No. 20-2297

IN THE

United States Court of Appeals for the Federal Circuit

NAGUI MANKARUSE,
Plaintiff-Appellant

v.

INTEL CORPORATION, ACER AMERICA CORPORATION, DANIEL DOCTER, ANDY BRYANT, MATTHEW HULSE
Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
No. SACV 19-01902-DOC (JDEx)
Hon. David O. Carter

RESPONSIVE BRIEF FOR INTEL CORPORATION, ACER AMERICA CORPORATION, DANIEL DOCTER, ANDY BRYANT, AND MATTHEW HULSE

Peter E. Gratzinger
peter.gratzinger@mto.com
MUNGER, TOLLES & OLSON LLP
350 S. Grand Ave., 50th floor
Los Angeles, CA 90071
Telephone: (213) 683-9513

Counsel for Defendants-Appellees

CERTIFICATE OF INTEREST

Pursuant to Federal Rule 47.4, Counsel for Defendants-Appellees certifies the following:

1. Represented Entities	2. Real Party in Interest	3. Parent Corporations and Stockholders
Intel Corporation	Same as entity	None
Acer America Corporation	Same as entity	Gateway, Inc.; Acer America Holdings Corporation; Boardwalk Capital Holdings, Ltd.; Acer, Inc.
Daniel Doctor	Same as entity	Not Applicable
Andy Bryant	Same as entity	Not Applicable
Matthew Hulse	Same as entity	Not Applicable

4. Legal Representatives. The law firms, partners, and associates that appeared for the entities in the trial court or are expected to appear in this court (and who have not entered an appearance in this case): Carolyn Luedtke and Marianna Mao of Munger, Tolles and Olson LLP.

5. Related Cases. *Mankaruse v. Raytheon*, Case No. 20-2309 (Fed. Circ. 2020) is a case pending in this Court that may directly affect or be directly affected by this Court's decision.

6. Organizational Victims and Bankruptcy Cases. Not Applicable.

DATED: November 19, 2020 MUNGER, TOLLES & OLSON LLP

By: /s/ *Peter E. Gratzinger*
PETER E. GRATZINGER
Attorneys for Defendants-Appellees

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STATEMENT OF RELATED CASES

No other appeal in or from the same civil action in the district court was previously before this or any other appellate court. *Mankaruse v. Raytheon*, Case No. 20-2309 (Fed. Circ. 2020) is a case pending in this Court that may directly affect or be directly affected by this Court's decision.

INTRODUCTION

This appeal involves Appellant Nagui Mankaruse's challenge to his designation by the district court as a vexatious litigant and the imposition of a bond requirement for him to proceed with the latest of a series of spurious litigations against Intel Corporation, Acer America Corporation, Daniel Docter, Andy Bryant, and Matthew Hulse (hereinafter "Intel Defendants"). The appeal, like many of Mr. Mankaruse's filings, is meritless and should be rejected.

Mr. Mankaruse is a prolific pro se litigant who has been designated a vexatious litigant in both state and federal court. Appx1; Appx988; Appx831. A California Superior Court designated Mr. Mankaruse a vexatious litigant after he brought a series of unsuccessful lawsuits against the Intel Defendants, as well as similar lawsuits against The Raytheon Company and some of its current and former employees (collectively, "Raytheon Defendants").

After the state court limited his ability to file additional lawsuits, Mr. Mankaruse turned his attention to the federal courts. Mr. Mankaruse filed a complaint in the district court alleging a trade secret misappropriation claim against the Intel Defendants that had already

been dismissed multiple times in the state court. As his basis for federal jurisdiction, he also added a new claim, asserting infringement of an expired United States patent and an expired Canadian patent. Once again, Mr. Mankaruse targeted both the Intel Defendants and the Raytheon Defendants, alleging, remarkably, that the same patents are infringed by an Intel CPU fan and by Raytheon's THAAD Missile Defense System.

The Intel Defendants, as well as the Raytheon Defendants, asked the district court to declare Mr. Mankaruse a vexatious litigant, to enter a pre-filing order regulating Mr. Mankaruse's filing of new, *pro se* lawsuits, and to require a security bond to proceed with his already-filed lawsuits. After full briefing and oral argument attended by Mr. Mankaruse, the district court granted the motions. The district court designated Mr. Mankaruse a vexatious litigant, ordered that he must obtain the court's approval before filing any new, *pro se* cases in the Central District of California against Raytheon, Intel, or their employees regarding trade secret misappropriation or patent infringement, and required Mr. Mankaruse to post a security bond of $25,000 to proceed with the then-pending litigation against the Intel

Defendants. Mr. Mankaruse failed to post any bond, and the district court dismissed his pending lawsuits. This appeal followed.

