

Nineteen Hundred and Twenty-two

NYIPLA

The New York Intellectual Property Law Association®

THE AMICUS BRIEF PROCESS

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Disclaimer

- **The following presentation reflects the personal opinions of its authors and does not necessarily represent the views of their respective clients, employers or of the New York Intellectual Property Law Association.**
- **Additionally, the following content is presented solely for the purposes of discussion and illustration, and does not comprise, nor is it to be considered, as legal advice.**

Agenda

- **Amicus Briefs: Benefits and Types**
- **NYIPLA Amicus Briefs Impact**
- **NYIPLA Amicus Briefs Process**
 - **Conflict Clearance: NYIPLA and Other Guidelines**
 - **Federal Circuit Amicus Briefs: Formal Considerations and Examples**
 - **Supreme Circuit Amicus Briefs: Formal Considerations and Examples**

Amicus Briefs: Benefits and Types

Amicus Briefs

- The benefits of Amicus briefs to the Courts are varied.
- The benefits to the Amicus are varied as well.

Amicus Briefs

- **Benefits to the Courts:**
 1. Ideally, less advocacy and more objective perspective.
 2. Ostensibly, can reduce the amount of research by the law clerks.
 3. Ideally, can provide a different or perhaps nuanced perspective.

Amicus Briefs

- **Benefits to the Amicus:**

1. Supporting an outcome aligned with the Amicus' interests.
2. Identifying the interests of stakeholders on both sides of the argument.
3. Identifying the consequences, and perhaps unintended consequences, of the Court's decision.
4. Proposing a unique resolution to the issues in the case.

Amicus Briefs

- **Types of Amicus Briefs:**

1. Historical perspective in terms of founding documents, common law and/or legislative history.
2. Novel legal argument.
3. Buttressing the merits arguments (without repetition) by amplifying or expanding on the arguments of one side, the other, or neither party.

Amicus Briefs

- **Types of Amicus Briefs (cont.):**
 4. The coalition of unlikely or unexpected groups of opposing stakeholders supporting a position for a particular issue.
 5. A brief that supports a position opposite from the perceived stance of a particular individual or group.
 6. The practical impact of a Court's decision in terms of its "real world" effect or the ability to enforce the ruling.

Amicus Briefs

- **Types of Amicus Briefs (cont.):**
 7. The policymakers' position on an issue.
 8. A Brandeis brief (named after then-attorney Louis Brandeis), which is a brief that compiles data or research relevant to the case.
 9. Academic perspective by legal scholars.
 10. Personalized narrative of the societal impact of a ruling.

NYIPLA Amicus Briefs Impact

Amicus Briefs

- **130 S.Ct. 2619**
- **Supreme Court of the United States**
- **CITY OF ONTARIO, CALIFORNIA, et al., Petitioners,**
 - **v.**
 - **JEFF QUON et al.**
 - **No. 08–1332.**
- **Decided June 17, 2010.**

“Another amicus points out that the law is beginning to respond to these developments, as some States have recently passed statutes requiring employers to notify employees when monitoring their electronic communications. *See Brief for New York Intellectual Property Law Association 22* (citing Del.Code Ann., Tit. 19, § 705 (2005); Conn. Gen.Stat. Ann. § 31–48d (West 2003)).”

Amicus Briefs

- **119 S.Ct. 2199**
- **Supreme Court of the United States**
- **FLORIDA PREPAID POSTSECONDARY EDUCATION EXPENSE BOARD, Petitioners,**
- **v.**
- **COLLEGE SAVINGS BANK AND UNITED STATES**
- **No. 98–531.**
- **Decided June 23, 1999.**

“The State of Florida has obtained over 200 United States patents since the beginning of 1995. **Brief for New York Intellectual Property Law Association as Amicus Curiae 2.**”

