No. _____

In the
Supreme Court of the United States

CENTRIPETAL NETWORKS, INC.,

Petitioner,

v.

CISCO SYSTEMS, INC.,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

28 U.S.C. §455(f) aims to preserve judicial resources and avoid the harsh consequences of recusal when a minor financial interest is discovered after a federal judge has already invested substantial time and effort into a matter. Specifically, it provides that a judge who "discover[s]" an insubstantial financial interest in a party "after substantial judicial time has been devoted to [a] matter" need not "disqualif[y]" himself as long as he "divests … the interest that provides the grounds for the disqualification." Here, the district judge discovered, years into this complex patent litigation, after a 22-day bench trial, and on the eve of granting judgment for the plaintiff, that his spouse owned 100 shares of the defendant's stock, worth $4,687.99 in total. The judge recognized the need to redress the interest and that "the simplest thing would be to sell the stock." But as he knew that he would shortly issue an opinion which would adversely affect the defendant's stock, he concluded that selling the stock at that point would create appearance problems and "undermine the purpose of section 455." The judge instead decided to divest the stock into a blind trust. He later entered judgment for the plaintiff. The Federal Circuit wiped out that judgment and years of judicial effort without ever addressing the merits, holding that employing a blind trust is not "divest[ment]" under §455(f) and that the district judge's use of the former was not harmless error.

The question presented is:

Whether placing stock in a blind trust satisfies §455(f)—and, if not, whether placing trivial amounts

of stock in a blind trust, in lieu of selling it outright, constitutes harmless error under *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988).

PARTIES TO THE PROCEEDING

Petitioner, and plaintiff-appellee below, is Centripetal Networks, Inc.

Respondent, and defendant-appellant below, is Cisco Systems, Inc.

CORPORATE DISCLOSURE STATEMENT

Petitioner has no parent corporation, and no publicly held company owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Centripetal Networks, Inc. v. Cisco Systems, Inc.*, No. 2:18-cv-00094-HCM (E.D. Va.), judgment entered on October 5, 2020;
- *Centripetal Networks, Inc. v. Cisco Systems, Inc.*, No. 2021-1888 (Fed. Cir.), judgment entered on June 23, 2022;
- *Palo Alto Networks, Inc. v. Centripetal Networks, Inc.*, No. IPR2022-00182 (P.T.A.B.), filed on November 18, 2021;
- *Cisco Systems, Inc. v. Centripetal Networks, Inc.*, No. IPR2022-01151 (P.T.A.B.), filed on June 24, 2022 (with pending motion for joinder with No. IPR2022-00182).

TABLE OF CONTENTS

QUESTION PRESENTED i
PARTIES TO THE PROCEEDING iii
CORPORATE DISCLOSURE STATEMENT iv
STATEMENT OF RELATED PROCEEDINGS v
TABLE OF AUTHORITIES viii
PETITION FOR WRIT OF CERTIORARI 1
OPINIONS BELOW 4
JURISDICTION 5
STATUTORY PROVISIONS INVOLVED 5
STATEMENT OF THE CASE 5
A. Legal Background 5
B. Factual and Procedural Background 7
REASONS FOR GRANTING THE PETITION 14
I. The Federal Circuit's Interpretation Of Section 455(f) Conflicts With This Court's Caselaw And Renders The Statute A Nullity .. 17
II. The Federal Circuit's Harmless Error Analysis Conflicts With This Court's Caselaw And Decisions Of Other Circuits 24
III. The Questions Presented Are Important, And This Case Is An Ideal Vehicle 32
CONCLUSION 35

APPENDIX

Appendix A

Opinion, United States Court of Appeals for the Federal Circuit, *Centripetal Networks, Inc. v. Cisco Sys., Inc.*, No. 21-1888 (June 23, 2022) App-1

Appendix B

Opinion and Order, United States District Court for the Eastern District of Virginia, *Centripetal Networks, Inc. v. Cisco Sys., Inc.*, No. 2:18-cv-94 (Oct. 2, 2020) App-30

Appendix C

Opinion and Order, United States District Court for the Eastern District of Virginia, *Centripetal Networks, Inc. v. Cisco Sys., Inc.*, No. 2:18-cv-94 (Oct. 5, 2020) App-49

Appendix D

Opinion and Order, United States District Court for the Eastern District of Virginia, *Centripetal Networks, Inc. v. Cisco Sys., Inc.*, No. 2:18-cv-94 (Mar. 17, 2021) App-262

Appendix E

Relevant Statutory Provision..... App-333

28 U.S.C. §455 ..... App-333

TABLE OF AUTHORITIES

Cases

Corley v. United States,
556 U.S. 303 (2009)..... 19

Doddy v. Oxy USA, Inc.,
101 F.3d 448 (5th Cir. 1996)..... 30

Fowler v. Butts,
829 F.3d 788 (7th Cir. 2016)..... 21

Halo Elecs., Inc. v. Pulse Elecs., Inc.,
136 S.Ct. 1923 (2016)..... 10

Hedden v. Richard,
149 U.S. 346 (1893)..... 23

In re Allied Signal Inc.,
891 F.2d 974 (1st Cir. 1989) 28

In re Continental Airlines Corp.,
901 F.2d 1259 (5th Cir. 1990)..... 30, 31

In re Literary Works in Elec. Databases Copyright Litig.,
509 F.3d 136 (2d Cir. 2007) 20

In re Sch. Asbestos Litig.,
977 F.2d 764 (3d Cir. 1992) 29

Kotteakos v. United States,
328 U.S. 750 (1946)..... 27

Liljeberg v. Health Servs. Acquisition Corp.,
486 U.S. 847 (1988)..... *passim*

Liteky v. United States,
510 U.S. 540 (1994)..... 5, 6

Mohamad v. Palestinian Auth.,
566 U.S. 449 (2012)..... 18

Muchnick v. Thomson Corp.,
509 F.3d 136 (2d Cir. 2007) 10

Parker Drilling Mgmt. Servs., Ltd. v. Newton,
139 S.Ct. 1881 (2019)..... 18

Parker v. Connors Steel Co.,
855 F.2d 1510 (11th Cir. 1988)..... 7, 29, 31

Patterson v. Mobil Oil Corp.,
335 F.3d 476 (5th Cir. 2003)..... 7, 30

Pub. Utils. Comm'n of D.C. v. Pollak,
343 U.S. 451 (1952)..... 24

Shell Oil Co. v. United States,
672 F.3d 1283 (Fed. Cir. 2012)..... 18

Shinseki v. Sanders,
556 U.S. 396 (2009)..... 28, 31

Sw. Airlines Co. v. Saxon,
142 S.Ct. 1783 (2022)..... 18

Trump v. Mazars USA, LLP,
39 F.4th 774 (D.C. Cir. 2022) 22

United States v. Cerceda,
172 F.3d 806 (11th Cir. 1999)..... 29, 31

United States v. Williams,
949 F.3d 1056 (7th Cir. 2020)..... 27

Statutes

28 U.S.C. §2111 24

28 U.S.C. §455(a) 5, 19

28 U.S.C. §455(b)(4)..... 17

28 U.S.C. §455(f)..... *passim*

Pub. L. No. 100-702, 102 Stat. 4642
(Nov. 19, 1988) 6

Pub. L. No. 93-512, 88 Stat. 1609 (Dec. 5, 1974) 5, 6

Rule and Regulation

Fed. R. Civ. P. 61 25

5 C.F.R. §2634.403(a)(2) 12

Other Authorities

Black's Law Dictionary (11th ed. 2019) 9

Br. of Former Federal Ethics Officials, *Trump v. Mazars USA, LLP*, Nos. 19-715, 19-760, 2020 WL 1373018 (U.S. Mar. 4, 2020) 22

