

No. 10-1219

IN THE
Supreme Court of the United States

DAVID J. KAPPOS, UNDER SECRETARY OF COMMERCE FOR
INTELLECTUAL PROPERTY AND DIRECTOR, UNITED STATES
PATENT AND TRADEMARK OFFICE

Petitioner,

v.

GILBERT P. HYATT

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF *AMICUS CURIAE*
INTELLECTUAL PROPERTY OWNERS
ASSOCIATION
IN SUPPORT OF NEITHER PARTY

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TABLE OF CONTENTS

TABLE OF AUTHORITIESiii

INTERESTS OF AMICUS CURIAE..... 1

SUMMARY OF ARGUMENT2

ARGUMENT4

I. THE FEDERAL CIRCUIT’S RULING ON THE INTRODUCTION OF NEW EVIDENCE IS CONSISTENT WITH THE STATUTE’S TEXT AND PURPOSE.....4

A. The Main Purpose of Civil Action Remedies Under Section 145 and its Sister Section 146 is to Allow Consideration of Evidence not Submitted to the PTO. 5

B. The Administrative Procedure Act Does Not Limit Introduction of New Evidence Under Section 145.....6

C. The Government’s Proposed Rule Would Effectively Eliminate Review in District Court Under Section 145. 7

D. The Government’s Proposed “No Reasonable Opportunity” Rule Will Force Applicants to Burden the PTO With Unnecessary Submissions..... 11

II. ALL FACTUAL FINDINGS IN SECTION 145 ACTIONS SHOULD BE *DE NOVO*..... 13

A. A Single Uniform Standard of Review Should Apply to All District Court Factfinding in Section 145 Actions. 14

B. The Government’s “Thorough Conviction” Standard of Review is Practically Unworkable.	17
CONCLUSION	19

TABLE OF AUTHORITIES

Cases

<i>Burlington Indus., Inc. v. Quigg</i> , 822 F.2d 1581 (Fed. Cir. 1987).....	6, 15
<i>Dickinson v. Zurko</i> , 527 U.S. 150 (1999).....	passim
<i>Digital Control, Inc. v. Charles Machine Works</i> , 437 F.3d 1309 (Fed. Cir. 2006).....	11
<i>Fregeau v. Mossinghoff</i> , 776 F.2d 1034 (Fed. Cir. 1985).....	11, 15
<i>Genentech, Inc. v. Chiron Corp.</i> , 220 F.3d 1345 (Fed. Cir. 2000).....	11
<i>Goldberg v. Kelly</i> , 397 U.S. 254 (1970).....	9
<i>Hoover Co. v. Coe</i> , 325 U.S. 79 (1945).....	7
<i>In re Watts</i> , 354 F.3d 1362 (Fed. Cir. 2004).....	8
<i>Johnson v. Mukasey</i> , 248 F.R.D. 347 (D.D.C. 2008).....	9
<i>Koki v. Dudas</i> , 556 F. Supp. 2d 41 (D.D.C. 2008).....	10
<i>Mazzari v. Rogan</i> , 323 F.3d 1000 (Fed. Cir. 2003).....	5, 11, 15

<i>McKart v. United States</i> , 395 U.S. 185 (1969).....	7
<i>Microsoft Corp v. i4i Ltd. Partnership</i> , 131 S.Ct. 2238 (2011)	3, 14
<i>Morgan v. Daniels</i> , 153 U.S. 120 (1894).....	16
<i>Tagg Bros. & Moorhead v. United States</i> , 280 U.S. 420 (1930).....	7
<i>Therasense, Inc. v. Becton, Dickinson, and Co.</i> , --- F.3d. ---, 2011 WL 2028255, (Fed. Cir. 2011).	12
<i>United States v. Banks</i> , 546 F.3d 507 (7th. Cir. 2008).....	9
<i>Winner International Royalty Corp. v. Wang</i> , 202 F.3d 1340 (Fed. Cir. 2000).....	5, 16