Amicus Briefs

- **119 S.Ct. 1816**
- **Supreme Court of the United States**
- **Q. TODD DICKINSON, ACTING COMMISSIONER OF PATENTS AND TRADEMARKS, Petitioner,**
 - **v.**
 - **MARY E. ZURKO, et al.**
 - **No. 98–377.**
 - **Decided June 10, 1999.**

“In any event, we have examined the 89 cases which, according to respondents and supporting amici, embody the pre-APA standard of review. *See App. to Brief for New York Intellectual Property Law Association as Amicus Curiae 1a–6a (collecting cases)*, and we conclude that those cases do not reflect a well-established stricter court/court standard of judicial review for PTO factfinding, which circumstance fatally undermines the Federal Circuit’s conclusion.”

Amicus Briefs

- **878 F.3d 1041**
- **United States Court of Appeals, Federal Circuit.**
- **REGENERON PHARMACEUTICALS, INC., Plaintiff-Appellant**
 - **v.**
 - **MERUS N.V., Defendant-Appellee**
 - **2016-1346**
 - **Decided December 26, 2017.**

“ ‘These newly created conflicts have received the attention of amici curiae, reflecting the importance of the issues. For example, the **New York Intellectual Property Law Association** states concern that the decision is “open to the interpretation that ‘widespread’ litigation misconduct may warrant an adverse inference of specific intent whenever it is ‘directly related’ to patent prosecution, even if the evidence does not otherwise support an inference of specific intent to deceive the Examiner during prosecution.’ ”

Amicus Briefs

- **793 F.3d 1297**
- **United States Court of Appeals, Federal Circuit**
- **In re CUOZZO SPEED TECHNOLOGIES, LLC, Appellant.**
 - **No. 2014–1301.**
 - **Decided July 8, 2015.**

“The *amicus* describes the broadest reasonable interpretation standard in the new post-grant proceedings as an issue of “particular importance.” *Id.* **Amicus New York Intellectual Property Law Association** reiterates that the “issue is of great importance and should be re-heard *en banc*.” Amicus Curiae Br. of NYIPLA at 4.”

Amicus Briefs

- **625 F.3d 1320**
- **United States Court of Appeals, Federal Circuit**
 - **GILBERT P. HYATT, Plaintiff–Appellant,**
 - **v.**
 - **DAVID KAPPOS, DIRECTOR, PATENT AND TRADEMARK OFFICE, Defendant–Appellee.**
 - **No. 2007–1066.**
 - **Decided Nov. 8, 2010.**

“ ‘It would be counterintuitive for an applicant to deliberately withhold non-cumulative evidence that would help persuade the BPAI to reverse the examiner’s rejection, and instead ... present it later on in a civil action when the party (as plaintiff) would be obligated to pay all the expenses—including the defendant PTO’s expenses. **NYIPLA Br. at 13’**”

The NYIPLA Amicus Briefs Committee

NYIPLA ABC

- The Amicus Briefs Committee (“ABC” or “Committee”) represents the New York Intellectual Property Law Association’s (“NYIPLA” or “Association”) diverse Intellectual Property constituency before the courts.
- In particular, the ABC coordinates the activities of the Association in the preparation and filing of briefs *amicus curiae* and makes recommendations with respect to briefs to the Board of Directors.

NYIPLA Amicus Briefs Process

Committee Guidelines

- There are two sets of NYIPLA guidelines related to the Committee's procedures for preparing and submitting amicus curiae briefs:
- **NYIPLA Procedural Guidelines for Amicus Briefing**
 - <https://www.nyipla.org/images/nyipla/Documents/Amicus%20Briefs/NYIPLA%20Procedural%20Guidelines%20for%20Amicus%20Briefing.pdf>
- **NYIPLA 2008 Amicus Committee Conflict of Interest Guidelines**
 - <https://www.nyipla.org/images/nyipla/Documents/CLEMaterials20172018/ABCConflictGuidelines.pdf>

