No. 23-2427

United States Court of Appeals for the Federal Circuit

RANGE OF MOTION PRODUCTS, LLC,

Plaintiff-Appellant,

v.

ARMAID COMPANY INC.,

Defendant-Appellee,

Appeal from the United States District Court for the District of Maine
Judge Jon D. Levy 1:22-CV-0091

RESPONSE TO PETITION FOR REHEARING EN BANC FOR DEFENDANT-APPELLEE

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CERTIFICATE OF INTEREST

Counsel for Appellee certifies the following:

1. **Represented Entities.** Provide the full names of all entities represented by undersigned counsel in this case. Fed. Cir. R. 47.4(a)(1).

   The Armaid Company Inc.

2. **Real Party in Interest.** 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. Fed. Cir. R. 47.4(a)(2).

   The Armaid Company Inc. is owned by the Estate of Terry M. Cross.

3. **Parent Corporations and Stockholders.** 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. Fed. Cir. R. 47.4(a)(3).

   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).

   None.

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).

   None.

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).

Not Applicable.

May 20, 2026

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INTRODUCTION AND SUMMARY

In a familiar "two-part test," determining infringement of a design patent requires first construing the claim and then comparing that properly construed claim to the accused design or product. Pet.Add6. Range of Motion (RoM) seeks *en banc* review on both of those foundational steps, arguing that this Court's approach is "contrary to" Supreme Court precedent for each. It is not. *En banc* review is not warranted to revisit the long-settled and correct approach to design-patent infringement, and, even if it were, this case would be a poor vehicle to do so.

RoM's first issue concerns the ordinary observer test for design-patent infringement. According to RoM, the *en banc* Court's reference to plain dissimilarity in *Egyptian Goddess* contradicts the Supreme Court's "substantially the same" standard from *Gorham Co. v. White*, 81 U.S. (14 Wall.) 511 (1871). RoM is mistaken. In truth, *Egyptian Goddess* did not "change[]," much less "gut," *Gorham*'s test (*contra* Pet. 1-2) but instead expressly applied it. The relevant passage explicitly asks whether "two designs would appear 'substantially the same' to the ordinary observer, as required by *Gorham*," while acknowledging "some

instances" in which "it will be clear without more that the patentee has not met its burden of pro[of]" on that inquiry. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 678 (Fed. Cir. 2008) (en banc). As the panel majority explained, *Egyptian Goddess* "merely recogniz[ed] that in some cases, the claimed and accused designs may be so clearly not similar (or 'dissimilar') as to remove the need to consider the prior art." Pet.Add12 n.3. That recognition finds ample support in the case law and in the understanding that analyzing substantial similarity often entails analyzing differences—and vice versa. The panel majority correctly recited and applied these rules.

Even if the Court concludes that RoM's first issue warrants *en banc* review, however, this case would be a poor vehicle to consider it. The "plainly dissimilar" question was not independently dispositive: the panel majority "conclude[d] that the district court did not reversibly err in its analysis" under the three-way comparison inquiry and "would therefore also affirm … on this alternative basis." Pet.Add16-17. That is the same inquiry that the dissent argued should "*always*" apply. Pet.Add28. RoM attempts to brush this aside in a cursory footnote, but RoM does not explain how the "plainly dissimilar" conclusion

purportedly "infected" the majority's explicit alternative holding. Pet. 14 n.1.

RoM's second issue—that all or almost all of design-patent claim construction should be for the jury under *Markman*—is also misguided. Seeking to extract an *en banc* issue from a footnote, RoM calls the panel majority's statement about claim construction functionality "undertheorized and incorrect." Pet. 2 (citing Pet.Add7 n.2). But RoM's broadside attack was never part of this case. RoM's opening brief, for example, cited *Markman* when stating that "claim construction is a matter of law to be decided by a judge." Op. Br. 22, ECF No. 19. That is directly contrary to the arguments on which RoM now seeks *en banc* review. Since *Markman*, this Court has repeatedly recognized that claim construction is a question for the court, and there is no good reason to revisit that unbroken line of cases here.

