No. 2025-2026

IN THE

United States Court of Appeals

FOR THE FEDERAL CIRCUIT

APPLICATIONS IN INTERNET TIME, LLC,

Plaintiff-Appellant,

v.

SALESFORCE, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the District of Nevada

Case No. 3:13-CV-00628-MMD-CLB

APPELLANT APPLICATIONS IN INTERNET TIME, LLC'S COMBINED PETITION FOR PANEL REHEARING AND REHEARING EN BANC

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CERTIFICATE OF INTEREST

Counsel for Plaintiff-Appellant Applications in Internet Time, LLC certifies the following:

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.	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.
Applications in Internet Time, LLC	None	None

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). Daniel C. Miller, Elizabeth A. Long, Eric P. Berger, Mark S. Raskin, King & Wood Mallesons LLP; Steve W. Berman, Nicholas S. Boebel, Philip J. Graves, Hagens Berman Sobol Shapiro LLP; Christopher D. Banys, Jennifer Chia-Ying Lu, Richard Cheng-Hong Lin, Banys P.C.; Keegan G. Low, Barry L. Breslow, Michael A. Burke, Robison, Sharp, Sullivan & Brust.

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b). *Applications in Internet Time, LLC v. Salesforce, Inc.*, United States District Court for the District of Nevada, Case No. 3:25-cv-00476-MMD-CLB.

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.

I certify the preceding information is accurate and complete to the best of my knowledge.

Date: April 15, 2026 by: */s/ Michael DeVincenzo*
Michael DeVincenzo

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

RULE 35 STATEMENT OF COUNSEL

Based on my professional judgment, this appeal requires resolution of one or more precedent-setting questions of exceptional importance:

1. Whether a plaintiff holding a recorded patent assignment, who reasonably believed it owned the asserted patents at the time the complaint was filed, lacks Article III constitutional standing or instead lacks only a statutory cause of action under 35 U.S.C. § 281, where the assignment is later found to be defective due to mistake.

2. Whether the equitable remedies of contract reformation and Rule 17(a)(3) ratification are categorically unavailable to cure defects in title existing when the complaint was filed, notwithstanding this Court's precedential holding in *Schwendimann v. Arkwright Advanced Coating, Inc.*, 959 F.3d 1065 (Fed. Cir. 2020), and the acknowledged division among district courts applying this Court's precedent.

Date: April 15, 2026 by: */s/ Michael DeVincenzo*
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POINTS OF LAW OR FACT OVERLOOKED OR MISAPPREHENDED BY THE COURT

1. The Court overlooked or misapprehended controlling precedent distinguishing Article III standing from statutory cause-of-action requirements, including *Lexmark Int'l, Inc. v. Static Control Components, Inc*., 572 U.S. 118 (2014) and this Court's decisions in *Lone Star Silicon Innovations, LLC v. Nanya Tech. Corp.*, 925 F.3d 1225 (Fed. Cir. 2019) and *Intellectual Tech LLC v. Zebra Techs. Corp.*, 101 F.4th 807 (Fed. Cir. 2024), by treating a disputed defect in a patent's chain of title as a constitutional standing failure rather than a statutory issue.

2. The Court overlooked or misapprehended controlling precedent holding that defects in a patent's chain of title arising from mistake may be addressed through equitable mechanisms, including contract reformation and Rule 17(a)(3) ratification. In particular, Plaintiff-Appellee Applications in Internet Time, LLC ("AIT") relied extensively on *Schwendimann v. Arkwright Advanced Coating, Inc.*, 959 F.3d 1065 (Fed. Cir. 2020), in which this Court permitted contract reformation to correct an assignment defect that existed at the time suit was filed. Yet, the panel did not distinguish or even address *Schwendimann*.

PRELIMINARY STATEMENT

This petition presents two issues of exceptional importance concerning a district court's subject matter jurisdiction over patent actions. The first is whether a plaintiff that reasonably believed it held patent title based on recorded assignments with the U.S. Patent & Trademark Office ("USPTO"), and that suffered concrete, redressable injury from infringement, retroactively loses Article III standing when a court finds a defect in the chain of title. The second is whether a district court's categorical refusal to permit contract reformation or Rule 17(a)(3) ratification to cure a formal defect in patent title can be affirmed despite this Court's precedential decision in *Schwendimann v. Arkwright Advanced Coating, Inc.*, 959 F.3d 1065 (Fed. Cir. 2020), which expressly recognizes that reformation can address such a defect.

The panel answered both questions incorrectly, and the consequences reach far beyond this case. On the first question, the panel treated the absence of clear legal title as a constitutional defect without considering the distinction the Supreme Court drew in *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), between Article III injury and statutory cause-of-action requirements. The former is constitutional; the latter is statutory and subject to cure. In the wake of *Lexmark*, this Court has recognized that whether the plaintiff is the proper "patentee" is a statutory inquiry and not an issue bearing on Article III jurisdiction. *Intellectual*

Tech LLC v. Zebra Techs. Corp., 101 F.4th 807, 814 (Fed. Cir. 2024); *see also Lone Star Silicon Innovations, LLC v. Nanya Tech. Corp.*, 925 F.3d 1225, 1235 (Fed. Cir. 2019). The panel's treatment of a lack of clear legal title as a constitutional defect cannot be reconciled with *Lexmark*, *Intellectual Tech*, and *Lone Star*, and would convert every patent title dispute, however technical and inadvertent, into a jurisdictional nullity.

