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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

KRZYSZTOF SYWULA,  
  
Plaintiff,  
  
v.  
  
TELEPORT MOBILITY, INC. *et al.*,  
  
Defendant.

Case No. 21-cv-1450-BAS-AGS

**ORDER:**

- (1) DENYING TELEPORT’S MOTION TO STRIKE [ECF No. 65];**
- (2) GRANTING PLAINTIFF’S MOTION TO SEAL [ECF No. 60]; and**
- (3) DENYING MOTION TO DISMISS [ECF No. 65]**

A patent application must list each and every inventor who is responsible for developing the technology claimed therein. *See* 35 U.S.C. § 116(a) (providing that “[w]hen an invention is made by two or more persons jointly,” the patent application must identify all such inventors); *see* 37 C.F.R. § 1.63(a)(2) (instructing patent applicant must “[i]dentify each inventor”); *see also id.* § 1.56 (instructing patent applicant “has a duty of candor and good faith in dealing with the United States Patent and Trademark Office” (“USPTO”)). A putative inventor whose status has been omitted from a patent may petition a federal

1 court pursuant to 35 U.S.C. § 256 to direct the USPTO to correct that patent’s inventorship  
2 acknowledgments. But the putative-inventor plaintiff must demonstrate he or she has  
3 Article III standing to do so.

4 Typically, a putative-inventor plaintiff demonstrates standing to seek correction by  
5 showing he or she has either: (1) an ownership interest in the disputed patent, *see, e.g.,*  
6 *Fina Oil & Chem. Co. v. Ewen*, 123 F.3d 1466, 1470 (Fed. Cir. 1997) (“*Fina Oil*”); or (2)  
7 a financial interest in being named an inventor of the disputed patent, *see, e.g., Chou v.*  
8 *Univ. of Chi.*, 254 F.3d 1347, 1359 (Fed. Cir. 2001) (“*Chou*”). But in 2015, the Federal  
9 Circuit in *Shukh v. Seagate Technology LLC*, 803 F.3d 659 (Fed. Cir. 2015) (“*Shukh*”),  
10 held a putative-inventor plaintiff need not have an ownership or financial-interest in the  
11 disputed patent to bring a § 256 claim *if* the plaintiff can show a “concrete and  
12 particularized *reputational* injury” arising from the defendant’s allegedly wrongful  
13 omission of inventorship status. *Id.* at 663 (emphasis added).

14 In the instant case, Plaintiff Krzysztof Sywula (“Sywula”) seeks to correct several  
15 patents owned by Defendant Teleport Mobility, Inc. (“Teleport”), which relate to a  
16 software application for aggregating ride-sharing services. Sywula purports to have  
17 invented the Teleport patents’ underlying technology but alleges that Defendants Alexis  
18 DaCosta (“DaCosta”)—Teleport’s majority shareholder—and Vincent Coletti  
19 (“Coletti”)—DaCosta’s business partner—wrongfully withheld inventorship credit in the  
20 patent applications.<sup>1</sup> However, Sywula has twice failed to demonstrate standing to pursue  
21 his § 256 claim.

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22  
23 <sup>1</sup> This action is one of three actions stemming from the Teleport business venture. There is also  
24 an action pending in the Northern District of California, in which Teleport alleges Sywula breached several  
25 agreements and misappropriated the entities’ intellectual property. *Teleport Mobility Inc. v. Sywula*, 21-  
26 cv-00874 (N.D. Cal. filed Feb. 3, 2021) (the “Northern District Action”). The Northern District Action is  
27 currently stayed pending arbitration. *Id.*, ECF No. 49. Furthermore, around the same time Sywula filed  
28 this action, he filed another action in San Diego Superior Court, in which he essentially alleged Defendants  
Teleport, DaCosta, and Coletti “tried to run him out of the Teleport business and deny him the benefits of  
the invention that he created and rightfully owns.” *Sywula v. DaCosta*, No. 21-cv-1456-BAS-AGS (the  
“Rescission Action”), 2022 WL 910217, at \*2–3 (S.D. Cal. Mar. 29, 2022). The Rescission Action was  
removed to federal court, but was subsequently remanded. *Id.* at \*10–11.