Procedural Guidelines

- NYIPLA procedural guidelines mandate that the “substantive touchstone for the Committee . . . should be an overriding concern for improvements in the application of the intellectual property laws by the courts and agencies in a consistent fashion which fulfills their Constitutionally mandated objectives. Additionally, the Association’s substantive positions should be formulated with a view to transparency, clarity and predictability.” (¶ 4)
- The guidelines also state that to the extent possible, the ABC should “avoid positions and arguments which might offend the legitimate concerns of significant minority membership factions.” (¶ 2)
- Finally, the guidelines admonish that “the Committee should strive for a tone that is neither overtly partisan nor strident.” (¶ 8)
- As a practical matter, typically 9 of the 16 NYIPLA Board Members must approve a proposed Amicus Brief for it to be filed on the Association’s behalf.

Committee Practice

- In accordance with these guidelines, the ABC leadership:
 - Strives to ensure that all sides of the issues presented by the cases before the Committee are fairly and thoroughly represented in Committee meetings;
 - Seeks to bring the Committee to a consensus position based on the legal merits of the cases before the Committee; and
 - Helps volunteer brief writers to prepare proposals to the Board, draft Amicus Briefs for Board approval, and file Amicus Briefs with the appropriate Court.
- The Committee primarily prepares and files amicus briefs in the US Court of Appeals for the Federal Circuit and in the US Supreme Court.
- That said, the Committee occasionally prepares briefs that are filed in other federal appeals courts, in state supreme courts, or in other venues.

Committee Members

- Amicus briefs are prepared by ABC members on a volunteer basis.
- The Committee recognizes that its members have different skill sets and time constraints. Accordingly, the Committee encourages ALL WHO ARE INTERESTED (and who have no conflicts) TO PARTICIPATE in the brief writing process.
- Members can participate in a number of different ways, depending on their strengths and availability. Some Committee members may wish to take the lead in drafting arguments and giving voice to the Association's concerns. Others may wish to participate in the editing process to refine the brief and its tone. Still others may wish to provide legal research in their areas of expertise, or otherwise contribute to the amicus brief preparation process, such as assisting with logistics or cite checking.

Conflict Clearance: NYIPLA Guidelines

- The NYIPLA procedural guidelines mandate that the Committee “should strive to prevent undue influence by the parties in interest over the amicus process, and will require disclosure of all current representation of the parties in interest by the Committee . . . members.” (¶ 7)
- The Association also understands that ABC members “almost always will have a philosophical position they wish to espouse” and “may have clients that, although not parties, may be interested in the outcome of the litigation [at issue].” Nevertheless, “[n]either philosophical bias nor client interest should present any conflict of interest problem so long as . . . no conflicts exist under the [NYIPLA conflict] guidelines . . .” (¶ 14)

Conflict Clearance: Committee Practice

- As a practical matter, the ABC typically distributes agendas at least several days before scheduled meetings. This procedure is intended to allow its members time to conduct conflict checks before participating in Committee meetings.
- If an ABC member determines that he or she has a conflict, that member (and others from that member's firm) should recuse themselves from participating in any discussions or drafting with respect to the subject case.
- If one or more Committee member(s) have a conflict, the Committee leadership will attempt to reorder the agenda to leave discussion of that case to the end of the meeting (allowing the conflicted member to participate in discussions of the other cases before signing off the call). However, if multiple members have conflicts regarding different cases, this may not be possible.