The district court's order should be affirmed in its entirety. The district court's vexatious litigant finding and security bond requirement are reviewed for abuse of discretion. *Molski v. Evergreen Dynasty Corp.* 500 F.3d 1047, 1056 (9th Cir. 2007) (vexatious litigant finding and pre-filing order); *Montserrat Overseas Holdings, S.A. v. Larsen,* 709 F.2d 22, 24 (9th Cir. 1983) (security bond for vexatious litigant). There was no abuse of discretion here.

With respect to the vexatious litigant determination and pre-filing order, the district court concluded that Mr. Mankaruse had already filed ten unsuccessful lawsuits against Raytheon and Intel. Appx989. The district court also found that Mr. Mankaruse has "an extensive history of frivolous and harassing litigation tactics" that "force Raytheon and Intel to spend significant resources in order to defend themselves." *Id.* The court further found that the order was appropriately narrow in that it was tailored to protect Intel and Raytheon and affiliated parties, which had been the target of Mr. Mankaruse's years-long abusive litigation campaign. *Id.*

With respect to the bond requirement, the Local Rules of the Central District of California authorize the district court to order Mr. Mankaruse "give security in such amount as the Court determines to be appropriate to secure the payment of any costs, sanctions or other amounts which may be awarded against a vexatious litigant…." L.R. 83-8.2. The amount of the bond is amply supported by the record, as it is a tiny fraction of the costs and fees for which Mr. Mankaruse might ultimately have been liable.

Thus, the district court did not abuse its discretion in either its pre-filing order or its bond requirement. The judgment should be affirmed.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1338. The court entered a final judgment on May 18, 2020. Appx3. Mr. Mankaruse filed a timely notice of appeal and appealed to the Ninth Circuit Court of Appeals, which granted The Intel Defendants' motion to transfer to this Court. This Court has jurisdiction under 28 U.S.C. § 1295(a)(1).

STATEMENT OF THE ISSUES

1. Did the district court abuse its discretion in designating Mr. Mankaruse a vexatious litigant and entering a pre-filing order requiring that Mr. Mankaruse obtain pre-filing approval by the trial court prior to filing cases in the Central District of California *pro se* against Raytheon, TRS, Intel, or any of their employees, officers, or agents regarding trade secret misappropriation or patent infringement?

2. Did the district court abuse its discretion in requiring Mr. Mankaruse to post a security bond in the amount of $25,000 before proceeding with his lawsuit against The Intel Defendants?

STATEMENT OF THE CASE

Mr. Mankaruse is a vexatious litigant with a long history of erratic and abusive litigation conduct.

Mr. Mankaruse first attempted to enforce the patent in suit, U.S. Patent No. 6,411,512 (the '512 Patent), a decade ago, through an entity called American Technology Inc. ("ATI"). *See American Tech. Inc. v. American Future Tech. Corp.,* 2012 WL 859345, at *5 (M.D. Fla. Mar. 14, 2012). That effort ended in disarray when counsel for ATI sought to

withdraw, and ATI dismissed its own claims with prejudice by filing covenants not to sue. *See id.*

Mr. Mankaruse, as the corporate officer of ATI, was apparently unhappy with this course of events. Despite being "specifically advised" by the court that "any post-judgement issues must be addressed by counsel," Mr. Mankaruse nonetheless insisted on making a number of unauthorized filings, including a "notice" purporting to dissolve ATI, a "motion to be considered a witness," and letters between himself and the ATI attorneys who were no longer willing to represent the company. *Id.* at *6. The district court struck Mr. Mankaruse's improper filings. *Id.*

After this failed legal venture, Mr. Mankaruse started his campaign against Intel. Even though Intel was not a party to the ATI lawsuit, Mr. Mankaruse was convinced that Intel had somehow conspired to undermine it. As alleged in his original Complaint in this action, Mr. Mankaruse started writing letters to Intel executives about this supposed conspiracy. *See* Complaint ¶ 27 ("All until April 27, 2012, Mr. Nagui Mankaruse, thought to follow up by a letter to Paul S. Otellini, Intel CEO and President at that time by sending him a

detailed letter asking him to intervene and solve the conspiracy issues of Intel during the US '512 Patent Infringement case ATI vs. Altima Computers, et al…"); *see also Mankaruse v. Intel Corp.,* No. G056143, 2019 WL 1894731, at *2 (Cal. Ct. App. Apr. 29, 2019), reh'g denied (May 17, 2019) (recounting Mankaruse allegations in state court litigations that "attorneys for ATI 'were compromised by Intel money in the litigation'").