1 As explained in this Court’s Order dismissing the First Amended Complaint (First  
2 Am. Compl., ECF No. 15) for lack of standing, Sywula has no ownership or financial  
3 interest in the Teleport patents. (Dismissal Order at 8–10, ECF No. 54.) Therefore, he is  
4 foreclosed from demonstrating Article III standing pursuant to *Fina Oil* and *Chou*. (*Id.*)  
5 Moreover, Sywula’s prior attempt to invoke *Shukh* was unsuccessful. (*Id.* at 10–12.)  
6 Although Sywula has demonstrated Defendants’ purported failure to credit him with  
7 inventing the technology claimed by the Teleport patents damaged his professional  
8 reputation, he has failed to show that reputational injury is a “concrete” one. (*Id.*) Without  
9 doing so, Sywula lacks standing to pursue correction of the Teleport patents. (*Id.*)

10 Nevertheless, the Dismissal Order left open the possibility Sywula can satisfy the  
11 standing requirements of *Shukh* if he is able to demonstrate his reputational injury has an  
12 “economic component,” such as “loss of employment prospects or other opportunities.”  
13 (Dismissal Order at 12 (quoting *Shukh*, 803 F.3d at 667).) On August 11, 2022, Sywula  
14 filed a pleading with new standing allegations designed to do just that; this pleading is  
15 styled as Sywula’s “Second Amended Complaint.” (Second Am. Compl., ECF No. 59.) It  
16 alleges, *inter alia*, that in early 2022 Sywula began seeking new employment opportunities  
17 beyond the Software Engineer position he held at Intel for approximately 12 years.  
18 However, because Defendants purportedly failed to properly recognize him as an inventor  
19 of the Teleport patents, Sywula alleges (1) he was unable to advance in rank within Intel  
20 and (2) another employer rescinded a job offer that was more lucrative than the position he  
21 ultimately secured.

22 Now before the Court is Teleport’s Second Motion to Dismiss for lack of standing  
23 pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(1). (Second Mot. to Dismiss  
24 (“Rule 12(b)(1) Motion”), ECF No. 65-1.) Teleport argues all three prerequisite elements  
25 of Article III standing still are missing from Sywula’s pleading. It also argues the  
26 extraneous facts it proffers alongside its Rule 12(b)(1) Motion dispossess this Court of  
27 jurisdiction. Those facts, Teleport asserts, demonstrate Sywula’s loss of vocational  
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1 leverage and employment opportunities has nothing to do with Sywula’s lack of published  
2 patents. Sywula opposes (Opp’n, ECF No. 70) and Teleport replies (Reply, ECF No. 72).

3 The Court finds resolution of Teleport’s Rule 12(b)(1) Motion—and the parties’  
4 other pending motions relating thereto—is suitable without the need for oral argument. *See*  
5 Civ. L. R. 7.1(d)(1). For the reasons set forth below, Sywula has sufficiently invoked  
6 *Shukh* to demonstrate he has standing to pursue his § 256 claim.

## 7 **I. BACKGROUND**

8 The Court presumes the parties’ familiarity with the facts and procedural history of  
9 this matter, which are principally set forth in this Court’s Order denying Sywula’s  
10 application for a temporary restraining order (ECF No. 27) and its Dismissal Order. The  
11 Court repeats that information here only to the extent necessary to frame the issues  
12 pertinent to the Motions now before it.

### 13 **A. Sywula’s First Amended Complaint and the Dismissal Order**

14 As mentioned above, *see supra* Introduction, the Federal Circuit recognizes three  
15 distinct theories of standing in the § 256 context. *See Fina Oil*, 123 F.3d at 1470 (holding  
16 owner of disputed patent has standing to pursue § 256 claim); *Chou*, 254 F.3d at 1359  
17 (holding plaintiff with financial interest in being named inventor of disputed patent has  
18 standing to pursue § 256 claim); *Shukh*, 803 F.3d at 663 (holding plaintiff who suffers  
19 concrete reputational injury from withholding of inventorship credit has standing to pursue  
20 § 256 claim). Sywula unsuccessfully sought to invoke all three in his First Amended  
21 Complaint.

22 Ownership Interest: Sywula alleged he has standing to pursue this inventorship  
23 action as “part-owner” of the Teleport patents. While he acknowledged he had assigned  
24 his ownership interest in the disputed patents to Teleport, he asserted those assignments  
25 are invalid. (FAC ¶ 73.) Hence, Sywula claimed he still retains ownership interest in the  
26 Teleport patents and, therefore, has standing to pursue this action under *Fina Oil*. (*Id.*);  
27 *see Fina Oil*, 123 F.3d at 1470.  
28

1 The Court observed Sywula’s ownership-interest theory of standing is viable *only*  
2 if the assignments to Teleport of his ownership interest in the subject patents are undone  
3 by judicial decree, which Sywula presently is litigating in the Rescission Action. Noting  
4 that it has no jurisdiction to address the invalidity issue in the instant § 256 action,  
5 (Dismissal Order at 9 (citing *Larson v. Correct Craft, Inc.*, 569 F.3d 1319, 1327 (Fed. Cir.  
6 2009); *Jim Arnold Corp. v. Hydrotech Sys., Inc.*, 109 F.3d 1567, 1571–72 (Fed. Cir.  
7 1997))), this Court concluded Sywula cannot proceed on his ownership-interest theory  
8 “unless and until he regains title to the patents.” (*Id.* (quoting *Larson*, 569 F.3d at 1327).)