With respect to the second question, the panel declared that "AIT has cited no cases under our precedent, nor have we found any" supporting reformation or Rule 17 relief to "cure a lack of constitutional standing." Panel Opinion (ECF No. 46, "Op.") at 11. That statement wrongly assumes that an error in assignment execution results in a constitutional standing defect, and cannot be squared with *Schwendimann*, which found equitable relief available where a chain of title is deficient. Like the district court below, the panel never mentioned *Schwendimann*, never distinguished it, and never explained why it is not controlling here. Importantly, the panel's decision effectively adopts the reasoning of the dissent in *Schwendimann*, which characterized the plaintiff's defective title as a lack of constitutional standing rather than statutory standing, in contrast to the *Schwendimann* majority. *See Schwendimann*, 959 F.3d at 1077 (Reyna, J., dissenting). The panel's decision thus unambiguously conflicts with binding precedent of this Court.

That conflict has already divided district courts, demonstrating the stakes extend well beyond this case. Some district courts have granted Rule 17(a)(3) relief for patent ownership defects arising from a mistake in chain of title, treating such defects as statutory, while others have held such relief categorically unavailable on the grounds that title defects are constitutional. The panel's ruling increases uncertainty and confusion on a question district courts are confronting regularly. The *en banc* Court's guidance is urgently needed.

The panel's decision is especially inequitable under the facts of this case, further underscoring the need for rehearing. Rule 17(a)(3) and the doctrine of reformation exist to prevent precisely this result: the dismissal of a 12-year-pending action based on a technical defect in ownership that no party to the relevant agreements intended. Here, Beverly Nelson, who the district court determined owned the patents, is, along with Douglas Sturgeon, the owner of AIT. She never intended to own the Asserted Patents, and in fact agreed to the assignment to AIT so that AIT could assert the patents against Defendant-Appellant Salesforce, Inc. ("Salesforce"). Indeed, Salesforce has never disputed that the 2012 Assignment was the result of a mistake. Denying equitable relief imposes extreme prejudice on AIT and Ms. Nelson, wiping out years of good-faith litigation, including multiple rounds of prior proceedings before this Court, and foreclosing any merits adjudication. This

is precisely the type of inequitable result Rule 17 and reformation are meant to prevent.

BACKGROUND

AIT filed this action in 2013 alleging that Salesforce infringed U.S. Patent Nos. 7,356,482 and 8,484,111 (the "Asserted Patents"). AIT held an assignment executed in September 2012 (the "2012 Assignment") by which the previous patent owner Alternative Systems, Inc. ("ASI") conveyed the Asserted Patents to AIT. That assignment was recorded with the USPTO. APPX004562– 004566. Both AIT and ASI were owned and controlled by the same two individuals: Beverly Nelson and Douglas Sturgeon. APPX004569, ¶¶2–3; APPX004571, ¶14.

Over ten years earlier, in April 2002, ASI and other parties had entered into an unrelated agreement to terminate a joint venture (the "2002 Agreement"). That agreement contemplated a future transfer of ASI's assets, including intellectual property rights, to a new entity to be formed. APPX003596. As recognized by the district court, APPX000002, the parties did not ultimately complete the transactions contemplated in the 2002 Agreement. APPX004571, ¶13.

In 2006, ASI, Ms. Nelson, and other parties entered into a second agreement (the "2006 Agreement"), which provided that the 2002 Agreement was "sold to Nelson" and that "all right, title, interest, and liability … set forth in the … 2002 Agreement shall transfer in whole to Nelson." APPX003591. The 2006 Agreement

was never recorded with the USPTO as a patent assignment, and no party to the 2006 Agreement—not Ms. Nelson, not Mr. Sturgeon, and not ASI—understood it to effect a present assignment of the Asserted Patents to Ms. Nelson individually. Ms. Nelson's uncontroverted declaration states that she did not intend the 2006 Agreement to assign the Asserted Patents to her and that she understood them to remain with ASI. APPX004623, ¶¶12–13; APPX004625, ¶¶19–20.

The uncontested facts support Ms. Nelson's testimony. Around Thanksgiving of 2011, Ms. Nelson's son and Mr. Sturgeon discovered that Salesforce likely infringed the Asserted Patents. APPX000254–000256, 29:9–31:14; APPX004624, ¶14. Thereafter, Mr. Sturgeon and Ms. Nelson decided to assign the patents from ASI to AIT, a company they jointly owned, so that AIT could assert the patents against Salesforce. APPX004571, ¶14; APPX004572, ¶17; APPX004624, ¶14–15. Mr. Sturgeon was tasked with effectuating the intent of Ms. Nelson, ASI and AIT via the execution of an assignment of all rights in the Asserted Patents to AIT, with Ms. Nelson's knowledge and consent. APPX004572, ¶17–18; *see also* APPX004624, ¶¶15–16; APPX004625, ¶¶18, 21–22; APPX004562–004566.

In November 2013, AIT filed this patent infringement action against Salesforce. The litigation proceeded for years, including numerous USPTO

challenges,[1] two stays, and multiple proceedings before this Court.[2] After this Court vacated the district court's grant of summary judgment and attorney fees against AIT in late 2024, on remand Salesforce renewed its previously-filed motion to dismiss for lack of standing. The district court granted Salesforce's motion, construing the 2006 Agreement as an assignment of the Asserted Patents to Ms. Nelson which rendered the later 2012 Assignment from ASI to AIT ineffective. APPX000003–000008.

