No. 02-197

In the Supreme Court of the United States

MONSANTO COMPANY, PETITIONER

v.

BAYER CROPSCIENCE, S.A.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the bona fide purchaser rule provides a defense to patent infringement to a party who obtained a non-exclusive sublicense to use the patent from a licensee who had fraudulently obtained the license.

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

Under the bona fide purchaser rule, as traditionally understood by this Court and other courts, "one who purchases property in good faith and for value from the holder of voidable title obtains good title." *United States* v. *A Parcel of Land*, 507 U.S. 111, 142 (1993) (Kennedy, J., dissenting) (citing authorities). This case concerns whether that rule extends to one who acquires not title to a patent, but a non-exclusive sublicense to use the patented invention. The Federal Circuit unanimously held that the bona fide purchaser rule does not extend to that situation. Although the United States has not specifically considered that question previously, the decision below appears to be correct and, in any event, the issue has not arisen with sufficient frequency to merit plenary review at this time.

1. The Patent Clause of the Constitution empowers Congress "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to * * * Inventors the exclusive Right to their * * * Discoveries." U.S. Const. Art. 1, § 8, Cl. 8. Congress has implemented the Patent Clause through statutory enactments, commonly known as the Patent Acts, that have set out the conditions for obtaining a patent. See, *e.g.*, Patent Act of 1790, ch. 7, 1 Stat. 109; Patent Act of 1793, ch. 11, 1 Stat. 318; Patent Act of 1836, ch. 357, 5 Stat. 117; Patent Act of 1839, ch. 88, 5 Stat. 353; Patent Act of 1870, ch. 230, 16 Stat. 198; Patent Act of 1939, ch. 451, 53 Stat. 1212; Patent Act of 1952, ch. 950, 66 Stat. 792. The Patent Act of 1952, as amended, provides the currently controlling law governing the issuance of patents. See 35 U.S.C. 100 *et seq.*

Under those laws, an individual is generally entitled to a patent on an invention, see 35 U.S.C. 102, 111(a)(1), and "whoever without authority makes, uses, offers to sell, or sells any patented invention * * * infringes the patent." 35 U.S.C. 271(a). Of particular relevance here is Section 261, which governs ownership of patents, and provides that, "[s]ubject to the provisions of this title, patents shall have the attributes of personal property." 35 U.S.C. 261. Patents, therefore, "shall be assignable in law by an instrument in writing." *Ibid.* Section 261 specifically provides that "[a]n assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and

Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage." *Ibid.*; see 37 C.F.R. Pt. 3 (implementing regulations).

2. Rhone-Polenc Agro, S.A. (RPA), now respondent Bayer CropScience, S.A., is a manufacturer and vendor of agricultural products and is engaged in biotechnological research with a particular interest in weed control and crops. Petitioner Monsanto Company (Monsanto) also manufactures and sells agricultural products and conducts biotechnological research. DeKalb Genetics Corporation (DeKalb), which became a fully owned subsidiary of Monsanto in December 1998, is involved in agricultural genetics and biotechnology for corn seed and is one of the largest corn seed suppliers in the United States. Pet. App. 36a.

The technology at issue in this case involves genetically engineered corn that is tolerant of a certain class of herbicides. Monsanto sells a herbicide called Roundup, whose active ingredient is glyphosate. As the court of appeals explained, "[t]he ability to grow glyphosate-tolerant corn increases the efficiency of farmers, because they can spray glyphosate herbicide over the entire crop of corn, killing all of the weeds but not damaging any of the corn plants." Pet. App. 36a.

For several years, RPA and DeKalb collaborated on the development of biotechnology related to specific genetic materials. RPA performed the initial genetic work while DeKalb grew corn plants derived from the genetic work. Pet. App. 37a. During that time, a scientist at RPA developed an optimized transit peptide (OTP) with a particular maize gene—referred to as RD-125—that proved successful at growing glyphosate-tolerant corn. *Id.* at 38a. RPA's scientist obtained a patent on the technology—U.S. Patent No. 5,510,471 (the '471 patent), reissued as Patent RE 36,449—and assigned the patent to RPA. DeKalb succeeded in growing corn plants that contained RD-125 and were resistant to the Roundup herbicide. *Id.* at 39a-40a.