Regulations

37 C.F.R. §1.56.....	10
----------------------	----

Statutes

35 U.S.C. §141.....	passim
35 U.S.C. §145.....	passim

Other Authorities

Brief for the Petitioner, April 7, 2011.....	18
IRA H. DONNER, PATENT PROSECUTION: LAW, PRACTICE, AND PROCEDURE, (2009)	6

PATENT AND TRADEMARK OFFICE, PROCESS
PRODUCTION REPORT FY 2004,
<http://www.uspto.gov/ip/boards/bpai/stats/process/fy2004.pdf> (last visited September 1, 2011) 12

PATENT AND TRADEMARK OFFICE, PROCESS
PRODUCTION REPORT FY 2010
<http://www.uspto.gov/ip/boards/bpai/stats/process/fy2010sepb.pdf> (last visited September 1, 2011).12

INTERESTS OF AMICUS CURIAE¹

Amicus curiae Intellectual Property Owners Association (IPO) is a trade association representing companies and individuals in all industries and fields of technology who own or are interested in U.S. intellectual property rights. IPO's membership includes more than 200 companies and more than 12,000 individuals who are involved in the association either through their companies or as inventor, author, executive, law firm, or attorney members. Founded in 1972, IPO represents the interests of all owners of intellectual property. IPO members receive about thirty percent of the patents issued by the Patent and Trademark Office to U.S. nationals. IPO regularly represents the interests of its members before Congress and the United States Patent and Trademark Office (PTO) and has filed *amicus curiae* briefs in this Court and other courts on significant issues of intellectual property law. The members of IPO's Board of Directors, which

¹ Pursuant to Supreme Court Rule 37.6, *amicus curiae* certifies that no counsel for a party authored this brief in whole or in part, and that no person or entity, other than *amicus*, its members, or its counsel, has made any monetary contribution to the preparation or submission of this brief. *Amicus curiae*'s counsel researched and drafted this brief with the advice and consent of *amicus curiae*. Both parties in this case have consented to the filing of this *amicus curiae* brief in support of neither party. Petitioner consented to the filing of this brief in the attached letter. Respondent consented to the filing of all *amicus* briefs in a letter to this Court.

approved the filing of this brief, are listed in the Appendix.²

IPO has no interest in any party to this litigation nor does IPO have a stake in the outcome of this case *per se*, other than its interest in seeking a correct and consistent interpretation and administration of the law on behalf of its members. IPO respectfully submits this *amicus curiae* brief in support of neither party.

SUMMARY OF ARGUMENT

IPO advocates in support of intellectual property laws that provide, strong, cost-effective, and reliable intellectual-property protection. IPO believes that the government's position in this case will render prosecution before the PTO less reliable and more costly, unduly limit statutorily guaranteed rights to seek factual review of adverse patentability determinations, and further burden the PTO examiners with factual submissions aimed at laying a predicate for a hypothetical, and quite unlikely, eventual challenge in district court.

First, Congress enacted 35 U.S.C. §145 for the specific purpose of allowing an applicant to introduce new evidence not offered at the PTO, in contrast to 35 U.S.C. §141, which permits a direct appeal from the PTO to the Federal Circuit based solely on the PTO record. The government's "no reasonable opportunity" standard would exclude almost all new

² IPO procedures require approval of positions in *amicus curiae* briefs by a three-fourth majority of directors present and voting.

evidence, since the Director of the PTO (Director) will almost always be able to argue that the new evidence in question could have been submitted to the PTO. Foreclosing the introduction of almost all new evidence under such a rule would effectively eviscerate district court review under section 145. Moreover, the general agency-review principles of the Administrative Procedure Act (APA) have no proper application limiting the introduction of new evidence in civil actions filed pursuant to section 145, as Congress enacted the statute to allow new evidence, as opposed to the APA-type judicial review under section 141.