AIT moved for reconsideration and equitable relief, seeking ratification by Ms. Nelson under Fed. R. Civ. P. 17(a)(3) or reformation of the 2006 Agreement under Cal. Civ. Code § 3399. The district court denied the requested equitable relief, holding both that the equitable remedies were unavailable to cure a constitutional standing defect, and that AIT requested such relief too late. APPX000011–000014.

A three-judge panel of this Court affirmed both the district court's finding that the 2006 Agreement assigned the Asserted Patents to Ms. Nelson, and its denial of AIT's request for equitable relief. With respect to equitable relief, the panel did not address AIT's argument that the district court abused its discretion in denying such

[1] The district court called out Salesforce for employing "tactical gamesmanship" in its repeated collateral attacks before the USPTO. APPX004682.

[2] *Applications in Internet Time, LLC v. RPX Corp.*, Nos. 2017-1698, -1699, and -1701; *In re Applications in Internet Time*, No. 2020-143; *Applications in Internet Time, LLC v. Salesforce, Inc.*, Nos. 2024-1133 and 2024-1685.

relief as untimely in view of *Jones v. Las Vegas Metro. Police Dep't*, which expressly held a real party in interest, here Ms. Nelson, is "entitled to await the district court's ruling before being deemed to have received notice for purposes of Rule 17." 873 F.3d 1123, 1129 n.3 (9th Cir. 2017). Instead, the panel affirmed solely on the basis that "AIT has cited no cases under our precedent, nor have we found any, that indicate that a party can cure a lack of constitutional standing pursuant to Rule 17(a)(3) ratification or contract reformation." Op. at 11.

ARGUMENT

I. The Panel Conflated Article III Injury-in-Fact with the Statutory Requirements of 35 U.S.C. § 281

The panel found that the equitable relief AIT sought was foreclosed, as a matter of law, because AIT lacked constitutional standing when it filed suit. Op. at 11. That finding was inconsistent with controlling precedent, and the panel conducted the wrong analysis for determining standing.

Article III standing requires only (1) injury-in-fact suffered by the plaintiff that is concrete and particularized, (2) causation traceable to the defendant's conduct, and (3) redressability by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–339 (2016). None of these elements requires the plaintiff to hold clear legal title to the right being enforced.

In *Lexmark*, the Supreme Court drew a sharp distinction between Article III standing and statutory cause-of-action requirements, holding that whether a plaintiff

falls within the class of persons Congress authorized to sue is a question of statutory interpretation, not constitutional law. *See Lexmark*, 572 U.S. at 127–128; *see also id.* at 126 (explaining that "the general prohibition on a litigant's raising another person's legal rights" comes from "a doctrine not derived from Article III"). This Court's recent precedent has recognized this distinction and conceded the inconsistency between *Lexmark* and earlier precedent. *See Lone Star*, 925 F.3d at 1235 ("*Lexmark* is irreconcilable with our earlier authority treating § 281 as a jurisdictional requirement."); *Intellectual Tech*, 101 F.4th at 814 ("This court has clarified, in light of [*Lexmark*], that § 281 is not a jurisdictional requirement."). Despite this, the panel declared AIT's lack of proper chain of title an incurable constitutional concern rather than a curable statutory issue.

The requirement that a patent plaintiff hold title to the asserted patent derives from 35 U.S.C. § 281, which grants a "patentee" the right to sue for infringement. It is a statutory cause-of-action requirement. *Lone Star*, 925 F.3d at 1235. Accordingly, when a plaintiff lacks title through mistake, the defect is of a statutory nature, i.e., the plaintiff falls outside the class of litigants § 281 authorizes to sue. Such defect does not negate the plaintiff's injury-in-fact from infringement.

The panel did not conduct the required injury-in-fact analysis under *Lexmark*. Here, there was no dispute that the only error was the execution of the 2012 Assignment by the wrong party, i.e., Mr. Sturgeon on behalf of ASI, instead of Ms.

Nelson. In these circumstances, AIT satisfied the injury-in-fact element of Article III standing at the time of filing in 2013, and the panel wrongly declared otherwise. In particular, AIT held a good faith belief it had title in the Asserted Patents pursuant to the 2012 Assignment from ASI, the longstanding owner of record, and Ms. Nelson's agreement thereto. APPX004572, ¶17–18; APPX004624, ¶¶14–16; APPX004625, ¶¶18–22. The 2012 Assignment was filed with the USPTO and carried a presumption of validity. *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1327–28 (Fed. Cir. 2010). Indeed, at the time of filing the Complaint, as reflected by Ms. Nelson's declaration, AIT held all rights to the Asserted Patents, even though those rights had not been transferred by a written instrument due to the error in the 2012 Assignment. APPX004624, ¶15 ("I fully intended for AIT to own all rights to the ICMU patents as part of our monetization efforts via litigation against Salesforce."); APPX004655 (2012 Assignment made with Ms. Nelson's "approval and consent"); *see also* APPX004625, ¶¶18–22. AIT had been treated as the lawful owner of the Asserted Patents by all relevant parties, including in defense of counterclaims brought by Salesforce. These facts readily establish Article III standing.

Importantly, this case does not involve a dispute between adverse parties asserting competing ownership interests to the Asserted Patents. Rather, it concerns the allocation of title among aligned parties who shared a common intent that AIT

would own and enforce the Asserted Patents. The 2012 Assignment was executed and recorded against that backdrop of shared intent. At most, the panel identified a defect in how that intent was memorialized, not the absence of a legally protected interest. That distinction is critical. Unlike cases involving adverse ownership claims, here both AIT and Ms. Nelson suffered injury-in-fact from Salesforce's infringement. Treating such a defect as a failure of Article III standing improperly converts a statutory question directed to the real party in interest into a jurisdictional bar.

