

**In The
Supreme Court of the United States**

SOUTHERN ELECTRONICS SUPPLY, INC., et al.,

Petitioners,

v.

CAMSOFT DATA SYSTEMS, INC.,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

REPLY BRIEF FOR PETITIONERS

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**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

The statement of the parties to the proceeding and the corporate disclosure statement included in the petition for writ of certiorari remain accurate.

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PETITIONERS' REPLY BRIEF

This case squarely presents three ripe conflicts among the Courts of Appeals, and those conflicts are all but conceded by Respondent CamSoft. Accordingly, this Court should grant the petition for certiorari.

I. CamSoft Makes Only Passing Attempts to Contest the Entrenched Circuit Splits This Case Presents.

A. The Fifth Circuit Split From Other Circuits and Held That a Plaintiff That Amended Its Complaint to Add New and Distinct Federal Claims Could Still Appeal the Denial of a Motion to Remand.

CamSoft timely contested this case's removal to federal court, but the district court rejected its remand arguments. Rather than simply proceed, CamSoft chose to amend its complaint to add, *inter alia*, new and distinct federal antitrust and RICO claims. In the Seventh and Ninth Circuits, CamSoft's decision to bring federal claims would have resulted in a waiver of its *Caterpillar* right to challenge the denial of its motion to remand on appeal. *Caterpillar v. Lewis*, 519 U.S. 61, 75 (1996). CamSoft's strategic decision would have also resulted in a waiver of its *Caterpillar* right in the First, Fourth, Eighth, and Tenth Circuits, because the federal claims were new and distinct from the existing claims. Standing alone, the Fifth Circuit followed its existing precedent and

deepened the circuit split by holding that CamSoft, by previously filing a motion to remand, “did all that was required to preserve its objection to removal” under *Caterpillar*. App. at 12a.

CamSoft essentially concedes this split, but argues in a single sentence, without citation or discussion, that the (six) decisions Petitioners cite with regard to this split only upheld federal jurisdiction because the cases were decided on the merits and resulted in final judgment. Respondent’s Brief at 14. CamSoft is wrong. None of the decisions cited by Petitioners turned on *Caterpillar* finality concerns; each decision specifically discussed and ruled based on the plaintiff’s voluntary choice to amend and add federal claims after removal. *E.g.*, *Bernstein v. Lind-Waldock & Co.*, 738 F.2d 179, 185-86 (7th Cir. 1984) (“[A]fter [plaintiff’s] motion to remand was denied, he threw in the towel, as it were, and filed an amended complaint in federal court that included an unmistakable federal cause of action against the Exchange. The amended complaint was thus within the original jurisdiction of the federal district courts. . . .”); *Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 949 n.6 (9th Cir. 2014) (“The question whether the district court erred in denying the Mall’s motions to remand is thus moot, as the Mall’s assertion of federal jurisdiction in the SAC conferred jurisdiction upon the district court and hence upon us.”); *see also Albert v. Smith’s Food & Drug Ctrs., Inc.*, 356 F.3d 1242, 1248-49 (10th Cir. 2004) (“[W]e hold that under the circumstances of this case,

[plaintiff] cannot voluntarily invoke, and then disavow, federal jurisdiction.”); *Lyons v. Philip Morris Inc.*, 225 F.3d 909, 913-14 (8th Cir. 2000) (“Defendants further argue that the Trustees waived their objection to the district court’s jurisdiction when they amended their complaint to include federal antitrust and RICO claims. Given the unusual procedural history of this case, we agree.”).

The rule of decision that a plaintiff cannot appeal a remand denial if it adds new and distinct federal claims supports the goal of judicial efficiency and finality of judgments. And there would not be any countervailing adverse impact on federal or state interests with a finding of federal jurisdiction under this scenario. The opposite is true. The mutual efficiency goals of both the federal and state judiciary would be harmonized by a ruling that makes clear that an opportunistic plaintiff cannot game the system and impose additional costs on opposing parties and the courts by adding federal claims – regardless of their merit – because there would be no consequence for doing so as long as the claims are resolved before trial.

The Court should grant certiorari on the first question presented to resolve this entrenched split.

B. CamSoft Does Not Dispute That a Federal Court’s Adjudication of Summary Judgment and Dismissals With Prejudice Would Have Foreclosed Appellate Review in Other Circuits Because of *Caterpillar*’s Finality Concerns.

The district court adjudicated CamSoft’s core joint-venture claim at summary judgment and also resolved 10 other claims, each brought against multiple defendants, through dismissal with prejudice. CamSoft does not dispute, and cannot dispute, that in the Fourth, Eighth, Tenth, or Eleventh Circuits these conclusive adjudications would have satisfied *Caterpillar*’s interests in preserving “finality, efficiency, and economy,” and would have prevented CamSoft from appealing the denial of its motion to remand. *Buffets, Inc. v. Leischow*, 732 F.3d 889, 897-98 (8th Cir. 2013); *Ayres v. Gen. Motors Corp.*, 234 F.3d 514, 518 n.6 (11th Cir. 2000); *Huffman v. Saul Holdings Ltd. P’ship*, 194 F.3d 1072, 1080 (10th Cir. 1999); *Aqualon Co. v. Mac Equip., Inc.*, 149 F.3d 262, 264-65 (4th Cir. 1998). The Fifth Circuit split from its sister circuits and held, inflexibly, that, “because there was no trial on the merits, any interests in economy or finality is not sufficient to override CamSoft’s timely and meritorious challenge to removal.” App. at 27a. The Court should also grant certiorari on the second question presented to resolve this split.