Conflict Clearance: Running Conflict Checks

- Committee members should conduct conflict checks in accordance with the following:
 - NYIPLA 2008 Amicus Committee Conflict of Interest Guidelines:
 - <https://www.nyipla.org/images/nyipla/Documents/CLEMaterials20172018/ABCConflictGuidelines.pdf>
 - Their own firm's conflict clearance guidelines; and
 - Relevant state and other conflict clearance guidelines:
 - New York: <https://www.nycourts.gov/ad3/AGC/Forms/Rules/Rules%20of%20Professional%20Conduct%2022NYCRR%20Part%201200.pdf>
 - New Jersey: <https://www.judiciary.state.nj.us/attorneys/assets/rules/rpc.pdf>
 - Connecticut: <https://www.jud.ct.gov/Publications/PracticeBook/PB.pdf>
 - USPTO: <https://www.uspto.gov/learning-and-resources/patent-and-trademark-practitioners/current-patent-practitioner/ethics-rules>

NYIPLA Conflict Guidelines

- We will discuss:
 - Recusal of attorney / law firm from amicus activities
 - Past situations involving recusal of attorney / law firm from amicus brief
 - NYIPLA 2008 Amicus Committee Conflict of Interest Guidelines
 - When conflicts may arise
 - NYIPLA's and attorneys' responsibilities in determining whether conflict exists
 - What action attorney can / cannot take if there may be a conflict

Conflict Guidelines

Phillip Morris Case

- Sup. Ct of Illinois: Firm represented Phillip Morris, Inc.
- Sup. Ct of Massachusetts: Firm counsel of record for amicus brief of the National Association of Manufacturers (NAM)
 - Firm failed to disclose that it is representing Phillip Morris, a party in the case, in a case in Illinois addressing similar issues

“A full and honest disclosure of the interest of amici is crucial to the fairness and integrity of the appellate process. Briefs of amicus curiae are intended to represent the views of nonparties; they are not intended as vehicles for parties of their counsel to make additional arguments beyond those that fit within the page constraints of their briefs”

Aspinall v. Philip Morris Cos., 442 Mass. 381, 385 n. 8, 813 N.E.2d 476 (2004)

Conflict Guidelines

Champa Case

- Case involved settlement agreements between a public school and parents of public school student
- Attorney's law firm represented the public school's town
 - Attorney represented the town and drafted settlement agreement between plaintiff parents and town
- Attorney filed a separate amicus brief on behalf of herself

Attorney's "filing of a separate brief, purportedly as an amicus, to make further arguments supporting the client's position, was ill-advised"

Conflict Guidelines

Local 1652 Case

- Supreme Judicial Court of Massachusetts reviewing preliminary injunction concerning a collective bargaining agreement between a town and a union
- Several amicus briefs filed
- One brief stricken

“We strike the brief of the Professional Firefighters of Massachusetts, because it was submitted by the same law firm (and attorney) who represented the union in this case. Briefs of amici curiae are intended to represent the views of nonparties”

Local 1652, Int'l Ass'n of Firefighters v. Town of Framingham, 442 Mass. 463, 463 n.1 (2004)

2008 Conflict of Interest Guidelines

Request for amicus support

1. [U]pon learning of any request for amicus support from a party in interest to an action, or any sua sponte proposal for amicus participation from a member of [certain NYIPLA committees] ... each member of the Committee shall undertake reasonable steps to determine whether any conflict of interest may disqualify such member from participating in the Committee's consideration of and voting on whether the Association should participate as an amicus in such action.
2. Each Committee member shall report in writing or by email ... whether the Committee member or the member's firm or corporate employer (i) currently represents a party in interest in any matter; or (ii) prosecuted a patent, trademark, copyright or other form of intellectual property at issue in the action under consideration.

2008 Conflict of Interest Guidelines

Recusal of committee member

3. A committee member who is recused *shall not*:
 - a. **participate in the discussion of such action,**
 - b. **vote on any proposition affecting the nature or filing of any amicus brief** on behalf of the Association in such action;
 - c. **actively seek to influence** the vote of any other Committee or Board member; and
 - d. **participate in or contribute to the preparation of any amicus brief** intended for filing in such action on behalf of the Association.
4. A committee member shall be recused if such member or such member's law firm or corporate employer:
 - a. represents a party in the specific matter under consideration, or
 - b. is a party to the specific matter under consideration.