Second, the government proposes an ambiguous, and ultimately unworkable standard, both for admitting new evidence and weighing it against the existing PTO record. The government's overly restrictive rule will disturb practice before the PTO, because applicants, concerned about being foreclosed from supplementing the record in district court, will burden themselves and the already overwhelmed PTO with unnecessary evidentiary submissions that examiners must consider in determining patentability.

Third, the government's shifting, variable standard of review – including a novel remand procedure for the PTO to consider evidence in the first instance – is an unnecessarily complicated and impractical rule with no basis in the statute. This Court should follow its recent guidance in *Microsoft Corp v. i4i Ltd. Partnership*, 131 S.Ct. 2238, 2250 (2011), in which the Court cautioned against “a standard of proof that would rise and fall with the facts of each case.” As a result, the district court's

entire review should be *de novo* regardless of whether new evidence is submitted, consonant with Congress's intent in establishing section 145 as an alternative to section 141.

The Federal Rules of Civil Procedure and the Federal Rules of Evidence adequately govern the admissibility and weighing of evidence in district courts. Without explicit Congressional direction to the contrary, the same rules should govern admissibility in civil actions brought under section 145, and review of all evidence should be *de novo*.

ARGUMENT

I. The Federal Circuit's Ruling on The Introduction of New Evidence is Consistent With the Statute's Text and Purpose.

The Federal Circuit correctly held that there is no limitation on an applicant's right to introduce new evidence in a section 145 civil action merely because it was not submitted to the PTO. Furthermore, the realities of prosecution practice demonstrate that the imposition of additional barriers to introduction of new evidence in district court threatens to undermine Congress's primary purpose in providing a remedy for denial of a patent by civil action challenge before a fact-finding body – allowing the introduction of evidence not submitted to the PTO in the patentability determination. Moreover, understanding the interests of applicants proceeding before the PTO and the district court reveals that the government's concern that patentees will “game the system” by withholding evidence from the PTO is without basis.

A. The Main Purpose of Civil Action Remedies Under Section 145 and its Sister Section 146 is to Allow Consideration of Evidence not Submitted To The PTO.

An applicant dissatisfied with a ruling of the PTO's Board of Patent Appeals and Interferences (the Board) has two avenues for relief: an appeal to the Federal Circuit, or a civil action in district court in the District of Columbia. *See* 35 U.S.C. §§ 141, 145. The Federal Circuit's review under section 141 is limited to the proceedings before the PTO, and determines only whether the Board's conclusions are supported by substantial evidence. *Dickinson v. Zurko*, 527 U.S. 150, 165 (1999). In civil actions brought under sections 145 (patent applications) and 146 (patent interferences), on the other hand, evidence not submitted to the PTO is admissible. *Winner International Royalty Corp. v. Wang*, 202 F.3d 1340, 1345-46 (Fed. Cir. 2000). It has long been Federal Circuit law that when new evidence is introduced on a particular issue of fact considered by the PTO, the district court's review of the PTO's conclusion on that issue is *de novo*. *Id.*

A patent applicant selects a district court challenge to an adverse decision of the Board, as opposed to a Federal Circuit appeal, solely in order to supplement the record with evidence and testimony not submitted to the PTO or considered by the Board; there is no other purpose under the statute. *See* 35 U.S.C. § 141, 145; *Mazzari v. Rogan*, 323 F.3d 1000 (Fed. Cir. 2003) ("A section 145 review is

distinct from a section 141 appeal in that it affords the applicant an opportunity to present additional evidence”); *Zurko*, 527 U.S. at 164 (contrasting district court with Federal Circuit review on the basis that applicants in section 145 district court actions can “present to the court evidence that the applicant did not present to the PTO”). Indeed, a leading patent prosecution practice guide recommends that applicants seek district court review when they wish to “gather additional facts outside the prosecution history,” but notes that an appeal to the Federal Circuit “is proper when the applicant is satisfied with [the prosecution history] record.” IRAH H. DONNER, *PATENT PROSECUTION: LAW, PRACTICE, AND PROCEDURE*, 430-31 (2009).