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H.R. 1, 116th Cong., title VIII, §8012 (2019) 23

John F. Manning, *What Divides Textualists From Purposivists?*, 106 Colum. L. Rev. 70 (2006) 23

Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* (1998) 19

PETITION FOR WRIT OF CERTIORARI

Ordinarily, a judge with even a trivial financial interest in a party must recuse as a matter of course. But in recognition that judges sometimes acquire or discover a financial interest only after investing substantial time in a matter, and that eleventh-hour recusals inflict a heavy toll on parties and the judicial system, Congress provided a safety valve in cases where the financial interest comes to light "after" a judge has already "devoted" "substantial judicial time … to [a] matter." 28 U.S.C. §455(f). In such circumstances, the judge need not recuse, provided that the offending financial interest would not "be substantially affected by the outcome" and that the judge "divests himself or herself of the interest that provides the grounds for the disqualification." Section 455(f) is a critical bulwark against the harsh consequences of overly rigid restrictions on a judge's ability to hear cases. That ameliorative statutory policy is buttressed by harmless-error doctrine. "As in other areas of the law," harmless-error doctrine applies to violations of the federal judicial recusal statute and allows reviewing courts to eschew the strong medicine of vacatur where the particular §455 violation caused no material prejudice. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 862 (1988).

The Federal Circuit fundamentally misconstrued and misapplied both §455(f) and harmless-error doctrine to inflict the harsh consequences that the statute and doctrine guard against. Petitioner Centripetal Networks, Inc. ("Centripetal") filed this patent-infringement suit in 2018 against respondent

Cisco Systems, Inc. ("Cisco"). Hard-fought motions practice and discovery followed, culminating in a bench trial in 2020 that lasted six weeks. Months later, after the district judge (Morgan, J.) had already prepared a draft opinion entering judgment for Centripetal, he discovered that his wife owned 100 shares of Cisco stock, worth less than five thousand dollars. Judge Morgan took that relatively trivial financial interest seriously and recognized the need to address it or recuse. Given the substantial investment of judicial resources and the trivial amount of stock, recusal made no sense. But because he knew that he would shortly rule against Cisco in a high-stakes case, he concluded that selling the stock right before ruling against Cisco "would undermine the purpose of section 455" by creating an appearance of impropriety, akin to insider trading. Rather than solve one appearance-of-impropriety problem by creating another, Judge Morgan opted to have the shares placed in a blind trust, so that a financial adviser untainted with any material non-public information would make the decision to hold or sell and Judge Morgan (and his wife) would be blind to that decision. He then issued a 167-page opinion entering judgment for Centripetal, finding Cisco's infringement "willful and egregious," and awarding the largest patent-damages award in U.S. history.

The Federal Circuit wiped out that judgment and years of judicial effort without even considering the merits. The court's opinion is irreconcilable with the basic purposes of §455(f), this Court's caselaw, and decisions of other circuits. It effectively nullifies §455(f). This Court's intervention is imperative.

The Federal Circuit first erred by focusing myopically on the word "divest" while ignoring the specific context addressed by §455(f). That subsection, unlike the default rules set forth elsewhere in §455, applies only when ownership of potentially disqualifying stock is discovered "after substantial judicial time has been devoted" to a case. Nearly every §455(f) case will thus present the scenario of a judge deciding how to "divest" stock in a company about which she has arguably material non-public information by virtue of her work on the case. Yet rather than give this critical context its due in reviewing Judge Morgan's decision to divest without engendering the appearance problems of an outright sale, the court reasoned that blind trusts are an inadequate substitute for an outright sale in general. That observation ignores the specific context addressed by §455(f), effectively reads subsection (f) out of the statute, and puts judges on the horns of a dilemma—either sell the stock while in possession of non-public information (which will create appearance-of-impropriety concerns requiring recusal under §455(a)) or retain full control over the stock (requiring recusal under §455(b)(4)). That is plainly not what Congress intended by expressly providing an option for judges to avoid recusal when minor financial interests are discovered after substantial judicial resources have been invested in a case. Instead, consistent with well-established usage in the context of government officials' recusal obligations, ceding the right and power to control shares to a trustee via a blind trust is a form of "divestment" under §455(f).

The Federal Circuit's harmless-error analysis added insult to injury. Even if Judge Morgan erred in

opting for a blind trust in lieu of an outright sale, that error was manifestly harmless. Judge Morgan had already overseen the entire trial and written the lion's share of his opinion before learning of any financial interest. Moreover, the financial interest here was trivial, and the judge ruled *against* it. Even Cisco conceded the judge was not actually biased. And the §455 error here (if error at all) was driven not by malice or indifference, but by a good-faith effort to avoid creating an appearance of impropriety by dumping Cisco shares on the eve of ruling against Cisco.

The court of appeals' zero-tolerance posture appears to have been motivated by recent public scrutiny of judicial stock ownership in circumstances far removed from Judge Morgan's good-faith effort to offload Cisco stock without creating an appearance problem. But this Court has consistently held that harmlessness must be assessed based on the particulars of the record, parties, and error at issue. The Federal Circuit's rigid approach also elides the whole point of §455(f), which recognizes the harsh consequences of late recusals on parties like petitioner who have done nothing wrong. By draining the statute of that promise and transforming the context-sensitive harmless-error doctrine into an inflexible rule, the decision here calls out for review.

OPINIONS BELOW

The Federal Circuit's opinion, 38 F.4th 1025, is reproduced at App.1-29. The district court's order denying Cisco's recusal motion, 492 F.Supp.3d 615, is reproduced at App.30-48. The district court's orders resolving the patent merits, 492 F.Supp.3d 495, and

denying Cisco's new trial motion, 526 F.Supp.3d 137, are reproduced at App.49-261 and 262-332, respectively.

JURISDICTION

The Federal Circuit issued its opinion on June 23, 2022. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The full text of 28 U.S.C. §455 is reproduced at App.333-336.