9 Financial Interest: Sywula also asserted he possesses a financial interest in the  
10 disputed patents because he is a minority shareholder of Teleport, the entity that  
11 purportedly owns the patents. (FAC ¶¶ 2, 31.) Sywula claimed his stake in Teleport gave  
12 him a financial interest in the disputed patents and, therefore, standing to sue to correct  
13 their inventorship credits. (*Id.*) The Court disagreed and disposed of Sywula’s financial-  
14 interest theory. (Dismissal Order at 9.) In doing so, it noted other courts have concluded  
15 with near uniformity a plaintiff’s shareholder status in an entity that owns the disputed  
16 patent does not constitute a “concrete financial interest sufficient to confer standing.” (*Id.*  
17 (quoting *Eastwood v. Molecular Defs. Corp.*, 373 F. Supp. 3d 502, 507–08 (S.D.N.Y.  
18 2009); citing additional authorities).)

19 Reputational Interest: Finally, Sywula alleged his “omission from th[e] [Teleport]  
20 [p]atents has caused [him] concrete *reputational* harm[.]” (FAC ¶ 74 (citing *Shukh*, 803  
21 F.3d at 659) (emphasis added).) Sywula identified three items of purported reputational  
22 injury; the first two relate to his professional reputation and the last to his personal  
23 reputation. First, Sywula alleged Defendants’ withholding of inventorship credit  
24 “depriv[ed] [him] of the public recognition and vocational leverage that comes from being  
25 named as an inventor on a patent in one’s field.” (*Id.* ¶ 75.) Second, he averred Defendants  
26 made diminishing statements about his contributions to the Teleport ride-sharing  
27 technology, which also “are harmful to Sywula’s credibility as a reputable software  
28 engineer.” (*Id.*) And third, Sywula claimed “reputational harm . . . based on . . . the intense

1 acrimony” arising from the various disputes between the parties, including publicly  
2 available police reports and a civil harassment restraining order DaCosta filed against him  
3 in Santa Clara County. (*Id.* ¶ 76.)

4 The Court found Sywula’s attempt to invoke *Shukh* unavailing. As an initial matter,  
5 the Court concluded Sywula’s allegations of personal reputational injury were neither fairly  
6 traceable to Defendants’ omission of inventorship credit nor redressable by a favorable  
7 ruling in this case. Moreover, it found Sywula failed to allege the injuries to his  
8 professional reputation are “concrete.” (Dismissal Order at 10–12.) Reciting *Shukh*’s legal  
9 premise (*see id.* at 10–11 (“[R]eputational injury alone is not sufficient; rather, it must be  
10 tied to economic consequences.” (quoting *Kamdem-Ouaffo v. PepsiCo Inc.*, 657 F. App’x  
11 949, 954 (Fed. Cir. 2016), *cert denied*, 137 S. Ct. 1096 (2017))))), the Court determined  
12 Sywula’s failure to identify “economic harm or other concrete consequences” arising from  
13 is purportedly diminished reputation as a software developer precluded him from  
14 proceeding with his § 256 claim (*see id.*).

15 Dismissal and Leave to Amend: This Court dismissed without prejudice the First  
16 Amended Complaint. (Dismissal Order at 13 (citing *Kelly v. Fleetwood Enters., Inc.*, 377  
17 F.3d 1034, 1036 (9th Cir. 2004)).) But it granted Sywula a final opportunity to allege  
18 standing under *Shukh*. (*Id.* (granting Sywula leave to amend “allegations concerning  
19 standing based on reputational injury”).)

## 20 **B. Second Amended Complaint**

21 In accordance with the Dismissal Order, Sywula filed his Second Amended  
22 Complaint on August 11, 2022. It contains new standing allegations designed to show  
23 Sywula’s alleged reputational injuries are concrete. It also appends five declarations that  
24 corroborate and bolster these new allegations.