In a 1994 agreement, RPA granted to DeKalb the "world-wide, paid-up right to use" the technology "in the field of use of corn." Pet. App. 3a. In addition, the agreement gave DeKalb "the right to grant sublicenses to the aforementioned right to use without further payment being made." *Ibid.*

In 1996, DeKalb and Monsanto entered into an agreement to work together on a variety of projects. Pet. App. 41a. As part of that agreement, DeKalb sublicensed to Monsanto the right to use the RPA technology for growing glyphosate-tolerant corn. *Ibid.* At the same time, Monsanto acquired a 40% equity interest in DeKalb and 10% of DeKalb Class A (voting) stock. *Id.* at 3a. In 1998, Monsanto and DeKalb began to sell "Roundup Ready" corn seeds produced through the RPA technology. *Id.* at 41a. DeKalb subsequently became a fully owned subsidiary of Monsanto. *Id.* at 36a.

3. In 1997, RPA brought this suit against DeKalb and Monsanto for misappropriation of technology, breach of contract, patent infringement, and antitrust violations. Pet. App. 42a. In a bifurcated trial, the first jury found that DeKalb breached its agreement with RPA by failing to provide RPA with the results of certain field tests. *Id.* at 44a. The jury also found that "DeKalb fraudulently induced RPA" to license the technology "on the terms that it did." *Ibid.* The jury awarded RPA $15 million for DeKalb's unjust enrichment and $50 million in punitive damages. *Ibid.*

Before the second phase of the trial, the district court granted summary judgment to Monsanto. The court held that Monsanto was a bona fide purchaser of its sublicense from DeKalb. Pet. App. 45a. "As such," the court held, "Monsanto could not be held liable by RPA" for infringing the '471 patent. *Ibid.*

A second jury then found that DeKalb misappropriated RPA's trade secret and that RPA's patent was valid and enforceable. Pet. App. 46a. The district court rescinded the 1994 licensing agreement and awarded RPA $15 million for unjust enrichment and $50 million in punitive damages. *Id.* at 136a. The court also enjoined DeKalb from using the licensed technology. *Ibid.*

In a post-trial opinion, the district court explained its bona fide purchaser holding. Pet. App. 81a-85a. The court held that the bona fide purchaser rule is recognized both in federal patent law and in North Carolina "through the common law and by its adoption of the Uniform Commercial Code." *Id.* at 81a (citation omitted). The court explained that the rule "preserves the stability of commercial transactions by promoting the free transferability and negotiability of property in commerce." *Id.* at 82a-83a. The court added that it is "more appropriate to place the risk of fraud on the party with the best chance of catching the fraud initially—the defrauded party." *Id.* at 83a. Finally, the court held that "the sublicensee, Monsanto, is entitled to be considered a bona fide purchaser, because it paid value for the right to use the technology without knowledge of any wrongdoing by DeKalb." *Id.* at 84a.

4. a. The Federal Circuit affirmed the judgment of the district court rescinding the 1994 licensing agreement for fraud. *Rhone-Poulenc Agro, S.A.* v. *DeKalb Genetics Corp.*, 272 F.3d 1335 (Fed. Cir. 2001), vacated and remanded, 123 S. Ct. 1828 (2003). In a separate decision entered the same day, the Federal Circuit initially affirmed the district court's judgment that

Monsanto was protected as a bona fide purchaser. Pet. App. 20a-34a. On that issue, the court considered itself bound by *Heidelberg Harris, Inc.* v. *Loebach*, 145 F.3d 1454 (Fed. Cir. 1998). Pet. App. 24a-28a.

b. The en banc Federal Circuit held, without dissent, that *Heidelberg Harris* was not binding with respect to the applicability of the bona fide purchaser rule. Pet. App. 159a-160a. The court emphasized the "unique circumstances in that case" and the fact that the parties there had not contested whether the bona fide purchaser doctrine applies to patent licenses. *Id.* at 160a. The court then vacated the panel's earlier decision in this case. *Ibid.*

c. The initial Federal Circuit panel then held that Monsanto was not protected by the bona fide purchaser rule. Pet. App. 1a-19a.

