



No. 05-1248

---

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

---

TECHNOLOGY LICENSING CORPORATION,

*Petitioner,*

v.

GENNUM CORPORATION,

*Respondent.*

---

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

---

**RESPONDENT'S BRIEF IN OPPOSITION**

---

J. DONALD MCCARTHY  
*(Counsel of Record)*  
JONES DAY  
555 West Fifth Street  
Suite 4600  
Los Angeles, CA 90013  
(213) 489-3939

GREGORY A. CASTANIAS  
THOMAS J. DAVIS  
JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001  
(202) 879-3939

*Counsel for Respondent*

**QUESTION PRESENTED**

Whether the Court of Appeals, in denying a requested writ of mandamus, correctly decided that where a third-party defendant filed a third-party complaint against the original plaintiff seeking a declaratory judgment of patent invalidity, unenforceability, and noninfringement, and the original plaintiff responded with a counterclaim for patent infringement seeking an injunction and damages, but then dropped its damages claim against the third-party defendant, the counterclaim plaintiff's affirmative election of a solely equitable remedy confers no right to a jury trial.

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Court Rule 29.6, there are no parent corporations or any publicly held companies that own 10 percent or more of the stock of respondent Gennum Corporation.

---

**TABLE OF CONTENTS**

QUESTION PRESENTED .....i  
CORPORATE DISCLOSURE STATEMENT .....ii  
TABLE OF AUTHORITIES .....iv  
RESPONDENT’S BRIEF IN OPPOSITION ..... 1  
STATEMENT ..... 1  
REASONS FOR DENYING THE PETITION.....3  
I. THE FEDERAL CIRCUIT’S DECISION IS  
CONSISTENT WITH THIS COURT’S  
SEVENTH AMENDMENT PRECEDENTS  
AND ITS OWN JURISPRUDENCE.....4  
II. PETITIONER’S STRATEGIC, ELEVENTH-  
HOUR WITHDRAWAL OF ITS DAMAGES  
CLAIM MAKES THIS CASE A POOR  
VEHICLE FOR CONSIDERING THE  
QUESTION, AND DEMONSTRATES  
THAT THE ISSUE IS NEITHER  
IMPORTANT NOR RECURRING.....8  
CONCLUSION .....10

**TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page</b>
<i>Abbott Labs. v. Gardner</i> , 387 U.S. 136 (1967).....	6
<i>Amoco Prod. Co. v. Village of Gambell</i> , 480 U.S. 531 (1987) .....	6
<i>Glaxo Group Ltd. v. Apotex, Inc.</i> , No. 00-5791, 2001 WL 1246628 (N.D. Ill. Oct. 16, 2001) .....	9
<i>Granfinanciera, S.A. v. Nordberg</i> , 492 U.S. 33 (1989). .....	4
<i>Great-West Life &amp; Annuity Ins. Co. v. Knudson</i> , 534 U.S. 204 (2002) .....	6
<i>Gulfstream Aerospace Corp. v. Mayacamas Corp.</i> , 485 U.S. 271 (1988) .....	4
<i>Hoechst Marion Roussel, Inc. v. Par Pharm. Inc.</i> , No. 95-3673, 1996 WL 468593 (D.N.J. Mar. 14, 1996)...	9
<i>KAO Corp. v. Unilever U.S., Inc.</i> , No. 01-680, 2003 WL 1905635 (D. Del. Apr. 17, 2003) .....	9
<i>In re Lockwood</i> , 50 F.3d 966 (Fed. Cir.), <i>vacated</i> , 515 U.S. 1182 (1995).....	5, 6, 7
<i>Markman v. Westview Instruments</i> , 517 U.S. 370 (1996) .....	5
<i>Mercelis v. Wilson</i> , 235 U.S. 579 (1915).....	6
<i>Mertens v. Hewitt Assocs.</i> , 508 U.S. 248 (1993) .....	6