Instead of conducting a proper injury-in-fact analysis, the panel simply found that because AIT ultimately did not own the Asserted Patents via a proper chain of title, it had no "exclusionary patent rights at the inception of the lawsuit and lacked constitutional standing to sue under them." Op. at 7. On the contrary, the undisputed facts demonstrate that AIT possessed all rights to the Asserted Patents, including exclusionary rights, based on Ms. Nelson's agreement to assign the Asserted Patents to AIT, despite Mr. Sturgeon's mistake in executing the 2012 Assignment on behalf of ASI rather than Ms. Nelson. That should have ended the inquiry in AIT's favor. The panel's finding that AIT had to demonstrate, in addition to injury-in-fact, proper chain of title as a prerequisite to Article III standing, conflicts with Supreme Court precedent and warrants *en banc* review. While a clean chain of title may be one way to demonstrate injury in patent cases, the Supreme Court has never held it is an

independent constitutional prerequisite. By treating the absence of formal ownership as defeating Article III standing, the panel imposed a heightened jurisdictional standard, inconsistent with *Lexmark*, that turns on the ultimate merits of the ownership dispute.

II. The Panel's Finding that Equitable Relief Was Categorically Unavailable Conflicts with This Court's Precedent and Warrants *En Banc* Review

In addition to wrongly finding an Article III standing defect, the panel declined to apply the equitable mechanisms of contract reformation and Rule 17(a)(3) ratification that this Court's precedent recognizes as available to address precisely such defects. That result cannot be reconciled with this Court's decision in *Schwendimann*, which confirms that defects in patent ownership arising from mistake or imperfect assignment may be corrected without jurisdictional dismissal. At a minimum, even under the panel's own premise that AIT lacked title at the time of filing, this case presents the same core circumstance addressed in *Schwendimann* of an ownership defect later cured through equitable means, yet the panel reached the opposite result. That tension, together with the acknowledged inconsistency among district courts regarding the availability of equitable relief in such circumstances, warrants *en banc* review.

A. The Panel's Erroneous Article III Holding Led It to Improperly Foreclose Equitable Relief

The panel gave short shrift to AIT's request for equitable relief, stating that AIT had "cited no cases under our precedent, nor have we found any" supporting reformation or Rule 17 relief to "cure a lack of constitutional standing." Op. at 11. That statement is incorrect. AIT extensively cited and relied on decisions from this Court, including *Schwendimann*, evidencing a district court has discretion to grant equitable relief in the face of a defect in title. The panel did not address that authority, and its decision cannot be squared with *Schwendimann*.

In *Schwendimann*, the plaintiff thought she was the owner by assignment of a patent at the time she filed suit, but she was not, due to a mistake in the preparation of the assignment document. 959 F.3d at 1068–70. Nevertheless, after the lawsuit commenced, the district court granted relief under the doctrine of contract reformation to reflect the parties' actual intent that the plaintiff be the patent owner. *Id.* at 1074. This Court affirmed the decision, noting *Lone Star*'s conclusion that "whether a party possesses all substantial rights in a patent does not implicate standing or subject-matter jurisdiction," in view of *Lexmark*. *Id*. at 1071 (quoting *Lone Star*, 925 F.3d at 1235–36). The *Schwendimann* court determined that because the complaint contained allegations that the plaintiff was the owner by assignment of the asserted patent, there was "no 'standing' issue to be decided in [the] appeal." *Id*. As such, this Court recognized there were no Article III concerns despite

reformation occurring ***after*** inception of the litigation. The *Schwendimann* court also distinguished *Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304 (Fed. Cir. 2003), the same case the panel relied upon here (Op. at 11), on the ground that *Paradise Creations* did not "involv[e] a district court's *reformation* of a contract, to properly reflect a valid, pre-existing transfer agreement." *Id.* at 1074 (emphasis in original).

The situation here is closely analogous to *Schwendimann*, in that, due to mutual mistake, the 2012 Assignment to AIT was executed by the wrong entity, such that the intended owner lacked formal title when filing suit despite the true owner agreeing to the transfer. *Schwendimann* holds that state law reformation is available to correct patent assignments that do not reflect the parties' actual intent, and there was no basis to preclude such relief here. *Schwendimann* and the panel's decision here cannot both be correct. If defects in patent assignments are constitutional standing defects, then *Schwendimann* was wrongly decided and should be reconsidered *en banc*. If instead such defects are statutory, then *Schwendimann* controls and the panel's denial of equitable relief was error.

In addition to *Schwendimann*, AIT cited this Court's recognition in *Lans v. Digital Equipment Corp.*, 252 F.3d 1320 (Fed. Cir. 2001) that the same principle regarding contract reformation also applies in the context of Rule 17(a)(3) equitable relief; namely, that courts have discretion to equitably correct defects in a chain of

title arising from an honest mistake. In *Lans*, a plaintiff assigned the asserted patent to a company he owned and controlled prior to filing suit for tax reasons, such that he lacked title at the time the complaint was filed. 252 F.3d at 1324–25. In response to a standing challenge, the plaintiff moved under Rule 17(a)(3) to substitute the company as the real party in interest. The district court denied that motion not on categorical grounds, but merely because lack of ownership "was not due to an honest and understandable mistake," and this Court affirmed on the ground that the district court was "well within its broad discretion" in doing so. *Id.* at 1325, 1329. That formulation is flatly incompatible with the panel's categorical rule that a district court has no discretion to grant relief where a chain of title defect exists.