When these letters did not produce the desired results, Mr. Mankaruse started filing lawsuits against the Intel Defendants in state court. At the time that Mr. Mankaruse filed his first state court lawsuit against the Intel Defendants, he already had several failed lawsuits in that forum arising from grievances against his former employer, Raytheon. For ease of discussion, a table of California state court cases against the Intel Defendants and the Raytheon Defendants, all of which were determined adversely to Mr. Mankaruse, is set forth below. The first case against the Intel Defendants is Case No. 4. As in the present case, Mr. Mankaruse sued not only Intel but several current and former Intel employees and Intel customer Acer America.

***Pro Se* Actions Determined Adversely To Mr. Mankaruse**		
1	*Mankaruse v. Raytheon Company, et al.,* Case No. 30-2013-00625080-CU-WT-CJC:	Jury verdict in favor of Raytheon in December 2014. The Court of Appeal affirmed. Appx851.
2	*American Innovation Corp. and Mankaruse v. Raytheon Company, et al.,* Case No. 30-2014- 00732670-CU-BC-CJC	Fraud and deceit claim (the only remaining claim) dismissed with prejudice by the Court on November 9, 2016. Appx849. Mr. Mankaruse dismissed his appeal after full briefing but before oral argument. Appx875; Appx877.
3	*Mankaruse v. Raytheon Company, et al.,* Case No. 30-2016-00878349-CU-IP-CJC	Mr. Mankaruse deemed a ***vexatious litigant*** on July 12, 2018 and required to post a $10,000 security bond. Appx831. Summary judgment granted for Raytheon and costs awarded Appx866. Appeal dismissed; remittitur issued on April 4, 2019. Appx900; Appx902; Appx904.

4	*Mankaruse v. Intel Corp., et al., Case No. 30-2016-00884058*	Intel's demurrer sustained without leave to amend; Amended Judgment awards $9,235.01 in fees/costs. Appx915. The Court of Appeal affirmed judgment on April 29, 2019, petition for rehearing was denied, and remittitur issued on July 1, 2019; California Supreme Court determined it lacked jurisdiction to review. Appx920; Appx938; Appx940; Appx942.
5	*Mankaruse v. Intel Corp., et al., Case No. 30-2018-00971116-CU-BC-CJC*	Intel's demurrer sustained without leave to amend; Amended Judgment awards $1,413.80 in fees/costs. Appx910.
6	*Mankaruse v. Raytheon Company, et al.,* Case No. 30-2017-00934796-CU-IP-CJC	Summary judgment granted for Raytheon on October 3, 2019; Judgment entered. Appx944.

Voluntarily Dismissed *Pro Se* Actions Determined Adversely to Mr. Mankaruse		
7	*Mankaruse v. Raytheon Company, et al., Case No. 8:12-cv-00261-JVS-MLG*	Six months after filing the complaint, after defendants had answered and discovery had commenced, Mr. Mankaruse dismissed the case. Mr. Mankaruse's stated primary reason for the dismissal was to avoid prosecuting his claims and for delay: "This Schedule is very optimistic and cannot be achieved due to the amount of tasks that Mr. Mankaruse need to complete in order to reach to documented evidences to present to the Court in the Summary Judgment and to the Jury in the trial." Appx846; Appx849.
8	*Mankaruse v. Raytheon Company, et al., Case No. 30-2016-00841632-CU-IP-CJC*	Mr. Mankaruse dismissed the action after Raytheon's demurrer was fully briefed and on the eve of the hearing. Appx879.

