25-1616

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

VICOR CORPORATION,

Appellant,

v.

INTERNATIONAL TRADE COMMISSION,

Appellee,

FII USA INC. and INGRASYS TECHNOLOGY INC.,

Intervenors.

Appeal from the United States International Trade Commission,
Investigation No. 337-TA-1370

LICENSING EXECUTIVES SOCIETY (U.S.A. & CANADA), INC.'S MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF NEITHER PARTY

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 2025-1616

Short Case Caption Vicor Corporation v. ITC

Filing Party/Entity Licensing Executives Society (U.S.A & Canada), Inc.

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 08/27/2025

Signature: /s/ Mark S. Raskin

Name: Mark S. Raskin

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☑ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☑ None/Not Applicable
Licensing Executives Society (U.S.A & Canada), Inc.		

☐ Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☐ Additional pages attached

Theodore A. Wood Wood IP LLC		

5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☐ Yes (file separate notice; see below) ☐ No ☑ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☑ None/Not Applicable ☐ Additional pages attached

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF

Pursuant to Federal Circuit Rule 29(a)(3), Licensing Executives Society (U.S.A. & Canada), Inc. respectfully moves the Court for leave to file the accompanying *amicus curiae* brief in support of neither party.

Appellant Vicor Corporation consents to this motion; Respondent ITC has indicated it does not object; Intervenors FII USA Inc. and Ingrasys Technology, Inc. each have confirmed they will not object.

I. Statement of Interest of *Amicus Curiae*

Licensing Executives Society (U.S.A. & Canada), Inc. ("LES") is a non-profit professional association of intellectual property (IP) licensing and technology transfer professionals. LES's mission is to empower its community to drive strategy, transactions, and deals involving intellectual property business and law. LES also advances best practices in IP transactions and promotes efficient, predictable markets for innovation. LES routinely files amicus briefs to offer practical, neutral perspectives on issues that affect licensing certainty, contracting practices, and reliance interests across industries. LES takes no position on the ultimate outcome of this appeal. A list of LES members is attached to the Certificate of Interest.

LES respectfully requests the Court's permission to file an *amicus curiae* brief in support of neither party in the above captioned matter.

II. Purpose for Amicus Brief

This appeal presents a common but consequential question at the intersection of state contract law and federal patent policy: when, if ever, boilerplate IP-license terms embedded in purchase orders and follow-on email traffic should be treated as part of the parties' agreement. Without favoring either party, LES expects that its brief will assist the Court with articulating technology-neutral principles that promote uniformity, avoid "license-by-boilerplate" outcomes, and respect reliance interests, particularly where Section 337 remedies can disrupt global supply chains.

For the foregoing reasons, *amicus curiae* LES requests that the Court grant it leave to file the corresponding brief.

Respectfully submitted,

Date: August 27, 2025

/s/ Mark S. Raskin

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Counsel for Amicus Curiae
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **LICENSING EXECUTIVES SOCIETY (U.S.A. & CANADA), INC.'S MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF NEITHER PARTY** complies with the requirements of Fed.R.App.P. 32(a)(5) and (6) because it has been prepared in Microsoft Word using 14-point Times New Roman, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Federal Circuit Rule 32(b)(1) because it contains 295 words, excluding the parts of the brief exempted under Fed.R.App.P. 32(f) and Federal Circuit Rule 32(b)(2), according to the count of Microsoft Word.

/s/ Mark S. Raskin
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Theodore A. Wood Wood IP LLC		

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INTEREST OF AMICUS CURIAE

The Licensing Executives Society (U.S.A. & Canada), Inc. (LES) is a non-profit professional association of intellectual property (IP) licensing and technology transfer professionals. LES's mission is to empower its community to drive strategy, transactions, and deals involving intellectual property business and law. LES also advances best practices in IP transactions and promotes efficient, predictable markets for innovation. LES routinely files amicus briefs to offer practical, neutral perspectives on issues that affect licensing certainty, contracting practices, and reliance interests across industries. LES takes no position on the ultimate outcome of this appeal.

INTRODUCTION

Patent licensing is central to IP commercialization: it enables innovators to share technology with partners, scale production, and bring products to market. Licensing also fuels collaboration, particularly in industries like semiconductors, AI, and data-center infrastructure, where no single entity controls all the know-how required for system integration. Thus, predictable licensing frameworks reduce transaction costs, promote reliance on patent rights, and encourage innovators to disclose and share technology.

These objectives, however, depend on legal certainty and contractual clarity in license formation and scope. In fast-moving supply chains, especially for

components used in data centers and AI systems, businesses rely on predictable contracting frameworks and the settled meaning of patent rights to allocate risk and invest at scale. Moreover, in an effort to achieve improvements in the protection of all types of IP within an organization and throughout all levels of its global supply chain, LES has developed a standard related to IP Protection Management Systems. (ANSI/LES ICBR Version 1.0-2022 Management System for the Protection of Intellectual Property in the Supply Chain).

This appeal presents a common but consequential question at the intersection of state contract law and federal patent policy: when, if ever, boilerplate IP-license terms embedded in purchase orders and follow-on email traffic should be treated as part of the parties' agreement. Without favoring either party, LES urges the Court to articulate technology-neutral principles that promote uniformity, avoid "license-by-boilerplate" outcomes, and respect reliance interests, particularly where Section 337 remedies can disrupt global supply chains.

SUMMARY OF ARGUMENT

Predictable licensing frameworks are especially critical for patent licensing, where inadvertent or unintended grants of rights can distort negotiations, undermine the value of portfolios, and chill investment in innovation.