---

**TABLE OF AUTHORITIES (continued)**

	<b>Page</b>
<i>Mowry v. Whitney</i> , 81 U.S. 434 (1871).....	6
<i>O2 Micro Intern. Ltd. v. Monolithic Power Sys., Inc.</i> , 399 F. Supp. 2d 1064 (N.D. Cal. 2005) .....	10
<i>Parklane Hosiery Co. v. Shore</i> , 439 U.S. 322 (1979) .....	6
<i>Pfizer v. Novopharm Ltd.</i> , No. 00-1475, 2001 WL 477163 (N.D. Ill. May 3, 2001) .....	9
<i>Proprietors of Charles River Bridge v. Proprietors of Warren Bridge</i> , 36 U.S. 420 (1837) .....	6
<i>Pulliam v. Allen</i> , 466 U.S. 522 (1984) .....	6
<i>Sanofi-Synthelabo v. Apotex, Inc.</i> , No. 02-2255, 2002 WL 1917871 (S.D.N.Y. Aug. 20, 2002) .....	9
<i>In re SGS-Thomson Microelectronics, Inc.</i> , 60 F.3d 839 (Fed. Cir. 1995) (table).....	7
<i>Tegal Corp. v. Tokyo Electron Am., Inc.</i> , 257 F.3d 1331 (Fed. Cir. 2001) .....	5, 7
<i>Truax v. Corrigan</i> , 257 U.S. 312 (1921) .....	6
<i>Tull v. United States</i> , 481 U.S. 412 (1987).....	3, 4
<i>United States v. San Jacinto Tin Co.</i> , 125 U.S. 273 (1888).....	6
<i>Warner-Lambert Co. v. Purepac Pharm. Co.</i> , No. 98-2749, 2001 WL 883232 (D.N.J. Mar. 30, 2001) .....	9

**TABLE OF AUTHORITIES (continued)**

	<b>Page</b>
<i>Weinberger v. Romero-Barcelo</i> , 456 U.S. 305 (1982) .....	6
<i>Ex parte Wood</i> , 22 U.S. (9 Wheat.) 603 (1824).....	5
<b>Federal Statutes &amp; Rules</b>	
28 U.S.C. § 636(c) .....	2
Fed. Cir. R. 47.....	7
Fed. R. App. P. 32.1.....	7
Fed. R. Civ. P. 39.....	2

---

## **RESPONDENT'S BRIEF IN OPPOSITION**

In this declaratory-judgment action, Respondent Gennum Corporation (Gennum) seeks to have Petitioner Technology Licensing Corporation (TLC)'s patents declared invalid. TLC has counterclaimed for infringement and has withdrawn any claim of damages, leaving TLC seeking only injunctive relief. In denying a requested writ of mandamus and thus upholding the decision of the district court, the Federal Circuit held that a Seventh Amendment jury trial right does not attach to a patent-infringement claim seeking a wholly equitable remedy.

TLC's petition should be denied. The Federal Circuit's decision creates no circuit conflict, contravenes none of this Court's precedents, and applies a rule that is both clear and understandable to district courts hearing patent cases. The decision was correct on the merits.

Furthermore, even if reasons did exist to otherwise merit this Court's review, this case would present an extraordinarily poor vehicle for such review. In the days before trial had been scheduled to begin, TLC radically altered the procedural posture of the case by making a strategic decision to withdraw its damages claim and seek injunctive relief only. Such an unorthodox fact pattern is unlikely to be repeated in the future, even in the limited class of civil cases involving patent infringement. As the Federal Circuit itself observed, "[b]ecause a party such as TLC will ordinarily be able to dictate whether it will have a jury trial by choosing whether to limit itself to equitable relief, the problem faced by TLC is not likely to recur with frequency in conventional infringement actions." Pet. App. 9a.

### **STATEMENT**

1. This case arises out of a patent-infringement suit filed in the Northern District of California by TLC against

Videotek, Inc., a purchaser of Gennum's computer chips. (The case was originally assigned to Judge Charles Breyer but, over two years after filing, and just three months before trial was scheduled to begin, the case was reassigned by the parties' consent to Magistrate Judge Richard Seeborg. *See* 28 U.S.C. § 636(c); Pet. App. 36a.) Videotek sought indemnification from Gennum, bringing it in as a third-party defendant. In response, Gennum filed a third-party declaratory-judgment complaint against TLC, seeking a declaration that TLC's patents were invalid, unenforceable, and not infringed. TLC counterclaimed, alleging Gennum's infringement, seeking damages, and requesting injunctive relief. Each side desired a jury trial. Videotek eventually settled with TLC. Gennum maintained its declaratory-judgment action against TLC, however. Pet. App. 1a-2a.

