Case Numbers: 24-2030, 24-2031, 24-2032, 24-2033, 24-2035, 24-2036, 24-2037, 24-2038

United States Court of Appeals for the Federal Circuit

RECEIVED
MAY 23 2025
United States Court of Appeals
For the Federal Circuit

FRANZ A. WAKEFIELD, D|B|A COOLTVNETWORK.COM, INC.
Plaintiff-Appellant

v.

BLACKBOARD, INC., META PLATFORMS, INC., F|K|A FACEBOOK, INC., INTERNATIONAL BUSINESS MACHINES CORPORATION, KALTURA, INC., MICROSOFT CORPORATION, OOYALA, INC., SNAP, INC., TRAPELO CORP.,
Defendants-Appellees

Appeals from the United States District Court for the District of Delaware in the following Case Numbers: 1:19-CV-00291-JLH, 1:19-CV-00292-JLH, 1:19-CV-00293-JLH, 1:19-CV-00294-JLH, 1:19-CV-00296-JLH, 1:19-CV-00297-JLH, 1:19-CV-00534-JLH, 1:19-CV-00535-JLH, PRESIDING, THE HONORABLE JENNIFER L. HALL.

APPELLANT "WAKEFIELD'S" COMBINED PETITION FOR REHEARING AND REHEARING EN BANC

Date: May 22,2025

/s/ Franz A. Wakefield

Franz A. Wakefield, *Pro Se*
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CERTIFICATE OF INTEREST

Pro Se for the Appellant COOLTVNETWORK.COM, certifies:

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

   COOLTVNETWORK.COM

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

   FRANZ A. WAKEFIELD[1]

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

   None/Not Applicable.

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 are:

   None/Not Applicable

5. The title and number of any case known to *Pro Se* Appellant 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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

   None/Not Applicable /S/ Franz A. Wakefield

Dated: **May 22, 2025**

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[1] The Court has applied state law to find that "[a] sole proprietorship has no legal identity separate from that of the individual who owns it." *Siegler v. Sorrento Therapeutics, Inc.*, No. 2020-1435, at *19 (Fed. Cir. July 20, 2021) (citations omitted) (nonprecedential) *See also Carty v. Beech Aircraft Corp.*, 679 F.2d 1051, 1065 (3d Cir. 1982) ("a sole proprietorship has no legal existence apart from its owner.").

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Judicial Rules

Constitutional Provisions

STATEMENT OF *PRO SE* APPELLANT PURSUANT TO FEDERAL CIRCUIT RULE 35(B)

Based on my professional judgment, I believe the panel decision is contrary to decisions of the Supreme Court of the United States and precedents of the Third Circuit Court of Appeals, the law of the regional circuit applied. Thus, consideration by the full court is therefore necessary to secure and maintain uniformity of the Court's decisions.

Based on my professional judgment, this appeal also requires an answer to the closely related and precedent-setting question of exceptional importance:

Whether the inclusion of Judge Pauline Newman, or any judge who has a witnessed and documented state of deteriorating mental capacity is allowable in the proper application of 28 U.S.C. § 46(b), when the Court ***creates*** a 3-judge panel by selecting a particular judge to serve on that panel.

In *Turner v. Rogers*, 564 U.S. 431 (2011), the Supreme Court ruled that a judge presiding over any proceeding must possess the "requisite procedural and substantive knowledge" to ***ensure fairness.*** Similarly, in *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010), the Supreme Court underscored that for ***due process to be maintained***, a competent three-judge panel must be initially formed to review cases:

> "We have interpreted that statute [28 U.S.C. § 46(b)] to '**require** the ***inclusion of at least three*** [capable] judges **in the first instance** but to allow a two-judge quorum to proceed to judgment when one member of the panel dies or is disqualified.' *Nguyen v. U.S.*, 539 U.S. 69, 82 (2003)." Emphasis Added

POINTS OF LAW OR FACTS OVERLOOKED OR MISAPPREHENDED BY THE PANEL

In its order dated April 23, 2025, the panel applied Third Circuit law, the law of the regional circuit, (See. Pgs. 6–7), but in doing so the panel failed to consider that the district court abused its discretion by its failure to consider and provide a Rule 60(b) analysis on the full set of facts and circumstances attendant to the Rule 60(b) Motion under review. Specifically, what the panel classifies as: "Mr. Wakefield seek[ing] ***to relitigate*** the validity of claims 15 and 17-18 based on arguments that could have been raised in the original appeal of the district court's judgment', is Appellant "WAKEFIELD'S" honest attempt of showing the district court and the panel on appeal that vacating the judgment would not be an "empty exercise," ultimately fulfilling the ***threshold precondition*** to relief under Rule 60(b), which is adopted as law in the First, Fourth, and Sixth Circuit Court of Appeals. See *Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 59 v. Superline Transp. Co. Inc. et. al.*, 953 F. 2d 17, 20 (1st Cir. 1992).

Thus, the panel misapprehended the thrust of Appellant "WAKEFIELD'S" Rule 60 Motion, which is: 1.) proving that a potentially meritorious claim exists, and 2.) that the reason for attack in bringing the Rule 60 Motion, is ***the substance*** of the order from the Judicial Council dated September 20, 2023, which consequently was not available at the time of the original judgment.

