

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 16-108

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IN RE: MARTEN TRANSPORT, LTD.,

*Petitioner.*

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**MOTION OF PUBLIC KNOWLEDGE AND THE ELECTRONIC  
FRONTIER FOUNDATION FOR LEAVE TO FILE AN *AMICI CURIAE*  
BRIEF**

Public Knowledge and the Electronic Frontier Foundation respectfully move for leave to file a brief as *amici curiae* in the above-identified petition for mandamus, pursuant to Federal Rule of Appellate Procedure 29(a). The brief has been tendered herewith. Petitioner consents to the filing of this brief; Respondent Eclipse IP LLC declined to consent upon request.

As detailed in the Interest of *Amici Curiae* section of the tendered brief, the Movants are nonprofit groups that focus on protecting consumer interests in the digital age, particularly with respect to intellectual property law. The Movants have a particular interest in ensuring a balanced patent system that protects technological innovation from the chilling effects of legal uncertainty and from outcomes that are contrary to the pursuit of innovation.

The present petition seeks a writ of mandamus directing the district court to rule on a motion to dismiss a patent infringement action on the grounds that the patent fails to satisfy the subject matter eligibility requirement of 35 U.S.C. § 101.

This is a question of substantial national importance, given the numerous patents being litigated today that raise subject matter eligibility questions.

The tendered brief provides a unique perspective on this question that contributes useful information beyond that provided by the parties. The brief reviews the larger implications of the district court's failure to rule on the motion to dismiss, including disincentives toward innovation and recognized harm to the public good. Without this broader perspective, this Court may "be deprived of a resource that might have been of assistance." *Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.).

The Movants are particularly suited to provide this Court with this valuable and unique perspective, having recognized experience in the field of subject matter eligibility. They have proffered their views on § 101 before this Court and the Supreme Court,<sup>1</sup> in researched papers,<sup>2</sup> and in hearings of Congress.<sup>3</sup> Their work

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<sup>1</sup>See *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014).

<sup>2</sup>See, e.g., Adi Kamdar, Daniel Nazer & Vera Ranieri, Elec. Frontier Found., *Defend Innovation: How to Fix Our Broken Patent System* (2015), available at [https://www.eff.org/files/2015/02/24/eff-defend-innovation\\_0.pdf](https://www.eff.org/files/2015/02/24/eff-defend-innovation_0.pdf).

<sup>3</sup>See *Demand Letters and Consumer Protection: Examining Deceptive Practices by Patent Assertion Entities: Hearing Before the Subcomm. on Consumer Protection, Product Safety, and Insurance of the S. Comm. on Commerce, Science, and Transportation*, 113th Cong. 20–28 (2013) (statement of Julie Samuels on behalf of EFF); *Examining Recent Supreme Court Cases in the Patent Arena: Hearing Before the Subcomm. on Courts, Intellectual Property, and the Internet of the H. Comm. on the Judiciary*, 114th Cong. 124–39 (2015) (prepared statement of Charles Duan on behalf of Public Knowledge).

on patent law has been recognized by courts as valuable elucidation on relevant public interest concerns.<sup>4</sup>

Accordingly, the tendered brief is a useful contribution of valuable information for this Court, coming from organizations well-equipped to offer that information. Leave to file the brief should be granted.

Respectfully submitted,

Dated: January 11, 2016

*/s/ Charles Duan*

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<sup>4</sup>See, e.g., *Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024, 54 n.22 (9th Cir. 2015) (quoting Public Knowledge *amicus* brief).

## CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2016, I caused the foregoing **Motion of Public Knowledge and the Electronic Frontier Foundation for Leave to File an *Amici Curiae* Brief** to be electronically filed with the Clerk of the Court using CM/ECF, which will automatically send email notification of such filing to all counsel of record.

Dated: January 11, 2016

*/s/ Charles Duan*

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Charles Duan

*Counsel for amici curiae*