2. Before trial, Gennum filed a motion in limine challenging TLC's damages-calculation formula. The district court granted Gennum's motion, which "had the effect of significantly reducing the amount of damages TLC would be able to recover from Gennum if infringement were found." Pet. App. 2a. Instead of pursuing its remaining damages claim, however, TLC—on "the day before trial was scheduled to commence," Pet. App. 27a n.3—withdrawn entirely its claim for damages, asserting that it would instead only seek injunctive relief at trial. TLC asserted that it still had a right to a jury trial, so Gennum filed a motion with the district court, under Fed. R. Civ. P. 39(a)(2), seeking a determination that such a right did not exist. Pet. App. 2a.

3. The district court granted Gennum's motion, holding that TLC was not entitled to a jury trial based on TLC's withdrawal of its claim for damages. Pet. App. 25a.

4. TLC then sought mandamus from the Federal Circuit, which "concur[red] in the analysis and conclusion reached by the magistrate judge that TLC was not entitled to a jury trial under our decisions and those of the Supreme Court" (Pet. App. 4a), and thus denied that petition.

---

a. Applying this Court's decision in *Tull v. United States*, 481 U.S. 412 (1987), the Court of Appeals examined whether TLC's suit was analogous to a suit at common law, both by comparing the petitioner's suit to actions brought in eighteenth-century England, and by examining whether its asserted remedy was legal or equitable in nature. *Id.* at 417-18. Looking to the first prong of the *Tull* analysis, the Court of Appeals concluded that, in eighteenth-century England, a patent-infringement plaintiff could bring suit in either a court of law or a court of equity, that choice dependent on whether he sought money damages or injunctive relief. In doing so, the court rejected the argument, advanced by the petitioner and the dissenting judge, that a declaratory-judgment action for patent invalidity was necessarily an action at law in the eighteenth century. Pet. App. 3a-4a, 4a-6a.

b. Looking to the second prong of the *Tull* analysis, the court found that TLC's action sought only equitable relief in the form of an injunction. Taking both factors into account, the court held that this case would have been brought in an English court of equity, not a court of law, and thus no Seventh Amendment rights applied. Pet. App. 3a, 6a.

### **REASONS FOR DENYING THE PETITION**

The petition for a writ of certiorari should be denied. The Federal Circuit's decision in this case presents no conflict among the Courts of Appeals, it is consistent with that Court's own prior decisions, and, most importantly, it is foursquare with this Court's prior Seventh Amendment precedents. Further, the unusual facts of this case make it an exceedingly poor vehicle for review: TLC's eleventh-hour withdrawal of its damages claim, as the Court of Appeals recognized, was a self-inflicted "problem" that "is not likely to recur with frequency in conventional infringement

actions.” Pet. App. 9a. These factors also counsel denial of the petition.

**I. THE FEDERAL CIRCUIT’S DECISION IS CONSISTENT WITH THIS COURT’S SEVENTH AMENDMENT PRECEDENTS AND ITS OWN JURISPRUDENCE.**

In *Tull v. United States*, this Court held that the Seventh Amendment right to a civil jury trial only extended to those actions that were “analogous to ‘Suits at common law.’” 481 U.S. at 417 (quoting U.S. CONST. amd. VII). In order to ascertain whether the constitutional right exists in a given case, a court must “examine both the nature of the action and of the remedy sought.” *Id.* First, the court “must compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity” and second, must “examine the remedy sought and determine whether it is legal or equitable in nature.” *Id.* at 417-18. “The second stage of this analysis is more important than the first.” *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989). The Federal Circuit’s holding, that a jury trial is not constitutionally compelled for a patentee-defendant in a declaratory-judgment action, in which the defendant withdrew its claim for damages and sought only an injunction by its counterclaim, was plainly correct under this analysis.