First, state laws and Uniform Commercial Code (U.C.C.) principles, not opportunistic phrases, should determine whether additional terms become part of a

contract formed through standardized forms. Where parties exchange competing forms that are each expressly conditional on the other side's assent and then perform, § 2-207(3)'s "knock-out" rule supplies the governing terms while conflicting boilerplate language (including broad IP-license language) drops out.

Second, after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244 (2024), the Commission's legal interpretations receive no Chevron deference. Clear Federal Circuit guidance on how § 2-207 applies to embedded IP terms will shape nationwide contracting practice and reduce forum-specific uncertainty.

Third, reliance interests around patent portfolios, and the constitutional right to exclude, favor predictable, text- and conduct-based rules. Section 337's border remedies magnify the cost of ambiguity, so uniform standards are essential.

Fourth, a fundamental principle of contract law is determining and giving effect to the intent of the parties. Absent a clear mutual assent to such a patent license, the Court should decline to infer such an assent.

ARGUMENT

I. Uniform Application of U.C.C. § 2-207 Should Control Contract Terms When Parties Exchange Conflicting Forms.

In modern supply chains, parties routinely exchange preprinted forms that conflict on material and minor terms. When each side's writings are expressly conditional and the parties nonetheless perform, § 2-207(3) supplies the contract comprised of agreed terms plus U.C.C. gap-fillers; conflicting terms are excluded.

Applying this neutral, text-first framework promotes uniformity and prevents a one-sided expansion of rights, such as a perpetual, royalty-free, boundless IP license, through unilateral boilerplate language.

LES respectfully urges the Court to reaffirm that (a) the "knock-out" rule governs where competing forms are expressly conditional and followed by performance; (b) the focus is on objective manifestations of assent and course of dealing; and (c) Courts of Law should be cautious about importing sweeping IP grants from a buyer's form where the seller's form expressly disclaims any license-by-sale.

II. Reliance Interests Around Patents Counsel in Favor of Predictable Contract-Formation Rules.

Patent licensing is the mechanism by which investments in innovation are monetized and disseminated. These investments allow patent owners to commercialize technologies that may otherwise go unexploited and enable firms to integrate complementary innovations. Thus, predictable rules for incorporating license language into high-volume transactions directly support innovation incentives.

Furthermore, entire agreements can be, and often are, dedicated to the transfer or grant of intellectual property rights. Such circumstances argue for the treatment of such terms as material in any contract and not relegated to boilerplate and subject

to formulaic form battles, where an unintentional change of ownership could be catastrophic to a party.

When licensing outcomes turn on ambiguous boilerplate or stray emails, parties face higher risk and higher costs, deterring collaboration. By contrast, uniform and predictable rules foster deliberate, negotiated licensing agreements that drive commercialization across industries. Dillon Miller, *Using Boilerplate Clauses and Its Risks*, Ahuja & Boss, LLP (Dec. 20, 2024), https://dmablaw.com/using-boilerplate-clauses-and-its-risks/.

Stable expectations about the scope of patent rights and the availability of meaningful remedies enable investment in research and development (R&D), manufacturing, and long-term collaborations. Predictable rules for incorporating license language into high-volume transactions further support innovation incentives.

III. Section 337's Border Remedies Magnify the Cost of Ambiguity and Favor Uniform Standards.

Limited exclusion orders and cease-and-desist orders can impose swift and sweeping consequences on supply chains and downstream customers. Technology-neutral guidance that confines "license-by-boilerplate" theories and clarifies the standards for contractual assent will mitigate disruption, regardless of which party ultimately prevails on the merits.

IV. Determining and Giving Effect to the Intent of the Parties Is a Core Principle of Contract Law.

One of the fundamental tenets of contract law is that agreements must be construed to give effect to the intent of the parties. See U.C.C. § 1-103(a)(2) (requiring that the U.C.C. be applied "to promote its underlying purposes and policies, which are … to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties"). This principle is especially important where patent licensing is at issue, because such rights are deliberate and valuable concessions.

Absent clear mutual assent to such a license, Courts should decline to infer one. Recognizing the materiality of terms related to IP rights can refocus the analysis on the parties' intent as a guiding principle to ensure that patent holders retain control over the scope of their rights, that licensors and licensees obtain the benefits of their bargains, and that technology transactions reflect negotiated commercial realities rather than inadvertent boilerplate terms.

CONCLUSION

The Court should safeguard the integrity of patent licensing as a cornerstone of commercialization and collaboration by grounding its guidance in predictable contract-formation rules. Such clarity will promote uniformity in licensing practice, strengthen innovation markets and the IP ecosystem, and protect the reliance interests of licensors and licensees alike.

LES respectfully urges the Court to articulate neutral, technology-agnostic principles that (1) apply § 2-207's knock-out rule when conflicting, expressly conditional forms are followed by performance; (2) recognize the reliance interests that favor predictable contract formation rules, especially when implicated by Section 337 remedies; and (3) effectuate the clear intent of the parties with respect to the creation or denial of IP rights. Such guidance will promote licensing uniformity, contractual certainty, and healthy markets for innovation across industries.

Respectfully submitted,

Date: August 27, 2025

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I further certify that this brief complies with the type-volume limitation of Federal Circuit Rule 40(i)(3) because it contains 1,248 words, excluding the parts of the brief exempted under Fed.R.App.P. 32(f) and Federal Circuit Rule 32(b)(2), according to the count of Microsoft Word.

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