

No. 19-832

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

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APPLE INC.,

*Petitioner,*

v.

VIRNETX INC., LEIDOS, INC.,

*Respondents.*

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

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**BRIEF OF HIGH TECH INVENTORS  
ALLIANCE, HP INC., AND LENOVO  
(UNITED STATES) INC. AS *AMICI CURIAE*  
IN SUPPORT OF THE PETITIONER**

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## INTEREST OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37.2, *amici curiae* High Tech Inventors Alliance, HP Inc., and Lenovo (United States) Inc. respectfully submit this brief as *amici curiae* in support of the petition for certiorari with respect to the first question presented (damages).<sup>1</sup> The High Tech Inventors Alliance (“HTIA”) is a coalition of high technology companies that was created to advocate on patent law and policy issues.<sup>2</sup> HTIA members are some of the most innovative technology companies in the world, creating the computer, software, semiconductor, and communications products and services that support growth in every sector of the economy. HTIA members invest over \$100 billion in research and development each year and collectively hold more than 300,000 patents. HTIA is a strong supporter of the patent system and of effective patent protection. At the same time, its members—like many successful technology companies—have frequently been defendants in suits brought by increasingly sophisticated non-practicing entities seeking a return on litigation as a portfolio investment strategy.

HP Inc. is a global leader in innovative personal computing devices, printers, 3D printing, and related services and solutions. HP owns over 27,000 patents

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, *amici* certify that no counsel for a party authored this brief in whole or in part, and that no such counsel or party (other than *amici* or their counsel) made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties received timely notice of the intent to file this brief and consented to its filing.

<sup>2</sup> HTIA is described at <https://www.hightechinventors.com/>. HTIA members are Adobe, Amazon.com, Cisco, Dell, Google, Intel, Microsoft, Oracle, Salesforce, and Samsung.

and is also targeted as a defendant in patent infringement lawsuits.

Lenovo (United States) Inc. and its affiliates manufacture one of the world's widest portfolios of connected products and data center solutions, and collectively run more than 40 research and development laboratories and employ over three thousand R&D professionals. The Lenovo group of companies own more than 13,700 patents and are also targeted as defendants in patent infringement lawsuits.

Accordingly, *amici* have a strong interest in a patent system that balances the rights of both patent owners and producers who are accused of infringement. This interest includes ensuring that patent damages awards are based on reliable methodologies and circumscribed by principles of apportionment that this Court has held to be required in patent cases.

Being simultaneously patent owners and producers, HTIA members and the other *amici* have extensive experience as both licensors and licensees of intellectual property. HTIA members and the other *amici* are thus familiar with the many complex, circumstance-specific factors and interests—economic, technical, litigation-induced, and strategic—that go into every license or cross-license negotiation. They also must grapple with the interplay between license negotiations and patent damages awards. Often, a company accused of patent infringement will agree to terms of a license that is acceptable in the short term for that company, and even allow the patent holder to insert self-serving language that does not affect the practical obligations for the current licensee, but can be used by the patent owner in later litigation against other companies. These licenses are then given excessive significance in later litigation, distorting patent damages

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