

No. _____

**In The
Supreme Court of the United States**

— ♦ —
FROST-TSUJI ARCHITECTS,

Petitioner,

v.

HIGHWAY INN, INC., et al.,

Respondents.

— ♦ —
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

— ♦ —
PETITION FOR WRIT OF CERTIORARI

— ♦ —
RANDALL K. SCHMITT
Counsel of Record
MCCORRISTON MILLER MUKAI MACKINNON LLP
Five Waterfront Plaza, 4th Floor
500 Ala Moana Boulevard
Honolulu, Hawai'i 96813
(808) 529-7300
schmitt@m4law.com
Counsel for Petitioner

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

There is a disparity between the circuits as to explicit exclusive rights afforded by the Architectural Works Copyright Protection Act (“AWCPA”) which has not been previously reviewed by this Court. 17 U.S.C. §§ 102 and 106 recognize “architectural works” as a designated special Class with explicit exclusive rights by Act of Congress. The First, Third, Fourth, Sixth, and Eleventh Circuits review their cases recognizing the rights of the copyright author, while the Fifth, Seventh, and Ninth Circuits advance the standard of implied license, which is not a limitation or exception under § 120.

1. Whether judicial grant of an unremunerated, involuntary, *sua sponte* implied license, is allowed to negate the explicit exclusive rights in “architectural works” to do and to authorize the bundle of rights under 17 U.S.C. § 106; contrary to 17 U.S.C. § 201(e), and in violation of U.S. Constitution Art. 1, § 8, Clause 8, and against the congressional mandates of AWCPA.
2. Whether the Ninth Circuit disregarded this Court by failing to recognize misconduct and illegal acts that nullify any license, in determining fee awards in a copyright infringement case, as decided in *Kirtsaeng v. Wiley & Sons*, 579 U.S. ___, 136 S.Ct. 1979, 2016 WL 3317564.
3. Whether removal of indications of attribution without the author’s knowledge or authorization, on

QUESTIONS PRESENTED – Continued

registered copyrighted work, before first publication of the building, stripping the architect's Titleblocks and copyright management information ("CMI"), is a violation of the Digital Millennium Copyright Act ("DMCA").

LIST OF PARTIES

Frost-Tsuji Architects (“Frost-Tsuji” or “FTA”),

Petitioner

Highway Inn, Inc. (“HII”)

Ho‘ola Mau, LLC (“HM”)

Bryce Uyehara, A.I.A., Inc. (“Uyehara”)

Iwamoto and Associates, LLC (“Iwamoto”)

J. Kadowaki, Inc. (“JKI”)

Palekana Permits, LLC (“Palekana”)

Bargreen Ellingson of Hawaii, Inc. (“Bargreen”)

Respondents

STATEMENT PURSUANT TO RULE 29.6

Frost-Tsuji Architects is a partnership registered under the laws of the States of California and Hawai‘i.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	iii
STATEMENT PURSUANT TO RULE 29.6.....	iii
INTRODUCTION	1
OPINIONS AND ORDERS BELOW.....	2
STATEMENT OF JURISDICTION	4
STATUTORY PROVISIONS INVOLVED	4
STATEMENT OF THE CASE.....	5
1. Review Of Key Factual Points.....	5
2. Review Of Key Procedural Points	11
REASONS FOR GRANTING THE PETITION....	14
I. The Lower Courts, By Imposing An Implied Non-Exclusive License, Are Violating The U.S. Constitution And The AWCPA.....	15
II. The Courts Of Appeals Are In Disarray About How To Treat “Architectural Works” Under The AWCPA	17
III. The Lower Courts’ Decisions Contravene This Court’s Established Precedent In <i>Kirtsaeng</i> By Failing To Address Its Directives.....	27
IV. This Case Presents An Ideal Vehicle To Consider Important Questions Of Federal Law Which Affect A Major Sector of The U.S. Economy	31
CONCLUSION.....	37

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.