The Federal Circuit has long recognized the critical importance of district court review of new evidence, emphasizing that a district court's reversal of the PTO's conclusion based on new evidence “is not contrary to the legislative purpose of section 145 *de novo* review. Indeed, it is a fulfillment of that purpose.” *Burlington Indus., Inc. v. Quigg*, 822 F.2d 1581, 1584 (Fed. Cir. 1987). Review of new evidence, the Federal Circuit wrote, is a “powerful advantage over the patent examiner” that is “characteristic of section 145 appeals.” *Id.* at 1584.

B. The Administrative Procedure Act Does not Limit Introduction of new Evidence Under Section 145.

The government, while admitting that section 145 does not “wholly preclude” introduction of new evidence (in contrast to review under the APA), argues that the “principles” of administrative

exhaustion should nonetheless apply. This argument is misplaced; neither the statutory scheme nor sound concerns of public policy support the application of exhaustion principles to bar the introduction of new evidence in section 145 actions.

The cases the government relies on, including *Tagg Bros. & Moorhead v. United States*, 280 U.S. 420, 444 (1930), and *McKart v. United States*, 395 U.S. 185 (1969), arise in circumstances where APA authorized review is limited to the agency record. To the extent these cases reflect a general principle that agencies should, whenever possible, serve as an initial factfinder, this Court already concluded in *Zurko* that section 145 constitutes a departure from that principle. If Congress had intended that the PTO review all possible evidence in the first instance, it would not have provided applicants with an option to seek a remedy by civil action, where the district court may hear live testimony, make findings of fact, and reach conclusions of law on patentability. See *Hoover Co. v. Coe*, 325 U.S. 79, 83 (1945) (noting that the statutory predecessor to section 145 allows for “a formal trial...on proof which may include evidence not presented in the Patent Office”).

C. The Government’s Proposed Rule Would Effectively Eliminate Review in District Court Under Section 145.

As enacted by Congress, the statute ensures that the opportunity to supplement the record before the PTO in district court comes at a significant cost and carries no assurance of success. First, section 145 requires that the applicant pay “all the expenses of the proceedings.” 35 U.S.C. § 145. Second,

generally, no new legal issues can be raised that were not presented to the PTO. *In re Watts*, 354 F.3d 1362, 1367 (Fed. Cir. 2004).

The practical result of these limits is that an applicant's assessment whether to bear the significant additional cost of a district court challenge depends largely on the likelihood that his contemplated new evidence will result in a reversal of the PTO's determination of unpatentability. The applicant must, then, have significant confidence that evidence offered for the first time will be persuasive if not dispositive for the district court. That so few district court actions are filed under section 145 confirms that applicants carefully consider and then select the case-appropriate avenue for relief.³

³ A search in Lex Machina's (<https://lexmachina.com/>) patent filings database for citations to 35 U.S.C. § 145 in patent complaints in the United States District Court for the District of Columbia revealed only four actions filed pursuant to 35 U.S.C. § 145 so far in 2011, two such actions in 2010, and five in 2009 (including two filed by Mr. Hyatt). For the years stated, patent complaints in the District Court for the District of Columbia were searched for "35 U.S.C. 145' ~10" which will return all documents including "35" "U.S.C." and "145" with a maximum of 10 words separating each term. Lex Machina is a commercial subscription service that pulls documents and docket information from the United States Courts' Public Access to Court Electronic Records (PACER) database. While the PACER database may not have a record of every

But these same considerations raise the possibility that the government's novel rule will effectively eliminate the "Civil Action to Obtain Patent" under section 145. This is because the Director will almost always be able to argue that an applicant had a reasonable opportunity to present the new evidence to the PTO examiner. Indeed, the government's proposed gate-keeping standard would appear to limit new evidence in section 145 actions to material discovered after PTO proceedings have concluded (or perhaps evidence in a form the PTO does not hear, such as live testimony⁴). Once the

section 145 action, and the stated search results may not be perfectly accurate, the results provide as a useful estimate of the volume of section 145 actions. Appeals to the Federal Circuit pursuant to section 141 do not appear to be any more common. According to a review of all Federal Circuit opinions and orders matching citing to 35 U.S.C. § 141, there were six such orders or opinions in 2010, three in 2009, and one in each of 2008, 2007, 2006, and 2005.