### 25 **1. New Standing Allegations**

26 Sywula alleges he is a software developer “with significant experience in the field  
27 of software engineering, including the conception, design, development[,] and  
28 maintenance of complex software systems.” (SAC ¶ 12.) He worked as a Software

1 Engineer at Intel for approximately 12 years. (*Id.* ¶ 11.) Beginning in 2010, Sywula  
2 worked for Intel in his home country of Poland. (*Id.*) He moved to Ireland in 2014, where  
3 he continued to work as a Software Engineer at Intel. (*Id.*) In 2015, he moved to the United  
4 States and started working for Intel in San Diego. (*Id.*) After approximately 12 years at  
5 Intel, Sywula began exploring new employment opportunities, both within Intel and  
6 elsewhere, in early 2022—well after he commenced this action. (*Id.* ¶ 84.)

7 Sywula alleges he aspired to climb the ranks at Intel to the position of “Principal  
8 Engineer,” which is the next step on Intel’s hierarchical ladder for software developers.<sup>2</sup>  
9 (SAC ¶ 87, 91.) Sywula avers he was “well-positioned” for a promotion. According to  
10 Sywula, Intel “typically requires” Principal-Engineer candidates to have approximately ten  
11 years of experience as a software engineer; Sywula had approximately 12 years under his  
12 belt. (*Id.* ¶¶ 84, 87.) But Sywula alleges inventorship credit is “usually required for  
13 [S]oftware [E]ngineers to attain higher-ranked roles” like Principal Engineer. (*Id.* ¶ 85.)  
14 He claims Intel was no different in this regard; there, patent-inventorship is an “important  
15 qualification” for prospective Principal Engineers. (*Id.* ¶ 87; *see id.* ¶¶ 85–86 (alleging  
16 inventorship credit “signals” a candidate “can recognize niches in the market, recognize  
17 potentially patentable inventions where they exist, and ultimately transform an idea into a  
18 product”).) Sywula alleges Intel utilized a “nomination form” to assess internal candidates  
19 eligible for promotion to the Principal Engineer role, which designates inventorship credit  
20 as relevant to several of the skills and qualities needed for that position. (*Id.* ¶ 87 (“On  
21 Intel’s nomination form for Principal Engineers, patent publications are listed as a criterion  
22 in three different places, under categories for ‘Expertise,’ ‘Leadership,’ and ‘Impact.’”)).)

23 Sywula alleges that had Defendants properly acknowledged his inventorship status  
24 in relation to the Teleport patents, he would have been able to show Intel he was a strong  
25 candidate for promotion. (SAC ¶ 83.) But because Defendants purportedly omitted him  
26 as inventor of the Teleport patents, he lacks any inventorship acknowledgments and,  
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28 <sup>2</sup> Sywula alleges Intel’s peers follow a practically identical hierarchical structure for software-  
developer positions. (*See* SAC ¶¶ 99, 108.)

1 therefore, was effectively foreclosed from “advance[ing] his career beyond the Software  
2 Engineer rank [at Intel].” (*Id.* ¶¶ 83–84.) Sywula alleges his prospects of promotion at  
3 Intel were so diminished by his lack of published patents that he did not even bother  
4 applying for a Principal Engineer role at Intel.<sup>3</sup> (*Id.* ¶¶ 83, 91.) “Colleagues [of Sywula],  
5 who worked in the software engineer hiring departments at [other major technology  
6 companies],” also expressed this sentiment to him. (*Id.* ¶ 81 (alleging colleagues advised  
7 Sywula “he would not be able to get hired as a Principal Engineer, or another role higher  
8 in rank than his current Software Engineer[] at Intel, or [at] any of the other major tech  
9 companies[,] due to his lack of inventorship on any patents”).)

10 So, Sywula instead sought Software Engineer and equivalent opportunities outside  
11 of Intel. (SAC ¶ 92.) Specifically, in early 2022, Sywula applied for a Build Integration  
12 and Release Firmware Engineer position at Apple. (*Id.* ¶ 91.) An Apple recruiter verbally  
13 confirmed to Sywula in mid-March 2022 “he was selected for the role and that he should  
14 expect to receive a formal job offer shortly.” (*Id.*) However, approximately one week  
15 later, the same recruiter informed Sywula that Apple decided not to extend an offer. (*Id.* ¶  
16 93.) The recruiter invited Sywula to call him for further explanation, which Sywula did.  
17 (*Id.*) During that telephone call, the recruiter stated Apple had conducted “an Internet  
18 search of [Sywula] as part of Apple’s vetting process,” and that Apple’s “verbal offer was  
19 rescinded and no other Apple team would hire [Sywula].” (*Id.*)