Voluntarily Dismissed *Pro Se* Actions Determined Adversely to Mr. Mankaruse		
9	*Mankaruse v. Raytheon Company, et al., Case No. 30-2016-00860092-CU-IP-CJC*	Rather than face another demurrer for lack of standing and on statute of limitations, Mr. Mankaruse filed a dismissal shortly before the Case Management Conference. Appx882.
10	*Mankaruse v. Intel Corp., et al., Case No. 30-2018-00971179-CU-IP-CJC*	Mr. Mankaruse dismissed this case, which was duplicative of a previous case Mr. Mankaruse had lost, while Intel's demurrer was pending. Appx906.

In addition to the fact that all of his claims were found to be meritless, Mr. Mankaruse's conduct in state court was frivolous and abusive. For example, in Mr. Mankaruse's first state court action against the Intel Defendants (Case No. 4 in the table above), Intel filed a demurrer to Mr. Mankaruse's original complaint. Before that demurrer could be heard, Mr. Mankaruse amended his complaint and added a cause of action for "abuse of process" based on Intel filing a demurrer, alleging that Intel had "abused the process by using excuses

to delay the justice by … answering with demurrers." Appx192. Counsel for the Intel defendants repeatedly explained to Mr. Mankaruse during meet and confer that the filing of demurrers was allowed and that the abuse of process claim should be dismissed. Appx469. Mr. Mankaruse refused to amend or dismiss this claim. Intel was forced to file a motion to strike, which the Superior Court granted. Appx190. Ultimately, Mr. Mankaruse's allegations of trade secret misappropriation, conspiracy, and other meritless claims asserted in Case No. 4 were dismissed with prejudice at the pleading stage, and that judgment was affirmed on appeal. *See Mankaruse v. Intel Corp.,* 2019 WL 1894731, at *2.

Mr. Mankaruse, apparently hoping to improve his odds with a different Superior Court judge, then re-filed the very same claims in two more cases. In both Case No. 5 and in Case No. 10, counsel for the Intel Defendants explained to Mr. Mankaruse in meet and confer that his re-filed claims would inevitably be dismissed because they were identical to the claims dismissed with prejudice in Case No. 4. Appx382. Mr. Mankaruse refused to amend or dismiss, forcing the Intel Defendants to file demurrers in both cases. The Superior Court

sustained the demurrer in Case No. 5, Appx393, after which Mr. Mankaruse sought to voluntarily dismiss his remaining complaint in Case No. 10, Appx472. Mr. Mankaruse's state court conduct with respect to the Raytheon Defendants was equally vexatious. *See, generally,* Appx812. Because the Intel Defendants understand that the Raytheon Defendants will be filing their own appellate brief, the Intel Defendants will not recount that vexatious conduct in detail here.

Based on his conduct in both the cases against the Intel Defendants (Nos. 4, 5, and 10) and the cases against the Raytheon Defendants (Nos. 1-3, 6-9), Mr. Mankaruse was declared a vexatious litigant in California Superior Court, limiting his ability to file further cases absent permission from that court. Appx831. Mr. Mankaruse then turned his attention to the federal courts.

In the instant lawsuit, Mr. Mankaruse filed a complaint re-alleging the thrice dismissed claims of trade secret misappropriation against the Intel Defendants. As a basis for federal jurisdiction, he also asserted infringement of the '512 Patent that had been the basis for the *ATI* debacle nearly a decade earlier. *See American Tech. Inc.,* 2012 WL 859345, at *5.

Mr. Mankaruse did not allege any plausible claim that Intel ever infringed the expired '512 Patent. His Amended Complaint alleged that the claims were infringed by an unspecified "CPU Cooler with Intel Logo from Amazon website." Appx62. But a chart in his Amended Complaint purporting to compare this unspecified "cooler" to the claims does not address the key limitations of the '512 patent. Claims 1 through 5, for example, require "first" and "second" internally-circulating, thermally conductive fluids. Appx40-Appx42. Mr. Mankaruse's pleadings ignored this requirement, failing to allege that the accused "cooler" contained such first and second fluids, let alone where they could be found. Appx38-Appx44. Claims 6-10 require a "circuit board and cold plate assembly," but Mr. Mankaruse's allegations did not identify any Intel product that includes a circuit board. *See id.*

With his federal court Complaint on file, Mr. Mankaruse continued his characteristic pattern of time-wasting and harassing conduct. For example, after he filed his initial Complaint, counsel for the Intel Defendants explained to Mr. Mankaruse verbally and in writing that his trade secret claim was barred by res judicata due to the