STATEMENT OF THE CASE

A. Legal Background

1. Early federal statutes required judges to recuse whenever they possessed an interest in a proceeding, but provided little else by way of guidance or safety valves. *See Liteky v. United States*, 510 U.S. 540, 544-48 (1994). Even as late as the 1970s, the federal recusal statute "was nothing more than" a "prohibition against a judge's presiding who has an interest in the case or a relationship to a party." *Id.* at 546. That changed in 1974, when Congress amended the law "to conform with the recently adopted ABA Code of Judicial Conduct, Canon 3C." *Liljeberg*, 486 U.S. at 858 n.7; *see* Pub. L. No. 93-512, 88 Stat. 1609 (Dec. 5, 1974).

The 1974 statute added a "new 'catchall' recusal provision[]," *see* 28 U.S.C. §455(a), which made clear that all asserted grounds for recusal were "to be evaluated on an objective basis," not under the "subjective 'in his opinion' standard" that had prevailed under the old version of the statute. *Liteky*, 510 U.S. at 546 (emphasis omitted); *Liljeberg*, 486 U.S.

at 858 n.7. Congress also "spelled out in detail," in new "paragraphs (b)(2) through (b)(5)," the contours of "the 'interest' and 'relationship' grounds of recusal." *Liteky*, 510 U.S. at 548. And, as relevant here, it defined the term "financial interest" expansively to include "ownership of a legal or equitable interest, however small." 88 Stat. at 1609-10 (codified at 28 U.S.C. §455(d)(4) (1974 ed.)).

Despite clarifying that even the smallest financial interest in a party triggered a duty to recuse, the 1974 statute had no safety valve to avoid automatic recusal in cases where the financial interest was trivial and the investment of judicial resources before a financial interest was acquired or discovered was substantial. This quickly proved problematic, and in 1988 Congress amended §455 to provide a safety valve when, among other things, a judge learns late in a case that he or a family member owns stock in a party. *See* Pub. L. No. 100-702, title X, §1007, 102 Stat. 4642, 4667 (Nov. 19, 1988) (codified at 28 U.S.C. §455(f)). Under subsection (f), a judge who "discover[s]," "after substantial judicial time has been devoted to [a] matter," that she or a close family member "has a financial interest in a party (other than an interest that could be substantially affected by the outcome)" "is not required" to recuse from the matter if she "divests … herself of the interest that provides the grounds for the disqualification."

2. "Although §455 defines the circumstances that mandate disqualification of federal judges, it neither prescribes nor prohibits any particular remedy for a violation of that duty." *Liljeberg*, 486 U.S. at 862. Congress left it "to the judiciary" to decide, on a case-

by-case basis, whether a given §455 violation warrants vacatur or instead constitutes "harmless error." *Id.*

This Court offered guidance in *Liljeberg* on how courts should make that harmless-error determination. *Liljeberg* involved a federal judge who adjudicated a case involving the financial interests of a university at the same he time he served on the university's board of trustees. Even after the judge made the connection, he continued to adjudicate the matter without informing the parties. Despite that clear violation, this Court eschewed a rule of automatic vacatur. Instead, the Court underscored "that in determining whether a judgment should be vacated for a §455(a) violation, it is appropriate to consider [1] the risk of injustice to the parties in the particular case, [2] the risk that the denial of relief will produce injustice in other cases, and [3] the risk of undermining the public's confidence in the judicial process." *Id.* at 864. While a bare majority found vacatur appropriate, three Justices disagreed and a fourth would have left the remedy for the lower courts.

Liljeberg addressed a §455(a) violation that arose only after judgment had been entered. Nevertheless, lower courts have applied *Liljeberg* and its three "consider[ations]" to other §455 violations and in a variety of procedural postures. *See, e.g.*, *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 485 (5th Cir. 2003); *Parker v. Connors Steel Co.*, 855 F.2d 1510, 1527-28 (11th Cir. 1988).

B. Factual and Procedural Background

1. This case began on February 13, 2018, when Centripetal filed suit against Cisco for infringement of its patents "deal[ing] with systems that engage in

complex computer networking security functions." App.57. The litigation was assigned to Judge Morgan, who set the case for trial in April 2020. App.7. "The parties later waived a jury trial" (opting instead for a bench trial) due in part to "the jury trial limitations resulting from the COVID-19 pandemic." App.50-51.

Trial began on May 6, 2020. App.7. It spanned 22 trial days across six weeks, *see* Dist.Ct.Dkts.430, 476, and included "an over 3,507-page record, 26 witnesses, and over 300 exhibits." App.3. After trial ended, Judge Morgan held a further "hearing on damages" evidence on June 25, 2020, signaling his intention to rule for Centripetal and award some quantum of damages. App.51; *see* Dist.Ct.Dkt.495.

2. On August 11, 2020, two months after trial ended but before an opinion had issued, Judge Morgan became aware that his wife owned Cisco stock. "[D]uring preparation of the [Judge's] judicial financial disclosure," Judge Morgan's "administrative assistant discovered … that the [Judge's] spouse owned 100 shares of Cisco stock valued at $4,687.99." App.31. Judge Morgan "promptly investigated the issue and confirmed that the shares were purchased as a result of [his wife's] broker[']s recommendation"; his wife "had no independent recollection of approving the transaction," which occurred in October 2019. App.31.

Judge Morgan "disclosed" this information "to the parties" the very next day, via email. App.31. The email "detailed" the particulars of the stock ownership and the Judge's discovery. App.31. In addition to "explaining that the shares 'did not and could not have influenced [his] opinion on any of the issues in this

case,'" because he was unaware of them, Judge Morgan noted in the email that "'[a] full draft of [his] opinion had [already] been prepared'" and that "[v]irtually every issue was decided." App.31.

Cisco, aware of Judge Morgan's stated intention to rule for Centripetal, "responded, nine days later, by filing [a] motion for recusal." App.32. After further briefing, Judge Morgan "conducted a hearing on the motion and heard oral argument on September 9, 2020." App.32. At that hearing, Judge Morgan "informed the parties" that he and his wife had "contacted their personal attorney to request the creation of a blind trust to divest the shares." App.32. He also "provided the completed trust documents to the parties." App.32.[1]

3. Judge Morgan denied Cisco's recusal motion on October 2, 2020. It was "undisputed" that he had "invested" "substantial judicial time" in the case. App.45. "The Court had devoted months of time into this matter engaging in ruling of pre-trial motions, holding a *Markman* hearing, conducting an almost six-week bench trial and drafting extensive findings of fact and conclusions of law in a 150-plus page opinion." App.45. As a result, Judge Morgan ruled that §455(f) applied, and "that divesture is appropriate." App.46.[2]

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[1] A "blind trust" is a device whereby a person "places investments under the control of an independent trustee." Black's Law Dictionary (11th ed. 2019). Once a blind trust is created, the transferor no longer knows whether the trustee has sold or retained the assets. *Id.*

[2] Judge Morgan also rejected Cisco's argument that recusal was warranted under 28 U.S.C. §455(a). Cisco abandoned reliance on §455(a) on appeal. App.7.

