A nonexclusive license confers no constitutional standing on the licensee to bring suit or even to join a suit with the patentee because a nonexclusive licensee suffers no legal injury from infringement.”) (internal citations omitted).

Sometimes a patent owner grants a license with the promise of exclusivity—assuring the licensee it will be the only one allowed to practice the invention. Here, the patent owner can be compelled to bring suit to protect its licensee’s exclusive market. That is, an exclusive license is a promise that the patent owner will enforce

the patent and exclude everyone else from practicing the invention. *See Rite-Hite Corp.*, 56 F.3d at 1552 (“To be an exclusive licensee for standing purposes, a [licensee] must have received, not only the right to practice the invention within a given territory, but also the patentee’s express or implied promise that others shall be excluded from practicing the invention within that territory as well.”); *Avocent Huntsville Corp. v. Aten Int’l Co.*, 552 F.3d 1324, 1336 (Fed. Cir. 2008) (“...when the patentee enters into an exclusive license...the patentee’s contractual undertaking may impose certain obligations to enforce the patent against infringers”); *Weinar v. Rollform, Inc.*, 744 F.2d 797, 807 (Fed. Cir. 1984) (exclusive licensee properly joined suit; because “two parties sharing the property rights represented by the patent may have respective rights protected”).

Finally, sometimes a patent owner transfers all substantial rights in the patent to its exclusive licensee, including all rights to exclude, the sole authority to sue for infringement, the sole right to assign or transfer the patent, and the sole right to license the patent to others without restriction. In such circumstances, where the patent owner has effectively transferred all of its rights, the exclusive license agreement may be considered a transfer of ownership of the patent, even if it is referred to as a license. *Propat Int’l Corp.*, 473 F.3d at 1189 (“Even if the patentee does not transfer formal legal title, the patentee may effect a transfer of ownership for standing purposes if it conveys all substantial rights in the patent to the

transferee.”). To determine whether a license is actually a conveyance, this Court looks to the “the substance of the rights transferred and the intention of the parties involved.” *Intellectual Prop. Dev., Inc. v. TCI Cablevision of Cal., Inc.*, 248 F.3d 1333, 1342 (Fed. Cir. 2001).

Either the licensor did not transfer ‘all substantial rights’ to the exclusive licensee, in which case the licensor ***remains the owner of the patent and retains the right to sue for infringement***, or the licensor did transfer ‘all substantial rights’ to the exclusive licensee, in which case the licensee ***becomes the owner of the patent for standing purposes and gains the right to sue*** on its own. In either case, the question is whether the license agreement transferred sufficient rights to the exclusive licensee to make the licensee the owner of the patents in question.

Alfred E. Mann Found. for Sci. Research v. Cochlear Corp., 604 F.3d 1354, 1359-1360 (Fed. Cir. 2010) (emphasis added). If a patent owner retains any substantial right, such as the right to sue if its exclusive licensee declines to do so, it remains the patent owner and has constitutional standing. *See id.* at 1357 (“We find that AMF is the owner of the patents-in-suit because it retained substantial rights in the patents, including the right to sue for infringement if AB declines to do so.”). However, where a patent owner transfers ownership of the patent to its licensee, it “lacks standing to bring suit, but more importantly, to even join the suit.” *Azure Networks*, F.3d at 1347 (vacated on other grounds).

There does not appear to be any precedent in which this Court, or the Supreme Court, has held that a patent owner does not have constitutional standing—other than

those cases where the patent owner was not actually the patent owner anymore because it had effectively transferred its ownership rights to another party. Stated another way, we are unable to find any precedent in which the *true* owner of an infringed patent lacked constitutional standing.