At the outset, the court noted that in "some circumstances the bona fide purchaser defense in patent cases is governed by" 35 U.S.C. 261. Pet. App. 5a. The court explained that Section 261 was not applicable here, however, because it "is by its terms limited to situations in which the patent owner makes inconsistent assignments, grants, or conveyances to two entities, and the question is whether the later assignee should prevail." *Ibid.* In contrast, this case concerns the circumstance in which "the interest in the patent held by the grantor is voidable and the question is whether a grantee may retain its interest even if the grantor's interest is voided." *Id.* at 5a-6a.

The court held that federal law, not state law, governs that question. Pet. App. 6a-9a. The court reasoned that there is "a need for a uniform body of federal law on the bona fide purchaser defense," especially in light of Congress's adoption of the defense in some circumstances under the patent laws. *Id.* at 7a. The court noted, however, that the applicable federal rule "is informed by the various state common law bona fide purchaser rules as they are generally understood." *Id.* at 8a.

Examining the common law, the court determined that "it was quite clear that one who did not acquire title to the property could not assert the protection of the bona fide purchaser rule." Pet. App. 10a. The court further concluded that "the title rule is recognized in modern property law," including in the Uniform Commercial Code. *Id.* at 12a. The court recognized the principle that "a sublicense continues, even when the principal license is terminated," but stated that the principle applies only "where the original licensee is terminated as a matter of contract law, *e.g.*, for breach of contract." *Id.* at 15a.

Finally, the court concluded that, "[e]ven if the general common law extended the protection of the bona fide purchaser rule to holders of non-exclusive licenses, it would not be appropriate for us to extend such protection to non-exclusive licenses as a matter of federal common law." Pet. App. 18a. The court reasoned that Section 261 "reflects a determination by Congress that only those who have obtained an 'assignment, grant or conveyance' may benefit from the protection" of the bona fide purchaser rule. *Ibid.* The court concluded that where, as here, the purchaser did not acquire "all substantial rights" to the patent, "Congress contemplated that there would be no bona fide purchaser defense." *Id.* at 19a.

DISCUSSION

The court of appeals held that the bona fide purchaser rule applies only to those who acquire "all substantial rights" under a patent (Pet. App. 19a), and thus not to those who acquire only a non-exclusive sublicense to use the patent. That conclusion is consistent with the common law, as applied by this Court, which extends the rule only to those who acquire title to property. Whatever the virtue of that distinction as an original matter, the common law has traditionally drawn the distinction, and the court of appeals' unanimous adoption of the distinction in the patent licensing context is neither unreasonable nor inconsistent with the decisions of this Court or other courts of appeals.

Indeed, so far as the United States is aware, this is the *only* case that has adjudicated the applicability of the bona fide purchaser rule to a non-exclusive patent license or sublicense. Nor has the question arisen in connection with the licensing agreements to which the United States is a party. Accordingly, the court of appeals' decision, whether or not correct, appears to be of limited practical importance. This Court's review is, therefore, unwarranted at this time.

1. The bona fide purchaser rule protects those who acquire property for value and without notice of any wrongdoing on the part of the seller. It is an exception to the general principle that a seller cannot convey better title to property than the seller itself possesses. See, *e.g.*, *Deitsch* v. *Wiggins*, 82 U.S. (15 Wall.) 539, 546-547 (1872).

The bona fide purchaser rule serves "to promote the flow of commerce by placing the burden of ascertaining and preventing fraudulent transactions on the one in the best position to prevent them, the original seller." 67 Am. Jur. 2d *Sales* § 432 (1985). It thus prevents "the waste that would be created if people either had to inquire how their transferors obtained their property or to accept a risk that a commercial deal would be reversed for no reason they could perceive at the time."

Bonded Fin. Servs., Inc. v. *European Am. Bank*, 838 F.2d 890, 892-893 (7th Cir. 1988).