The panel overlooked that the reason the Rule 60 Motion wasn't filed earlier in March 2023 when the Judicial Council announced the complaint against Judge Newman or when the May 2023 order from the Judicial Council published, is because those orders respectively, gave the public notice and gave Judge Newman the time and the opportunity to comply with the orders and produce medical records, to complete medical examinations, and to participate in an interview to substantiate the normalcy or abnormality of her mental and/or physical disability status. (See Appellant's Appendix at Appx00036) and (See April 23, 2025, Order at pg. 9). Judge Newman could have very well complied with the investigation and proved that she did not have a mental and/or physical disability which would prevent her from being able to function as an active judge, ultimately this would render any Rule 60 Motion, prematurely filed, moot since her inclusion on the prior appellate panel when she is experiencing mental disability issues, is the catalyst and thrust for Appellant "WAKEFIELD" filing the motion. Therefore, under these extenuating circumstances out of the control of Appellant, the clock should run from September 20, 2023, the date of the Order that suspended Judge Newman. Appellant "WAKEFIELD" filed his Rule 60 Motion ***approximately two months*** after on November 21, 2023. See Appellant's Corrected Initial Brief pages 39-46. Also See *Welch & Forbes, Inc. v. Cendant Corp. (In re Cendant Corp. Prides Litig)*, 235 F. 3d 176 (3rd Cir. 2000) holding: (We turn now to the applicable factors we delineated above, applying them

to the facts not in dispute or controverted in the District Court. We find that ***the length of [the litigant's] delays were insignificant as a matter of law.*** We agree with [the litigant] that its 'delay' in bringing the Rule 60(b) motion was three weeks...Under O'brien, 'the length of the delay is considered in absolute terms.' O'Brien, 188 F. 3d at 130. This delay was trivial...under O'brien,...we concluded that ***a two-month delay was insignificant as a matter of law***,"). Emphasis Added.

Appellant "WAKEFIELD" believes that the arguments presented to the district court in support of the Rule 60 Motion, the Motion for Clarification/Reargument, and in the briefs in this appeal should be considered on its merits because of the inclusion of suspended Judge Pauline Newman who sat on his prior appellate panel. Appellant "WAKEFIELD" believes that his prior appeal--hearing, deliberation process, and ruling, succumbed to ***an unfair forum*** that was a result of 1.) bias, and 2.) lack of quorum of capable judges; which deprived Appellant "WAKEFIELD" of his Due Process Rights under the 14th Amendment of The United States Constitution and equal protection under the law, by unfairly invalidating **United States Patent №: 7,162,696** because of a defect in the integrity of the appeal by including Judge Newman on the panel, who suffered with mental and/or physical disability issues which was ***absolutely no fault*** of Appellant "WAKEFIELD". This caused Appellant serious injury and has ***deleted hundreds of millions of dollars*** in potential damages from the various infringement of the '696 patent. See Appellant's Corrected Initial

Brief at pages 17-20—(invalidating the '696 Patent, personal property), Also See Appellant's Corrected Appendix at Appx00082-Appx00084.

Third Circuit precedent states: "that 'while parties may not raise new arguments, they may place ***greater emphasis on an argument or more fully explain an argument on appeal***' and may even '***reframe their argument within the bounds of reason***'." See Gen Refractories Co. v. First State Ins. Co., 855 F 3d 152, 162 (3d Cir. 2017).

In addition, the panel also overlooked that the district court ***did not provide a Rule 60(b) analysis*** on the full set of facts and circumstances, attendant to the Rule 60(b) Motion under review, which is a prerequisite in the Third Circuit, and consequently only produced a one paragraph oral order denying relief from the Rule 60(b) Motion by stating only that the motion is denied "at least for the reason that it is untimely." See *Cox v. Horn*, 757 F. 3d 113 (3d Cir. 2014) where ("[T]he Court...did not employ the full, case-specific analysis ***we require*** when faced with a 60(b)(6) motion...[A] district court ***must consider*** the full measure of ***any properly presented facts*** and circumstances attendant to the movant's request." Emphasis Added).

ARGUMENT IN SUPPORT OF REHEARING EN BANC

En Banc rehearing is necessary in this matter for multiple integral reasons as follows:

1. To secure and maintain uniformity of decisions: based on Third Circuit precedent, District Courts must consider a Rule 60(b), (6) Motion on a ***multi factor basis*** particular to a case when determining the timeliness and extraordinary circumstances of the motion.

2. To resolve a conflict with other circuits: whether a litigant should be required to meet a ***precondition***, to relief under Rule 60(b) as predicated in the First, Fourth, and Sixth Circuit Court of Appeals, to give a trial court reason to believe that vacating the judgment will not be an "***empty exercise***."

And,

3. The involvement of a question of exceptional importance: whether the inclusion of Judge Pauline Newman, or any judge who has a witnessed and documented state of deteriorating mental capacity is allowable in the proper application of 28 U.S.C. § 46(b), when the Court ***creates*** a 3-judge panel by selecting a particular judge to serve on that panel.