20 Sywula alleges Apple’s vetting process would have captured filings in this instant  
21 litigation, including Defendants’ opposition to Sywula’s application for a temporary  
22 restraining order, which contains statements that purportedly diminish Sywula’s  
23 contributions to Teleport’s ride-sharing application. (SAC ¶ 89; Defs.’ Opp’n to TRO  
24 App., ECF No. 14.) In particular, that brief states: (1) Sywula was a “pair of hands” in  
25 relation to Teleport’s ride-sharing technology, “who was engaged by [DaCosta and Coletti]  
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27 <sup>3</sup> Sywula avers he did not apply for Principal Engineer roles elsewhere because “[t]he typical path  
28 for obtaining [that] role . . . is to first hold a Principal Engineer role in [the applicant’s] current company.”  
(SAC ¶ 99.)



1 to bring their concept to reality”; and (2) Sywula’s “*de minimis* involvement as company  
2 tech support during the creation of the inventions claimed in the patents does not rise to the  
3 level of joint inventorship.” (Defs.’ Opp’n to TRO App. at 4, 24; *see also* SAC ¶¶ 89.)  
4 Sywula does not expressly allege the Apple recruiter attributed Apple’s decision to renege  
5 its offer to Defendants’ diminishing statements or that Apple ever saw these statements.  
6 However, Sywula does allege “employers commonly search job candidates’ online  
7 presence in their vetting process, which would reveal [court filings],” such as Defendants’  
8 brief; that Apple conducted such a search; and that Apple reneged its offer to Sywula after  
9 doing so. (SAC ¶¶ 90, 93.)

10 Ultimately, Sywula secured a Software Engineer position at TikTok in June 2022.  
11 (SAC ¶ 95.) According to Sywula, he makes \$42,000 less in annual compensation than  
12 what he would have made at Apple. (*Id.* ¶¶ 96–97.) He further avers his TikTok  
13 compensation package is in the range of \$46,000 to \$225,000 less than what a Principal  
14 Engineer at Intel earns per year. (*Id.* ¶¶ 96, 98.)

## 15 2. Annexed Declarations

16 Sywula appends five declarations to the Second Amended Complaint. Four are from  
17 “longtime industry professionals.” (Opp’n at 9.) One declaration is from Maciej Peplinski,  
18 an Intel hiring manager (ECF No. 59-2); one is from Maciej Kusio, a Principal Engineer at  
19 Meta who formerly worked at Intel (ECF No. 59-3); one is from Manoel Ramon, a Senior  
20 Technical Program Manager at Google who previously worked at Intel and Amazon (ECF  
21 No. 59-4); and one is from Calvin Park, a Principal Engineer at Apple who formerly  
22 worked at Intel (ECF No. 59-5). Peplinski attests she advised Sywula in early 2022 not to  
23 bother seeking a promotion at Intel given his lack of inventorship credit and to focus his  
24 job search on Software Engineer positions elsewhere instead. (Peplinski Decl. ¶¶ 8–9.)  
25 All four declarants attest Sywula’s lack of inventorship credit significantly diminished his  
26 candidacy for Principal Engineer at Intel. (*See id.*; Kusio Decl. ¶¶ 3–5 (attesting that  
27 “patent inventorship is desirable for all software engineer positions and is practically  
28 required for higher positions” and that Sywula “would be qualified for [Principal Engineer]

1 absent this inventorship issue”); Ramon Decl. ¶ 4 (“If I had to choose between two  
2 engineers with the same qualifications, I will select the candidate that can produce or  
3 participate in IPs and publications.”); Park Decl. ¶ 7 (“Being named on published patents  
4 is an important qualification to become a Principal Engineer.”.)

5 The fifth declaration is Sywula’s own. (ECF No. 59-1.) It appends several  
6 documents. Two of those attachments are internal Intel documents: a “Principal Engineer  
7 and Senior Principal Engineer Nomination Form” (“Intel Nomination Form”) and a copy  
8 of an Intel informational power point (“Intel Presentation”).<sup>4</sup> Sywula proffers these  
9 documents—the relevant contents of which are described in Paragraph 87 of the Second  
10 Amended Complaint—to demonstrate Intel places important emphasis on patent-  
11 inventorship credit in determining whether to elevate a Software Engineer to Principal  
12 Engineer.