In the end, the potential consequences of RoM's positions are stark. RoM claims that, "since 2000," design patent cases "have nearly tripled." Pet. 23. In RoM's view, however, virtually all of those cases should skip past claim construction and summary judgment, straight to a jury trial. Under that regime, courts would lose important

mechanisms for filtering out unmeritorious claims (like RoM's) at the pretrial stages, straining time and resources. The current system is working, and plenty of design-patent cases should and do get tried to a jury. RoM's case against Armaid is just not one of them. The Court should deny the petition.

BACKGROUND

Terry Cross was Armaid's late owner and founder and was also a co-founder of RoM. He is the inventor or co-inventor on various design and utility patents, and he was the initial developer of body massaging products for both RoM and Armaid. Appx363-370. In the late 1990s, Cross first invented the "Armaid1," an arm-focused massage device covered by a utility patent. Appx364.

In 2015, based on feedback about the Armaid1, Cross developed the "Rolflex," a redesigned product capable of massaging the entire body. Appx3-4. Cross filed multiple utility patent applications directed to the Rolflex's functional features, including its adjustable arms and a base shaped to accommodate different body parts. Appx367; Appx408-467. He also applied for a design patent claiming the ornamental design of the device, which ultimately issued as U.S. Design Patent No.

D802,155 ("D'155 patent"). Pet.Add3; Appx4-5. In 2016, Cross and two others formed RoM to commercialize the Rolflex, and RoM owns the D'155 patent. Pet.Add2; Appx4.

After a falling-out with RoM, Cross returned to Armaid and developed the "Armaid2"—the accused product here. Pet.Add3. Cross submitted a detailed declaration explaining, from the inventor's unique perspective, the changes that the Armaid2 contains as compared to the Armaid1 and the Rolflex. *See generally* Armaid Br. 13-16, ECF No. 21.

RoM brought two lawsuits alleging infringement of the D'155 patent. In the first, in April 2021, RoM moved for a preliminary injunction but dropped the case after the injunction was denied. Pet.Add4. In April 2022, RoM sued Armaid again in the same court, making the same infringement allegations. Appx71. In between the two cases, Cross died in an accident. Appx6.

Armaid moved for summary judgment of non-infringement, and the parties stipulated to a summary judgment record that was largely limited to the record from RoM's first case. Appx1-2 & n.1. RoM also "expressly represented that [the district court] could rely on the existing evidence in the record to construe the claim in the D'155 patent," while

simultaneously "fail[ing] to detail any additional evidence that would assist the Court with claim construction." Appx15

The district court construed the D'155 patent and then assessed whether the "two designs are substantially the same" under the undisputed material facts. Appx11-29. On claim construction, the court distinguished between the functional and ornamental aspects of the claimed design, while making sure not to "wholly exclude functional features." Appx20-21. On infringement, the court "compare[d]" the accused and claimed designs "side-by-side," avoided "an element-by-element comparison," and considered the "overall visual impression" created. Appx26. The court held that Armaid was entitled to summary judgment because (1) the designs were plainly dissimilar and (2) the designs are "not substantially similar" when compared to the prior art. Appx26-29.

This Court affirmed across the board. The panel majority first "agree[d] with the district court's conclusion that the shape of the arms is functional and disagree[d] with RoM's contention that the district court entirely eliminated a structural element" during claim construction. Pet.Add6; *see also* Pet.Add8 ("The evidence in the record

supports the conclusion that the shape of the arms is functional."). The majority likewise "disagree[d] with RoM's contention that the intrinsic evidence unambiguously demonstrates that the shape of the arms is ornamental." Pet.Add9.

Moving to infringement, the majority affirmed both of the district court's independent holdings. Pet.Add11-17. First, "the district court's infringement analysis properly focused on the designs' overall ornamental appearance," and the court did not err "in reaching its determination that the design of the Armaid2 and the narrow design protected by the D'155 patent are plainly dissimilar." Pet.Add11-15. Second, the majority "agree[d] with the district court that a comparison of the D'155 patent and the Armaid2 designs with the Armaid1 design in the prior art further supports the conclusion that no reasonable jury could find that the designs at issue are substantially similar." Pet.Add16-17. The majority also explained in detail how "RoM and the dissent advocate for an approach that fails to respect the limits on a design patent's scope" and why that would be contrary to the governing statute and longstanding precedent. Pet.Add13.