2008 Conflict of Interest Guidelines

Recusal of committee member

5. A committee member *shall consider* recusal if such member:
 - a. ... represents any party to the action ... in any other matter;
 - b. ... works for a party related to a party in the action (parent, affiliate, subsidiary, joint venture);
 - c. ... prosecuted ... intellectual property at issue in the action;
 - d. ... has been engaged to prepare another amicus brief in the same action on behalf of any entity other than a bar association;
 - e. ... is requested by another Committee member to consider if recusal is warranted, or
 - f. Any other facts are known ... which might... create a conflict of interest, an appearance of a conflict of interest, or in any other way adversely affect the credibility of the Association.

2008 Conflict of Interest Guidelines

Recusal of committee member

6. In any situation contemplated by Paragraph 5, the Committee member may in such member's discretion be recused voluntarily.

If such member elects not to be recused voluntarily, and if such refusal is challenged by another Committee member, the Committee Chair and Board Liaison shall promptly make a determination ...

7. Any disclosures to the Committee or Board required by these Guidelines shall only be made

- a. the extent permitted consistent with the Committee member's professional responsibility to any client.
- b. If the Committee member concludes that no disclosure is permissible consistent with the member's professional responsibilities, then the member shall be recused.

2008 Conflict of Interest Guidelines

Committee and Board members

8. If any Committee member learns at any time before an amicus brief is filed that such member should have been recused, such Board member shall promptly so advise the Committee Chair ...
9. That the outcome of a particular action that is being considered for *amicus* briefing may impact clients of a member of the Committee, will not without more present a conflict of interest ...
10. All discussions and voting on amicus matters by the Committee and Board shall be maintained in confidence.

Fed. Cir. Amicus Briefs: Introduction

- The ABC typically files brief in support of “Petitions for Rehearing or Rehearing En Banc” or merits briefs in en banc rehearings. That said, the ABC on occasion files merits briefs at the panel level.
- Amicus filings at the Federal Circuit are primarily governed by Fed. R. App. P. 29, 35 & 40 and Fed. Cir. R. 29, 35 & 40, although other rules regarding timing, formatting, and similar procedural matters also apply.

Fed. Cir. Amicus Briefs: When Permitted?

- Amicus briefs in brief in support of “Petitions for Rehearing or Rehearing En Banc” may be filed by leave of the court. Fed. Cir. R. 35(g), 40(f).
- Amicus briefs on the merits may be filed either on consent of all parties or by leave of the court. Fed. R. App. P. 29(a).
- Parties often file blanket consents, which can be found on the docket. If not, consent from all parties should be obtained before the due date. These facts should be noted in the amicus brief. Fed. R. App. P. 29(a)(2).
- If one or more of the parties refuse their consent, the amicus curiae must file a motion requesting leave of the court to file an amicus brief. Typically, the amicus brief is attached as an exhibit to the motion. Fed. R. App. P. 29(a)-(b).
- Absent unusual circumstances, such motions are likely to be granted.
- An amicus curiae may participate in oral argument only upon approval by the court. Fed. R. App. P. 29(a)(8). Such approval is rarely granted.

Fed. Cir. Amicus Briefs: Timing & Length

- Amicus briefs in support of a Petition for Rehearing or Rehearing En Banc, including briefs in support of neither party, must be filed within 14 days of the petition and may be up to 10 pages or 2,600 words long. Fed. Cir. R. 35(g), 40(f).
- Unless specifically requested by the court, responses to such petitions are not allowed. However, if the court does request such a response, then amicus briefs in opposition to a petition may be filed within 14 days of the response and may be up to 10 pages or 2,600 words long. Fed. Cir. R. 35(g), 40(f).
- Amicus briefs on the merits are due 7 days after the Principal Brief of the party supported. Fed. R. App. P. 29(a)(6). If the brief is in support of no party, then it is due 7 days after Appellant's Principal Brief. *Id.* Amicus Briefs on the merits may be up to 15 pages or 6,500 words in length. Fed. R. App. P. 29(a)(5); see *also* Fed. R. App. P. 32(a)(7).