### 13 **3. The Instant Motions**

14 On August 24, 2022, Teleport moved pursuant to Rule 12(b)(1) to dismiss Sywula’s  
15 Second Amended Complaint. Teleport argues Sywula’s refined reputational-interest  
16 theory is still facially deficient. It further proffers extraneous materials, which Teleport  
17 asserts dispossess this Court of jurisdiction. Simply put, Teleport claims Sywula does  
18 not—and cannot—show he suffered a “concrete” reputational injury that is either fairly  
19 traceable to Defendants’ omission of inventorship credit in the Teleport patents or  
20 redressable by a favorable ruling in the instant case. Accordingly, Teleport claims Sywula  
21 lacks standing to pursue his § 256 claim.

22 Teleport’s Rule 12(b)(1) Motion also features a Motion to Strike all five of the  
23 declarations appended to the Second Amended Complaint. It asserts that Rule 10(c)  
24 prohibits attachment of such documents to pleadings and that the appropriate remedy is to  
25 expunge those declarations from the record under Rule 12(f). (Rule 12(b)(1) Mot. at 7–9.)  
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28 <sup>4</sup> These documents are lodged under seal at ECF No. 58.

1 Sywula, on the other hand, moves to seal the Intel Nomination Form and Presentation,  
2 which are annexed to his Declaration. (Sealing Mot., ECF No. 60.)

## 3 **II. LEGAL STANDARD**

4 Article III, Section 2 of the Constitution limits federal courts to hearing “actual cases  
5 or controversies.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016). This limitation means  
6 the plaintiff must have standing to sue. *Id.* at 338. To establish standing, a plaintiff must  
7 demonstrate the irreducible constitutional minimum of: (1) an injury-in-fact via “an  
8 invasion of a legally protected interest which is (a) concrete and particularized, and (b)  
9 actual or imminent, not conjectural or hypothetical”; (2) causation—that the injury is  
10 “fairly traceable to the challenged action of the defendant”; and (3) redressability—that it  
11 is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable  
12 decision.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (internal citations and  
13 quotations omitted). “Each element of standing ‘must be supported . . . with the manner  
14 and degree of evidence required at the successive stage of litigation.’” *Maya v. Centex*  
15 *Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011) (quoting *Lujan*, 504 U.S. at 561).

16 Under Rule 12(b)(1), a party may move to dismiss a claim based on lack of subject  
17 matter jurisdiction, including the absence of standing. *Chandler v. State Farm Mut. Auto.*  
18 *Ins. Co.*, 598 F.3d 1115, 1123 (9th Cir. 2010). A Rule 12(b)(1) challenge to jurisdiction  
19 may be facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1036, 1039 (9th Cir.  
20 2004), *cert denied*, 544 U.S. 1018 (2005). Teleport’s Motion to Dismiss contains both  
21 types of jurisdictional challenges.

22 In a facial attack, the challenger asserts the allegations in the complaint itself are  
23 insufficient to invoke federal jurisdiction. *Meyer*, 373 F.3d at 1039. The presumption of  
24 truthfulness attaches to the allegations in the complaint, and the court is limited to the four  
25 corners of the pleading in determining whether it has jurisdiction over the matter. *Thornhill*  
26 *Publ’g Co. v. Gen. Tel. Elec.*, 594 F.2d 730, 733 (9th Cir. 1979). To survive a Rule 12(b)(1)  
27 facial challenge, “the plaintiff must ‘clearly . . . allege facts demonstrating’ each element  
28

1 [of standing].” *Spokeo*, 578 U.S. at 338 (quoting *Warth v. Seldin*, 422 U.S. 490, 518  
2 (1975)).

3 When a defendant makes a factual challenge “by presenting affidavits or other  
4 evidence properly brought before the court, the party opposing the motion must furnish  
5 affidavits or other evidence necessary to satisfy its burden of establishing subject matter  
6 jurisdiction.” *Meyer*, 373 F.3d at 1039 (citation omitted). The court need not presume the  
7 truthfulness of the plaintiff’s allegations under a factual attack. *White v. Lee*, 227 F.3d  
8 1214, 1242 (9th Cir. 2000); *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir.  
9 1983). However, in the absence of a full-fledged evidentiary hearing, disputes in the facts  
10 pertinent to subject matter jurisdiction are viewed in the light most favorable to the  
11 opposing party. *Dreier v. United States*, 106 F.3d 844, 847 (9th Cir. 1996). The disputed  
12 facts related to subject matter jurisdiction should be treated in the same way as one would  
13 adjudicate a motion for summary judgment. *Id.*

### 14 **III. ANALYSIS**

#### 15 **A. Motion to Strike**

16 Citing Rule 10(c), Teleport argues the declarations appended to the Second  
17 Amended Complaint must be stricken. (Rule 12(b)(1) Mot. at 7–9.) Sywula does not  
18 explicitly oppose this request. (Opp’n at 5 (“[T]he Court may find [Teleport’s Motion to  
19 Dismiss] suitable for denial without relying on the declarations[.]”).)