Taken together, *Schwendimann* and *Lans* establish that when a patent plaintiff technically lacks title at filing due to an honest mistake, courts have discretion to grant equitable relief, through Rule 17(a)(3) ratification or contract reformation, to correct the record and allow adjudication on the merits. Yet, the panel disregarded that authority. Either the panel must reconsider its ruling, or the *en banc* Court should reconsider both *Schwendimann* and *Lans*.

B. District Courts Applying This Court's Precedent Have Reached Irreconcilable Results Under Similar Facts

District courts' inconsistent application of this Court's precedent is another compelling reason for providing *en banc* guidance on whether equitable relief is available to address patent title defects. Following *Lexmark*, and consistent with

Schwendimann's framework, district courts have generally recognized that equitable relief is available to cure defects in assignment agreements, although sometimes characterizing the ownership defect as constitutional. For example, in *Spectrum Dynamics Med. Ltd. v. General Electric Co.*, the court granted Rule 17(a)(3) substitution despite there being "no dispute" that the original party "lacked Article III standing." No. 18-CV-11386, 2023 WL 7135236, at *6 (S.D.N.Y. Oct. 30, 2023). Similarly, in *CPI Card Group, Inc. v. Multi Packing Solutions, Inc.*, No. 16-cv-02536-MEH, 2018 WL 3429197, at *3–9 (D. Colo. Jul. 16, 2018), the court granted Rule 17(a)(3) relief where the plaintiff did not own the patents at case filing, notwithstanding the constitutional framing. Prior to *Lexmark,* in *Park B. Smith, Inc. v. CHF Industries Inc.*, a district court expressly granted Rule 17(a)(3) relief despite finding the plaintiff "did not have constitutional standing at the time it filed suit." 811 F. Supp. 2d 766, 773–75 (S.D.N.Y. 2011).

However, on the other side of the split is the district court's decision in this action and in *Middleton, Inc. v. Minnesota Mining & Mfg. Co.*, No. 4:03-CV-40493-MWB-TJS, 2012 WL 12860706 (S.D. Iowa Mar. 6, 2012). In *Middleton*, the district court held that Rule 17(a)(3) substitution cannot cure a mistake in assignment, characterizing it as a lack of constitutional standing. The *Middleton* court expressly disagreed with *Park B. Smith*'s analysis and declined to follow it, holding that "constitutional standing must exist at the time a lawsuit is filed" and noting that "if

the original plaintiff lacked Article III initial standing, the suit must be dismissed, and the jurisdictional defect cannot be cured." *Id*. at *1–2 (internal citations omitted). *Middleton* thus adopted the same categorical bar that the panel announced here, placing it in direct conflict with *Spectrum Dynamics*, *CPI Card Group*, and *Park B. Smith* on the threshold legal question. The resulting landscape is one in which district courts facing identical legal questions reach diametrically opposite conclusions, with no controlling authority from this Court to guide them. That is the paradigmatic situation calling for *en banc* review.

CONCLUSION

For the foregoing reasons, the Court should grant rehearing or rehearing *en banc*, vacate the panel decision, and rehear this appeal.

Dated: April 15, 2026

Respectfully submitted,

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/s/ *Michael DeVincenzo*

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ADDENDUM

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

APPLICATIONS IN INTERNET TIME, LLC,
Plaintiff-Appellant

v.

SALESFORCE, INC.,
Defendant-Appellee

2025-2026

Appeal from the United States District Court for the District of Nevada in No. 3:13-cv-00628-MMD-CLB, Judge Miranda M. Du.

Decided: March 16, 2026

MICHAEL DEVINCENZO, King & Wood Mallesons LLP, New York, NY, argued for plaintiff-appellant. Also represented by ANDREA PACELLI, CHARLES WIZENFELD; STEVEN C. SEREBOFF, SoCal IP Law Group LLP, Westlake Village, CA.

DEREK L. SHAFFER, Quinn Emanuel Urquhart & Sullivan, LLP, Washington, DC, argued for defendant-appellee. Also represented by KEVIN P.B. JOHNSON, RAY ROBERT

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

LOURIE, *Circuit Judge*.

Applications in Internet Time, LLC ("AIT") appeals from a decision of the United States District Court for the District of Nevada dismissing its suit for lack of constitutional standing, *Applications in Internet Time, LLC v. Salesforce, Inc.*, No. 3:13-cv-00628-MMD-CLB, 2025 WL 961656 (D. Nev. Mar. 28, 2025) ("*Dismissal Decision*"), and denying its motion for equitable relief, *Applications in Internet Time, LLC v. Salesforce, Inc.*, No. 3:13-cv-00628-MMD-CLB, 2025 WL 2029841 (D. Nev. July 21, 2025) ("*Reconsideration Decision*"). For the following reasons, we *affirm*.

BACKGROUND

The main issue in this case is whether the district court erred in determining that AIT lacked constitutional standing to sue for infringement of U.S. Patents 7,356,482 ("the '482 patent") and 8,484,111 ("the '111 patent"). That in turn depends on whether a non-party, Alternative Systems, Inc. ("ASI"), had title to the patent application that would later issue as those patents at the time when ASI entered into an agreement to assign its rights to those patents to AIT.