The appellate panel has erroneously affirmed the district court's ruling denying Rule 60(b) relief after its failure to complete ***a multifactor analysis*** on the particular facts of the case, which is required by Third Circuit precedent, which states: "[i]n 'exceptional circumstances,' the 'public interest can require that the issue be heard.' *Walton v. Mental Health Ass'n of Se. Pa.*, 168 F. 3d 661, 671 (3d Cir. 1999). This is just such an occasion." (See *General Refractories Co. v. First State Insurance Co.*, No. 15-3409, 3d Cir. 2017). As explained in the July 2024 order of the Judicial Counsel:

> ***"The litigants whose rights are at stake in the cases before this Court deserve to have confidence that none of the judges ruling on their cases suffers from a cognitive impairment that may affect the resolution of their cases.*** They also deserve to have confidence that the mechanisms Congress established for addressing judicial disability function properly and that a judge with such an impairment cannot simply stymie the process..." Emphasis added.
>
> "[T]o return Judge Newman to deciding cases—creating ***a risk of harm to litigants and the public***, given the ***ample justification for concern about disabilities connected to the decisional function.***" Emphasis added
> See Appellant's Corrected Initial Brief at page 10.

Rehearing En Banc should be granted because this petition proposes an exceptional question of public importance on whether the appellate court is obligated to only elect judges for panels who are not under investigation for mental/physical disability and who has not shown incapacitating signs in conducting their daily tasks due to the probable cause of mental deterioration; in the correct application of 28 U.S.C. § 46(b), and to maintain fidelity with the Supreme Court's decisions in the

rulings made in: *Turner v. Rogers*, 564 U.S. 431 (2011), and *New Process Steel, L.P v. NLRB*, 560 U.S. 674 (2010).

Many cases in the appellate court may have been negatively impacted by the inclusion of Judge Newman on their panel, while it is documented that she was experiencing mental and/or physical disability issues, and thus, this is a question of exceptional importance to uphold the public perception of the judicial system. See *Selected Risks Ins. Co. v. Bruno*, 718 F. 2d 67, 69-70 (3d Cir. 1983) holding ("that exceptional circumstances were present where proper application of Pennsylvania public policies with respect to insurance contracts would affect 'every inhabitant...and the insurance companies that serve them'").

I. ARGUMENT IN SUPPORT OF REHEARING & REHEARING EN BANC

On appellate review a district court's denial of a motion under Rule 60(b) is reviewed for abuse of discretion. See *Brown v. Phila. Hous. Auth.*, 350 F. 3d 338, 342 (3d Cir. 2003). A district court abuses its discretion when it bases its decision upon a clearly erroneous finding of fact, an erroneous conclusion of law, or an improper application of law to fact. See *Morris v. Horn*, 187 F. 3d 333,341 (3d Cir. 1999).

i. Multiple Circuit Courts of Appeals Require Litigants to Meet a Threshold Precondition, to Relief Under Rule 60(b)

Many Circuit Courts of Appeals employ ***a threshold*** system that requires litigants to meet ***a precondition*** of having a meritorious claim if the facts in the motion are proven at trial. "In considering the merits of a Rule 60(b) motion, a district court ***is required*** to 'intensively balance numerous factors.' See *Blue Diamond Coal Co. v. Trustees of UMWA Combined Benefit Fund*, 249 F. 3d 519, 529 (6th Cir. 2001)." Emphasis Added.

In *Tanner v. Yukins*, 776 F. 3d at 440 (6th Cir. 2015) the Sixth Circuit ruled that "the district court did not undertake 'intensive balancing' of 'numerous factors,' instead making ***the conclusory statement*** that it would deny the motion because Tanner 'offered no explanation as to why she was unable to properly file a motion for an extension of time in which to file her notice of appeal as provided by Federal Rule of Appellate Procedure Rule 4(a)(5).' The ***omission of meaningful analysis*** led the court to a clear error in judgment." Emphasis Added. Also See *Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 59 v. Superline Transp. Co. Inc. et. al.*, 953 F. 2d 17, 20 (1st Cir. 1992), holding ("that a litigant, as a precondition to relief under Rule 60(b), must give the trial court reason to believe that vacating the judgment will not be an empty exercise."), Also See *Nat'l Credit Union Admin. Bd. v. Gray, 1 F. 3d 262, 264* (4th Cir. 1993), holding ("In order to obtain

relief from a judgment under Rule 60(b), a moving party must show that his motion is timely, [and] that he has a meritorious defense to the action,").

The panel states in their ruling dated April 23, 2025, at (pg. 7, ¶3) that Appellant "WAKEFIELD" "seeks to relitigate the validity of claims 15 and 17-18 based on arguments that could have been raised in the original appeal of the district court's judgment." But in Appellant "WAKEFIELD'S" Corrected Initial brief at pages 25-26, Appellant states that these same arguments were in fact made in the original appeal and that ***it was the failure of the panel*** to consider the argument and evidence:

> "The original appellate panel failed to ***inquire*** during the ***July 7, 2022*** hearing, **See. Appx00116 – Appx00129** , about the district court's error and failed to ***evaluate*** APPELLANT ("WAKEFIELD'S") argument. Thus, it was the Appellate Court, and not APPELLANT ("WAKEFIELD") that was responsible for the failure to consider the evidence. See. *Good Luck Nursing Home, Inc., v. Harris*, and *Chicago E. Ill. R.R. v. Illinois Cent. R.R.* 261 F. Supp 289 (N.D. Ill. 1966) (***where the Court concluded it had sufficient reason to invoke Rule 60(b) in the circumstances of the case where the Court was responsible for the failure to present and review evidence***)."