20 Rule 10(c) provides, “A copy of a written instrument that is an exhibit to a pleading  
21 is a part of the pleading for all purposes.” In the Ninth Circuit, a declaration is a “written  
22 instrument” suitable to annex to a pleading only if it “form[s] the basis of the complaint.”  
23 *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). For example, a search-warrant  
24 affidavit that purportedly contains false information “forms the basis” of a Fourth  
25 Amendment claim challenging the unlawful search that affidavit authorized and, thus, is  
26 appropriate to append to, and construe as part of, the pleading. *See Branch v. Tunnell*, 14  
27 F.3d 449, 450–54 (9th Cir. 1994). However, a declaration that merely repeats and bolsters  
28 allegations already contained in the complaint, and, therefore, has no independent

1 significance beyond amplifying and parroting facts already set forth in the pleading, does  
2 not “form[] the basis” thereof. *See, e.g., Montgomery v. Buege*, No. Civ. 08-385-WBS  
3 KHM, 2009 WL 1034518, at \*4 (E.D. Cal. Apr. 16, 2009). The five declarations Sywula  
4 appends to his Second Amended Complaint fall within the ambit of this latter category.  
5 The attestations therein merely repeat or corroborate factual allegations set forth in the  
6 Second Amended Complaint. (*See, e.g., SAC ¶ 91* (alleging Sywula’s colleagues believed  
7 his chances at promotion were dim due to his lack of inventorship credit and that he was  
8 advised not to apply).) Therefore, Rule 10(c) prohibits this Court from construing these  
9 declarations as part of the Second Amended Complaint and, thus, from considering them  
10 in connection with Teleport’s facial challenge to subject matter jurisdiction. *See Meyer*,  
11 373 F.3d at 1039.

12         However, Teleport does not simply ask this Court to ignore the Peplinski, Kusio,  
13 Ramon, Park, and Sywula Declarations in addressing the facial strand of Teleport’s  
14 jurisdictional challenge; Teleport asks the Court to strike those declarations from the record  
15 entirely. (Rule 12(b)(1) Mot. at 7–9.) Doing so would preclude this Court from  
16 considering those declarations in analyzing the *factual* strand of Teleport’s Rule 12(b)(1)  
17 Motion. This is a bridge too far. While courts are limited to the four corners of the  
18 complaint when deciding a facial Rule 12(b)(1) challenge, they have broad discretion to  
19 consider extrinsic evidence—including declarations and the documents appended  
20 thereto—in assessing a factual jurisdictional challenge. *See, e.g., Stuart v. Colo. Interstate*  
21 *Gas Co.*, 271 F.3d 1221, 1225 (10th Cir. 2001) (opining district courts have “wide  
22 discretion to allow affidavits [and] other documents . . . to resolve disputed jurisdictional  
23 facts”); *accord Shaw v. Hiawatha, Inc.*, 884 F.2d 582 (9th Cir. 1989) (Memorandum  
24 Decision) (similar).

25         In the ordinary course of a factual challenge, the opposing party will proffer evidence  
26 seeking to establish subject matter jurisdiction *in response* to such a challenge. Sywula  
27 indisputably proffered the declarations prematurely and in a peculiar sequence. But  
28 Teleport does not cite any authority supporting the proposition this Court must ignore the