In Judge Morgan's view, the decision to "divest the Cisco shares into a blind trust" satisfied the statute. App.46. He believed this form of divestment was "the proper remedy" here given the specific circumstances of the case. App.46. After trial but before learning about the Cisco stock, Judge Morgan had "asked for further financial data" for damages purposes, which could suggest to "reasonable attorney[s]," and did in fact suggest to "both sides" here, "that the Court intended to award damages." App.47. In these circumstances, "an outright sale of the stock" would risk creating an "appear[ance]" that the judge secured a financial "benefit" by unloading Cisco stock on the eve of a substantial damages award, which "would undermine the purpose of section 455": "'to promote public confidence in the impartiality of the judicial process.'" App.46-47 (quoting *Muchnick v. Thomson Corp.*, 509 F.3d 136, 140 (2d Cir. 2007)). Having "divest[ed] the Cisco shares into a blind trust," Judge Morgan found the terms of §455(f) satisfied and denied Cisco's recusal motion. App.46.

4. Three days later, Judge Morgan issued a 167-page opinion entering his findings of fact and conclusions of law. He found that four of Centripetal's five sued-upon patents were valid and infringed, and that Cisco's infringement was "willful and egregious." App.49-331. The willfulness finding triggered 35 U.S.C. §284, under which a court "may increase the damages up to three times the amount found or assessed." Applying *Halo Electronics, Inc. v. Pulse Electronics, Inc.*, 136 S.Ct. 1923 (2016), Judge Morgan found that enhancing damages "by a factor of 2.5[x]" was warranted. App.250. That brought the past damages award to $1,889,521,362.50. App.250. Once

interest, costs, and "a running royalty" for six years were added, Judge Morgan entered judgment awarding Centripetal damages capped at $3.2 billion. App.256.

Cisco filed a new-trial motion challenging some of the infringement rulings and challenging "willfulness and damages"; Cisco also filed "a Rule 52(b) motion regarding direct infringement [and] damages." App.262. Judge Morgan denied all post-trial motions in a 50-page opinion on March 17, 2021. App.262-332.

Cisco timely appealed each of these orders (the recusal order; the merits opinion; and the order denying Cisco's post-trial motions). App.1.

5. The Federal Circuit reversed Judge Morgan's recusal order without addressing or even hearing argument on the other issues. The court "first address[ed] whether placement of the Cisco stock in a blind trust satisfied the statutory requirements of §455(f)." App.8. All agreed "that the Cisco stock constitutes a 'financial interest' and that 'substantial judicial time [had] been devoted to the matter.'" App.9 (alteration in original) (quoting 28 U.S.C. §455(f)). The dispositive statutory question was whether "placement of the stock in a blind trust qualified as divestment." App.10. In the court's view, the answer was no, because (it said) the "only" "possible" way "to 'divest'" oneself of "'ownership' of a legal or equitable interest" is to "s[ell]" the interest or "give[it] away," and placing stock into a blind trust is neither. App.11.

The court found support for its conclusion in §455(c), under which a judge "should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about

the personal financial interests of his spouse," and in a Judicial Conference Committee opinion advising that "use of a blind trust would be incompatible with a judge's duty to 'keep informed' about financial interests.'" App.15. The court also found support for its view in the "rules governing recusal of executive branch officials who have a 'financial interest' in a particular government action," under which an official's decision to transfer an asset "to [a blind] trust until such time as he or she is notified by the independent trustee that such asset has been disposed of or has a value of less than $1,000" does not defeat the ordinary executive-branch-official recusal requirements of 18 U.S.C. §208(a). App.14 (alteration in original). "The reason for this [rule]," the court paraphrased, "is that" as long as an official is aware that her assets remain "'in the trust,'" "'the possibility still exists that [she] could be influenced in the performance of official duties by those interests.'" App.14 (quoting 5 C.F.R. §2634.403(a)(2)).

The court next considered whether the decision to place the stock in a blind trust, rather than sell it, was harmless error. To answer this question, the court looked to "three factors" from *Liljeberg*: "(1) 'the risk of injustice to the parties in the particular case'; (2) 'the risk that the denial of relief will produce injustice in other cases'; and (3) 'the risk of undermining the public's confidence in the judicial process.'" App.17 (quoting *Liljeberg*, 486 U.S. at 864). All three, the court held, "weigh[] against a finding of harmless error." App.17.

On the first factor, the court found a "risk of injustice to the parties" from non-recusal because not

all of Judge Morgan's merits rulings are "subject to plenary review on appeal"; Cisco did not "delay[]" in seeking recusal; and Centripetal showed no "'special hardship by reason of [its] reliance on the original judgment.'" App.17-21 (quoting *Liljeberg*, 486 U.S. at 869). The court did not dispute that the value of the stock was minimal or that Judge Morgan ruled against his financial interest by ruling against Cisco. Yet it brushed all that aside. In the court's telling, a judge who rules against his financial interest might still face an appearance problem based on a concern that he "might bend over backwards to rule against that party to try to prove that there is no bias." App.25.

The court also rejected Centripetal's argument that any potential prejudice to Cisco was negligible because Judge Morgan had already made up his mind about the merits "prior to learning of his wife's ownership of Cisco stock." App.21 (quoting Centripetal.Br.63)). The court acknowledged Judge Morgan's pre-decision "state[ment] that his views as to the appropriate resolution of the case were fixed," but deemed that irrelevant on the ground that he could always "change his mind." App.22.

On the second factor, the court did not dispute that "the facts of this case are unusual." App.25. But it still concluded that finding harmless error here "would have a significant adverse effect in other cases" because stock ownership is "an increasingly common problem" and "vacatur here would signal to judges in other cases the importance of complying strictly with the procedures spelled out in §455(f)." App.26.

The court's analysis of the third factor (the risk of undermining public confidence in courts) was similarly influenced by "recent reports of many federal judges presiding over cases in which they or relevant family members owned stock in a party." App.27. It was also similarly insensitive to the facts of this case. The court made no mention of Judge Morgan's statement, made in real time, that he decided to place the Cisco stock in a blind trust rather than sell it because he was concerned that selling right before imposing a substantial damages award against Cisco could create an appearance of impropriety.

Having found all three "factors" to "weigh[] against a finding of harmless error in this case," App.17, the court "reverse[d]" on recusal and "vacate[d]" Judge Morgan's merits opinions. Because Judge Morgan passed away during the pendency of the appeal, the Federal Circuit "remand[ed] for further proceedings before a newly appointed judge." App.29. The court specified that, on remand, the new judge "shall decide the case without regard for the vacated opinions and orders." App.29.

REASONS FOR GRANTING THE PETITION

The Federal Circuit wiped out a multibillion-dollar judgment without so much as considering the merits, and gave short shrift to the district court's concerns that the outright sale of Cisco stock on the eve of a ruling against Cisco could create its own appearance problems. Even though both §455(f) and *Liljeberg* counsel against such a harsh result, the court of appeals viewed the use of a blind trust as a harmful error demanding vacatur. The court reached that conclusion only by losing sight of critical

statutory context, defying this Court's precedents, and eliding basic harmless-error principles. The resulting decision reflects the waste and harshness that both §455(f) and *Liljeberg* reject, and requires this Court's correction.