B. The Zydex Case Was Wrongly Decided

The *Zydex* decision contradicts this established precedent and turns the law on its head by evaluating the patent owner's standing as if it was the licensee. The court below supports its analysis by relying upon district court cases instead of firmly basing its opinion on Federal Circuit and Supreme Court precedent. *Zydex* relies heavily upon the *Uniloc* case from District of Delaware and the *Deere & Co. v. Kinze Mfg., Inc.* (“*Deere*”) decision from the Southern District of Iowa. 683 F. Supp. 3d 904 (S.D. Iowa 2023). *Zydex* cites *Deere* nine times. *Zydex* at *4, 5, 7, 8, 11, 13. *Uniloc* is not good law, and its reasoning has been rejected by this Court as discussed above. See *Zebra Techs.*, 101 F.4th at 812 n.5 (Fed. Cir. 2024) (“*Zebra Techs*”) (“The reasoning of the [standing determination in *Uniloc*] has not been endorsed by this court.”). *Deere* is also not good law because its standing analysis is also based on *Uniloc*. See *Deere & Co.*, 683 F. Supp. 3d at 914 (relying upon *Uniloc* to suggest patent owners can lack Article III standing). *Deere* was not subject to appellate review since only one party was dismissed and the other party went on to win a jury verdict. But had *Deere* been appealed, it should have been reversed like *Zebra*

Techs—where this Court criticized the district court for relying on *Uniloc*. Because *Uniloc* was affirmed on other grounds, and *Deere* was not appealed, major legal research platforms like LexisNexis and Westlaw continue to assign them positive Shepard’s Signals and KeyCite Flags. Perhaps this is the source of the District Court’s mistakes in *Zydex*. *Amicus* requests that this Court clarify that these district court cases are not good law.

In addition, the *Zydex* decision below misinterprets *Lone Star* to reject the plaintiff’s argument that it had constitutional standing because it had retained “substantial rights” and therefore still owned the patents. *Zydex* at *12. The court wrongly relied on *Lone Star* to conclude that the “substantial rights” inquiry had no role in resolving the constitutional standing inquiry. *Id.* The court then incorrectly distinguished this Court’s *Alfred E. Mann* decision based on a previous decision in a Tennessee case that had properly analyzed a *licensee’s* constitutional standing under an “exclusionary right” standard, and its § 281 statutory authority under the “substantial rights” standard. *Id.* (citing *Anglefix, LLC v. Wright Med. Tech., Inc.*, No. 2:13-CV-02407-JPM-tmp, 2016 WL 3566275, at *5 (W.D. Tenn. June 27, 2016) (McCalla, J.)). The court went so far as to suggest that *Alfred E. Mann* “does not concern constitutional standing.” *Id.* at *12 n.5. This is incorrect. *Alfred E. Mann* repeatedly mentions standing—not “prudential standing” or “statutory authority,” but standing. *Alfred E. Mann*, 604 F.3d at 1363 (“AMF retained standing to sue

accused infringers, and the district court therefore erred by dismissing AMF’s claims against Cochlear for lack of standing”). Even if *Alfred E. Mann* had been a discussion about patent ownership in relation to statutory authority instead of standing, it still decided the standing issue, since “[e]stablishing ownership of a patent that has been infringed *satisfies the requirements of Article III standing.*” *Pandrol USA, LP*, 320 F.3d at 1368 (emphasis added). Further, the “exclusionary” rights that this Court contemplates in its “exclusionary rights standard” are “exclusionary rights and interests created by the patent statutes.” *Morrow*, 499 F.3d at 1340. Deciding the statutory authority issue, therefore, necessarily decides the “exclusionary rights” issue, and this also confers constitutional standing on the patent owner. Therefore, the *Zydex* opinion should be reversed, as it incorrectly held that a patent owner who retained several substantial rights in its patents lacked Article III standing. Additionally, we ask this Court to consider clarifying the law, as described above, by emphasizing that courts must recognize the key distinction between evaluating standing for patent owners versus non-patent owners.

IV. CONCLUSION

For the foregoing reasons, the *amicus* respectfully requests this Court to find the District of Delaware in error and to provide clear guidance to all district courts regarding patent standing as it applies to patent owners.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the relevant type-volume limitation of the Federal Rule of Appellate Procedure and Federal Circuit Rules because it has been prepared using a proportionally-spaced typeface and includes 4,283 words.

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