(multiple) final judgments on the same claim in state court. Appx186; *See also* Appx809. Mr. Mankaruse refused to amend his Complaint, however, until after the Intel Defendants incurred the time and expense of filing a motion to dismiss. *See id.* Mr. Mankaruse then filed a First Amended Complaint ("FAC") that seemingly deletes portions of the trade secret claim, but nonetheless retains numerous irrelevant allegations of trade secret misappropriation (*see, eg*., Appx37) (Plaintiff "hereby alleges and sues all the Defendants listed above for Willful Infringement on US Patent 6,411,512, and Canadian Patent 2,389.458 **and the Trade Secrets and Theft**.") (emphasis added). Thus, Mr. Mankaruse needlessly imposed on the Intel Defendants the further expense of filing a motion to strike together with a new motion to dismiss. Appx147.

Further, as he had done in the state court, Mr. Mankaruse continued to insist on targeting current and former Intel employees who he felt had wronged him, as well as Intel's customer Acer America, despite the absence of any legally cognizable allegations against them. In their motion to dismiss the Complaint, the Intel Defendants explained that these additional defendants were not properly included,

and that to allege patent infringement against individual Intel employees, Mr. Mankaruse would need to allege facts sufficient to "pierc[e] the corporate veil" and find that those individuals are the "alter ego" of Intel. *See* Appx27 (citing *Al-Site Corp. v. VSI Int'l, Inc.*, 174 F.3d 1308, 1331 (Fed. Cir. 1999)). Mr. Mankaruse, unsurprisingly, was not able to muster any factual allegations that any Intel employee is the alter ego of Intel. But he nonetheless insisted on continuing to name individual Intel employees as defendants in his FAC for patent infringement, necessitating another motion to dismiss. Appx147.

In light of Mr. Mankaruse's history of abusive conduct in state court and continued abusive conduct in federal court, the Intel Defendants, as well as the Raytheon Defendants, moved in the district court for determination that Mr. Mankaruse is a vexatious litigant, for a pre-filing order regulating his future filings, and for a security bond. Appx170; Appx803; Appx965. The motions were fully briefed and heard on January 21, 2020. Appx988; Appx760. During the January 21 hearing, the district court heard argument from Mr. Mankaruse that he should not be deemed a vexatious litigant. *Id.*

After reviewing the detailed record submitted by the Intel Defendants and by the Raytheon Defendants of Mr. Mankaruse's conduct, the district court found that Plaintiff "has a history of frivolous and harassing litigation tactics," and that these tactics "force Raytheon and Intel to spend significant resources in order to defend themselves." Appx992. The district court felt "compel[led] to make an adverse inference regarding Plaintiff's motive in bringing these actions." *Id.* The district court also took note of the fact that Mr. Mankaruse had been declared a vexatious litigant in state court, and that he had been undeterred from filing frivolous actions in the state court notwithstanding a $10,000 security bond in that court. *Id.* On the basis of these factual findings, the district court granted the Intel Defendants' motion. *Id.*

SUMMARY OF ARGUMENT

The district court did not abuse its discretion in finding that Mr. Mankaruse is a vexatious litigant and entering a pre-filing order. The district court applied the four-factor test required under Ninth Circuit law. *See Molski,* 500 F.3d at 1056. Pursuant to that test, the district court made findings about Mr. Mankaruse's conduct that are amply

supported by the record. Also, pursuant to *Molski,* the district court also imposed an appropriately narrow pre-filing order, which requires the court to approve any future *pro se* patent or trade secret complaint against the Intel Defendants or the Raytheon Defendants in the Central District of California.

Likewise, the district court did not abuse its discretion in requiring a security bond. Requiring a vexatious litigant to provide a security bond is within the inherent authority of the district court, *see, e.g., In re Merrill Lynch Relocation Management, Inc.* 812 F.2d 1116, 1121 (9th Cir. 1987), and is specifically provided for by the local rules of the Central District of California. *See* L.R. 83-8.2. (party may be ordered to "give security in such amount as the Court determines to be appropriate to secure the payment of any costs, sanctions or other amounts which may be awarded against a vexatious litigant…"). The amount of the bond, which is modest relative to Mr. Mankaruse's potential liability, is amply supported by the record.