Congress added §455(f) to give judges a path to avoid recusal and wasted judicial effort when they acquire or discover a potentially disqualifying financial interest. But §455(f) empowers judges with discretion to divest, rather than recuse, only when the financial interest is acquired or discovered after the judge has invested considerable time on a case. In those circumstances, a judge will often possess substantial non-public information about a party, especially when she knows she is about to rule against the company. A decision to sell on the eve of such an adverse decision will often appear suspect and tinged with insider-trading concerns. Yet rather than give this critical context its due in determining whether Judge Morgan's decision to employ a blind trust satisfied the statute or was at least a harmless error, the Federal Circuit focused instead on the inadequacy of blind trusts in other contexts and the view that "divest" generally means outright dispossession.

That approach ignores the specific problem at which §455(f) is directed—namely, financial interests that come to light only after the judge has invested significant effort into a case. At that point, a rule of automatic disqualification creates an enormous waste of judicial resources, but an outright sale creates problems of its own. Indeed, in a case like this, an outright sale of stock just before an adverse ruling creates appearance problems that would themselves

require disqualification. Rather than leave a judge between a rock and a hard place, a decision to divest the shares into a blind trust provides a way forward and constitutes divestiture for purposes of §455(f). The Federal Circuit's concern that a blind trust could frustrate compliance with a judge's duty to apprise herself of financial holdings is inapposite. Section 455(f) deals exclusively with situations where the judge is aware of a financial holding (albeit belatedly) and needs to divest to avoid wasting judicial resources. In those circumstances, divesting via a blind trust avoids one appearance problem without creating another. That is consistent with the use of the word "divestment" in the context of government officials and their recusal obligations, and reflects the reality that a blind trust cedes the single most important incident of stock ownership—the power to determine whether and when to sell.

Even if placing stock in a blind trust is not divestment for purposes of §455(f), a good-faith decision to employ a blind trust in lieu of an outright sale is the archetypal harmless error. The Federal Circuit's contrary conclusion conflicts with this Court's cases and other circuits' decisions correctly applying them. Upon finding a §455 violation, the question becomes whether the particular violation warrants vacatur. That question is necessarily context-sensitive. To ensure that courts do not needlessly erase valid judgments, this Court has made clear that harmless-error analysis must focus on whether, in the context of the particular case, the precise error committed is harmful to the parties and the system at large. The Federal Circuit elided the specifics of this case—all of which counsel against

vacatur—in favor of systemic concerns that might be a valid basis for Congress to recalibrate the statute but are not implicated here and are no basis for ignoring the context-sensitive analysis *Liljeberg* demands and other circuits faithfully apply.

Under the proper framework, vacatur is a wholly inappropriate remedy here. Judge Morgan was not indifferent to his wife's stock ownership. As soon as he discovered her interest, he apprised the parties and took immediate action. Rather than minimize the problem because of the trivial amount, he treated the issue as a grave matter that demanded remedial action. The only error he even arguably committed was to use a blind trust in lieu of an outright sale. And even if that violated the statute, it was motivated by a good-faith concern about the appearance problems of a judge-directed sale on the eve of a judicial ruling reducing the share price. In this context—where the stock was in the *losing* party, the judge decided all issues in the case before learning about the stock, and the losing party explicitly disavowed any claim of actual bias—the decision to put stock in a blind trust given appearance-of-impropriety concerns is not the sort of error that warrants vacatur, as decisions of this Court and other circuits make clear.

I. The Federal Circuit's Interpretation Of Section 455(f) Conflicts With This Court's Caselaw And Renders The Statute A Nullity.

Under 28 U.S.C. §455(b)(4), a federal judge who "knows" that he or his spouse "has a financial interest … in a party" "shall" ordinarily "disqualify himself" from any matter involving that party. That default rule has substantial provenance. But like most

default rules, it does not apply in every situation. "Notwithstanding" §455(b)(4), if a judge "discover[s]" a disqualifying financial interest "after substantial judicial time has been devoted to [a] matter," then disqualification "is not required" as long as the interest is not one "that could be substantially affected by the outcome" and the judge or spouse, "as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification." 28 U.S.C. §455(f). In other words, "[w]here a judge discovers a financial interest and divests in accordance with §455(f), disqualification under §455(b)(4) is no longer required." *Shell Oil Co. v. United States*, 672 F.3d 1283, 1290 (Fed. Cir. 2012).

The first question in this case is whether Judge Morgan's transfer of Cisco shares into a blind trust satisfies §455(f). The court of appeals answered that question by focusing on the word "divest" in isolation and suggesting that a blind trust would not be an adequate substitute for an outright sale in other contexts. That approach was doubly erroneous. Statutory terms cannot be properly interpreted, let alone properly applied, when viewed in isolation. And the relevant context is supplied by the specific problem to which a statutory provision is addressed.

As this Court has repeatedly admonished, because words only take meaning in light of the context in which they arise, they "'must be read' and interpreted 'in their context.'" *Sw. Airlines Co. v. Saxon*, 142 S.Ct. 1783, 1788 (2022) (quoting *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S.Ct. 1881, 1888 (2019)); *see, e.g.*, *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 457 (2012); *Corley v. United States*, 556

U.S. 303, 315 n.5 (2009). "In textual interpretation, context is everything." Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 37 (1998).

The critical context here is supplied by the problem at which §455(f) is directed and is apparent on the face of the statute. Section 455(f) affords judges the option to "divest" themselves of a "financial interest" *only* where they discover the interest "after substantial judicial time has been devoted to the matter." That context is critical, as it means that the appearance-of-impropriety concern Judge Morgan sought to ameliorate via a blind trust is inherent in the universe of cases to which §455(f) specifically applies. A judge who has "devoted" "substantial judicial time … to [a] matter" will almost inevitably possess some arguably material non-public information about the parties and will often be on the cusp of entering a decision that will impact the parties' stock prices. In that context—*i.e.*, the specific context at which §455(f) is directed—divestiture via a blind trust may be the only means of divestiture that does not create a nontrivial appearance of impropriety.

Construing §455(f)'s divestiture option to allow only outright sales, as the Federal Circuit did here, thus defeats the promise of §455(f) and puts the statute at war with itself. Subsection (f) cross-references "the preceding provisions" of §455. The first such provision, §455(a), requires judges to "disqualify [them]sel[ves] in any proceeding in which [their] impartiality might reasonably be questioned." 28 U.S.C. §455(a). In light of that "preceding provision[]," if the Federal Circuit's miserly construction is correct, then §455(f)'s promise of a path

to avoid recusal obligations and the attendant waste of judicial resources will often prove illusory. If a judge who "discover[s]" that she or her spouse has an interest in a party "after substantial judicial time has been devoted to the matter" does *not* do something to divest the stock, then §455(b)(4) plainly requires recusal. But where a judge has material non-public information suggesting the stock is overvalued (or will be overvalued in light of an impending ruling), then an outright sale on the eve of an adverse ruling and attendant market drop raises a separate problem that also requires recusal under §455(a). The only option that avoids this dilemma and fulfills the promise of §455(f) is a divestiture into a blind trust.