The novel question in this case is whether one who has acquired a non-exclusive sublicense to use a patent may assert a bona fide purchaser defense to a claim of patent infringement when the license on which the sublicense is predicated is rescinded for fraud. Although that precise question has not previously been addressed by Congress or the courts, the Federal Circuit's resolution of the question is consistent with the common law rule reflected in the existing precedents.[1]

a. No federal statute expressly resolves whether the bona fide purchaser rule protects those who acquire a non-exclusive license or sublicense to use a patented invention. By contrast, Congress has addressed the application of that rule to the "assignment, grant or conveyance" of patents in the context of a subsequent transfer when the first transfer was not recorded in the Patent and Trademark Office:

> An assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within

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[1] As a threshold matter, the court of appeals held that federal, not state, law governs the application of the bona fide purchaser rule in the patent licensing context. Pet. App. 7a; cf. *Lear, Inc.* v. *Adkins*, 395 U.S. 653 (1969). Although petitioner takes issue with the court's analysis of that question (see Pet. 16-18), petitioner does not appear to take issue with the court's holding. See *Black* v. *Cutter Labs.*, 351 U.S. 292, 297 (1956) (Court "reviews judgments, not statements in opinions"). The court of appeals, moreover, understood its holding that the bona fide purchaser rule does not apply to non-exclusive patent sublicenses to be consistent with the applicable state law. Pet. App. 6a & n.2.

> three months from its date or prior to the date of such subsequent purchase or mortgage.

35 U.S.C. 261.

As the court of appeals observed, the grant of a license may be "tantamount to an assignment" in some circumstances. Pet. App. 18a; see, *e.g.*, *Textile Prods., Inc.* v. *Mead Corp.*, 134 F.3d 1481, 1484 (Fed. Cir.), cert. denied, 525 U.S. 826 (1998). Thus, when a license confers "all substantial rights" under a patent, Section 261 and its bona fide purchaser rule may apply. Pet. App. 18a. But when, as here, a license grants only a non-exclusive right to practice the invention, the license is not equivalent to an assignment of the patent, and Section 261 does not apply. See, *e.g.*, *Moraine Prods.* v. *ICI Am., Inc.*, 538 F.2d 134, 143 (7th Cir.) ("Patent licenses are not governed by the Patent Act, Section 261 being inapplicable to licensees.") (quoting Peter Rosenberg, *Patent Law Fundamentals* 264 (1975)), cert. denied, 429 U.S. 941 (1976); see also *Cybernetic Servs., Inc.* v. *Matsco, Inc.*, 252 F.3d 1039, 1052 (9th Cir. 2001) (holding that a security interest in a patent is akin to a license and need not be recorded under Section 261), cert. denied, 534 U.S. 1130 (2002).

The court of appeals acknowledged that Section 261, which addresses only "inconsistent assignments, grants, or conveyances to two entities," does not "directly govern" this case. Pet. App. 5a, 6a. The court nonetheless viewed Section 261 as reflecting a more general understanding on Congress's part that "the protections of the bona fide purchaser rule extend only to those who have received an 'assignment, grant or conveyance.'" *Id.* at 18a. Accordingly, the court concluded that, when a party acquires only a non-exclusive right to use a patent, and thus not "all substantial rights" under the patent, "Congress contemplated that there would be no bona fide purchaser defense." *Id.* at 19a.

The court of appeals may not have been justified in drawing that negative inference from Section 261. By its terms, Section 261 is a recording statute that concerns the distinct problem of *inconsistent* assignments. That problem does not arise in the context of a non-exclusive sublicenses such as the one at issue here. It does not necessarily follow from Congress's decision to address the problem of inconsistent assignments that Congress intended to bar the application of the bona fide purchaser rule to other transactions not addressed by the statute.

b. There is not only no statute, but also no prior case law, that directly resolves the question presented in this case. Indeed, petitioner's assertion that "[u]ntil this case, the BFP defense was clearly available to licensees of intellectual property" (Pet. 2), is accompanied by citation to only one case from any court. That case—*Heidelberg Harris*, *Inc.* v. *Loebach*, 145 F.3d 1454 (Fed. Cir. 1998)—did not decide, but merely assumed, the availability of the defense.

In *Heidelberg Harris*, the bona fide purchaser of a patent license was allowed to prevail over an inventor whose original assignment of the patent had been rescinded as based on fraud. See Pet. App. 27a-28a. The parties in *Heidelberg Harris* did not, however, contest the availability of the bona fide purchaser defense to a patent licensee; instead, the inventor argued that the licensee had notice of the inventor's claim and thus was not a bona fide purchaser. See 145 F.3d at 1458. Because the question presented here was not briefed or argued by the parties and was not considered by the court in *Heidelberg Harris*, the en banc court of appeals (including every member of the *Heidelberg Harris* panel) unanimously recognized that the earlier case was not binding authority. Pet. App. 160a. Petitioner's assertions that the en banc court "tossed aside its decision in *Heidelberg Harris*," which "*held* that the BFP defense is available to patent licensees," must be understood in the context of what was actually contested in that earlier case. Pet. 9 (emphasis added); see Pet. 3.

