No. 14-1538

IN THE

Supreme Court of the United States

LIFE TECHNOLOGIES CORPORATION, *et al*.,

Petitioners,

v.

PROMEGA CORPORATION,

Respondent,

On Writ of Certiorari to the United States Courts of Appeals for the Federal Circuit

BRIEF OF BUNDESVERBAND DER DEUTSCHEN INDUSTRIE E.V., DEUTSCHER INDUSTRIE- UND HANDELSKAMMERTAG E.V., HENNING GROSSE RUSE-KHAN, AND PAUL L.C. TORREMANS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

RONALD J. MANN
Counsel of Record
435 West 116th Street
New York, NY 10027
(212) 854-1570
rmann@law.columbia.edu

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QUESTION PRESENTED

Whether a supplier can be held liable under 35 U.S.C. § 271(f)(1) for providing "all or a substantial portion of the components of a patented invention" from the United States when the supplier ships for combination abroad only a single commodity component of a multi-component invention.

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General Agreement on Tariffs and Trade 1994 arts. XI, XX(d), Apr. 15, 1994, 1867 U.N.T.S. 187 (1994) 10

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INTEREST OF *AMICI CURIAE*[1]

The Federation of German Industries – formally, *Bundesverband der Deutschen Industrie e.V*, or BDI – is the umbrella organization for all industrial businesses and industry-related service providers in Germany. It represents 36 industrial-sector federations and has 15 regional offices in Germany and offices abroad in Brussels, London, Tokyo, and Washington, D.C. BDI speaks for more than 100,000 private enterprises employing some eight million people.

Besides its activities on the national and European level, BDI also communicates the interests of German industry to governments internationally. It seeks to maintain the openness and attractiveness to German businesses of important international markets like the United States, in which countless German companies operate. It regularly has sought to vindicate the interests of German business in the courts of the United States.

German businesses and industries are among the United States' most frequent and reliable economic partners. German industry contributes substantially to the U.S. economy through investment in the U.S. and commercial dealings with U.S. companies. In 2012, the cumulative value of all

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[1] This brief was not authored in whole or in part by counsel for a party. No person other than the *amicus* made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

foreign direct investment in the U.S. was $2.6 trillion – equivalent to fully 16% of the U.S. gross domestic product. Investment by German business in the U.S. market exceeded $199 billion at the end of 2012. German investment is highly sought after by state and local governments across the United States, which seek to create well-paid jobs for their citizens. German companies employ 640,000 American workers, 10.5% of the 6.1 million in-sourced jobs in the United States in 2013.

The Association of German Chambers of Industry and Commerce (Deutscher Industrie- und Handelskammertag e.V., (DIHK)) is the umbrella organization of Germany's 79 regional Chambers of Industry and Commerce, representing by law the interests of more than 3.6 million commercial enterprises of all sizes in Germany. Further, it supervises and coordinates the German Chamber Network (Auslandshandelskammern (AHKs)) with 130 locations in 90 countries worldwide, including the United States.

Dr. Henning Grosse Ruse-Khan is Lecturer at the University of Cambridge where he teaches intellectual property (IP) and international economic law. He is a Fellow of King's College (Cambridge) and the Max Planck Institute on Innovation and Competition in Munich. Dr Ruse-Kahn has authored several articles and a recent monograph on the interface between IP protection and international trade law. He has a longstanding interest in the careful development of national IP rules in light of international trade law.

Dr. Paul L. C. Torremans is a professor of intellectual property law at the School of Law, University of Nottingham, United Kingdom. He has published widely regarding intellectual property law in the UK and the relationship between intellectual property law and private international law.

This case considers the circumstances in which a supplier's shipment of a commodity component from the United States to another country for assembly overseas can serve as the basis for a patent-infringement judgment based on sales overseas of the final products. Both BDI and DIHK are directly interested in maintaining institutions that support the free trade of goods and services across national borders. Among other things, that includes the facilitation of manufacturing that involves cross-border supply chains. The decision of the court of appeals threatens to extend American patent law to govern economic activity that occurs almost entirely in other countries, creating major obstacles to the routine inclusion of United States firms and facilities in multinational manufacturing and supply arrangements. BDI and DIHK have a strong interest in ensuring that this Court understands the difficulties that the decision poses for existing patterns of cross-border supply chains. All of the amici are interested in the development of nation-level rules for intellectual property that give due weight to the concerns of private international law. We hope this brief will help the Court understand the disruption that would follow a validation of the decision of the court of appeals.