"Congress passed §455(f) to mitigate unnecessary restrictions on a judge's ability to hear cases." *In re Literary Works in Elec. Databases Copyright Litig.*, 509 F.3d 136, 142 (2d Cir. 2007). It plainly did not amend the statute for nothing; nor did it create a safety valve that applies only in exceptional cases where the financial asset is not traded or the judge has devoted "substantial judicial time" to a matter without acquiring any arguably material non-public information. Yet if the Federal Circuit's narrow construction of §455(f) is correct, then Congress' deliberate effort to add a safety valve to ameliorate the harsh result of eleventh-hour vacatur would be rendered largely illusory. That cannot be right.

The Federal Circuit relegated the appearance-of-impropriety concerns that motivated Judge Morgan to employ a blind trust in lieu of an outright sale to a footnote. But that footnote misses the point. The footnote suggested that a recently enacted statute

would protect judges from insider-trading liability if they sell stock in this context. *See* App.15 n.9 (discussing the STOCK Act). But whether or not judges would face actual liability for insider trading has little to no impact on how the public (and the parties) will perceive a judge selling stock right before issuing a ruling denting the stock price. And perception is the watchword here. Section 455 exists "to promote public confidence in the integrity of the judicial process." *Liljeberg*, 486 U.S. at 860; *see also Fowler v. Butts*, 829 F.3d 788, 793 (7th Cir. 2016) (this is true of §455(b) as well as §455(a)). That a judge in a §455(f) case will not get a call from the SEC does nothing to undermine the appearance problem with a conveniently timed sale (and might actually exacerbate it, it if became known).

The Federal Circuit proceeded as if anything short of an outright sale could not satisfy §455(f) because "divest" means "deprive (someone) of power, rights, or possessions." Google Oxford Languages Dictionary, https://bit.ly/3bvzZra (last visited Sept. 12, 2022); *see* App.11 (citing similar definitions from the time of enactment). But a judge who transfers shares into a blind trust does deprive herself of rights and powers over the stock, including the critical power to determine when and whether to sell it. That is the defining characteristic of a blind trust. Unlike many assets where physical possession is critical, the right to possess is trivial for shares in publicly traded companies. Indeed, it is the rare shareholder who has physical possession of her shares; nearly all shares are held by third parties. *See* FINRA, *It's Your Stock, Just Not in Your Name: Explaining 'Street Names'* (Dec. 21, 2015), https://bit.ly/3QyrDhL. When it comes to

publicly traded shares, the most important power is the authority to decide when to sell and at what price—and that is precisely what is divested by the creation of a blind trust. Once a blind trust is created, the judge no longer controls whether the shares are sold or held, and may not even know whether the trust has sold them.

Given that reality, it is no surprise that lawyers, legislators, and judges consistently refer to placing assets in a blind trust as a form of divesting a financial interest in the specific context of government officials and their recusal obligations. *See, e.g.*, *Trump v. Mazars USA, LLP*, 39 F.4th 774, 797 (D.C. Cir. 2022) ("Among recent Presidents, according to the Committee, only President Trump declined to divest himself of his business interests and place his assets in an independent blind trust[.]"); Br. of Former Federal Ethics Officials, *Trump v. Mazars USA, LLP*, Nos. 19-715, 19-760, 2020 WL 1373018, at *11, 16 (U.S. Mar. 4, 2020) (noting that President Eisenhower "divested of his personal finances by establishing a blind trust" and that "Rockefeller was prepared to comply with the practice of his predecessors and divest of his enormous financial interests by transferring his assets into a blind trust"); CRS Reports & Analysis, *Legal Sidebar: Conflicts of Interest and the Presidency* (Oct. 14, 2016), https://bit.ly/3btjNXr (explaining that, for executive branch officials with a potential conflict arising from a financial interest, "one option for … divestiture" of the interest is to "establish a qualified blind trust"). In fact, the House of Representatives recently passed a bill providing that "[t]he President and Vice-President shall, within 30 days of assuming office, divest of all financial interests that pose a

conflict of interest … by … placing each such interest in a qualified blind trust." H.R. 1, 116th Cong., title VIII, §8012 (2019).

The Federal Circuit breezed past all of this on-point usage. But it is hard to imagine better evidence of what the relevant statutory phrase means. "The meaning of language depends on the way a linguistic community uses words and phrases in context." John F. Manning, *What Divides Textualists From Purposivists?*, 106 Colum. L. Rev. 70, 78 (2006); *accord, e.g.*, *Hedden v. Richard*, 149 U.S. 346, 349 (1893). The relevant community has long employed the phrase in question (divest a financial interest) to include what Judge Morgan did (place stock in a blind trust).

The Federal Circuit ignored all that on-point usage based on a concern that broad use of blind trusts would run counter to judges' statutory duty under §455(c) to inform themselves of their financial interests. App.14-15. But that once again ignores the specific problem addressed by §455(f) and the narrow circumstances in which Judge Morgan employed a blind trust. Section 455(f) has nothing to do with judges' general obligation to inform themselves about financial interests. Indeed, §455(f) applies only when a judge is already aware of a financial interest (albeit belatedly) and seeks to avoid wasting the substantial resources she has already invested in the matter. In that context, a blind trust is an appropriate means of divesting a financial interest without creating an appearance problem. And that is the precise and only way that Judge Morgan employed a blind trust. He did not put all his assets in a blind trust and call it a

day. He divested himself (and his wife) of any power over his wife's Cisco shares via a blind trust, which is all that §455(f) should or does require.

The Federal Circuit's contrary construction is deeply flawed and dangerously so. It puts judges that have invested substantial judicial time in a matter — *i.e.*, the precise judges to whom §455(f) is directed—in an impossible position. It largely defeats the purposes of §455(f) and creates artificial pressure for judges to sell shares in ways that create appearance problems. The decision below thus runs directly contrary to the ameliorative purposes of §455(f) and ignores the "guiding consideration" of avoiding the appearance of impropriety. *Liljeberg*, 486 U.S. at 869-70 (quoting *Pub. Utils. Comm'n of D.C. v. Pollak*, 343 U.S. 451, 466-67 (1952) (Frankfurter, J., in chambers)). Only this Court can restore the promise of §455(f).