ASI was founded in 1986 by Beverly Nelson, Douglas Sturgeon, and Anthony Sziklai. J.A. 4569. In 1997, ASI entered into a joint venture with a company (not a party in this appeal) to develop information management software technology. *Dismissal Decision*, 2025 WL 961656, at *1; J.A. 4569. The joint venture culminated in the development of new Integrated Change Management Unit ("ICMU") software, and in 1998 ASI filed a patent

application seeking to protect that software. *See* J.A. 4570–71. Pursuant to the joint venture agreement, ASI owned all rights to the patents that might issue from the application via assignments executed by the named inventors. J.A. 500, 4556–61. That application matured into the '482 and '111 patents in 2008 and 2013, respectively. J.A. 16, 50.

The joint venture was terminated in 2002 pursuant to agreement ("the 2002 Agreement"). J.A. 3596–611. That Agreement contemplated a future contingent conveyance of patent rights to HMB, a party to be created by the Agreement, J.A. 3596, 3598, but that future contingent conveyance never actually occurred, J.A. 3231, 4571.

In 2006, ASI, Nelson, and other entities that were party to the joint venture entered into an agreement that "sold" the 2002 Agreement to Nelson ("the 2006 Agreement"). In relevant part, the 2006 Agreement recited "[t]hat the . . . 2002 Agreement is hereby sold to Nelson." J.A. 3591. It also stated that "all right, title, interest, and liability (including financial liability) set forth in the . . . 2002 Agreement shall transfer in whole to Nelson." *Id.*

Meanwhile, in 2005, Nelson and Sturgeon formed AIT, the plaintiff in this case. J.A. 4571. In 2012, Sturgeon, acting on behalf of ASI, entered into an agreement to assign the patent rights to AIT ("the 2012 Assignment"). *See* J.A. 4562–66. The following year, in 2013, both patents having issued, AIT sued Salesforce, Inc. ("Salesforce") in the District of Nevada, asserting infringement of the '482 and '111 patents. *See* J.A. 89.

The litigation proceeded through discovery and motion practice, most of which is of no consequence to this appeal. But, in 2022, Salesforce filed a motion to dismiss for lack of standing and a motion for summary judgment that the patent claims were invalid as anticipated and obvious, and that its accused products were not infringing. *Applications in Internet Time, LLC v. Salesforce.com, Inc.*, 691 F. Supp.

3d 1223, 1227 (D. Nev. 2023). The district court granted the motion for summary judgment on each ground asserted by Salesforce and denied the motion to dismiss for lack of standing as moot. *Id.* at 1253. AIT appealed the grant of summary judgment to this court, and we vacated and remanded on the issue of anticipation. *Applications in Internet Time, LLC v. Salesforce, Inc.*, 2024 WL 4456271, at *1, *6 (Fed. Cir. Oct. 10, 2024).

On remand, Salesforce filed a renewed motion to dismiss for lack of standing, which the district court granted. *See Dismissal Decision*, 2025 WL 961656, at *1. The district court determined that the 2006 Agreement had unambiguously transferred all the patent rights to Nelson, so that, pursuant to the 2012 Assignment, ASI had no rights remaining to transfer to AIT. *Id.* at *3, *5. AIT therefore had no rights in the asserted patents at the outset of the lawsuit and lacked constitutional standing to sue under them. *Id.* The district court also rejected AIT's argument that Nelson effectively had transferred her patent rights to AIT. *Id.* at *5. AIT filed a motion for reconsideration and equitable relief, under Federal Rule of Civil Procedure 17(a)(3) ratification or the doctrine of contract reformation, which the district court denied. *Reconsideration Decision*, 2025 WL 2029841, at *2–3.

AIT timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(1).

STANDARD OF REVIEW

"[Q]uestions of the district court's jurisdiction—upon which this court's jurisdiction depends—are always determined under Federal Circuit law." *Schreiber Foods, Inc. v. Beatrice Cheese, Inc.*, 402 F.3d 1198, 1202 (Fed. Cir. 2005). We review a district court's dismissal for lack of standing *de novo*, and we review factual determinations relevant to standing for clear error. *Advanced Video Techs. LLC v. HTC Corp.*, 879 F.3d 1314, 1317 (Fed. Cir. 2018) (citations omitted).

We review matters of procedural law that do not implicate issues of patent law under the standard of review of the regional circuit, here the Ninth Circuit. *See Landmark Screens, LLC v. Morgan, Lewis, & Bockius, LLP*, 676 F.3d 1354, 1361 (Fed. Cir. 2012); *Lans v. Digital Equip. Corp.*, 252 F.3d 1320, 1328 (Fed. Cir. 2001). The Ninth Circuit reviews denials of equitable relief, such as Rule 17(a)(3) ratification and contract reformation, for an abuse of discretion. *See Forest Grove Sch. Dist. v. T.A.*, 523 F.3d 1078, 1084 (Fed. Cir. 2008); *Jones v. L.V. Metro. Police Dep't*, 873 F.3d 1123, 1128 (9th Cir. 2017).

Regarding interpretation of a contract, "[t]he question of who owns the patent rights and on what terms typically is a question exclusively for state courts." *Bd. of Trs. of Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 583 F.3d 832, 841 (Fed. Cir. 2009) (citation modified). The parties agree that California law controls interpretation of the 2006 Agreement. Open. Br at 31; Resp. Br. at 34. "Under California state law, contracts are interpreted without deference on appeal." *Tex. Instruments Inc. v. Tessera, Inc.*, 231 F.3d 1325, 1329 (Fed. Cir. 2000); *see also Intell. Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1320 (Fed. Cir. 2017) (applying California law).