⁴ In many cases, a court can make assessments of the veracity of testimony through a transcript or affidavit without the need for a live hearing. *See, e.g., Johnson v. Mukasey*, 248 F.R.D. 347 (D.D.C. 2008) (noting that magistrate reviewed, on a written record, objections to the veracity of an affidavit); *see also United States v. Banks*, 546 F.3d 507, 511 (7th Cir. 2008). In other circumstances, live testimony may be necessary. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254 (1970) ("[W]ritten submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decision maker appears to regard as

Director has advanced such an argument, the applicant must rebut it or face exclusion of critical new evidence – the applicant’s only reason for pursuing a district court action in the first instance – from his case.

The government’s proposed “no reasonable opportunity” rule thus threatens to “render an appeal under section 145 nearly indistinguishable from a direct appeal to the Federal Circuit” under section 141, based solely on the PTO record, “and would render the purpose of the statute duplicative and meaningless.” *See Koki v. Dudas*, 556 F. Supp. 2d 41, 47 (D.D.C. 2008) (considering a far less restrictive rule).

The government argues that its restrictive rule is necessary to encourage full disclosure by applicants before the PTO. But the policy of encouraging disclosure needs no further intrusion from the courts. Preliminarily, the PTO has adopted, and the courts have enforced, 37 C.F.R. § 1.56, which ably incents applicants to make a full disclosure to the PTO in seeking patent protection. More fundamentally, Congress understood the importance

important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision.”). Thus, under the government’s proposed “no reasonable opportunity” standard of review, the Director may successfully foreclose even live testimony when the new evidence proffered to the district court could have been submitted in written form by declaration to the PTO.

of applicants presenting their full case to the PTO, and ensured that applicants are able to by requiring that the applicant pay expenses of a district court action under section 145. Congress thus struck a policy balance between encouraging disclosure to the PTO and allowing supplementation of the PTO record on which the district court may find facts and reach conclusions of law. By placing its thumb on the scales, the government's proposed rule would unnecessarily disturb practice before both the district court and the PTO.

D. The Government's Proposed "No Reasonable Opportunity" Rule Will Force Applicants to Burden the PTO With Unnecessary Submissions.

The government's proposed rule would disturb the settled expectations of applicants before the PTO and upend current district court practice in section 145 proceedings. The Federal Circuit has long allowed district courts to admit new evidence irrespective of whether an applicant had a "reasonable opportunity" to present the evidence to the PTO. *See, Mazzari*, 323 F.3d at 1003 (Fed. Cir. 2003) (considering new prior art references and expert declarations offered by the PTO and applicants); *Genentech, Inc. v. Chiron Corp.*, 220 F.3d 1345 (Fed. Cir. 2000) (considering testimony of four new experts despite fact that none had offered testimony in PTO proceedings); *Fregeau v. Mossinghoff*, 776 F.2d 1034, 1036 (Fed. Cir. 1985) (considering applicant's new expert declaration setting forth additional data and new theory). The Federal Circuit has furthermore consistently recognized that the only obligation of disclosure

imposed on applicants is 37 C.F.R.1.56. *See e.g., Digital Control, Inc. v. Charles Machine Works*, 437 F.3d 1309, 1314-16 (Fed. Cir. 2006) (discussing standard of materiality in “new” Rule 56). *See also Therasense, Inc. v. Becton, Dickinson, and Co.*, --- F.3d. ---, 2011 WL 2028255, *14-*16 (Fed. Cir. 2011) (declining to adopt Rule 56’s definition of materiality for inequitable conduct).

