Nos. 14-1617, -1619

IN THE

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

LEXMARK INTERNATIONAL, INC.,
Plaintiff-Cross-Appellant,

v.

IMPRESSION PRODUCTS, INC.
Defendant-Cross-Appellee.

(Caption continued on inside cover)

Appeal from the United States District Court for the Southern District of Ohio, Case No. 10-CV-564, Judge Michael R. Barrett

Assented-to Motion of *Amici Curiae* Biotechnology Industry Organization and CropLife International for Leave to Participate in Oral Argument and Request for Expedited Consideration

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September 22, 2015

QUALITY CARTRIDGES, INC., JOHN DOES, 1-20, BLUE TRADING LLC, EXPRINT INTERNATIONAL, INC., LD PRODUCTS, INC., PRINTRONIC CORPORATION, TESEN DEVELOPMENT (HONG KONG) CO. LTD., AND BENIGNO ADEVA AND HIS COMPANIES,

Defendants.

CERTIFICATE OF INTEREST

Pursuant to Fed. Cir. R. 47.4 and Fed. R. App. P. 26.1, counsel for Amici Curiae Biotechnology Industry Organization and CropLife International certifies the following:

1. The full name of every party represented by me is: Biotechnology Industry Organization and CropLife International.

2. The name of the real party in interest represented by me is: N/A.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the parties represented by me are: None.

4. The names of all law firms and the partners or associates that appeared for the parties now represented by me and that are expected to appear in this Court are:

Foley Hoag LLP — Barbara A. Fiacco and Sarah S. Burg

/s/ Barbara A. Fiacco
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Counsel for Amici Curiae Biotechnology Industry Organization and CropLife International

Date: September 22, 2015

MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

Amici curiae Biotechnology Industry Organization ("BIO") and CropLife International ("CropLife") (together, "Amici") respectfully move this Court, pursuant to Fed. R. App. P. 29(g), for leave to participate as amici curiae in oral argument in this matter. Amici further request expedited consideration of this motion pursuant to Fed. R. App. 2 in order to allow all counsel adequate time to prepare for oral argument, in the event the Court grants the motion.

Appellee Lexmark International is willing to cede 5 of its 30 minutes to Amici BIO and CropLife. Amici therefore respectfully request that Amici be allotted 5 minutes of oral argument, with the remainder retained by Impression Products. As ground for this motion, Amici state as follows:

1. Both Lexmark International and Impression Products consent to this motion.

2. As set forth in further detail in the brief filed by Amici on August 19, 2015 (Docket No. 291), BIO is the principal trade association representing the biotechnology industry in all fifty states and abroad. BIO's members, include businesses, biotechnology centers, and academic institutions. CropLife International ("CropLife") is a global federation representing the plant science industry as well as a network of regional and national associations in ninety-one countries. CropLife's member companies include BASF, Bayer CropScience,

Dow AgroSciences, DuPont-Pioneer, FMC, Monsanto, Sumitomo, and Syngenta. Together, Amici represent well over 1,100 member companies.

3. BIO and CropLife members have a substantial interest in the patent exhaustion questions before the Court in this case. Any decision issued by the Court in this case will have broad implications for BIO and CropLife member companies. They invest vast resources to develop breakthrough products that will improve public health and welfare, including novel antibody therapeutics, transgenic seeds and plants, industrial enzymes, and advances in personalized medicine for use in the United States and abroad. To ensure broad dissemination of innovative biotechnology products, these companies rely on the ability to license and price their products based on the relevant market and/or intended use — along with the corresponding ability to enforce their intellectual property rights against unauthorized use. BIO and CropLife members have relied on longstanding patent exhaustion doctrine to structure their businesses — from investment in research and development through sales of their products.

4. In its order issued on September 22, 2015 (Docket No. 330), this Court granted the motion of amici Intel Corporation, LG Electronics, Inc., SAS Institute, Inc., Samsung Electronic Co., Ltd., Xilinx, Inc., Dell Inc., Newegg, Inc., Google Inc., QVC, Inc., L Brands Inc., and Ninestar Image Tech Limited to allow

those amici ten minutes of oral argument time. Those amici support Impression Products, and do not represent the biotechnology industry.

5. Amici believe that, if granted leave to participate in oral argument, they would provide valuable assistance to the Court by explaining the particular implications of making any changes to the existing patent exhaustion doctrines for the biotechnology industry. Amici represent a large and diverse cross-section of companies that will be deeply affected by the *en banc* decision in this case. Allowing Amici to participate in oral argument will avoid the risk of this Court hearing a one-sided perspective on the implications of this case, which will apply across diverse industries.

CONCLUSION

Amici respectfully request that this Court grant this motion for BIO and CropLife to participate in oral argument.

Respectfully submitted,

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Biotechnology Industry Organization
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September 22, 2015

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2015, I electronically filed the foregoing document with the United States Court of Appeals for the Federal Circuit using the CM/ECF system. I certify that all of the parties of record or their counsel are registered as ECF Filers and that they will be served by the CM/ECF system.

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