Chief Judge Moore dissented. Pet.Add18-30. The dissent argued that *Egyptian Goddess* inadvertently "changed the substantial similarity test" when it discussed whether "two designs are 'sufficiently distinct' or 'plainly dissimilar.'" Pet.Add20. In the dissent's view, courts "should *always* 'compar[e] the claimed and accused designs in light of the prior art.'" Pet.Add28. The dissent did not address the claim construction rulings or the majority's footnote citing *Markman*.

ARGUMENT

I. *EN BANC* REVIEW ON THE NON-INFRINGEMENT ISSUE IS NOT WARRANTED.

RoM seeks *en banc* review on whether the Court's "test for design patent infringement" is "inconsistent with" the Supreme Court's substantial-sameness test. Pet. ix. Because this Court's approach is fully consistent with Supreme Court precedent, and because this case has significant vehicle issues regardless, RoM's petition should be denied.

A. *Egyptian Goddess* Properly Applied the Supreme Court's Test From *Gorham*.

Egyptian Goddess was a unanimous *en banc* decision. The first sentence of the Court's substantive analysis states: "The starting point for any discussion of the law of design patents is the Supreme Court's

decision in" *Gorham*. 543 F.3d at 670. The Court then reaffirmed that the "ordinary observer" test from *Gorham* is the "*sole* test for determining whether a design patent has been infringed." *Id.* at 678 (emphasis added).

The *en banc* Court went on to explain how that test may apply to different factual situations—each time making clear that the ultimate question is substantial sameness. Sometimes, the Court said, "the claimed design and the accused design will be sufficiently distinct that it will be clear without more that the patentee has not met its burden of proving the two designs would appear '*substantially the same*' to the ordinary observer, as required by *Gorham*." *Id.* (emphasis added). Other times, including when the designs are "not plainly dissimilar, resolution of the question whether the ordinary observer would consider the two designs to be *substantially the same* will benefit from a comparison of the claimed and accused designs with the prior art." *Id.* (emphasis added).

Despite the Court's explicit references to substantial sameness, RoM contends that these statements "flout[]" *Gorham* by "invert[ing] the inquiry from similarity to difference." Pet. 10-11. That is incorrect.

First, as the panel majority explained, "*Egyptian Goddess* merely recogniz[ed] that in some cases, the claimed and accused designs may be so clearly not similar (or 'dissimilar') as to remove the need to consider the prior art." Pet.Add12 n.3. The district court here "properly considered both the similarities and differences in assessing the overall similarity of the claimed and accused designs." *Id.* RoM's petition does not mention this part of the majority opinion.

Second, and related, it does not "invert" the substantial-sameness inquiry to consider differences when analyzing sameness. That is often an inherent part of the task, as *Gorham* and many cases since have shown.

Gorham itself is a powerful example. Right after articulating the "substantially the same" rule, the Supreme Court "[a]ppl[ied] th[at] rule to the facts of the present case" and concluded that it was "apparent there is *no substantial difference*" between "the figure or outline of the plaintiff's design" and an accused one. 81 U.S. at 528-29 (emphasis added); *see also id.* at 530 ("there is no substantial difference in the three designs"). Elsewhere, as RoM notes (Pet. 8-9), the Supreme Court looked to *M'Crea v. Holdsworth*, (1864) 122 Eng. Rep. 917 (QB), but the

Court's interpretation of that case evinced the same understanding: the "important inquiry was whether there was any *difference* in the effect of the designs." 81 U.S. at 526 (emphasis added).

After *Gorham*, courts of appeal regularly recognized that an analysis of differences is consistent with the substantial-sameness test. The Third Circuit, for example, described *Gorham* as asking about "the sameness of, or difference between," the designs. *Monroe v. Anderson*, 58 F. 398, 400-01 (3d Cir. 1893). Reversing an infringement conclusion, the panel was "entirely satisfied that [the designs] [we]re *substantially different* in their effect upon the eye," and "that their *difference* in appearance would be manifest to an ordinary observer." *Id.* at 400 (emphases added). Other circuits were similar. *See, e.g.*, *Ziddel v. Dexter*, 262 F. 145, 147 (9th Cir. 1920) ("differences which will attract the attention of the ordinary observer" will "avoid infringement"); *Am. Fabrics Co. v. Richmond Lace Works*, 24 F.2d 365, 367 (2d Cir. 1928) (affirming non-infringement when "the general appearance of the two patterns is sufficiently different"). RoM's categorical assertion that "the circuits consistently understood the test to inquire *only* into designs' overall similarity," Pet. 9-10 (emphasis added), is inaccurate.