The panel overlooked that although the request was made for the district court to consider the facts of Appellant's Rule 60 Motion under Rule 60(b)(4) in the Motion for Clarification/Reargument, (See Appellant's Motion for Clarification/Reargument at page 3, ¶ 1-3) and the Rule 60(b)(4) argument was made on appeal which is deemed

waived because that rule wasn't explicitly[2] argued in the Rule 60 Motion, that the district court was still obligated to consider ***the facts*** of the void judgment argument properly before the court, as one of the factors that warrant relief under Rule 60(b),(6) because the facts assert that Appellant's Due Process Rights were violated by the inclusion of Judge Newman on the original panel which was ***absolutely no fault*** of Appellant "WAKEFIELD." In *United States v. Dupree*, 617 F. 3d 724 (3d Cir. 2010), the Third Circuit "concluded that the challenge to the initial ruling on the motion to

---

[2] In Appellant "WAKEFIELD'S" Rule 60 Motion he states: "Plaintiff believes that because of the inclusion of Judge Pauline Newman on his appeal panel, that his appeal---hearing, deliberation process, and ruling, succumbed to ***an unfair forum*** that was a result of 1.) bias, and 2.) lack of quorum of capable judges; which deprived him of his Due Process Rights under the 14th Amendment of The United States Constitution and equal protection under the law, by invalidating **United States Patent №: 7,162,696**, which caused Plaintiff serious injury." See Page 19-20. This violation of Due Process rights under the 14th Amendment is the same argument and reason, Appellant stated ***voided the judgment*** in his Motion for Reargument/Clarification. See. Appellant "WAKEFIELD'S" Reargument/Clarification at pages 8-9, Also See U.S. v. Joseph, No. 12-3808, 704 F. 3d 302 (3d Cir. 2013), holding ("We hold that for parties to preserve an argument for appeal, they must have raised the same argument in the District Court...our precedents reveal at least two characteristics that identical arguments always have. First, they depend on the same legal rule or standard [i.e. due process violation]...Second, the arguments depend on the same facts.").

Thus, because Appellant "WAKEFIELD" made the ***identical argument*** in the Rule 60 Motion and in the Motion for Clarification/Reargument, he in fact did not waive the void judgment argument, which ***must be considered*** by the court. See *Wolstein v. Docteroff*, 133 F. 3d 210,214 (3d Cir. 1997) holding (For a party to be estopped from relitigating an issue,...the issue must have been determined by ***a valid*** and final ***judgment.***") Emphasis Added.

suppress was waived but the challenge to the denial of the motion for reconsideration was not." In *Cavalieri v. Virginia*, No. 20-6287, 2022 WL 1153247 (4th Cir. Apr. 19, 2022) the Fourth Circuit states "Once the movant has met...***threshold requirements***, 'he must proceed to satisfy one or more of[Rule 60(b)]'s six grounds for relief from judgment.'...Because the motion 'challenge[d] [a] defect in the integrity of the federal habeas proceedings,' it 'is a true Rule 60(b) motion.'...'grounds for relief [enumerated in Rule 60(b)] often overlap, and it is difficult if not inappropriate in many cases to specify or restrict the claim for relief to a particular itemized ground.'" Emphasis Added.

In essence, Appellant ***unearthed the manifest injustice*** and extraordinary circumstance that caused extreme hardship in this case on appeal which warrants relief under Rule 60(b) which was ultimately overlooked[3] and not considered—(because of the argument length in the Rule 60 Motion), by the panel and the district court. "Such extraordinary circumstances exist if a person can demonstrate that he was not at fault for his predicament." See *Mendez*, 600 F. App'x at 733; See Also *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393 (1993).

---

[3] The panel in their April 23, 2025 order states at pages 8-9: "Mr. Wakefield's [Rule 60] motion also briefly argued that he did not receive a fair hearing during his first appeal, in violation of his right to due process, because of Judge Newman's inclusion on the panel that decided that appeal. See SAppx 1151-52...considering the very brief treatment that [the] motion afforded this argument...we cannot say that the district court abused its discretion in also deeming this portion of [the] motion not made within a reasonable time."

"[C]ourts have expressed much the same view, though in somewhat different words. See, e.g., In re Telfair, 745 F. Supp. 2d 536, 561 (D.N.J. 2010) (the term **manifest injustice** is an overlap of the term manifest error of law or fact, and it means that the court overlooked some dispositive factual or legal matter that was presented to it, or alternatively that there was an error in the trial court that was direct, obvious and observable)". See *Shearer v. Titus (In re Titus)*, 479 B.R. 362 (Bankr. W.D. Pa. 2012).

Brevity in an argument does not equate to the exceptional rarity in the extenuating circumstances and facts of a case. The United States Court of Appeals for the Federal Circuit was established 42 years ago on October 1, 1982, there have been 32 former judges dating back to 1982, and thousands of cases heard to date. In the 42 years of its history, under the Judicial Conduct and Disability Act, a federal judge has been suspended from the Federal Circuit Court of Appeals for issues related to mental fitness and for refusing to cooperate with medical evaluations regarding their mental fitness, **only *once*** which is the reason for the request of Rule 60(b) relief. See cafc.uscourts.gov/home/the-court/about-the-court/

Therefore, the thrust of Appellant "WAKEFIELD'S" Rule 60 Motion is: 1.) proving that a potentially meritorious claim exists, and 2.) that the reason for attack in bringing the Rule 60 Motion, is ***the substance*** of the order from the Judicial Council dated September 20, 2023, which consequently was not available at the time

of the original judgment. In addition, the panel overlooked that Appellant vigorously presented the Judge Newman argument in the pleadings in support of Rule 60 relief and those in support of the Motion for Clarification/Reaurgument.