Should this Court adopt the government’s restrictive rule, applicants, justifiably concerned about the exclusion of evidence from a later civil action challenge, would be incented to overwhelm the PTO examiners with extraneous facts and evidentiary submissions.⁵ This threat is made all the more likely given the dramatic increase in appeals to the Board in recent years.⁶ Presently,

⁵ There is strong precedent that applicants will, out of caution, burden the PTO with a deluge of additional evidence. As the Federal Circuit noted in *Therasense*, “[w]ith inequitable conduct casting the shadow of a hangman’s noose, it is unsurprising that patent prosecutors regularly bury the PTO examiners with a deluge of prior art references, most of which have marginal value...This tidal wave of disclosure makes identifying the most relevant prior art more difficult....This flood of information strains the agency’s examining resources and directly contributes to the backlog.” 2011 WL 2028255 at *9.

⁶ According to statistics published by the PTO, in 2004 there were a total of 2469 appeals to the Board. PATENT AND TRADEMARK OFFICE, PROCESS PRODUCTION REPORT FY 2004, available at <http://www.uspto.gov/ip/boards/bpai/stats/process/fy2004.pdf> (last visited September 1, 2011). In 2010

applicants proceeding before the PTO strike a strategic balance, submitting evidence likely sufficient to obtain a patent while avoiding overburdening the PTO because, should it be necessary and important enough, applicants can present additional evidence to the district court under section 145. And if no further evidence is needed, review may instead be had before the Federal Circuit under section 141. This is the framework Congress enacted.

The government's proposed rule, and the burden on applicants, the PTO, and the courts that will follow from it, are entirely unnecessary. This Court should reject that rule and hold that evidence in section 145 challenges is admissible according to the same clear, established standards that apply in other civil actions: the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

II. All Factual Findings in Section 145 Actions Should be *De Novo*.

The Federal Circuit erred in creating a standard of review for section 145 civil actions that varies based on whether evidence was considered by the PTO or newly introduced in the district court. Further, the language of the statute and Court's precedent indicate that a section 145 civil action should be a completely *de novo* proceeding whether

that number had increased five-fold to 12,380. PATENT AND TRADEMARK OFFICE, PROCESS PRODUCTION REPORT FY 2010, available at <http://www.uspto.gov/ip/boards/bpai/stats/process/fy2010sepb.pdf> (last visited September 1, 2011).

or not new evidence is submitted by one of the parties.

A. A Single Uniform Standard of Review Should Apply to All District Court Factfinding in Section 145 Actions.

A standard of review in district court that varies, factual issue by factual issue, has no statutory basis and will cause unnecessary practical difficulties in section 145 civil actions. As the Court recently wrote in *Microsoft*, 131 S.Ct. at 2250:

Nothing in [the statute's] text suggests that Congress meant to depart from that understanding to enact a standard of proof that would rise and fall with the facts of each case. Indeed, had Congress intended to drop the heightened standard of proof where the evidence before the jury varied from that before the PTO – and thus take the highly unusual and impractical step of enacting a variable standard of proof that must itself be adjudicated in each case – we assume it would have done so expressly.

This Court should be no more inclined to erect a variable standard of review for section 145 actions. *See Zurko*, 527 U.S. at 164 (1999) (“Recognizing the importance of maintaining a uniform approach to judicial review of administrative action, we have closely examined the Federal Circuit’s claim for an exception to that uniformity.”) (finding no exception). No basis for any variation exists here: section 145

says nothing of a varying standard of review, commanding instead that the district court judge review the facts in the case “as they may appear.” 35 U.S.C. § 145.

A long line of Federal Circuit cases hold that the statute’s language requires that factual issues are reviewed *de novo* when new evidence is submitted. See *Mazzari*, 323 F.3d at 1005 (Fed. Cir. 2003) (deciding that following *Zurko*, “if the parties choose to present additional evidence to the district court...the district court would make *de novo* factual findings...”); *Burlington Indus., Inc. v. Quigg*, 822 F.2d 1581, 1584 (Fed. Cir. 1987) (noting that in a section 145 civil action “when additional evidence is adduced beyond that before the PTO the factual weight must be determined afresh”); *Fregeau*, 776 F.2d at 1038 (Fed. Cir. 1985) (noting that “where new evidence is presented to the district court on a disputed fact question, a *de novo* finding will be necessary to take such evidence into account together with the evidence before the board”).