SUMMARY OF ARGUMENT

1. The thrust of modern legal systems has been to facilitate trade and commerce among developed nations on a free and even playing field, limiting as much as possible the relevance of the home nations and locations of competing commercial enterprises. In part, that is reflected in a regime in which developed nations ordinarily limit their trade regulations to activity inside their borders. The same intuition supports this Court's vigilant recognition that Congress does not routinely adopt statutes intended to apply to foreign manufacturing and commerce.

The decision of the court of appeals heedlessly throws a wrench into that framework, interfering with the most routine and innocent trade in off-the-shelf components involved in cross-border supply and manufacturing chains. That decision places a conspicuous black mark on United States firms – signaling to foreign enterprises that they need to think twice before investing in or establishing manufacturing facilities in the United States.

2. This Court has justified the presumption against extraterritoriality in part as limiting the intrusion of United States law into the legitimate domains of foreign sovereigns. The Court also has recognized that extensions of United States law are particularly problematic in policy-laden areas like patent law, in which different nations often balance the competing considerations differently.

The case at hand poses a stark example of such a conflict. Specifically, when it comes to the propriety of aggressive patent litigation, the sensibilities of United States lawmakers differ sharply from those of policymakers in the European Union. Where United States law generally is tolerant of that activity, on the theory that it ensures a proper return on the investment in the patented invention, European courts and the European Commission have been much more worried that aggressive exercise of intellectual-property rights can undermine robust competition in important markets. Thus, the very remedy that the Federal Circuit has approved here likely would be regarded in Europe as an anti-competitive act, to be prohibited under basic principles of competition law in the European Union.

It would be one thing if the United States Congress acted to press the point. It is quite another for the judiciary to press the conflict itself, building on inferences from a statute that is ambiguous at most. The simplest response is for this Court to reject the analysis of the court of appeals, confining United States patent law to its proper territorial bounds.

ARGUMENT

I. The Decision of the Court of Appeals Complicates Routine Business Planning by Raising the Costs of Including United States Firms in Cross-Border Supply and Manufacturing Chains.

Time after time, the Court in recent years has emphasized the "wisdom of the presumption against extraterritoriality," *Morrison v National Australia Bank Ltd.*, 561 U.S. 247, 261 (2010), applying it "with particular force in patent law," *Microsoft Corp. v AT&T Corp.*, 550 U.S. 437, 455 (2007). The failure of the court of appeals to give that presumption substantial weight led it to a decision that intrudes markedly into the routine business arrangements necessary for firms inside and outside the United States to cooperate in the manufacturing and supply of products "in today's highly interdependent commercial world," *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 165 (2004).

While it stands, the decision below raises the possibility that even trivial involvement by a United States facility in a supply or manufacturing chain will expose the enterprise to liability under United States patent law – without regard to the patent status of the invention in the countries where the products are assembled, sold, or used. Accordingly, unless this Court rejects the reasoning of the court of appeals, the decision will require planners considering whether to involve a United States firm or facility in such arrangements to step back with trepidation, to act with particular care before taking that step.

The blithe analysis of the court of appeals suggests that it did not understand the stumbling blocks that its decision creates for routine and wholly innocent business activity, such as the commonplace integration of a United States firm or facility into a multinational supply and manufacturing chain. Consider, for example, a German firm selling products that it long has sold in its home country, justifiably confident that they infringe no patents effective in Germany. Under the analysis of the court of appeals, if that firm decided to invest in a company owning a United States manufacturing facility, it could not use that United States facility to produce even a commonplace off-the-shelf component without taking account of the possibility that its product sales in its home country would become actionable as infringement of a United States patent.

Shifting production of a single off-the-shelf component from a British facility to a United States facility is in every important way a trivial act – but the court of appeals has made the attendant legal risk considerable: subjecting the investor to the full regimen of patents granted by the United States Patent and Trademark Office, including the remedies for infringements of those patents that arise under the Patent Act of the United States. In effect, the decision places a black mark on United States facilities, subjecting their use to legal costs and risks from which investors otherwise would be free.