Turning to the first prong of *Tull*, the action here was brought as a declaratory-judgment action. However, because “[a]ctions for declaratory judgments are neither legal nor equitable ... courts have therefore had to look to the kind of action that would have been brought had Congress not provided the declaratory judgment remedy.” *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 284 (1988). Prior to the passage of the Declaratory Judgment Act, “a party concerned that its present or future activities

---

might give rise to patent infringement liability had no legal or equitable procedure to test the validity of the patent at issue.” *In re Lockwood*, 50 F.3d 966, 973 (Fed. Cir.), *vacated*, 515 U.S. 1182 (1995); Pet. App. 6a-7a. Instead, a threatened party could only wait to be sued for infringement and then raise the defense of invalidity. *Lockwood*, 50 F.3d at 974.

Based on this historical practice, the Federal Circuit correctly concluded that, without the declaratory-judgment statute, this action could only have been brought as an infringement action by the patentee, with the alleged infringer defending on invalidity grounds. Further, the court concluded that a patentee bringing such an infringement action could do so at law, or in equity, with the choice of forum (and thus of jury *vel non*) dependent upon whether he sought money damages or an injunction against further infringement.<sup>1</sup> Pet. App. 6a.

Further, the Court of Appeals properly rejected the notion that a declaratory-judgment action to invalidate a patent was the analog of the common-law action of *scire facias*. As this Court has held, that doctrine allowed the crown “to repeal patents which have been obtained surreptitiously, or upon false suggestions.” *Ex parte Wood*, 22 U.S. (9 Wheat.) 603,

---

<sup>1</sup> Petitioner cites *Markman v. Westview Instruments*, 517 U.S. 370, 377 (1996), for the proposition that “there is no dispute that infringement cases today must be tried to a jury, as their predecessors were more than two centuries ago.” Pet. 22. However, as an examination of that case reveals, and as the Federal Circuit has recognized in another, earlier decision, the Court’s shorthand references to “infringement cases today” and “their predecessors” did not mean *all* infringement cases regardless of the relief requested. That shorthand “was entirely understandable and appropriate because damages were requested in the original trial litigation” in *Markman*, and thus that language “provides no guidance on how to analyze the case before us, in which damages are not at issue.” *Tegal Corp. v. Tokyo Electron Am., Inc.*, 257 F.3d 1331, 1340 (Fed. Cir. 2001).

609 (1824); *see also United States v. San Jacinto Tin Co.*, 125 U.S. 273, 281 (1888) (noting that *scire facias* is brought when a patent has been procured by “‘fraud ... practiced on the government’”) (quoting *Mowry v. Whitney*, 81 U.S. 434, 441 (1871)); *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 650 (1837) (Story, J., dissenting) (“Where a patent is repealed in chancery, on a *scire facias*, it is at the suit of the king, on the ground, that he was deceived, and his subjects thereby injured.”). As the Court of Appeals here concluded, the modern equivalent of a *scire facias* action is “unenforceability due to inequitable conduct,” not an action to declare a patent invalid. Pet. App. 7a-8a; *Lockwood*, 50 F.3d at 975 n.9.

Turning to the second, “more important” prong of the *Tull* analysis, the Federal Circuit observed that TLC was seeking only an injunction, having affirmatively disavowed any claim to seek damages at trial. “It goes without saying that an injunction is an equitable remedy.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311 (1982).<sup>2</sup> It can hardly be disputed that had TLC brought an infringement action for mere injunctive relief in 1791, the action would have been required to be pursued on the equity side, without a jury.

---

<sup>2</sup> *See also Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 211 n.1 (2002) (“injunction is inherently an equitable remedy”); *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993) (“injunction” is “a remedy traditionally viewed as ‘equitable’”); *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987) (noting the “fundamental principle that an injunction is an equitable remedy”); *Pulliam v. Allen*, 466 U.S. 522, 529 (1984) (“[i]njunctive relief was an equitable remedy”); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 337 n.24 (1979) (“petitioners did not have a right to a jury trial in the equitable injunctive action”); *Abbott Labs. v. Gardner*, 387 U.S. 136, 155 (1967) (“injunctive remedies are equitable in nature”); *Truax v. Corrigan*, 257 U.S. 312, 330 (1921) (noting that an “injunction” is “equitable relief”); *Mercelis v. Wilson*, 235 U.S. 579, 582 (1915) (injunction is “purely equitable relief” for which “there was, of course, no right to demand a trial by jury”).