Indeed, there are strong practical reasons for the Court’s aversion to a shifting standard of review. Under a single *de novo* standard, it is not necessary for the district court to determine (based on argument of the parties) how—or whether—each piece of new evidence should affect the standard of review. Only a single, uniform standard of review is appropriate in a section 145 civil action, because in many cases it will be difficult or impossible to draw the line between discrete “issues” to which variable standards should apply.

As the Federal Circuit has recognized, it can be difficult or impossible to distinguish such factual issues for the purpose of determining which pieces of evidence apply to which facts. “[W]e do not decide whether a given dispute could be parsed into discrete “issues” or facts such that a determination could be made, or if it could, how a court would draw the line between such facts or issues.” *Winner Int’l*, 202 F.3d at 1347 n.4 (Fed. Cir. 2000).

Moreover, a single, simple standard is easier for district court judges – and parties – to apply. A variable standard will result in litigants wasting the court’s and the parties’ resources by arguing that the standard of review should be strict or lenient on particular issues for reasons of expedience (i.e., encouraging deference for favorable PTO rulings, *de novo* for unfavorable ones). Certainly newly-introduced evidence must be reviewed *de novo* – there is no record to which deference can be afforded. Thus, *de novo* is the only uniform standard of review possible. It is better, more efficient, and more effective to avoid the dual-standard quagmire entirely with a single, uniform *de novo* standard of review for all evidence.

Petitioner’s arguments to the contrary should be rejected. Petitioner relies heavily on *Morgan v. Daniels*, 153 U.S. 120, 125 (1894). In *Morgan*, however, no new evidence was introduced and the *Morgan* court did not discuss what the standard of review would have been in such a circumstance. Furthermore, the government’s broad interpretation of *Morgan* applying it to section 145, cannot be reconciled with the Court’s later holdings. First, as the Court pronounced in *Zurko*, “[t]he presence of

such new or different evidence makes a factfinder of the district judge.” 527 U.S. at 164.⁷ And second, such an interpretation of *Morgan* conflicts with *Microsoft*’s admonition that a standard of proof should not “rise and fall with the facts of each case.” *Microsoft*, 131 S.Ct. at 2250. The Court should reconcile the tension between *Morgan* and the Court’s more recent pronouncements in *Zurko* and *Microsoft* by requiring across-the-board *de novo* factual review in section 145 civil actions.

B. The Government’s “Thorough Conviction” Standard of Review is Practically Unworkable.

The government’s proposed standard of review is unworkable for at least two reasons. First, it erects yet another barrier to district court fact-finding by requiring that, if the applicant submits any evidence that could have been submitted to the PTO, then the district court shall remand to the PTO for consideration in the first instance. Brief for the Petitioner, April 7, 2011 at 24. And second, it provides for a sliding, flexible standard of review

⁷ *Zurko*’s earlier statement that a court reviewing a “record-based factual conclusion” should inquire only whether the conclusion in question is supported by “substantial evidence” is not to the contrary. 527 U.S. at 164. *Zurko*’s holding, like other cases the government cites, was limited to Federal Circuit review under section 141, which is limited to the record before the PTO. In this regard, IPO’s position here on the scope of *de novo* review evolved from that stated in its *amicus curiae* brief in the Federal Circuit based on a reassessment under *Microsoft*.

depending on the nature of the evidence presented. Neither of these rules have any basis in the statute, and both would create unnecessary costs for applicants and courts and delay applicants their relief.