The same problems would arise if a German firm considered establishing its own manufacturing facility in the United States, something hitherto quite common. *E.g.*, Jack Ewing, *Bet on U.S. Pays off for Germany's Carmakers*, N.Y. Times, Feb. 4, 2013; Stanley Reed & Melissa Eddy, *BASF, an Industrial Pillar in Germany, Leans Abroad*, N.Y. Times, Oct. 24, 2014. If the firm used the United States facility even for a single off-the-shelf component, the firm would risk the subjection of its world-wide sales to the vagaries of United States patent law, even if the holder of the patent in question had not bothered to obtain patent protection in any country other than the United States.

The German firm of course ***could*** proceed to establish a United States manufacturing facility, but it would face the considerable risk that transportation of components for that facility for use in overseas assembling facilities would carry United States patent law with them, "infecting" the products of those overseas facilities with United States law. To be sure, the German firm might avoid U.S. patent liability if it stopped using the facility's components promptly upon learning of a patent claim, but that possibility simply underscores the inability of the foreign firm to include a United States facility reliably in long-term planning. The logical response would be to limit the production of the United States facility to wholly domestic uses, a balkanization of supply chains that benefits neither country's economy or workforce.

What makes this extension of United States so problematic is the triviality of the requisite link. We live in a world in which finished products are likely to consist of thousands of components, manufactured and designed at different times and places, fabricated into sub-assemblies at different times and places, and transported for further assembly, manufacture, and distribution around the globe. *See* Mark A. Lemley & Carl Shapiro, *Patent Holdup and Royalty Stacking*, 85 Texas L. Rev. 1991, 1992-93 (2007). Who could reasonably expect that United States patent law would apply to any sale ***worldwide*** of a product solely because of the fortuity that a single off-the-shelf component turns out to have originated in the United States? Without a more substantial connection to United States economic activity, the application of United States law in that context is more likely to seem a trap for the unwary than a reasoned delineation of national competition policy. *Cf. eBay Inc. v MercExchange LLC*, 547 U.S. 388, 396-97 (2006) (Kennedy, J., concurring) (noting problems in applying traditional patent remedies to multi-component products); Lemley & Shapiro, *supra*, 85 Texas L. Rev. at 2025-35 (discussing problematic application of United States patent law in that context).

Indeed, the link to economic activity in the United States is so tenuous that it well might bring the Patent Act into conflict with the Nation's existing obligations under the treaties that govern international trade. For example, the Paris Convention of 1883 provides that each country to the Convention shall issue patents that are "independent of patents obtained for the same invention in other countries," Paris Convention for the Protection of Intellectual Property art. 4bis, Mar. 20, 1883, which is ordinarily understood to mean that "the territorial scope of national intellectual property statutes and the rights granted under those states are restricted to the territory of the State concerned," J.J. Fawcett & P.L.C. Torremans, Intellectual Property and Private International Law 688 (2nd ed. 2011). For the same reason, extra-territorial use of United States patent law to restrict assembly and manufacturing activity in other countries is at best of doubtful legitimacy under GATT and TRIPS. *See* General Agreement on Tariffs and Trade 1994 arts. XI, XX(d), Apr. 15, 1994, 1867 U.N.T.S. 187 (1994); Agreement on Trade-Related Aspects of Intellectual Property Rights art. 41(1), Apr. 15, 1994, 1869 U.N.T.S. 299 (obligation to ensure that IP enforcement procedures do not "create barriers to legitimate trade"). *See generally* Henning Grosse Ruse-Khan, The Protection of Intellectual Property in International Law ch. 11 (2016) (discussing interplay between GATT and IP enforcement).

As explained above, amici are directly interested in the free and untrammeled flow of component materials and finished products across national boundaries, trade that redounds to the benefit of all countries involved. The decision of the court of appeals creates an unfortunate roadblock hindering that activity.

II. The Decision of the Court of Appeals Intrudes on the Sovereign Authority of Foreign Nations in an Area in Which Differing Policy Judgments Are Common.

The Court also has emphasized the role that the presumption against extraterritoriality plays in respecting "the legitimate sovereign interests of other nations," fostering interpretations that "hel[p] the potentially conflicting laws of different nations work together in harmony." *F. Hoffmann-La Roche*, *supra*, 542 U.S. at 164. That concern is particularly salient in this context, because "foreign law may embody different policy judgments about the relative rights of inventors, competitors, and the public in patented inventions." *Microsoft*, *supra*, 550 U.S. at 455 (brackets and internal quotation marks omitted) (quoting Brief for United States as *Amicus Curiae* 28, No. 05-1056, *Microsoft Corp. v AT&T Corp.*). In particular, the case involves an area in which the sovereign judgments about competition policy are quite different. *See F. Hoffmann-La Roche*, *supra*, 542 U.S. at 167 (noting instances in which "this Court has found" differences of antitrust policy sufficiently substantial to raise a "practical likelihood of interference with the relevant interests of other nations").