C. CamSoft Concedes That Lower Courts are Divided Regarding Whether Federal Courts Have Subject Matter Jurisdiction Over Claims of Inventorship Involving Pending Patent Applications.

Lower courts of appeals are divided on this case's underlying question of federal patent jurisdiction. Where, as in this case, a state-law claim does no more than request ownership in the intangible property rights associated with a particular machine on the sole basis that the claimant invented the machine, the Federal Circuit has held that the claim creates federal patent jurisdiction without regard to whether the machine is the subject of an issued patent or instead is the subject of only a patent application. *HIF Bio, Inc. v. Yung Shin Pharm. Indus. Co., Ltd.*, 600 F.3d 1347, 1353 (Fed. Cir. 2010) ("This court has held that the field of federal patent law preempts any state law that purports to define rights based on inventorship."). But the Fifth Circuit followed the Sixth Circuit in holding that the state-law claim creates patent jurisdiction only where it relates to an issued patent, deepening the existing split. The Fifth Circuit explicitly recognized this split, and CamSoft concedes the split's existence.¹ The Court should

¹ CamSoft incorrectly argues that the Federal Circuit already determined the underlying question of inventorship jurisdiction when it transferred this case to the Fifth Circuit. *See* App. at 30-31a. But the Federal Circuit reviews for appellate jurisdiction based on whether the case has a federal patent question *at the time of the appeal*. *Gronholz v. Sears, Roebuck &*

(Continued on following page)

therefore also grant certiorari on the third question presented.

CamSoft's response does nothing to rebut the existence of these three irreconcilable conflicts among the circuits. The Court should grant certiorari.

II. This Case Presents a Suitable Vehicle to Resolve One or More of These Circuit Splits.

A. Absent This Court's Review, Years' Worth of Federal Court Litigation and Dozens of Merits Decisions Will Be Vacated.

CamSoft argues that certiorari is not warranted because even if this Court reverses, the Fifth Circuit will still likely order the case remanded to state court because the district court refused to exercise

Co., 836 F.2d 515 (Fed. Cir. 1987) (dismissing patent claims without prejudice operates as an amendment of the complaint and thus eliminated "arising under" patent jurisdiction – case transferred to regional circuit). The relevant question here, before the Fifth Circuit, and at the district court is whether federal patent jurisdiction over the complaint existed *at the time of removal*. *E.g.*, *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 295-96 (1938) (holding that relevant amount in controversy for diversity jurisdiction is amount at time of removal). CamSoft amended its complaint after removal and destroyed patent jurisdiction under Federal Circuit precedent by adding a "co-joint venture" alternative ownership claim (while at the same time creating federal question jurisdiction by asserting the new and distinct federal antitrust and RICO claims). App. at 6a. And contrary to CamSoft's assertion, Petitioners properly appealed this case to the Fifth Circuit, not the Federal Circuit.

supplemental jurisdiction.² But CamSoft fails to recognize that even if the Fifth Circuit subsequently affirms the district court and orders remand, the remand would preserve the resolution of at least 11 claims that the Fifth Circuit vacated. App. at 27a (“The district court’s other orders are vacated for lack of jurisdiction.”). Thus, even if the litigants end up in state court, they would not be required to completely start over but would, instead, litigate only those claims and defenses that the district court did not already resolve. As it currently stands, the Fifth Circuit’s decision wiped out over three years’ worth of litigation and resolved claims and will enable CamSoft to re-litigate these claims against no fewer than 30 defendants.

B. The District Court Did Not Dismiss CamSoft’s Federal Claims for Lack of Subject Matter Jurisdiction.

In passing, CamSoft argues that the district court dismissed its federal claims for lack of subject-matter jurisdiction. This argument derives from CamSoft’s confusion of statutory “antitrust injury” with Article III injury-in-fact. *See, e.g., Ross v. Bank of Am., N.A. (USA)*, 524 F.3d 217, 224-25 (2d Cir. 2008) (observing that “[a]ntitrust standing demands a

² Petitioners challenged on appeal the district court’s refusal to exercise supplemental jurisdiction, but the Fifth Circuit avoided ruling on that issue by holding that the district court improperly denied CamSoft’s original remand motion.

much more detailed and focused inquiry into a plaintiff’s antitrust claims than constitutional standing”).

There is no reasonable dispute that CamSoft alleged sufficient injury-in-fact to support constitutional Article III standing, and the Fifth Circuit recognized that CamSoft’s federal claims were dismissed based on statutory grounds, not on subject-matter-jurisdiction grounds. *See* App. at 9a (“CamSoft . . . contends that the court effectively remanded for lack of jurisdiction because the federal claims were dismissed under Rule 12(b)(1). [citation omitted]. This argument is without merit. The district court dismissed CamSoft’s federal claims after finding that CamSoft had no standing under the respective governing statutes.”).³ As such, there is no question that CamSoft’s amendment gave rise to federal subject matter jurisdiction. *Pegram v. Herdrich*, 530 U.S. 211, 215 n.2 (2000).



³ CamSoft’s misguided RICO claims were likewise properly before the federal court as an Article III matter but, like anti-trust claims, RICO claims have additional statutory standing requirements that CamSoft failed to meet. *E.g.*, *Maio v. Aetna, Inc.*, 221 F.3d 472, 482-83 (3d Cir. 2000) (noting “additional standing criterion” that must be satisfied beyond Article III to establish RICO standing) (citing *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985)).

CONCLUSION

This Court should grant the petition for writ of certiorari.

Respectfully submitted,

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