Example: Rehearing En Banc

18-2140

**United States Court of Appeals
for the Federal Circuit**

ARTHREX, INC.,

Appellant,

– v. –

SMITH & NEPHEW, INC., ARTHROCARE CORP.,

Appellees,

UNITED STATES,

Intervenor.

*On Appeal from the United States Patent and Trademark Office,
Patent Trial and Appeal Board in No. IPR2017-00275*

**BRIEF FOR AMICUS CURIAE NEW YORK
INTELLECTUAL PROPERTY LAW ASSOCIATION
IN SUPPORT OF INTERVENOR'S PETITION FOR
REHEARING EN BANC**

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DECEMBER 30, 2019

No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than *amicus curiae*, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

After reasonable investigation, the NYIPLA believes that no officer, director or member of the Committee on Amicus Briefs who voted in favor of filing this brief, nor any attorney associated with any such officer, director or committee member in any law or corporate firm, represents a party in this litigation.

¹ Arthrex, Inc., Smith & Nephew, Inc., ArthroCare Corp., and the United States consented in writing to the filing of the brief. Pursuant to Federal Circuit Rule 35(g), a motion for leave to file is being submitted with this brief.

Example: Panel Level

2018-1614

**United States Court of Appeals
for the Federal Circuit**

SYNGENTA CROP PROTECTION, LLC,

Plaintiff-Appellant,

– v. –

WILLOWOOD, LLC, WILLOWOOD USA, LLC, WILLOWOOD
AZOXYSTROBIN, LLC, WILLOWOOD LIMITED,

Defendants-Appellees.

*On Appeal from the United States District Court for the Middle
District of North Carolina in Case No. 1:15-cv-00274-CCE-JEP
Honorable Catherine C. Eagles, Judge*

**BRIEF FOR AMICUS CURIAE NEW YORK
INTELLECTUAL PROPERTY LAW ASSOCIATION
IN SUPPORT OF NEITHER PARTY**

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(For Continuation of Appearances See Inside Cover)

MAY 4, 2018

After reasonable investigation, the NYIPLA believes that no member of the Board or Amicus Committee who voted to prepare this brief on its behalf, or any attorney in the law firm or corporation of such a Board or Committee member, or attorney who aided in preparing this brief, represents either party to this litigation. Some Committee or Board members or attorneys in their respective law firms or corporations may represent entities which have an interest in other matters which may be affected by the outcome of this litigation

¹ Plaintiff-appellant Syngenta has consented to this brief, but defendant-appellee Willowood did not. Accordingly, NYIPLA has filed a motion for leave to file brief of amicus curiae New York Intellectual Property Law Association in support of neither party.

SCOTUS Amicus Briefs: Cert. Petitions

- An amicus brief submitted before the Court considers a cert. petition requires written consent of all parties or motion to file under Section 2(b) of S.Ct. Rule 37 (with accompanying copy of the brief itself). The motion must disclose the movant's interest. Such motions are not favored.
- An amicus brief for the petitioner must be filed within 30 days after the case is placed on the docket.
- An amicus brief for the respondent must be filed must be filed within the same time as that to file an opposition brief (or motion to dismiss or affirm).
- Must provide notice to all parties of intent to file at least ten days before the deadline (unless filed more than ten days before the deadline), and the brief must disclose if consent granted or denied.

Example: Cert. Petition

No. 20-891

IN THE
Supreme Court of the United States

AMERICAN AXLE & MANUFACTURING, INC.,
Petitioner,

v.