Rehearing En Banc should also be granted to resolve the conflict between the Third Circuit Court of Appeals and collectively with the First, Fourth, and Sixth Circuit Courts of Appeals as it pertains to requiring litigants to meet the ***threshold condition*** of showing that a potential meritorious claim exists if the judgment is vacated, so as to avoid the incorrect classification of Rule 60 Motions, as an attempt by plaintiffs to relitigate a case; potentially barring relief under Rule 60(b) in cases where extenuating circumstances exist in a meritorious claim.

CONCLUSION

Pro Se APPELLANT "WAKEFIELD" humbly requests that his combined Petition for Rehearing and Rehearing En Banc be GRANTED.

Date: May 22, 2025

/s/ Franz A. Wakefield

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CERTIFICATE OF SERVICE

I, **Franz A. Wakefield**, *Pro Se* Appellant, certify that on **May 22, 2025**, a copy of the COMBINED PETITION FOR REHEARING AND REHEARING EN BANC was served by Federal Express to The Clerk of the Court, and via email on counsel of record.

Date: May 22, 2025

/s/ Franz A. Wakefield

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CERTIFICATE OF COMPLIANCE

This Petition complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief was printed using a 14 point Times New Roman font, and meets the requirements of Federal Circuit Rule 40.

This brief complies with the type-volume limitation of Federal Circuit Rule 32(a). This brief contains **3455** words, excluding the parts of the brief exempted under the Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and Federal Circuit Rule 32(b). This certificate was prepared in reliance on the word count of the word-processing system (Microsoft® Word for Windows Version 2206) used to prepare the brief.

Date: May 22, 2025

/s/ Franz A. Wakefield

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❖ ADDENDUM

Selected docket entries for case 24−2030

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Filed	Documeut Description	Page	Docket Text
04/23/2025	67 Opinion	2	OPINION filed for the court by Lourie, Circuit Judge; Dyk, Circuit Judge and Chen, Circuit Judge. Nonprecedential Per Curiam Opinion. Service as of this date by the Clerk of Court. [1084397] [24−2030,24−2031,24−2032,24−2033, 24−2035, 24−2036, 24−2037, 24−2038]—[Edited 04/23/2025 by MVH] [MVH]
04/23/2025	68	12	JUDGMENT. AFFIRMED. Terminated on the merits after submission on the briefs. COSTS: No Costs. Mandate to issue in due course. For information regarding costs, petitions for rehearing, and petitions for writs of certiorari click here. Service as of this date by the Clerk of Court. [1084400] [24−2030, 24−2031, 24−2032, 24−2033, 24−2035,24−2036,24−2037,24−2038][MVH]

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

FRANZ A. WAKEFIELD, DBA COOLTVNETWORK.COM, INC.,
Plaintiff-Appellant

v.

BLACKBOARD INC., META PLATFORMS, INC., FKA FACEBOOK, INC., INTERNATIONAL BUSINESS MACHINES CORPORATION, KALTURA, INC., MICROSOFT CORPORATION, OOYALA, INC.,SNAP INC., TRAPELO CORP.,
Defendants-Appellees

2024-2030, 2024-2031, 2024-2032, 2024-2033, 2024-2035, 2024-2036, 2024-2037, 2024-2038

Appeals from the United States District Court for the District of Delaware in Nos. 1:19-cv-00291-JLH, 1:19-cv-00292-JLH, 1:19-cv-00293-JLH, 1:19-cv-00294-JLH, 1:19-cv-00296-JLH, 1:19-cv-00297-JLH, 1:19-cv-00534-JLH, 1:19-cv-00535-JLH, Judge Jennifer L. Hall.

Decided: April 23, 2025

FRANZ A. WAKEFIELD, Fort Lauderdale, FL, pro se.

MICHAEL S. NADEL, McDermott Will & Emery LLP, Washington, DC, for defendant-appellee Blackboard Inc.

BRYAN SCOTT HALES, Kirkland & Ellis LLP, Chicago, IL, for defendant-appellee International Business Machines Corporation.

SETH W. LLOYD, Morrison & Foerster LLP, Washington, DC, for defendant-appellee Kaltura, Inc. Also represented by KYLE W.K. MOONEY, New York, NY.

JOHN D. VANDENBERG, Klarquist Sparkman, LLP, Portland, OR, for defendant-appellee Microsoft Corporation. Also represented by JOSEPH THOMAS JAKUBEK.

RICHARD GREGORY FRENKEL, Latham & Watkins LLP, Menlo Park, CA, for defendant-appellee Ooyala, Inc.

HEIDI LYN KEEFE, Cooley LLP, Palo Alto, CA, for defendants-appellees Snap Inc., Meta Platforms, Inc. Snap Inc. also represented by Reuben H. Chen. Meta Platforms, Inc. also represented by PHILLIP EDWARD MORTON, Washington, DC.

RICARDO BONILLA, Fish & Richardson P.C., Dallas, TX, for defendant-appellee Trapelo Corp. Also represented by NEIL J. MCNABNAY, LANCE E. WYATT, JR.