II. The Federal Circuit's Harmless Error Analysis Conflicts With This Court's Caselaw And Decisions Of Other Circuits.

Even if Judge Morgan's good-faith effort to avoid an appearance problem by employing a blind trust in lieu of an outright sale somehow violated §455, it is the prototypical harmless error that does not merit the strong medicine of vacatur. This Court has already made clear that "conclu[ding] that a [§455] violation occurred does not … end our inquiry." *Liljeberg*, 486 U.S. at 862. Section 455 does not prescribe vacatur as the automatic remedy for a mistaken failure to recuse. Instead, consistent with Congress' general instruction that courts should not set aside erroneous judgments unless the "errors" at issue "affect the substantial rights of the parties," 28 U.S.C. §2111; *see also* Fed. R.

Civ. P. 61, Congress "delegated to the judiciary the task of fashioning the remedies that will best serve the purpose of [§455]." *Liljeberg*, 486 U.S. at 862. Upon finding a failure to recuse in violation of §455, the question becomes whether non-recusal affected the parties' rights and whether vacatur would promote justice and the public's perception of the courts.

The Federal Circuit paid lip service to *Liljeberg*, but its analysis proceeded at the wrong level of generality while focusing on systemic concerns having little to do with §455(f) or the specifics of this case. Judge Morgan's good faith, the trivial financial stake at issue, the fact that his rulings ran counter to any financial interest, and the absence of any actual bias all gave way to a felt-need to show that the court was sensitive to the importance of robust financial disclosure. The result is an opinion that squarely conflicts with this Court's precedents and decisions of other circuits.

The decision below conflicts with *Liljeberg* at every level. *Liljeberg* involved a judge who ruled in favor of a university where the judge sat as a trustee and failed to immediately disclose the conflict. This case involves the polar opposite. A judge who ruled against his supposed financial interest, brought the issue to the parties' attention immediately, and attempted to remedy it in good faith. Moreover, while *Liljeberg* underscored that the guiding principle is avoiding the appearance of bias and impropriety, the Federal Circuit all but ignored that Judge Morgan opted to employ a blind trust in lieu of an outright sale precisely to avoid an appearance of impropriety. Even if that choice was not available under the statute,

Judge Morgan's good-faith appearance-protecting motivations should have made this an easy case to rule out vacatur as a remedy. Instead, the Federal Circuit found that every *Liljeberg* factor favored vacatur—and erred at every turn.

The first "consider[ation]" under *Liljeberg* is "the risk of injustice to the parties in the particular case." 486 U.S. at 864. All parties, including the prevailing party below who often, as here, has done nothing even arguably improper, must be taken into account. *Liljeberg* is explicit on this point: Vacatur is not the appropriate remedy where "it would … be unfair to deprive the prevailing party of its judgment." *Id.* at 868. Yet the court here paid no attention to that instruction or the massive harm Centripetal stands to suffer from the minor difference between a blind trust (which the court ruled violated §455) and a market sale (which would have complied with the statute and not affected any resulting ruling in the least).

It is difficult to overstate those harms to petitioner and other small investors who seek to vindicate their patent rights against long odds. The costs of litigating this case have been enormous for a start-up that would prefer to invest its limited resources in further innovation. Forcing the parties to start over before a brand-new judge will require Centripetal to expend even more resources to educate the new judge on the intricacies of the complex technologies at issue in this case—and that is to say nothing of the costs of potentially redoing a trial (and an inevitable appeal that may cover the merits issues the panel below refused to reach). The resulting costs will work serious prejudice to Centripetal, a small

inventor, but are just a cost of doing business to Cisco, a massive company with a war chest set aside for protracted patent litigation. Adding insult to injury, Centripetal stands to suffer all of these harms (and more) from vacatur simply because Judge Morgan, in trying to avoid a serious appearance-of-partiality problem inherent in the §455(f) context, chose an option the court of appeals later decided was noncompliant. If that is not an injustice, then it is hard to see what would be.

The Federal Circuit swept all of that aside on the misguided theory that "the time and cost of the litigation thus far, the complexity of the case, and the delay in obtaining judgment" cannot support harmless error here because they will "exist in every case where a ground for recusal arises after significant trial proceedings." App.24. That is factually wrong and legally impermissible. Few cases will involve the potential waste of judicial and client resources occasioned by a six-week bench trial. And abstracting away from the specifics of the particular case is the antithesis of proper harmless-error review. *See, e.g.*, *United States v. Williams*, 949 F.3d 1056, 1063-66 (7th Cir. 2020) (summarizing circuit precedent and explaining that the harmlessness determination in each case depended "on the facts in that case"). "The crucial" issue for harmless-error review "is the impact of the thing done wrong … in the total setting." *Kotteakos v. United States*, 328 U.S. 750, 764 (1946). For that reason, this Court has long warned against applying harmless-error review at too high a level of generality, since that may lead a court to "find an error harmful, when, in fact, in the particular case before the court, it is not." *Shinseki v. Sanders*, 556 U.S. 396,

407 (2009) (overruling Federal Circuit opinion and reiterating that "whether an error is harmless" depends on "case-specific application of judgment"). If time, cost, and complexity all fall decidedly on one side in a given case and all underscore that it would be especially unjust to vacate in that case, then the simple fact that those considerations may not apply as strongly or neatly in other cases does not undermine their support for harmless error *in that case*.

Nor can it seriously be argued that justice favors anything other than upholding the judgment in this case (or at least allowing the court of appeals to reach and resolve the merits). Cisco explicitly disclaimed any claim of bias, *or even the appearance of bias*, under §455(a). *See* CAFC Oral Arg. Tr. at 0:21-1:12. And Cisco has made no argument that it stands to suffer any particular prejudice from having the appellate court review Judge Morgan's decisions, which he made in substance before learning about the stock. Nevertheless, the Federal Circuit not only breezed past Cisco's concession, but held that "a showing of actual bias" is irrelevant in the context of "a §455(b)(4) violation." App.23. But even if actual bias is irrelevant to the statutory question, it remains highly relevant to harmless-error inquiry, as numerous courts have correctly recognized. *See, e.g.*, *In re Allied Signal Inc.*, 891 F.2d 974, 975 (1st Cir. 1989). Worse still, the Federal Circuit doubled-down on this misguided approach in dismissing as irrelevant the fact that Judge Morgan ruled *against* his supposed financial interest. It is hard to imagine a ruling more at odds with this Court's instruction in *Liljeberg* that the "guiding consideration" in assessing whether

vacatur is an appropriate remedy is the appearance of partiality.

The decision below not only conflicts with this Court's cases, but is irreconcilable with decisions of sister circuits paying close attention to the prejudice a victorious party stands to suffer if a deserved judgment is overturned due to the strictures of §455. *See, e.g.*, *United States v. Cerceda*, 172 F.3d 806, 814-16 (11th Cir. 1999) (en banc) (declining to vacate where retrial would cause the prosecution to "spend significant amounts of time and money in retrying" and the losing defendants "failed to establish any significant possibility that they suffered any harm because of the circumstances that underlie the section 455(a) issue"); *In re Sch. Asbestos Litig.*, 977 F.2d 764, 785-87 (3d Cir. 1992) (declining to vacate where there was no "likelihood of actual bias" and where vacatur "would entail enormous cost to the parties and to the judicial system with little corresponding gain").