This Court's precedent has been similar—both before and in *Egyptian Goddess*. In *KeyStone Retaining Wall Systems, Inc. v. Westrock, Inc.*, for example, the Court said that "one cannot establish design patent infringement by showing similarity of only one part of a patented design if the designs as a whole are substantially dissimilar." 997 F.2d 1444, 1450 (Fed. Cir. 1993); *see also, e.g.*, *Elmer v. ICC Fabricating, Inc.*, 67 F.3d 1571, 1577-78 (Fed. Cir. 1995) (finding non-infringement when the accused design "ha[d] a substantially different overall ornamental appearance").

Egyptian Goddess likewise did not "br[eak] from *Gorham*'s substantial-sameness test," Pet. 10, but reaffirmed and applied it. The passage on which RoM focuses is directed to "proving the two designs would appear 'substantially the same' to the ordinary observer, as required by *Gorham*." 543 F.3d at 678. When the Court discussed the three-way comparison test *that RoM supports*, moreover, it said: if "there are many examples of similar prior art designs, … *differences* between the claimed and accused designs that might not be noticeable in the abstract can become significant to the hypothetical ordinary

observer who is conversant with the prior art." *Id.* (emphasis added). All of that is consistent with *Gorham*.

B. The Summary Judgment Standards Are Being Applied Properly.

RoM next contends that a "plainly dissimilar" inquiry "invites a related error" by resolving factual questions at summary judgment. Pet. 11-15. In support, RoM argues that "overall" similarities should have been enough to get to a jury here and that the existing test "subverts the summary-judgment standard's proper application." *Id.* This criticism fares no better.

First, RoM continues to insist that the "overall designs" need only be set on top of one another to conclude that summary judgment should have been denied. Pet. 14.[1] As the panel majority correctly recognized, however, RoM's just-look-at-the-overlapping-pictures approach "fails to respect the limits on a design patent's scope." Pet.Add13. It "would dramatically increase the scope of design patents by *precluding*

[1] RoM's overlapping images do not even ask the right question. The "proper comparison requires a side-by-side view," *e.g.*, *Crocs, Inc. v. Int'l Trade Comm'n*, 598 F.3d 1294, 1304 (Fed. Cir. 2010), not a confusing juxtaposition of a patent drawing on top of a blurry photo of the accused product. *Contra* Pet. 14.

summary judgment whenever functional considerations result in two designs sharing similarities." *Id.* (emphasis added). It is therefore RoM's approach, not the panel majority's, that would "subvert[] the summary-judgment standard's proper application." *Contra* Pet. 15.

Second, RoM invokes an "empirical study," Pet. 12-13, but it establishes nothing. The study seems to have asked *only* about plain dissimilarity, not substantial sameness—thus providing no basis to assess whether the variance in language mattered to the respondents. As others have explained, moreover, there are several other reasons it deserves no weight. *See* Resp. Br. for Defs.-Appellees 19-21, *North Star Tech. Int'l Ltd. v. Latham Pool Prods., Inc.*, No. 23-2138 (Fed. Cir. Sep. 10, 2025) (criticizing study).