Consider the analytical and procedural steps the government would require of a district judge faced with evidence not presented to the PTO. First, after determining that evidence is new, the court must determine whether the applicant had a “reasonable opportunity” to present the evidence to the PTO. Pet. at 23. If not, then the court must decide whether the evidence “consists of materials that the PTO can consider as part of its examination process.” *Id.* at 24. If the evidence can be considered by the PTO, the district court should remand to the PTO. *Id.* If it cannot, the district court should make an assessment of the facts to determine if “the new evidence, considered together with the administrative record, creates a ‘thorough conviction’ that the PTO erred. *Id.* at 25. Such an intricate procedure will only dissuade applicants from exercising their statutorily guaranteed rights, and it serves no useful purpose. Instead, the district court should adjudicate questions of patentability “as the facts in the case may appear,” just as the statute directs. 35 U.S.C. § 145.

As for the standard of review, the government notes that “the court may give the new evidence more weight in the analysis, in recognition of the fact that the PTO’s conclusions did not take that evidence into account.” Pet. at 24. As the government admits, under this standard, “the manner in which [new] evidence is considered may vary depending on the

nature of the evidence.” *Id.* The deference to the PTO, in other words, will depend on the nature and type of evidence for each new piece of evidence introduced. This is exactly the kind of shifting standard of review that will “rise and fall with the facts of each case” that the Court cautioned against in *Microsoft*. 131 S.Ct. at 2250.

CONCLUSION

For the foregoing reasons, IPO respectfully requests that the Court hold that 1) admissibility of new evidence in civil actions under 35 U.S.C. § 145 is governed only by the Federal Rules of Civil Procedure and the Federal Rules of Evidence; and 2) that all of the district court’s factual findings in such civil actions shall be decided *de novo*.

RESPECTFULLY SUBMITTED,

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APPENDIX

**APPENDIX — MEMBERS OF THE BOARD OF
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APPENDIX¹

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1. IPO procedures require approval of positions in briefs by a three-fourths majority of directors present and voting.

2a

Appendix

Scott M. Frank
AT&T

Darryl P. Frickey
Dow Chemical Co.

Bernard J. Graves, Jr.
Eastman Chemical Co.

Krish Gupta
EMC Corporation

Jack E. Haken
Koninklijke Philips Electronics N.V.

Dennis R. Hoerner, Jr.
Monsanto Co.

Carl B. Horton
General Electric Co.

Soonhee Jang
Danisco U.S. Inc.

Michael Jaro
Medtronic, Inc.

Philip S. Johnson
Johnson & Johnson

George William Johnston
Roche Inc.

Appendix

Lisa K. Jorgenson
STMicroelectronics, Inc.

Dean Kamen
DEKA R&D Corp.

Charles M. Kinzig
GlaxoSmithKline

David J. Koris
Shell International B.V.

Mark W. Lauroesch
Corning Inc.

Scott P. McDonald
Mars Inc.

Jonathan P. Meyer
Motorola, Inc.

Steven W. Miller
Procter & Gamble Co.

Jeffrey L. Myers
Adobe Systems Inc.

Douglas K. Norman
Eli Lilly and Co.

Sean O'Brien
United Technologies Corp.

Appendix

Richard F. Phillips
Exxon Mobil Corp.

Kevin H. Rhodes
3M Innovative Properties Co.

Mark L. Rodgers
Air Products & Chemicals, Inc.

Curtis Rose
Hewlett-Packard Co.

Manny Schechter
IBM Corp.

Steven J. Shapiro
Pitney Bowes Inc.

David M. Simon
Intel Corp.

Dennis C. Skarvan
Caterpillar Inc.

Russ Slifer
Micron Technology, Inc.

Daniel J. Staudt
Siemens Corp.

Brian K. Stierwalt
ConocoPhillips

Appendix

Thierry Sueur
Air Liquide

James. J. Trussell
BP America, Inc.

Cheryl J. Tubach
J.M. Huber Corp.

Danise Van Vuuren-Nield
The Coca-Cola Co.

Roy Waldron
Pfizer, Inc.

Michael Walker
DuPont

BJ Watrous
Apple Inc.

Stuart L. Watt
Amgen, Inc.

Jon D. Wood
Bridgestone Americas Holding, Inc.

Paul D. Yasger
Abbott Laboratories