

No. \_\_\_\_\_

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In The  
Supreme Court of the United States

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BLACKBIRD TECH LLC,  
dba Blackbird Technologies,  
*Petitioner,*

v.

HEALTH IN MOTION LLC,  
dba Inspire Fitness,  
LEISURE FITNESS EQUIPMENT LLC,  
*Respondents.*

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

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PETITION FOR A WRIT OF CERTIORARI

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*Dated: March 16, 2020*

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## QUESTION PRESENTED FOR REVIEW

35 U.S.C. § 285 provides that a court “in exceptional cases may award reasonable attorney fees to the prevailing party.” In *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545 (2014), this Court held that an exceptional case is “one that stands out from others with respect to the substantive strength of a party’s litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated.” This Court further held that “district courts may determine whether a case is ‘exceptional’ in the case-by-case exercise of their discretion, considering the totality of the circumstances.” *Id.* Applying *Octane Fitness*, in this case both the district court and Federal Circuit found this was an exceptional case based in part on the number of previous unrelated litigations filed by Petitioner without any analysis of those previous cases.

The question presented is:

Can a court consider factors unrelated to the instant case in determining whether a particular case is exceptional, *i.e.*, whether those outside factors are relevant to the strength of a party’s litigating position in that particular case, or the manner in which that particular case was litigated?

**PARTIES TO THE PROCEEDINGS AND  
RULE 29.6 STATEMENT**

The parties to the proceedings include those listed on the cover.

Blackbird Tech LLC dba Blackbird Technologies is a limited liability company. It does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

The following is a list of all proceedings in other courts that are directly related to the case:

- *Blackbird Tech LLC d/b/a Blackbird Technologies v. Health In Motion LLC et al.*, No. 2:17-cv-03488-R-GJS, U.S. District Court for the Central District of California. Judgment entered Sept. 10, 2018.
- *Blackbird Tech LLC d/b/a Blackbird Technologies v. Health In Motion LLC et al.*, No. 2018-2393, U.S. Court of Appeals for the Federal Circuit. Judgement entered December 16, 2019.

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