NEAPCO HOLDINGS LLC
AND NEAPCO DRIVELINES LLC,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**BRIEF OF NEW YORK INTELLECTUAL
PROPERTY LAW ASSOCIATION AS AMICUS
CURIAE IN SUPPORT OF PETITIONER**

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January 25, 2021

After reasonable investigation, the NYIPLA believes that no officer or director or member of the Committee on Amicus Briefs who voted in favor of filing this brief, nor any attorney associated with any such officer, director or committee member in any law or corporate firm, represents a party in this litigation.

¹ Pursuant to Sup. Ct. R. 37.6, the NYIPLA states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the NYIPLA, its members, or its counsel made a monetary contribution to its preparation or submission. Pursuant to Sup. Ct. R. 37.2(a), the NYIPLA states that all of the parties have consented in writing to the filing of this brief. Further, counsel of record for all parties have received notice of NYIPLA's intention to file an *amicus curiae* brief at least 10 days prior to the due date for the *amicus curiae* brief as per Sup. Ct. R. 37.2(a).

SCOTUS Amicus Briefs: After Cert. Granted

- An amicus brief submitted after the Court grants cert. requires written consent of all parties or motion to file under Section 3(b) of S.Ct. Rule 37 (with accompanying copy of the brief itself). The motion must disclose the movant's interest.
- An amicus brief must be filed within 7 days after the brief of the party supported, or if in support of neither party, within 7 days after the petitioner's brief. No motions to extend are permitted.
- Must provide notice to all parties of intent to file (although ten-day rule for cert. petitions does not apply), and disclose if consent granted or denied. Must also provide electronic copies to counsel at time of filing (in addition to paper copies).

Example: After Cert. Granted

No. 20-440

**IN THE
Supreme Court of the United States Court**

MINERVA SURGICAL, INC.,
Petitioner,

v.

HOLOGIC, INC., CYTYC SURGICAL PRODUCTS, LLC,
Respondents.

ON A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

**BRIEF OF AMICUS CURIAE NEW YORK
INTELLECTUAL PROPERTY LAW ASSOCIATION
IN SUPPORT OF NEITHER PARTY**

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¹ Pursuant to Sup. Ct. R. 37.6, the NYIPLA and its counsel represent that they have authored the entirety of this brief, and that no person other than the *amicus curiae* or its counsel has made a monetary contribution to the preparation or submission of this brief.

² Pursuant to Sup. Ct. R. 37.3(a), both Petitioner and Respondents have each consented to the NYIPLA filing this *amicus curiae* brief in support of neither party's position on the merits.

³ The arguments made in this brief were approved by an absolute majority of the NYIPLA's officers and members of its Board of Directors, but do not necessarily reflect the views of a majority of the members of the Association, or of the law or corporate firms with which those members are associated. After reasonable investigation, the NYIPLA believes that no officer or director or member of the Amicus Briefs Committee who voted in favor of filing this brief, nor any attorney associated with any such officer, director or committee member in any law or corporate firm, represents a party to this litigation. Some officers, directors, committee members or associated attorneys may represent entities, including other *amici curiae*, which have an interest in other matters that may be affected by the outcome of this litigation.

Suggested Additional Reading

- The Amicus Brief: Answering the Ten Most Important Questions About Amicus Practice, 4th ed. (2015) by Reagan W. Simpson, Esq. and Judge Mary Vasaly, a 280-page single-volume paperback published by the Tort, Trial, and Insurance Practice Section of the ABA.
- Supreme Court Practice, 10th ed. (2013) by Stephan M. Shapiro, Kenneth S. Geller, Timothy S. Bishop, Edward A. Hartnett, and Dan Himmelfarb, which contains information peculiar to amicus practice in that Court. Published by Bloomberg BNA.
- Federal Appellate Practice, 2nd ed. (2013) edited by the law firm of Mayer Brown LLP. It contains a single chapter devoted to amicus practice in the various circuits of the U.S. Court of Appeals. Published by Bloomberg BNA.

**Thank you and please
consider joining the
NYIPLA Amicus Briefs
Committee!**

Questions?