Before LOURIE, DYK, and CHEN, *Circuit Judges*.

PER CURIAM.

In 2022, this court affirmed the judgment of the United States District Court for the District of Delaware holding invalid all claims of U.S. Patent No. 7,162,696 ('696 patent). *See CoolTV.Network.com, Inc. v. Blackboard, Inc.*, No. 2021-2191, 2022 WL 2525330 (Fed. Cir. July 7, 2022) (per curiam). More than a year later, the named inventor

of the '696 patent, Franz A. Wakefield, doing business as CoolTVNetwork.com, Inc. (CoolTV),[1] filed a motion for relief from the judgment under Federal Rule of Civil Procedure 60(b). The district court denied Mr. Wakefield's motion as untimely and additionally denied Mr. Wakefield's subsequent motion for reargument. SAppx 461.[2] Because the district court did not abuse its discretion, we *affirm*.

BACKGROUND

In 2019, CoolTV sued Blackboard Inc., Meta Platforms, Inc., International Business Machines Corporation, Kaltura, Inc., Microsoft Corporation, Ooyala, Inc., Snap Inc., and Trapelo Corp. (Appellees) in the District of Delaware for infringement of the '696 patent. Following a claim construction hearing, the magistrate judge concluded in a report and recommendation that certain means-plus-function limitations of independent claim 1 of the '696 patent are indefinite. *See* SAppx 46–54. The magistrate judge also concluded that similar limitations of independent claims 15 and 17–18 are indefinite based on CoolTV failing to make separate arguments with respect to those limitations and failing to challenge Appellees' argument that those limitations should be treated the same as and rise and fall with the means-plus-function limitations of claim 1. SAppx 51, 54.

CoolTV filed objections to the magistrate judge's report and recommendation. CoolTV objected to holding the means-plus-function limitations of claim 1 indefinite and,

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[1] CoolTV, the plaintiff-appellant in the first appeal, was then represented by counsel. Mr. Wakefield now proceeds pro se as the sole proprietor of CoolTV. *See* ECF No. 11.

[2] "SAppx" refers to the supplemental appendix filed by Appellees.

in a footnote, reserved the right to raise on appeal whether the construction of claims 15 and 17–18 "should have been considered similarly to the means-plus-function limitations in Claim 1." SAppx 735–50, 740 n.1. The district judge overruled CoolTV's objections and adopted the recommended constructions. Accordingly, the district court entered final judgment of invalidity on July 16, 2021. SAppx 754.

CoolTV appealed to this court. In its opening brief, like it did before the district court, CoolTV focused on claim 1 and made no separate arguments with respect to claims 15 and 17–18, save for a footnote observing that the district court treated claims 15 and 17–18 as means-plus-function claims. SAppx 783 n.3; *see generally id.* at 755–826. Following oral argument, a unanimous panel of this court, consisting of Judge Newman, Judge Linn, and Judge Chen, affirmed pursuant to Federal Circuit Rule 36. *See CoolTV.Network.com*, 2022 WL 2525330. Our mandate issued on October 7, 2022.

In February 2023, Mr. Wakefield (then proceeding pro se) filed an ultimately unsuccessful petition for a writ of certiorari with the Supreme Court. Thereafter, on March 24, 2023, the Chief Judge of this court identified a judicial complaint against Judge Newman under the Judicial Conduct and Disability Act based on probable cause that Judge Newman had committed misconduct and/or suffered from a mental or physical disability. A Special Committee was appointed to investigate. In May 2023, Mr. Wakefield filed a petition for rehearing of the denial of certiorari, based on the recently announced complaint and investigation against Judge Newman. Mr. Wakefield generally argued that Judge Newman's inclusion on the panel of this court that affirmed the invalidity of the '696 patent deprived him of a fair hearing and his right to due process. *See* SAppx 1089. The Supreme Court denied Mr. Wakefield's petition for rehearing on June 26, 2023.

On September 20, 2023, the Judicial Council of this court issued an order suspending Judge Newman based on misconduct for refusing to comply with an earlier order of the Special Committee. Approximately two months later, on November 21, 2023, Mr. Wakefield filed a motion with the district court to set aside the judgment under Rule 60(b)(5) and (6). SAppx 1126–55. Mr. Wakefield's motion primarily argued that the district court should have treated claims 15 and 17–18 differently from claim 1. *See, e.g.*, *id.* at 1136–37. The motion concluded with a brief argument concerning Judge Newman that echoed Mr. Wakefield's rehearing petition at the Supreme Court. *See id.* at 1151–52.

The district court denied Mr. Wakefield's motion in an oral order "at least for the reason that it is untimely." SAppx 461. Mr. Wakefield then filed a "Motion for Clarification/Reargument" under the District of Delaware's Local Rule 7.1.5,[3] arguing that his Rule 60(b) motion was not untimely. SAppx 1232–52. The district court denied that motion by another oral order. SAppx 461.

Mr. Wakefield appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(1).

STANDARD OF REVIEW

In the context of Rule 60(b), we have explained that "our general practice is to apply the law of the regional circuit. Because rulings under Rule 60(b) commonly involve procedural matters unrelated to patent law issues as such, we often defer to the law of the regional circuit in reviewing such rulings." *Fiskars, Inc. v. Hunt Mfg. Co.*, 279 F.3d 1378, 1381 (Fed. Cir. 2002) (citation omitted); *see also Cardpool, Inc. v. Plastic Jungle, Inc.*, 817 F.3d 1316, 1321 (Fed. Cir. 2016); *O2 Micro Int'l Ltd. v. Monolithic Power*

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[3] Rule 7.1.5 permits motions for reargument to be filed within 14 days of a decision. *See* D. Del. LR 7.1.5.