STANDARD OF REVIEW

This Court "appl[ies] the law of the regional circuit on non-patent issues." *Baden Sports, Inc. v. Molten USA, Inc.* 556 F.3d 1300, 1304

(Fed. Cir. 2009). Under Ninth Circuit law, a pre-filing order entered against a vexatious litigant is reviewed for abuse of discretion. *Molski,* 500 F.3d at 1056. Likewise, an order requiring a security bond for continued suit by a vexatious litigant is reviewed for abuse of discretion. *Montserrat,* 709 F.2d at 24. "A district court abuses its discretion when it bases its decision on an incorrect view of the law or a clearly erroneous finding of fact." *Molski,* 500 F.3d at 1056-57 (citing *United States v. Finley,* 301 F.3d 1000, 1007 (9th Cir. 2002)).

ARGUMENT

I. The District Court Did Not Abuse Its Discretion In Finding That Mr. Mankaruse Is A Vexatious Litigant And Entering A Pre-Filing Order

The Ninth Circuit provides four factors for district courts to consider before entering a pre-filing order against a vexatious litigant. First, "the litigant must be given notice and a chance to be heard before the order is entered." *Molski,* 500 F.3d at 1057 (citing *De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990)). Second, the district court must compile "an adequate record for review." *Id.* Third, the district court "must make substantive findings about the frivolous or harassing nature of the plaintiff's litigation." *Id.* Finally, "the vexatious

litigant order 'must be narrowly tailored to closely fit the specific vice encountered.'" *Id.*

Here, the first factor is satisfied because, as the district court order confirms, Mr. Mankaruse was given notice and an opportunity to be heard. Appx989; Appx991; Appx760-Appx793. The second factor requiring an adequate record for review is satisfied because the parties submitted and the district court cited to a record of ten prior state court actions determined adversely to Mr. Mankaruse that were filed against Raytheon or Intel in the seven years preceding the district court's order. Appx957-Appx959. The record also contains detailed evidence of abusive conduct by Mr. Mankaruse in this lawsuit. Appx991. The third factor is satisfied because the district court made substantive findings that Mr. Mankaruse "has an extensive history of frivolous and harassing litigation tactics." Appx992. Finally, with respect to the fourth factor, the district court narrowly tailored the pre-filing order by limiting it to "Raytheon, TRS, Intel, or any of their employees, officers, or agents regarding Plaintiff's prior employment with these entities or regarding any alleged stolen trade secrets or patent infringement by these actors." Appx993. Thus, as the district court explained, "the order

will not deny Plaintiff access to the courts generally," but rather, "subjects Plaintiff to an initial screening regarding a subset of potential future litigation against particular parties that Plaintiff has unfairly targeted *pro se*." *Id.*

Mr. Mankaruse cannot climb the high hill of demonstrating an abuse of discretion. He does not argue and cannot establish any "incorrect view of the law," given that the district court tracked exactly the controlling Ninth Circuit authority that governs the entry of pre-filing orders against vexatious litigants. *See Molski,* 500 F.3d at 1056. Nor has Mr. Mankaruse pointed out any "clearly erroneous finding of fact." *Id.*

Mr. Mankaruse's primary argument appears to be that the Superior Court, in one of his cases against Raytheon, exonerated him from being a vexatious litigant. Br. at 10, 19. Mr. Mankaruse's understanding of the trial court record is mistaken. Mr. Mankaruse cites to a state trial court order that denied Raytheon's request for an additional bond, Br. at 10-11, but that order did not hold that Mr. Mankaruse should be removed from the vexatious litigant list. Appx838. Mr. Mankaruse *requested* removal from the Vexatious

Litigant List, but that request was denied. Rather, the Superior Court held that "[i]n order to vacate the prefiling order," Mr. Mankaruse "must make a showing that there is 'a material change in the facts upon which the order was granted," and found that "Plaintiff has made no such showing." Appx843. The Court can take judicial notice of the fact that, to this day, Mr. Mankaruse is listed on the California state court website as a vexatious litigant. [1]

Moreover, the district court did not simply rely upon Mr. Mankaruse's status as a vexatious litigant in the state court, but rather, made its own independent finding that Mr. Mankaruse "has an extensive history of frivolous and harassing litigation tactics." Appx992. Thus, even if the state courts were to decide to remove Mr. Mankaruse from the vexatious litigant list – which they have not done – the district court's order in this case would still not be an abuse of discretion given the district court's independent findings. Mr. Mankaruse fails to explain, or even coherently argue, why the district

[1] Vexatious Litigant List, as of October 15, 2020, *available at* https://www.courts.ca.gov/documents/vexlit.pdf (last accessed Nov. 19, 2020).

court's finding that he has engaged in frivolous and harassing tactics is an abuse of discretion. Instead, Mr. Mankaruse expresses frustration that the Intel Defendants successfully filed motions to defeat his meritless claims before he could bring them to trial. *See, e.g.,* Br. at 27. Thus, the Court should find that the district court did not abuse its discretion in entering the pre-filing order.