DISCUSSION

AIT argues that the district court erred in dismissing its suit for lack of constitutional standing and abused its discretion in denying its motion for equitable relief pursuant to Rule 17(a)(3) and the doctrine of contract reformation. Open. Br. at 18, 40. We address each argument in turn.

I

In order to have constitutional standing, a plaintiff must establish injury-in-fact, causation, and redressability. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). In patent infringement cases, the injury-in-fact

requirement is met when the plaintiff has an exclusionary right in the asserted patent(s). *Intell. Tech LLC v. Zebra Techs. Corp.*, 101 F.4th 807, 813–14 (Fed. Cir. 2024).

Under California law, "interpretation of a contract must give effect to the mutual intention of the parties." *MacKinnon v. Truck Ins. Exch.*, 73 P.3d 1205, 1212 (Cal. 2003) (citation modified). "Such intent is to be inferred, if possible, solely from the written provisions of the contract." *Id.* at 1213. "California has a liberal parol evidence rule: It permits consideration of extrinsic evidence to explain the meaning of the terms of a contract even when the meaning appears unambiguous." *Foad Consulting Grp., Inc. v. Azzalino*, 270 F.3d 821, 826 (9th Cir. 2001) (citing *City of Manhattan Beach v. Superior Ct.*, 13 Cal. 4th 232, 246 (1996)).

A

In this court, on appeal, AIT argues that the 2006 Agreement was not a present patent assignment to Nelson. It asserts that the agreement itself was sold, not the assets referred to in the agreement.

We disagree. The 2006 Agreement did convey all patent rights to Nelson. It recites:

> [T]he . . . 2002 Agreement *is hereby sold* to Nelson by the Parties (exclusive of Nelson) without reservation of any provision of the . . . 2002 Agreement. The waiver of reservation of any provision shall be irrevocable, complete and total; *all right, title, interest, and liability (including financial liability) set forth in the . . . 2002 Agreement shall transfer in whole to Nelson*. Further, Nelson shall have the sole and exclusive right to modify, terminate or otherwise discard Sections A, B and C of the . . . 2002 Agreement.

J.A. 3591 (emphases added). In turn, "Section A" of the 2002 Agreement recites:

> As soon as practicable following the date of signing of this Agreement, ASI will transfer certain assets of ASI (the "ASI Assets") to HMB . . . .
>
> . . .
>
> The ASI Assets are . . . *all* . . . *intellectual property rights* (including without limitation *patent*, trademark, copyright and other rights) . . . .

J.A. 3596 (emphases added). Because the 2006 Agreement transferred "all *right*, title, interest, and liability . . . set forth in the . . . 2002 Agreement" to Nelson, it therefore included the "intellectual property *rights*" set forth in the 2002 Agreement. Thus, as the patents were then the property of Nelson, ASI had no patent rights to transfer to AIT in 2012. AIT therefore had no exclusionary patent rights at the inception of the lawsuit and lacked constitutional standing to sue under them.

AIT's arguments to the contrary are unconvincing. AIT first argues that any transfer of patent rights to Nelson by the 2006 Agreement was a future contingent transfer which never occurred, because the "shall transfer" language of the 2006 Agreement denotes a future act. Open. Br. at 24–26. However, fatal to AIT's argument is that it reads one sentence of the 2006 Agreement in isolation, not in the context of the entire agreement. *See* Cal. Civ. Code § 1641 ("The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."). Immediately preceding the "shall transfer" sentence is a sentence reciting "[t]hat the . . . 2002 Agreement *is hereby sold* to Nelson." J.A. 3591 (emphasis added). That language conveys a present transfer of the 2002 Agreement to Nelson, which includes "all right, title, interest, and liability" put forth in the next sentence. The 2006 Agreement was therefore not a future contingent transfer of patent rights to Nelson.

Relatedly, AIT argues that the 2006 Agreement affecting a present transfer of patent rights is irreconcilable with Nelson having, under the 2006 Agreement, "the sole and exclusive right to modify, terminate or otherwise discard" certain sections of the 2002 Agreement, including the "ASI Assets" and the future contingent transfer of the patent rights to HMB. *See* Open. Br. at 26–28. According to AIT, Nelson's ability to modify sections of the 2002 Agreement shows that there was no present transfer of patent rights. But AIT's argument again ignores the language "[t]hat the . . . 2002 Agreement is *hereby sold* to Nelson." J.A. 3591 (emphasis added). The 2006 Agreement specifying that Nelson has exclusive control over the assets she is gaining (that is, the sole right to modify or terminate certain terms of the 2002 Agreement) is not inconsistent with the 2006 Agreement affecting a present transfer to her of the patent rights.

Finally, AIT argues that the district court erred in declining to consider extrinsic evidence in concluding that the 2006 Agreement transferred all patent rights to Nelson. Open. Br. at 32–33. The district court indeed stated that it declined to consider extrinsic evidence, but it did acknowledge Sturgeon's testimony that the 2006 Agreement sold "[e]verything" to Nelson, and cast doubt on his later declaration attempting to walk back his testimony, because that later declaration was self-serving and contradictory. *Dismissal Decision*, 2025 WL 961656, at *4 (citing J.A. 3233–34, 4571–72).