Taking both *Tull* factors into account—an analogous 18th-century action that was either legal or equitable depending on the remedy chosen by the complainant, and the petitioner’s election here of an unambiguously equitable remedy—the court below properly held that petitioner’s action was not analogous to a “Suit[] at common law.”

Petitioner’s further attempt to classify Federal Circuit precedent as internally inconsistent is inaccurate. In each published opinion of that court,<sup>3</sup> the patentee’s choice to seek (or not seek) a damages remedy was dispositive of the Seventh Amendment question. In *Lockwood*, the patentee brought an infringement action for both damages and injunctive relief, and the court concluded that it was entitled to a jury trial. *Lockwood*, 50 F.3d at 976. In *Tegal Corp. v. Tokyo Electron America, Inc.*, 257 F.3d 1331, 1341 (Fed. Cir. 2001), the patentee brought an infringement action and sought only an injunction; the Court held that, unlike in *Lockwood*, that factor made the cause of action one in equity,

---

<sup>3</sup> Indicative of its lack of support in the published, precedential decisions of the Federal Circuit, TLC cites and relies extensively (“*passim*,” Pet. v; see Pet. 12-15, 17-18) on the opinion in *In re SGS-Thomson Microelectronics, Inc.*, 60 F.3d 839 (Fed. Cir.) (table), *cert. denied*, 516 U.S. 931 (1995). However, *SGS-Thomson* is a non-precedential opinion which “must not be employed or cited as precedent” under the Federal Circuit’s existing local rules. Fed. Cir. R. 47(6)(b); see Pet. App. 30a n.6. It thus could not contribute to “confusion” in the lower courts. The fact that the decision is on electronic databases, Pet. 12 n.4, does not change its essential, non-citable, non-precedential nature.

The recent prospective change to the Federal Rules of Appellate Procedure that bars appellate courts from “prohibit[ing] or restrict[ing] the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been designated as ‘unpublished,’ ‘not for publication,’ ‘non-precedential,’ ‘not precedent,’ or the like,” Fed. R. App. P. 32.1(a)(i), does not change this fact. First, the rule itself applies only to opinions “issued on or after January 1, 2007.” *Id.* 32.1(a)(ii). *SGS-Thompson* was issued in 1995. Second, and more importantly, the rule makes such opinions citable in briefs, but still does not make them binding precedent.

and as such provided no Seventh Amendment jury-trial right. In that way, this case is similar to *Tegal*—the counterclaim plaintiff here expressly abjured a damages remedy, and therefore brought an action in equity, foreclosing a jury-trial right.

In sum, the Federal Circuit’s decision creates no conflict among the Courts of Appeals; it is consistent with all relevant precedent; and it is correct besides. And it applies a clear standard that can easily be utilized by lower courts in future cases.

**II. PETITIONER’S STRATEGIC, ELEVENTH-HOUR WITHDRAWAL OF ITS DAMAGES CLAIM MAKES THIS CASE A POOR VEHICLE FOR CONSIDERING THE QUESTION, AND DEMONSTRATES THAT THE ISSUE IS NEITHER IMPORTANT NOR RECURRING**

Petitioner characterizes this case as presenting “a straightforward question” of “whether a party in an action for declaratory judgment of patent invalidity and non-infringement has a right to a jury trial where the patentee seeks no damages on its infringement counterclaim.” Pet. App. 3. But the procedural posture of this case is anything but “straightforward”: TLC did not merely “seek no damages”; rather, it affirmatively (and strategically) disclaimed its damages remedy—literally on the eve of trial. App. 1a-2a, *infra*; Pet. App. 27a.

As the Federal Circuit recognized, this strategic choice on TLC’s part renders this case highly unusual, if not unique, even within the already-limited context of civil patent infringement suits involving declaratory-judgment claims: “Because a party such as TLC will ordinarily be able to dictate whether it will have a jury trial by choosing whether to limit itself to equitable relief, the problem faced by TLC is not likely to recur with frequency in conventional

---

infringement actions.” Pet. App. 9a. Although TLC seeks to characterize this case as presenting an issue “of extraordinary national importance” and “warrant[ing] this Court’s immediate resolution” (Pet. 7), it makes no effort whatsoever to address this self-evident observation by the Court of Appeals. Indeed, TLC mentions its own voluntary act of withdrawal but once. *See* Pet. 4.