II. The District Court Did Not Abuse Its Discretion In Requiring A $25,000 Security Bond

Federal courts have inherent authority to require plaintiffs to post security for costs. *See, e.g., In re Merrill Lynch*, 812 F.2d at 1121. Under the Local Rules of the Central District of California, the Court may order a vexatious plaintiff to "give security in such amount as the Court determines to be appropriate to secure the payment of any costs, sanctions or other amounts which may be awarded against a vexatious litigant…" L.R. 83-8.2.[2] The Local Rule is consistent with the inherent

[2] In the absence of a local rule, or in diversity actions, district courts may choose to apply state court rules regarding security for costs. *See* 10 Wright & Miller, Fed. Prac. & Proc. Civ. § 2671 (4th ed.) Security for Costs; s*ee also Simulnet E. Assocs. v. Ramada Hotel Operating Co.* 37 F.3d 573, 574 (9th Cir. 1994) (applying state law because the "Nevada District Court has not adopted a court rule relating to security for costs

power of the court and controlling Ninth Circuit authority, which has recognized that a security bond is appropriate when there is "an appearance of vexatiousness in the prosecution of the suit." *Montserrat Overseas Holdings,* 709 F.2d at 24.

The amount of the bond is amply supported by the record and is not an abuse of discretion. Like any litigant, Mr. Mankaruse is liable for costs if he does not prevail. *See* Fed. R. Civ. P. 54(d)(1). Further, the patent statute provides that the court may in "exceptional cases" award attorney fees, including those cases where the Plaintiff engaged in "an overall vexatious litigation strategy." *Monolithic Power Sys., Inc. v. O2 Micro Int'l Ltd.* 726 F.3d 1359, 1367 (Fed. Cir. 2013).

Here, Mr. Mankaruse's potential lability for costs alone supports the amount of the bond. As of the time that Mr. Mankaruse filed his federal complaint, he already owed $12,185 to Intel based on unpaid judgments from his state court actions. Appx807. Those judgments flowed in part from sanctions against Mr. Mankaruse and in part from taxable costs. Appx910; Appx915. Mr. Mankaruse accumulated those

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but has, by case law, adopted the pertinent Nevada statute as the appropriate procedure."). Neither situation applies here.

cost judgments and sanctions even though none of the state court actions against Intel proceeded past the pleading stage.

If Mr. Mankaruse's present action had proceeded past the pleading stage, he could have easily become liable for $25,000 in taxable costs alone. Indeed, that amount is slightly *less* than the taxable costs of $27,722 that Mr. Mankaruse's company, ATI, incurred the last time he attempted to enforce the '512 patent, prior to dismissing his own claims. Gratzinger Decl. Ex. A [Bill of Costs, *ATI v. Velocity Micro, Inc*, Case No. 6:11-cv-00113 (M.D. Fla. Oct. 24, 2012), ECF No. 312]. And that amount, in turn, is modest compared to cost judgments that are commonly awarded in patent cases that go to trial. *See e.g., Summit Tech., Inc. v. Nidek Co., Ltd.* 435 F.3d 1371, 1381 (Fed. Cir. 2006) (affirming taxable cost award of $173,434.82 in patent litigation); *Shum v. Intel Corp.* 629 F.3d 1360, 1363 (Fed. Cir. 2010) (affirming cost award of $134,368.28 in correction of inventorship suit brought by individual against Intel).

Moreover, if unsuccessful, Mr. Mankaruse could have been liable not only for costs but for fees as well. The district court could properly take into account the possibility of a fee award in setting the amount of

the bond. *See Montserrat,* 709 F.2d at 24 ("When, as in this case, state substantive law allows the recovery of counsel fees, and the District Court has already determined that the circumstances warrant the requirement of a bond as security for costs, it is proper for the Court to take counsel fees into account in fixing the amount of the required bond."). Mr. Mankaruse's modus operandi is just like that of the plaintiff in *Monolothic Power Systems*, where this Court affirmed a fee award based on a plaintiff repeatedly filing and dismissing its own claims, but only after imposing substantial costs. *Monolithic Power Sys.,* 726 F.3d at 1367. Appx184. Due to Mr. Mankaruse's assertion of frivolous claims and refusal to dismiss those claim until after the Intel Defendants filed motions to dismiss, the Intel Defendants had already spent more than $25,000 in legal fees. *Id.* And this case was still in the pleading stage when Mr. Mankaruse failed to post the required bond. Thus, Mr. Mankaruse's exposure to a potential fee award greatly exceeded the bond requirement.