Third, and contrary to RoM's claims, the current framework is working. On one side, courts have applied *Gorham* and *Egyptian Goddess* to resolve unsubstantiated infringement claims on summary judgment despite "broad" overall similarities. *See, e.g.*, Pet.Add12-15 & n.3; *OddzOn Prods., Inc. v. Just Toys, Inc.*, 122 F.3d 1396 (Fed. Cir. 1997); *Lanard Toys Ltd. v. Dolgencorp LLC*, 958 F.3d 1337 (Fed. Cir. 2020). On the other side, courts regularly send other cases past

summary judgment. *See, e.g.*, *Samiam Grp., LLC v. Coopersburg Assocs., Inc.*, 650 F. Supp. 3d 295, 312-17 (E.D. Pa. 2023) (denying summary judgment when two designs were not plainly dissimilar but also not substantially the same); *Glam & Glits Nail Design, Inc. v. iGel Beauty, LLC*, 2022 WL 2102858, at *8 (C.D. Cal. Apr. 6, 2022) (denying summary judgment even though "the products are not identical"); *Rothy's, Inc. v. Birdies, Inc.*, 602 F. Supp. 3d 1228, 1238 (N.D. Cal. 2022) (denying summary judgment in competitor suit).

The panel majority and the district court correctly recognized that summary judgment of non-infringement was appropriate here. The inquiry "properly focused on the designs' overall ornamental appearance." Pet.Add13-15. There were "broad" similarities, but "most" came from functional features that were "only to be considered 'to the extent that they contribute to the overall ornamentation.'" Pet.Add14-15. That analysis struck the right balance and correctly "reject[ed] the proposal to establish what amounts to an oversimplified version of the ordinary observer test." Pet.Add13.

C. This Case Is A Poor Vehicle For RoM's Non-Infringement Issue.

Even if RoM's contentions had merit, the Court should decline to address the issue in this case because the decision on appeal did not turn on the "plainly dissimilar" standard alone. Both the district court and panel majority alternatively held that, separate and apart from plain dissimilarity, the accused and claimed designs were not "substantially the same" after comparing the claimed design, the accused design, and the relevant prior art. Pet.Add16-17; Appx27-28. The dissent argued that, "[w]hen performing the substantial similarity analysis required by *Gorham*," the Court "should *always* 'compar[e] the claimed and accused designs in light of the prior art.'" Pet.Add28 (quoting *Egyptian Goddess*, 543 F.3d at 677). But the majority (and the district court) already did that. *En banc* review on the plain-dissimilarity inquiry, therefore, would not "chang[e] the outcome of" RoM's appeal. *See Adame v. Holder*, 777 F.3d 390, 391-92 (7th Cir. 2015) (mem.) (Hamilton, J., concurring in denial of rehearing *en banc*).

ROM's attempt to address this issue in a footnote (Pet. 14 n.1) falls flat. RoM just declares that the panel's "plain dissimilarity" holding "permeat[ed] and bias[ed]" its analysis under the three-way

comparison test. *Id.* But that footnoted assertion comes with no explanation. RoM cites *United States v. $28,000.00 in U.S. Currency*, 802 F.3d 1100, 1107 (9th Cir. 2015), but that was not a case about alternative holdings. Instead, the district court there wrongly declined to consider submitted hourly fee rates, which also caused the court to "ignore[] the hourly rates" included in plaintiffs' submissions. *Id.* RoM does not explain why that case's reasoning would apply to the alternative holdings here.

* * *

Last year, the Court denied a petition for rehearing *en banc* that advanced the same critique that RoM advances here, supported by many of the same *amici*. *See* Pet. for Reh'g, *North Star*, No. 23-2138 (Fed. Cir. June 26, 2025), ECF No. 89. The Court should do so again here.

II. *EN BANC* REVIEW ON THE CLAIM CONSTRUCTION ISSUE IS NOT WARRANTED.

The panel majority recognized that RoM and the dissent were proposing "what amounts to an oversimplified version of the ordinary observer test that effectively eliminates the step of claim construction." Pet.Add13. It would "fail[] to ensure that functional aspects of a design

do not play a role in the infringement analysis," and "would render pointless [the Court's] requirement to construe the claim, including conducting the functional-versus-ornamental inquiry" that is an essential predicate to any infringement analysis. *Id.*

Rather than dispute the majority's description, RoM seemingly embraces it and tries to turn it into a second *en banc* issue about claim construction. Latching onto a footnote from the majority opinion, RoM now contends that the Court should upend the claim construction inquiry and assign any determination of functionality versus ornamentation to a jury. Pet. ix, 2 (citing Pet.Add7 n.2). For several reasons, the Court should deny *en banc* review on this issue as well.