While it appears to be true that California law requires extrinsic evidence to interpret terms that are "reasonably susceptible" to a party's interpretation, and can even be used to determine whether a term is "reasonably susceptible" to such an interpretation, extrinsic evidence cannot be used to alter or add terms to a contract. *Bionghi v. Metro. Water Dist. of S. Cal.*, 70 Cal. App. 4th 1358, 1364–65 (Cal. Ct. App. 1999); *Pac. Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.*, 442 P.2d 641, 645 (Cal. 1968); *see Foad*,

270 F.3d at 826 (explaining that, under California contract law, extrinsic evidence can uncover "a latent ambiguity in [a] contract").

To the extent that the district court properly evaluated extrinsic evidence to determine if there was a "latent ambiguity" in the contract terms, it correctly indicated that Sturgeon's testimony supports the conclusion that the 2006 Agreement transferred the patent rights to Nelson. Indeed, Sturgeon testified, "Everything in [the 2002] [A]greement was transferred to [Nelson]." J.A. 3233. Sturgeon was then asked, "And that includes what is defined as the ASI assets?" to which he responded, "Everything." J.A. 3234. That testimony bolsters the conclusion that the 2006 Agreement transferred the patent rights to Nelson. The district court's discrediting Sturgeon's later contradictory declaration was not clearly erroneous.

B

Next, AIT argues that, even assuming that the 2006 Agreement did transfer all rights in the asserted patents to Nelson, the district court clearly erred in determining that Nelson did not consent to the 2012 Assignment, thereby transferring her patent rights to AIT. Open. Br. at 37–39. We disagree.

In support of its argument, AIT points only to Sturgeon's declaration that he is in "constant communication" with Nelson "regarding the business of AIT and she is informed of all material decisions of the company," which "has included the assignment of the . . . patents from ASI to AIT," J.A. 4572, as well as the general fact that Nelson and Sturgeon had sole ownership and control of ASI and AIT during the relevant time, *see, e.g.*, J.A. 4569. But that is not persuasive evidence showing that Nelson consented to the 2012 Assignment. The district court thus did not clearly err in determining that Nelson did not exercise her right to modify the 2002 Agreement via her consent to the 2012 Assignment such that AIT acquired the patent rights.

AIT also argues that the district court improperly placed the burden on it to show that the 2012 Assignment was valid. Open. Br. at 38. It is true that the recording of an assignment with the Patent Office "creates a presumption of validity as to the assignment," and the burden to rebut that presumption falls "on one challenging the assignment." *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1327–29 (Fed. Cir. 2010). But Salesforce rebutted the presumption that the 2012 Assignment was valid by showing that AIT had no rights to transfer in 2012, as explained above. Notwithstanding any presumption (that was overcome in this case), the burden falls on AIT to show it had constitutional standing. *See Sicom Sys., Ltd. v. Agilent Techs., Inc.*, 427 F.3d 971, 976 (Fed. Cir. 2005).

For the foregoing reasons, we conclude that the district court correctly determined that AIT lacked constitutional standing and therefore correctly granted Salesforce's motion to dismiss.

II

We last address AIT's contention that the district court abused its discretion in denying AIT's motion, filed after the case was dismissed, for equitable relief pursuant to Rule 17(a)(3) or contract reformation under California contract law. *Reconsideration Decision*, 2025 WL 2029841, at *2.

Under FRCP 17(a)(3):

> The [district] court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action.

And under California contract law:

> When, through . . . mutual mistake of the parties, . . . a written contract does not truly express the

> intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

Cal. Civ. Code § 3399.

The district court denied both forms of relief, explaining that AIT's arguments based on Rule 17(a)(3) and contract reformation "could have been raised in connection with [AIT's] opposition to the motion to dismiss," and the court was under no obligation to consider such newly-raised arguments. *Reconsideration Decision*, 2025 WL 2029841, at *2. On the merits, the district court determined that neither form of relief could be used to cure a constitutional standing defect present at the outset of the lawsuit. *Id.*

We conclude that the district court did not abuse its discretion in denying either form of equitable relief. "A court may exercise jurisdiction only if a plaintiff has standing to sue on the date it files suit." *Abraxis Bioscience, Inc. v. Navinta LLC*, 625 F.3d 1359, 1364 (Fed. Cir. 2010) (citing *Keene Corp. v. United States*, 509 U.S. 200, 207 (1993)). "[I]n order to assert standing for patent infringement, the plaintiff must demonstrate that it held enforceable title to the patent *at the inception of the lawsuit*." *Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304, 1309 (Fed. Cir. 2003) (emphasis in original). As explained above, AIT lacked constitutional standing on the date it filed suit. AIT has cited no cases under our precedent, nor have we found any, that indicate that a party can cure a lack of constitutional standing pursuant to Rule 17(a)(3) ratification or contract reformation. The district court therefore did not abuse its discretion in denying either form of relief.

CONCLUSION

We have considered AIT's remaining arguments but find them unpersuasive. For the foregoing reasons, we *affirm* the decision of the district court.

AFFIRMED

PROOF OF SERVICE

I, Michael DeVincenzo, hereby certify that on April 15, 2026, I caused one copy of the foregoing document to be electronically filed using the CM/ECF system, which sent a notice of electronic filing to all ECF registered participants.

Date: April 15, 2026 by: */s/ Michael DeVincenzo*
Michael DeVincenzo
Counsel for Plaintiff-Appellant
Applications in Internet Time, LLC

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of the Federal Rules of Appellate Procedure and the Rules of this Court because it contains 3,842 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 32(b).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type styles requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font.

Date: April 15, 2026 by: */s/ Michael DeVincenzo*
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