Sys., Inc., 467 F.3d 1355, 1364 (Fed. Cir. 2006). The timeliness of Mr. Wakefield's motion is not unique to patent law. *See Marquip, Inc. v. Fosber Am., Inc.*, 198 F.3d 1363, 1368–69 (Fed. Cir. 1999). We thus apply Third Circuit law.

The Third Circuit "review[s] grants or denials of relief under Rule 60(b), aside from those raised under Rule 60(b)(4),[4] under an abuse of discretion standard." *Sovereign Bank v. REMI Cap., Inc*, 49 F.4th 360, 364 (3d Cir. 2022) (citation omitted). The Third Circuit also reviews a denial of a motion for reargument, and the district court's application of its own local rules, for an abuse of discretion. *See Jilin Pharm. USA, Inc. v. Chertoff*, 447 F.3d 196, 199 n.4(3d Cir. 2006); *Weitzner v. Sanofi Pasteur Inc.*, 909 F.3d 604, 613 (3d Cir. 2018). "A district court abuses its discretion when it bases its decision upon a clearly erroneous finding of fact, an erroneous conclusion of law, or an improper application of law to fact." *Cox v. Horn*, 757 F.3d 113, 118 (3d Cir. 2014).

DISCUSSION

Rule 60(b) permits a court, "[o]n motion and just terms," to relieve a party from a final judgment for five specified reasons or, under Rule 60(b)(6), for "any other reason that justifies relief." Fed. R. Civ. P. 60(b). Rule 60(c)(1) provides the time in which a Rule 60(b) motion must be made: "A motion under Rule 60(b) must be made within *a reasonable time*—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or

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[4] Mr. Wakefield cites to Rule 60(b)(4) in his motion for reargument and on appeal, but his Rule 60(b) motion was based on only 60(b)(5) and (6). *See, e.g.*, SAppx 1135; *cf. United States v. Franz*, 772 F.3d 134, 150 (3d Cir. 2014) ("[R]aising an argument for the first time in a motion for reconsideration results in waiver of that argument for purposes of appeal.").

order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1) (emphasis added). Mr. Wakefield's motion, filed under Rule 60(b)(5) and (6), is not subject to the one-year limitation.

"[W]hat is a reasonable time must depend to a large extent upon the particular circumstances alleged." *Lasky v. Cont'l Prods. Corp.*, 804 F.2d 250, 255 (3d Cir. 1986) (citation omitted). A Rule 60(b) motion is not made within a reasonable time when "the reason for the attack . . . was available for attack upon the original judgment." *Moolenaar v. Gov't of Virgin Islands*, 822 F.2d 1342, 1348 (3d Cir. 1987); *see also Kemp v. United States*, 596 U.S. 528, 538 (2022) (declining to define Rule 60's "reasonable time" standard but noting that Courts of Appeals have used it to deny Rule 60(b) motions alleging errors that should have been raised in a timely appeal).

Mr. Wakefield filed his Rule 60(b) motion more than two years after the district court's final judgment and more than one year after our mandate affirming that judgment. The thrust of that motion, and of Mr. Wakefield's arguments on appeal, is that claims 15 and 17–18 should have been evaluated for validity separately from claim 1, rather than treated as means-plus-function claims along with claim 1. In other words, Mr. Wakefield seeks to relitigate the validity of claims 15 and 17–18 based on arguments that could have been raised in the original appeal of the district court's judgment. Rather than develop such an argument, CoolTV's opening brief in the first appeal merely made a passing reference to it in a footnote. *See* SAppx 783 n.3. Mr. Wakefield argues that intervening precedent renders his motion timely, citing *Dyfan, LLC v. Target Corp.*, 28 F.4th 1360 (Fed. Cir. 2022). But, without addressing whether *Dyfan* has any import on the merits of Mr. Wakefield's arguments, *Dyfan* was decided by this court in March 2022, during the pendency of and prior to oral argument in the first appeal. "Rule 60(b) is not a substitute for appeal." *Moolenaar*, 822 F.2d at 1347. Under these

circumstances, the district court did not abuse its discretion in finding that Mr. Wakefield's motion was not made within a reasonable time. *See, e.g.*, *id.* at 1348 (concluding that a Rule 60(b) motion was not made within a reasonable time where brought almost two years after the district court's initial judgment and "the reason for the attack upon that judgment was available for attack upon the original judgment").[5]

The facts presented in this case are quite similar to those in *Odyssey Logistics & Technology Corp. v. Stewart*, 130 F.4th 973 (Fed. Cir. 2025). There, a patent applicant waited more than one year after the issuance of our mandate affirming the Patent Trial and Appeal Board's denial of a patent application in filing a request for review by the Director of the United States Patent and Trademark Office based on the Supreme Court's decision in *United States v. Arthrex, Inc.*, 594 U.S. 1(2021). *See Odyssey*, 130 F.4th at 976–77. Analogizing the Patent Office's discretion in denying review to the Rule 60(b) context, we affirmed the denial of review because the party "had notice of the . . . issue . . . and made no effort to present this argument" until a substantial amount of time had passed. *Id.* at 978–79.