First, RoM's *en banc* petition contrasts sharply with its arguments to the merits panel and the district court. In its opening brief, RoM stated that "claim construction is a matter of law to be decided by a judge." Op. Br. 22 (citing *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 981 (Fed. Cir. 1995)); *see also* Appx536. The majority agreed. Pet.Add7 n.2. RoM cannot reasonably criticize the majority opinion as "undertheorized" (Pet. 2) when RoM articulated the same "theory" to the panel. In a similar vein, RoM also told the panel that "there is

simply no persuasive reason to treat claim construction evidence differently in design and utility patent cases." Reply Br. 18, ECF No. 22. Now, RoM says, construction of design patents is fundamentally "unlike interpretation of utility-patent text." Pet. 20. RoM's Seventh Amendment arguments are forfeited, and the Court should not countenance RoM's about-face here.

Second, this Court's cases have unanimously recognized that claim construction remains a task for courts in design patent cases, and RoM does not point to any decision—or even dissent—suggesting otherwise. Shortly after *Markman*, for example, the Court held that "[d]etermining whether a design patent claim has been infringed requires, first, *as with utility patents*, that the claim be properly construed to determine its meaning and scope." *Elmer*, 67 F.3d at 1577 (emphasis added) (citing *Markman*, 52 F.3d at 976). The Court has been consistent ever since. *See, e.g.*, *Sport Dimension, Inc. v. Coleman Co.*, 820 F.3d 1316, 1320 (Fed. Cir. 2016) ("a district court may use claim construction to help guide the fact finder through issues that bear on claim scope"); Pet.Add7 n.2 (citing cases).

The *en banc* decision in *Egyptian Goddess* is equally telling. More than a decade after *Markman* had settled into the Court's jurisprudence, *Egyptian Goddess* offered guidance on design-patent claim construction. 543 F.3d at 679-80. That guidance proceeded with the clear understanding that it is a task for "trial courts." *Id.* Indeed, the Court's discussion was modest precisely because "[p]roviding an appropriate measure of guidance to a jury without crossing the line and unduly invading the jury's fact-finding process is a task that trial courts are very much accustomed to." *Id.* at 680. RoM's position is inconsistent with these established understandings.

Third, as with the infringement standard, the Court's existing framework works. District courts are able to sort functional and ornamental elements as a part of claim construction, and potentially meritorious claims can and do go to juries. *See, e.g.*, *Sanho Corp. v. Kaijet Tech. Int'l Ltd.*, 736 F. Supp. 3d 1241, 1256-57 (N.D. Ga. 2024) (denying summary judgment even though "functional concerns set certain parameters on the [patented design's] physical shape"); *PainTeq, LLC v. Omnia Med., LLC*, 2024 WL 4534193, at *8-10 (M.D. Fla. Oct. 21, 2024) (concluding that claimed design had "ornamental

features" resulting in an "overall design" that was "similar enough" to survive summary judgment).

Finally, the panel majority correctly understood—and rejected—the consequences of RoM's everything-for-the-jury proposal. RoM seeks to "effectively eliminate[] the step of claim construction" and send design patent cases to a jury "whenever functional considerations result in two designs sharing similarities." Pet.Add13. By RoM's own count, "since 2000," design patent cases "have nearly tripled." Pet. 23. RoM nevertheless proposes that core aspects of claim construction (and summary judgment) all must proceed to a jury. That strips district courts of important pretrial tools and risks sending countless unmeritorious design patent cases to juries, straining already-limited time and resources. The panel majority rightly "reject[ed] the proposal." Pet.Add13.

CONCLUSION

The Court should deny the petition for rehearing *en banc*.

Date: May 20, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 40(d)(3) and the Rules of this Court, because it contains 3,882 words (as determined by the Microsoft Word word-processing system used to prepare the brief), excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b)(2).

This brief 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) because it has been prepared in a proportionally spaced typeface using the Microsoft Word word-processing system in 14-point Century Schoolbook font.

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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2026, a true and correct copy of the foregoing was filed using the Court's CM/ECF system and a copy served on the parties' counsel of record via ECF.

DATED: May 20, 2026

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