c. The court of appeals' conclusion that the bona fide purchaser rule applies only to transactions that involve, or are tantamount to, a transfer of title accords with the traditional common law rule. For example, this Court, applying the common law, held that the bona fide purchaser rule "applies only where the legal title has been conveyed and the purchase-money fully paid." *Villa* v. *Rodriguez*, 79 U.S. (12 Wall.) 323, 338 (1870); see Pet. App. 10a-11a (citing cases). The Restatement of Restitution similarly describes the rule as protecting one who "acquires title to property." Restatement of Restitution § 172(1) (1937) ("Where a person acquires title to property under such circumstances that otherwise he would hold it upon a constructive trust or subject to an equitable lien, he does not so hold it if he gives value for the property without notice of such circumstances.").

In contrast, modern commercial law as embodied in the Uniform Commercial Code (U.C.C.) does not confine the bona fide purchaser rule to transactions involving the passage of title. To be sure, Section 2-403(1) of the U.C.C., which codifies the rule for sales of goods, is phrased in terms of title: "A person with voidable title has power to transfer a good title to a good faith purchaser for value." In addition, however, the U.C.C.

extends the rule to leases of goods. See U.C.C. §§ 2A-304, 2A-305.

The U.C.C. does not directly apply to this case because a license of intellectual property is excluded from its definition of "goods." U.C.C. §§ 2A-103(1)(h), 9-102(a)(42) & Official Cmt. 5(d). Nor is a non-exclusive patent license precisely analogous to a sale or lease of goods. A patent license is "fundamentally an agreement by the patent owner not to sue the licensee." *Fromson* v. *Western Litho Plate & Supply Co.*, 853 F.2d 1568, 1576 (Fed. Cir. 1988); accord, *e.g.*, *Henry* v. *A.B. Dick Co.*, 224 U.S. 1, 24 (1912). A patent holder may sue for infringement anyone who "*without authority* makes, uses, offers to sell, or sells any patented invention." 35 U.S.C. 271(a) (emphasis added). A license is a grant of authority by the patent holder, and a license may, as here, include a grant of authority to issue sublicenses. See Pet. App. 3a. Viewed as an agreement not to sue, a non-exclusive patent license or sublicense may be distinguished from the transactions to which the bona fide purchaser rule has been applied under the common law and the U.C.C.[2]

d. As petitioner notes (Pet. 8), many of the interests advanced by the bona fide purchaser rule are not con-

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[2] Consistent with the decision here, the lower courts have held that the bona fide purchaser rule does not apply in the analogous field of copyright licenses. *Microsoft Corp.* v. *Harmony Computers & Elecs., Inc.*, 846 F. Supp. 208, 211 (E.D.N.Y. 1994); *ISC-Bunker Ramo Corp.* v. *Altech, Inc.*, 765 F. Supp. 1310, 1331 (N.D. Ill. 1990) ("Simply put, there is no such thing as a bona fide purchase for value in copyright law."); *Major League Baseball Promotion Corp.* v. *Colour-Tex, Inc.*, 729 F. Supp. 1035, 1041 (D.N.J. 1990); see *American Int'l Pictures, Inc.* v. *Foreman*, 576 F.2d 661, 664, 665 (5th Cir. 1978). Thus, a sublicensee of a copyright can obtain no greater right than the sublicensor can convey.

fined to transactions involving transfers of title or "all substantial rights" (Pet. App. 19a) to property. Whether or not a series of transactions is of that character, a party to the initial transaction is ordinarily in a better position than a non-party to detect and prevent fraud in that transaction. On the other hand, in the context of a non-exclusive right to use intellectual property, the bona fide purchaser rule does not serve the same role in providing an incentive to record the assignment (and so to avoid inconsistent claims) as it does in the context of exclusive assignments.