Mr. Wakefield's motion also briefly argued that he did not receive a fair hearing during his first appeal, in violation of his right to due process, because of Judge Newman's

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[5] Mr. Wakefield appears to argue to us that claim 1 of the '696 patent was also erroneously invalidated. *See, e.g.*, Appellant's Br. 13–14, 46. This argument, not raised to the district court in the Rule 60(b) motion, is forfeited. *See Simko v. U.S. Steel Corp.*, 992 F.3d 198, 205 (3d Cir. 2021). Even if that argument had not been forfeited, the district court would not have abused its discretion in deeming the argument untimely for the same reason as with respect to claims 15 and 17–18: Mr. Wakefield may not use Rule 60(b) as a substitute for appeal.

inclusion on the panel that decided that appeal. *See* SAppx 1151–52.[6] Although the motion cited to the Judicial Council's September 2023 order suspending Judge Newman, Mr. Wakefield first pressed this same theory for relief in his May 2023 rehearing petition to the Supreme Court, following the March 2023 order that announced the complaint against Judge Newman. Yet Mr. Wakefield waited approximately eight months following the March 2023 order and approximately six months following the rehearing petition to file his Rule 60(b) motion. Given the "overriding interest in the finality and repose of judgments," *Martinez-McBean v. Gov't of Virgin Islands*, 562 F.2d 908, 913 (3d Cir. 1977) (citation omitted), and considering the very brief treatment that Mr. Wakefield's motion afforded this argument to attack a then-28-month-old judgment, we cannot say that the district court abused its discretion in also deeming this portion of Mr. Wakefield's motion not made within a reasonable time. *See also, e.g.*, *Moolenaar*, 822 F.2d at 1347 ("Reopening the case many years later ... totally disregards the important principle that litigation must finally end...."); *Harrison v. Harrison*, No. 22-3361, 2023 WL 7017695, at *2 (3d Cir. Oct. 25, 2023) (per curiam) (holding that a Rule 60(b) motion was not made within a reasonable time where it was filed almost one year after the judgment and "was filed several months after the date of the latest 'new evidence' on which [the motion was] based").

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[6] This court must call attention to what is, at best, a careless misrepresentation in Appellees' response brief. Appellees assert that Mr. Wakefield's Rule 60(b) motion "made no mention of Judge Newman." Appellees' Br. 26. This is simply untrue, as even a basic computer word search of the motion would reveal. *See* SAppx 1134, 1151–52; *see also* SAppx 1225 n.7 (Appellees' opposition to Mr. Wakefield's motion acknowledging that the motion made this very argument).

The district court also denied Mr. Wakefield's motion for reargument. The court's local rules specify that such motions "shall be sparingly granted." D. Del. LR 7.1.5. "[R]eargument may be appropriate where 'the [c]ourt has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the [c]ourt by the parties, or has made an error not of reasoning but of apprehension.'" *Johnson v. Diamond State Port Corp.*, 50 F. App'x 554, 560 (3d Cir. 2002) (quoting *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1241 (D. Del. 1990)). The district court found that none of those circumstances were present. *See* SAppx 461. Mr. Wakefield identifies no reason why the district abused its discretion in denying that motion and nor do we see any.

CONCLUSION

We have considered Mr. Wakefield's remaining arguments and find them unpersuasive. For the foregoing reasons, we *affirm* the district court's orders denying Mr. Wakefield's Rule 60(b) motion and denying reargument.

AFFIRMED

COSTS

No costs.

United States Court of Appeals for the Federal Circuit

FRANZ A. WAKEFIELD, DBA COOLTVNETWORK.COM, INC.,
Plaintiff-Appellant

v.

BLACKBOARD INC., META PLATFORMS, INC., fka Facebook, Inc., INTERNATIONAL BUSINESS MACHINES CORPORATION, KALTURA, INC., MICROSOFT CORPORATION, OOYALA, INC., SNAP INC., TRAPELO CORP.,
Defendants-Appellees

2024-2030, 2024-2031, 2024-2032, 2024-2033, 2024-2035, 2024-2036, 2024-2037, 2024-2038

Appeals from the United States District Court for the District of Delaware in Nos. 1:19-cv-00291-JLH, 1:19-cv-00292-JLH, 1:19-cv-00293-JLH, 1:19-cv-00294-JLH, 1:19-cv-00296-JLH, 1:19-cv-00297-JLH, 1:19-cv-00534-JLH, 1:19-cv-00535-JLH, Judge Jennifer L. Hall.

JUDGMENT

THIS CAUSE having been considered, it is

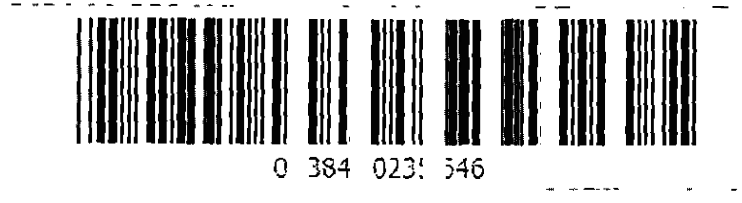
ORDERED AND ADJUDGED:

AFFIRMED

FOR THE COURT

April 23, 2025
Date

Jarrett B. Perlow
Clerk of Court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