Further, the Federal Circuit’s observation that this issue “is not likely to recur with frequency” has been borne out by experience. No case cited by Petitioner follows the fact pattern of this one. And, despite Petitioner’s unquestionably correct observation that “there are literally thousands of patent cases pending in the lower courts at any one time” (Pet. 24), it could come up with only *Lockwood* and *Tegal* (and an unpublished, non-citable opinion) as evidence of the Federal Circuit’s consideration of the Seventh Amendment issue over an eleven-year period. Obviously, this is *not* an issue that has recurred with frequency, nor is it likely to.<sup>4</sup>

---

<sup>4</sup> Petitioner also cites a handful of unpublished district-court opinions to support its claim of “confusion” in the lower courts. Pet. 16-19. A closer look reveals that there is no such “confusion.” The two opinions from the District of New Jersey cited by Petitioner to support its claim that some courts hold that “an accused infringer is entitled to a jury trial on its counterclaim of invalidity, even where the patentee’s infringement action is limited to injunctive relief” (Pet. 16) preceded the Federal Circuit’s decision to the contrary in *Tegal*, decided on July 16, 2001. *See Warner-Lambert Co. v. Purepac Pharm. Co.*, No. 98-2749, 2001 WL 883232 (D.N.J. Mar. 30, 2001); *Hoechst Marion Roussel, Inc. v. Par Pharm. Inc.*, No. 95-3673, 1996 WL 468593 (D.N.J. Mar. 14, 1996). By contrast, Petitioner’s three post-*Tegal* district-court opinions each held, consistent with both *Tegal* and this case, that when a patentee seeks only injunctive relief, there is *no* entitlement to a jury trial. *See KAO Corp. v. Unilever U.S., Inc.*, No. 01-680, 2003 WL 1905635, at \*1 (D. Del. Apr. 17, 2003); *Sanofi-Synthelabo v. Apotex, Inc.*, No. 02-2255, 2002 WL 1917871, at \*6 (S.D.N.Y. Aug. 20, 2002); *Glaxo Group Ltd. v. Apotex, Inc.*, No. 00-5791, 2001 WL 1246628, at \*5 (N.D. Ill. Oct. 16, 2001); *see also Pfizer v. Novopharm Ltd.*, No. 00-1475, 2001 WL 477163, at \*3 (N.D. Ill. May 3, 2001) (pre-*Tegal*). If ever there was “confusion,” *Tegal* has eliminated it.

Simply put, TLC had the right to a jury trial, but TLC itself sabotaged that right by strategically dropping a viable damage claim merely because it would not be able to receive all of the \$77 million in damages that it had originally sought. The Court should not grant certiorari merely to protect TLC from the consequences of its unilateral and easily avoidable strategy choice.

### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. DONALD MCCARTHY  
*(Counsel of Record)*  
 JONES DAY  
 555 West Fifth Street  
 Suite 4600  
 Los Angeles, CA 90013  
 (213) 489-3939

GREGORY A. CASTANIAS  
 THOMAS J. DAVIS  
 JONES DAY  
 51 Louisiana Avenue, N.W.  
 Washington, D.C. 20001  
 (202) 879-3939

*Counsel for Respondent*

April 28, 2006

---

(continued...)

Nor does Petitioner's one published district-court opinion show "confusion." There, as in *Lockwood*, the court held that a jury trial was appropriate where the patentee "did not elect to limit itself to an equitable remedy," but merely had its legal remedy removed from the case before trial. *O2 Micro Int'l. Ltd. v. Monolithic Power Sys., Inc.*, 399 F. Supp. 2d 1064, 1087 (N.D. Cal. 2005). Notably, *O2 Micro* cited the Federal Circuit's opinion in this case, and similarly noted its extremely unusual, "distinguishable" fact pattern. *Id.* This further illustrates the unsuitability of this case as a vehicle for this Court's review.

---