The fact that the court of appeals' decision is not justified by reference to the primary interests served by the bona fide purchaser rule does not, of course, mean that the decision is incorrect. Cf. *PBGC* v. *LTV Corp.*, 496 U.S. 633, 647 (1990) (courts should not "assume that *whatever* furthers the statute's primary objective must be the law") (quoting *Rodriguez* v. *United States*, 480 U.S. 522, 525-526 (1987)). The common law similarly confined the rule to transactions involving a transfer of title. Such an approach provides incentives for buyers as well as sellers contemplating other sorts of transactions to assure themselves that no fraud has occurred. Moreover, in the patent context, the decision below allows the patent owner to retain control over the patented invention and does not allow fraud to result in loss of that control.

2. The United States is not aware of any other case that presented the question whether the bona fide purchaser rule applies in the patent licensing context. See Pet. App. 13a (noting the absence of common law cases applying the rule to contract rights generally).

The United States' own experience indicates that the question does not arise with any frequency. Federal agencies enter into thousands of patent licenses each year. Agencies having significant patent licensing experience—the Department of Commerce, the Department of Energy, the National Institutes of Health, and the National Aeronautics and Space Administration—have reported no attempts to void their patent licenses as based on fraud.[3]

The paucity of litigation on this question may indicate that a sublicensee is often able to protect itself against the risk that a defect will arise in the sublicensor's ability to convey the sublicense. The parties to a sublicense commonly draft their agreement to address that contingency. See Jay Dratler, Jr., *Licensing of Intellectual Property* § 8.02[1], at 8-8.2 (2002) (Dratler) ("Now most well-drafted licenses, whether or not exclusive, contain warranties of authority to license, and many indemnify the licensee against losses from breach of that warranty."). A sublicensee may also seek an assurance from the patent holder that the original license is valid and that the sublicense is authorized.[4]

The petition implies that the question did not arise in other cases because the availability of the bona fide purchaser defense in the patent licensing context was generally assumed. See, *e.g.*, Pet. 2-3, 9. The assump-

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[3] The United States is aware of only one instance in which an inventor sought (unsuccessfully) to void the *assignment* of his patent to the government based upon alleged fraud. See *Heinemann* v. *United States*, 620 F.2d 874 (Ct. Cl. 1980), and *Heinemann* v. *United States*, 796 F.2d 451 (Fed. Cir. 1986), cert. denied, 480 U.S. 930 (1987). A patent assignment, in which title to a patent is conveyed, may well be treated differently from a non-exclusive sublicense under the bona fide purchaser rule.

[4] That is not to suggest that such measures would always provide a sublicensee with the same protection as would the bona fide purchaser rule. See, *e.g.*, Dratler § 8.02[1] ("a warranty or indemnity is only as good as the firm that makes it").

tion in *Heidelberg Harris* that the defense applied there is consistent with that view. Ordinarily, however, parties do not voluntarily relinquish valuable rights, such as a party's right to control the licensing of its patent, in the absence of controlling law directly on point. No such law existed on the question here. See pp. 9-12, *supra*. There is reason for skepticism, therefore, that the dearth of cases such as this one is attributable to a nearly universal assumption among patent holders and patent licensees about the scope of the bona fide purchaser rule.

Finally, in light of the apparent infrequency with which the bona fide purchaser rule has been invoked with respect to patent licenses and sublicenses, it is unclear whether the court of appeals' decision will have the disruptive consequences that petitioner predicts. See, *e.g.*, Pet. 8 (predicting "enormous transaction costs and intolerable uncertainties"); accord Dratler § 8.02[1], at 8-8.4. If experience confirms those predictions, Congress may well be persuaded to clarify the law. Alternatively, this Court could consider the question if, and when, its practical importance is demonstrated.[5]

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[5] In any event, this case would present an atypical scenario for addressing the applicability of the bona fide purchaser rule in view of the close connections among the parties. When it entered into the sublicense, petitioner purchased a 40% equity interest in DeKalb, the sublicensor, and 10% of DeKalb's voting stock. Pet. App. 3a. Presumably, that purchase was made only after petitioner conducted an extensive due-diligence investigation of DeKalb. The usual concern of the bona fide purchaser rule to avoid imposing search costs on an innocent purchaser is thus attenuated in this case. (There is, however, no suggestion in the record that petitioner had notice of any fraud.) In addition, petitioner's subsequent purchase of the remaining equity in DeKalb arguably makes petitioner a more suitable candidate than the usual innocent purchaser for bearing any losses caused by DeKalb.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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