The specific problem here is that the European Union has been much more concerned than United States courts about the possibility that litigation to enforce patents might interfere with competition. It is inherent in the grant of a patent, of course, that it provides the holder some exclusive control over the invention described, which readily can create a monopoly with regard to related technologies. The grant of that control raises obvious risks that the patentholder will exercise that control abusively, in ways that contradict the purposes for which the patent was granted. Although United States courts have not ignored those concerns, *e.g.*, *Halo Electronics v Pulse Electronics, Inc.*, 136 S. Ct. 1923, 1937-38 (2016) (Breyer, J., concurring); *eBay Inc. v MercExchange LLC*, 547 U.S. 388, 396-97 (2006) (Kennedy, J., concurring), it is fair to say that competition authorities in the European Union have shown much greater concern that vigorous exercise of patent rights might diminish market competition.

From the perspective of European policymakers, the concerns arise out of Article 102 of the Treaty on the Functioning of the European Union (TFEU), which provides that "the abuse * * * of a dominant position within the internal market or a substantial part of it shall be prohibited." Consolidated Version of the Treaty on the Functioning of the European Union art. 102, 2012 O.J. C 326/47, at 89. Applying that principle broadly, the European Court of Justice explains that it aims "to protect not only the interests of competitors or of consumers, but also the structure of the market and, in doing so, competition as such." *T-Mobile Netherlands BV*, Case C-8/08, [2009] E.C.R. I-04,529, ¶ 63. Thus, although the rights of patentholders in the EU are in many respects similar to those of patentholders in the United

States,[2] the dominating interest in ensuring effective competition has motivated European courts to develop a well-established doctrine under which "the exercise of an exclusive right linked to an intellectual-property right * * * may * * * involve abusive conduct for the purposes of Article 102." *Huawei Technologies Co. v ZTE Corp.*, Case C-170/13, [2015] E.C.R. I_____ (delivered July 16, 2015), ¶ 47.

In Europe, the ability of a patentholder to exercise a patent is linked directly to the patentholder's market power. Thus, although it is not inherently abusive for a patentholder to insist on its exclusive rights, European law often would obligate a patentholder with a dominant market position to grant licenses to its patent or otherwise refrain from activity that would be routinely permissible in the United States. *See* Patent Law: A Handbook on European and German Patent Law § 9, at 852-53 (M. Haedicke & H. Timmann eds. 2014) [hereinafter Haedicke & Timmann] (summarizing German doctrine). Judicial limitation of a patentholder's right to seek damages or injunctive relief has been routine in German courts for decades. *See* Haedicke & Timmann, *supra*, § 9, at 853-58 (discussing decisions of the German Federal Court of

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[2] *See generally*, *e.g.*, Alexander Harguth, Patents in Germany and Europe chs. 5, 12 (2011) (discussing procedures for issuing and enforcing patents in Germany); Patent Law: A Handbook on European and German Patent Law §§ 2, 10 (M. Haedicke & H. Timmann eds. 2014) (discussing the amenability of inventions to patent protection and the consequences of patent infringement).

Justice). It has become equally commonplace at the European level. *E.g.*, *AB Volvo v Erik Veng (UK) Ltd.*, Case 238/87, [1988] E.C.R. 6211, ¶ 9 (explaining that exclusive rights to design of automotive parts would be abused by "arbitrary refusal to supply spare parts to independent repairers, the fixing of prices for spare parts at an unfair level or a decision no longer to produce spare parts for a particular model"); *Radio Telefis Eireann (RTE) and Independent Television Publications Ltd (ITP) v Commission of the European Communities*, Case 241/91, [1995] E.C.R. I-00,743, ¶¶ 50-58 (affirming conclusion that radio and television networks abused copyright by failure to provide access to complete programming guide); *IMS Health GmbH &amp Co. OHG v NDC Health GmbH &amp Co. KG*, Case C-418/01, [2004] E.C.R. I-05,039, ¶ 38 (summarizing case law concluding that copyright holder abuses position by refusing access whenever refusal prevents "the emergence of a new product for which there is a potential consumer demand, that it is unjustified and such as to exclude any competition on a secondary market").