The conflict with *Parker v. Connors Steel Co.*, 855 F.2d 1510 (11th Cir. 1988), is stark. *Parker* held that a judge's employment of a law clerk with ties to counsel for a party was harmless where the judge "announced his tentative decision to grant … summary judgment prior to" hiring the clerk. *Id.* at 1526. Given that timing, "the risk that [the judge] based his decision on [the clerk's] involvement is remote," so there was no concern of injustice to the parties. *Id.* So too here: Judge Morgan had drafted the opinion and called for additional evidence on damages well before he learned about the stock. It cannot honestly be argued that the shares influenced his judgment or prejudiced Cisco, and Cisco has

waived any such argued in all events. Had the court of appeals here seriously considered the prejudice Centripetal stands to suffer from vacatur, it (like its sister circuits) would have found harmless error.

The court's application of the second *Liljeberg* consideration ("the risk that the denial of relief will produce injustice in other cases," 486 U.S. at 864) was no less flawed. The operative inquiry here is whether a failure to vacate could be read "as a nod of approval for [the judge's] handling of the situation," *In re Continental Airlines Corp.*, 901 F.2d 1259, 1263 (5th Cir. 1990), or "as a license to make such circumstances more frequent," *Doddy v. Oxy USA, Inc.*, 101 F.3d 448, 459 (5th Cir. 1996). Even assuming Judge Morgan should have sold the stock outright despite his concerns about the appearance of impropriety, non-vacatur here will hardly be interpreted as a message of approval, especially now that the circuit court has held that a blind trust does not constitute "divest[iture]" under §455(f). *See, e.g.*, *Patterson*, 335 F.3d at 486 ("[H]olding that Judge Cobb erred by failing to stand recused will serve as a cautionary note to future district courts considering recusal motions in similar circumstances. Thus, we find the risk of injustice to other cases to be slight[.]"). Given that Judge Morgan took the late-discovered financial interest seriously and took prompt action designed to remedy it, the fact that he chose the wrong remedy will not cause that error to be replicated. Instead, the Federal Circuit's §455(f) ruling will send a clear message to lower court judges that they should sell shares outright rather than employ a blind trust.

The court's application of the third factor (whether vacatur would improve or impair public perception of courts) was, if anything, even worse. The court minimized the timing of Judge Morgan's discovery and decision to place the stock in a blind trust. But this is not a case where a judge acted with indifference to public perceptions. Even if Judge Morgan chose the wrong mechanism to address the appearance issue inherent in the §455(f) context, that choice creates no meaningful perception problem. To the contrary, the fact that he disclosed the issue immediately and took prompt action designed to remedy it (and designed to avoid appearance problems)—all in stark contrast to the judge in *Liljeberg*—matters far more than whether he picked the wrong remedy. In fact, throwing out a substantial verdict based on the district judge's good-faith effort to solve a conflict problem without creating an insider-trading problem is more likely to create a perception problem. As this Court recently noted, "revers[ing] in cases where, in fact, the error is harmless … diminishes the public's confidence in the fair and effective operation of the judicial system." *Shinseki*, 556 U.S. at 409; *accord, e.g.*, *Parker*, 855 F.2d at 1527.

The risk of a public-perception hit from non-vacatur is also particularly low here given the court's §455(f) holding and the fact that not even Cisco argues that actual bias infected Judge Morgan's decisions. Other circuits in similar contexts have correctly held that vacatur is the remedy that will undermine public confidence in the courts. *See, e.g.*, *Cerceda*, 172 F.3d at 816; *In re Continental Airlines*, 901 F.2d at 1263.

The Federal Circuit gave short shrift to all the case-specific considerations that counseled against vacatur based on a perception that there is a widespread problem with judicial underreporting of financial interests. But while such systemic concerns may be an appropriate consideration for Congress, they should not skew a court's harmless-error analysis. There is nothing to suggest that Judge Morgan's failure to identify the financial interest here earlier was willful or some sort of recurring error. Section 455(f) itself is premised on the notion that late-discovered interests are inevitable and neither fatal nor malum in se. To deprive Centripetal of its judgment based on the failures of other judges in other cases is the height of unfairness. If the Federal Circuit had kept its focus on the specifics of this case and the guiding principle of preserving an appearance propriety, it could not have ordered vacatur here.

III. The Questions Presented Are Important, And This Case Is An Ideal Vehicle.

The stakes in this case are substantial. Besides conflicting with this Court's and other circuits' cases, the decision below robs §455(f) of most of its ameliorative force. Congress added that provision to §455 for the precise purpose of ameliorating the harsh consequences of a rule of automatic recusal. The decision below sows confusion about both how to comply with §455(f) and the consequences of choosing the wrong remedy. Employing a blind trust to avoid an appearance-of-impropriety problem specific to cases where judges have already spent considerable judicial time learning about the parties makes good practical sense for all the reasons Judge Morgan cited.

If that is not an available option for "divesting" within the meaning of §455(f), that should be made clear to lower courts. Similarly, the proper appellate remedy for violations of §455(f) should be clear. Both §455(f) and *Liljeberg* warn against a rule of automatic vacatur for good-faith efforts to eliminate financial interests and appearance problems.

Moreover, the stakes for Centripetal and other small inventors are substantial. The decision below wipes out the largest patent damages award in U.S. history, without so much as a word addressing the merits of Judge Morgan's decisions, most of which were reached in substance before he became aware of his wife's small Cisco stake. But even beyond this specific case, the decision below cannot help but chill the enforcement of valid patents by small inventors. A small inventor armed with a validly issue patent and strong evidence of infringement by a publicly traded incumbent faces a steep climb to vindicate its rights. Not only do companies like Cisco have an ample war chest to fight the principal patent litigation, they routinely open up a second front by challenging the validity of the patents before the PTO. Fighting that kind of two-front war is standard operating procedure for entrenched incumbents, but a devastating burden for innovative start-ups. If those start-ups face the prospect of a do-over even after they successfully run the gauntlet based on judicial ownership of trivial amounts of widely held stock, despite the judge's good-faith effort to solve the problem, many will conclude that the deck is stacked. Put simply, the decision below contributes to, rather than eliminates, the perception that the judicial system is partial to the largest players.

In the end, both Congress in §455(f) and this Court in *Liljeberg* made clear that a strict rule of judicial impartiality need not translate to an inevitable waste of judicial resources when a financial interest (or the proper interpretation of §455) does not emerge until substantial judicial resources have been invested. Congress specifically rejected a rule of automatic recusal and provided a safety valve for late-discovered conflicts. This Court, in turn, eschewed a rule of automatic vacatur in favor of a case-specific analysis that rewards good faith and treats avoiding an appearance of bias and impropriety as its guiding principle. The decision below runs contrary to the judgements of Congress and this Court, and sows confusion in an area that demands clarity. This Court should grant review and restore the ameliorative policies behind §455(f) and *Liljeberg*.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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