Mr. Mankaruse argues that the bond is "excessive in value compared to the plaintiffs [sic] income." Br. at 23. *Montserrat,* however, affirmed a judgment dismissing the plaintiff's claims after plaintiff

failed to post a bond, without regard to the plaintiff's apparent unwillingness or inability to pay. Instead, the Ninth Circuit approved of the bond amount based on the "expense of the litigation," the value of the dispute, and the "appearance of vexatiousness." *Montserrat,* 709 F.2d at 24*; c.f. Wolfe v. George,* 486 F.3d 1120, 1126 (9th Cir. 2007) (rejecting arguments that California statute requiring vexatious litigants to post security bond violates due process or other constitutional rights). Likewise, here, Mr. Mankaruse has been found to be a vexatious litigant, and he does not argue that the bond amount is inappropriate either in light of the expense of the litigation or the purported value of his patent rights.

Further, with respect to Mr. Mankaruse's finances, it is worth noting that the district court denied his motion to proceed *in forma pauperis* and required him to pay filing fees. Appx8. The district court's vexatious litigant order also observed that Mr. Mankaruse was able to post (and willing to lose) a $10,000 bond pursuing meritless litigation against Raytheon in state court. Appx992. Finally, Mr. Mankaruse only seeks money damages, and there is no shortage of attorneys willing to pursue meritorious patent claims on contingency.

C.f. Ray v. City of Milwaukee, No. 06-C-1226, 2008 WL 2785631, at *2 (E.D. Wis. July 16, 2008) ("The high cost of litigation deters many people who may feel they have a strong case from starting a lawsuit. In modern times, it has been the willingness of attorneys to represent individuals on a contingency fee basis that permits most individuals to bring a lawsuit.").

In *Simulnet* the Ninth Circuit commented that courts "must strike a delicate balance" to avoid depriving a plaintiff of access to the courts through a security bond. *Simulnet,* 37 F.3d at 576. *Simulnet*, however, expressly distinguished *Montserrat* because the latter involved "the appearance of vexatiousness in pursuing the action," whereas "the district court [in *Simulnet*] emphatically stated that it was not relying on vexatiousness." *Id.* at 575. It is therefore inapposite here. Furthermore, even if applicable, the district court in this case struck an appropriate balance given the finding of vexatiousness, the modest size of the bond relative to Mr. Mankaruse's potential liability, and Mr. Mankaruse's willingness and ability to forfeit a $10,000 bond in a recent state court action.

Thus, notwithstanding Mr. Mankaruse's desire to pay a lesser amount, the imposition of the $25,000 security bond is amply supported by the record and is not an abuse of discretion.

CONCLUSION

For the foregoing reasons, the Intel Defendants respectfully request that the district court judgment be affirmed in its entirety.

DATED: November 19, 2020 MUNGER, TOLLES & OLSON LLP

By: */s/ Peter E. Gratzinger*
PETER E. GRATZINGER
Attorneys for Defendants-Appellees

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) because this brief contains 5,264 words, including the words from the images in the brief and excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 28(a)(12)(B).

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DATED: November 19, 2020 MUNGER, TOLLES & OLSON LLP

By: */s/ Peter E. Gratzinger*
PETER E. GRATZINGER
Attorneys for Defendants-Appellees

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 560 Mission Street, Twenty-Seventh Floor, San Francisco, CA 94105-2907.

On November 19, 2020, I served true copies of the following document(s) described as **Responsive Brief for Intel Corporation, Acer America Corporation, Daniel Docter, Andy Bryant, and Matthew Hulse** on the interested parties in this action as follows:

Nagui Mankaruse
19081 Carp Circle
Huntington Beach, CA 92646

By Mail: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 19, 2020, at San Francisco, California.

/s/ *Stephanie Ferrell*

Stephanie Ferrell