In recent years, the European Commission has been especially vigilant in this area, intervening to limit high-profile litigation that it regards as an anticompetitive abuse of intellectual property rights. *E.g.*, Commission Decision No. AT.39985 (*Motorola*), slip op. ¶¶ 510-15 (Apr. 4, 2014) (holding that Motorola violated Article 102 by seeking an injunction against Apple in German courts, although Apple had not obtained a license to use the relevant patent, because Apple professed itself "not unwilling to enter a licensing agreement on [fair, reasonable, and non-discriminatory] terms and conditions"); Commission Decision No. AT.39939 (*Samsung*), slip op. ¶¶ 62, 122 (Apr. 29, 2014) (consent decree under which "Samsung will not be able to seek injunctions on the basis of [specified patents] against any potential licensee willing to entire into a license on [fair, reasonable, and non-discriminatory] terms and conditions," responding to Commission's contention that Samsung sought injunctive relief with a view to "inducing Apple to accept disadvantageous licensing terms, compared to those which Apple may have accepted in the absence of injunctions being sought").

None of the decisions of the Commission or the Court of Justice to date have considered the specific issue before the Court: use of the shipment of an off-the-shelf component into the EU as leverage for extending the coverage of a United States patent to European commerce. But the risks to competition from the Federal Circuit decision are obvious. Consider a manufacturer in Germany with two potential suppliers: one is a German facility affiliated with a United States firm that has a patent on the final product in the United States (but not in Germany); the other is affiliated with a United States manufacturing facility. The supplier affiliated with the patent holder could use the United States patent as a device for preventing competition for the supply of commodity parts in Germany – in the absence of any intellectual property enforceable in Germany. Given the vigor of the actions of the Commission, European Court of Justice, and the German Federal Court of Justice discussed above, it is reasonable to expect that the

Commission or a European court might hold it abusive to leverage the United States patent into a monopoly in Germany.

A converse hypothetical brings the likely European response into perspective. Consider a European manufacturer holding a patent that continues in force in Europe but has expired in the United States, attempting to enforce a judgment issued on the basis of that patent that awards damages for sales in the United States, based solely on the use of a single Europe-sourced off-the-shelf component. Surely that judgment would trouble both United States courts and competition authorities in the Executive Branch. Should we expect European authorities to be any less troubled?

Indeed, because the decision of the court of appeals justifies an award based on the sales of products wholly assembled and manufactured abroad, the decision presents the prospect of conflicting judgments: a European judgment or Commission ruling following *Huawei*, *Motorola*, and *Samsung*, forbidding patent litigation that provides a dominant position in products assembled and sold entirely in Germany, blocking a judgment of a United States court awarding monetary damages for the German assembly and sales, based on the inclusion of an off-the-shelf United States-sourced component in the Germany product.

It would be one thing if the United States Congress had gone out of its way to challenge foreign competition authorities. Presumably United States Courts would have to leave that problem for resolution by the Executive Branch. But as this Court knows all too well that has rarely been the practice of Congress. *See*, *e.g.*, *F. Hoffmann-La Roche*, *supra*, 542 U.S. at 162-73 (concluding that Congress did not intend the Foreign Trade Antitrust Improvements Act of 1982, 15 U.S.C. § 6a, to extend to foreign commerce). Rather, as the presumption against extraterritorial application reflects, "legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.'" *Morrison v National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) (quoting *EEOC v Arabian American Oil Co.*, 499 U.S. 244, 248 (1991) (quoting *Foley Bros. v Florida*, 336 U.S. 281, 285 (1949))).

CONCLUSION

The decision of the court of appeals extends United States patent law far into the realm of the commerce of other nations, allowing the shipment of a single off-the-shelf component to make wholly foreign assembly, manufacture, and sale directly subject to the United States patent laws. That extension not only complicates the routine and innocent development of multinational supply and manufacturing arrangements, it grants patentholders a litigation tool that apparently conflicts with the competition law and policy of the European Union.

Amici respectfully submit that the Court should reverse the decisions of the court of appeals.

Respectfully submitted,

RONALD J. MANN
COUNSEL OF RECORD
435 WEST 116TH STREET
NEW YORK, NY 10027
(212) 854-1570
RMANN@LAW.COLUMBIA.EDU

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