1 declarations appended to the Second Amended Complaint in assessing Teleport’s factual  
2 challenge to jurisdiction. *Cf.* Fed. R. Civ. P. 12(f) (“The court *may* strike from a pleading  
3 an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”)  
4 (emphasis added). Rather, the Court has wide latitude to consider the “entire record” and  
5 assess whether any evidence therein bears upon the issues put into contention by a factual  
6 challenge to subject matter jurisdiction. *See CapitalKeys, LLC v. Democratic Rep. of*  
7 *Congo*, No. 15-cv-2079 (KBJ), 2021 WL 2255362, at \*19 (D.D.C. June 3, 2021) (Brown  
8 Jackson, J.); *see also CSR Ltd. v. CIGNA Corp.*, 405 F. Supp. 2d 526, 533 n.3 (noting  
9 district court has “authority . . . to consider the entire record” under Rule 12(b)(1)). Several  
10 of the declarations, here, do bear squarely upon Teleport’s factual challenge. *See* Sec.  
11 III.D.2. For example, Teleport argues Sywula’s loss of vocational leverage had little to do  
12 with his lack of inventorship credit and more to do with his own self-inflicted reputational  
13 injuries. The Intel Nomination Form and Presentation, which highlight patent publications  
14 as a relevant criterion for promotion, relate to this proposition. And Teleport asserts  
15 Sywula foregoing an application for a promotion at Intel demonstrates he had no interest  
16 in the Principal Engineer position. Attestations in the Peplinski Declaration, however, offer  
17 another explanation for Sywula’s failure to formally apply for the job.

18 Accordingly, the Court **DENIES** Teleport’s Motion to Strike and construes the  
19 Second Amended Complaint’s five declarations—and their attachments—as though they  
20 were proffered alongside Sywula’s Opposition.

### 21 **B. Sealing Motion**

22 Having resolved Teleport’s Motion to Strike, the Court turns next to Sywula’s  
23 request to seal two internal Intel files appended to his declaration: the Intel Nomination  
24 Form and Presentation. (*See* Sealing Mot.)

25 As explained in the Second Amended Complaint, Sywula had access to these  
26 documents by virtue of his former employment with Intel. They are offered to corroborate  
27 Sywula’s allegation that Intel considers patent inventorship as indicative of the qualities  
28 and experience necessary to be promoted to Principal Engineer. (*See* Sealing Mot. at 2;

1 *see also* SAC ¶¶ 86–87.) Sywula argues sealing the Intel files is warranted because courts  
2 have traditionally found the public does not have the right to access internal corporate  
3 documents. (Sealing Mot. at 3 (citing *Charles v. Target Corp.*, No. 20-cv-7854-HSG, 2022  
4 WL 3205047, at \*3 (N.D. Cal. July 6, 2022) (“[I]nternal document[s] detailing [a  
5 corporation]’s internal policies and procedures . . . divulges confidential business  
6 information.”)).) Moreover, Sywula asserts the Second Amended Complaint discloses at  
7 Paragraph 87 the relevant content of the Intel Nomination Form and Presentation, and  
8 explains how they support Sywula’s claimed reputational injury. Therefore, Sywula avers  
9 the documents themselves are inessential to understanding this Court’s standing analysis.  
10 (*Id.*)

11 Although Teleport moved to strike the Sywula Declaration, it does not oppose the  
12 Sealing Motion. But Teleport’s silence does not absolve this Court’s duty to scrutinize  
13 Sywula’s request. Teleport’s interest in accessing the proposed sealed documents is not  
14 the only one at stake. The public also has a “common law right ‘to inspect and copy public  
15 records and documents, including judicial records and documents,’” *Pintos v. Pac.*  
16 *Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana v. City & Cty. of*  
17 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)), and an interest “in understanding the  
18 judicial process” in a given case, *Kamakana*, 447 F.3d at 1178–79. It is the Court’s role to  
19 protect against improper infringement of that public right and interest.

20 “Unless a particular court record is one ‘traditionally kept secret,’ a ‘strong  
21 presumption in favor of access’ is the starting point.” *Kamakana*, 447 F.3d at 1178 (citing  
22 *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1125, 1135 (9th Cir. 2003)). The Ninth  
23 Circuit has designated only a few categories of documents that courts “traditionally ke[ep]  
24 secret”: (1) grand jury transcripts; (2) the closed portions of contempt proceedings  
25 containing discussion of matters occurring before the grand jury; (3) filings and transcripts  
26 relating to motions to quash grand jury subpoenas; (4) motions to hold a grand jury witness  
27 in contempt; (5) warrant materials during the pre-indictment phase of an investigation; and  
28 (6) attorney-client privileged materials. *Kamakana*, 447 at 1178 (identifying grand jury

1 transcripts and warrant materials); *United States v. Index Newspapers LLC*, 766 F.3d 1072,  
2 1084–85 (9th Cir. 2014) (expanding category to include filings and motions relating to  
3 grand jury proceedings). Despite Sywula’s bald assertion otherwise, business records  
4 pertaining to a company’s hiring standards do not fall within this limited—and rarely  
5 expanded classification—of material to which no First Amendment right attaches. Hence,  
6 it is Sywula’s burden to overcome the “presumption in favor of access” as to the internal  
7 Intel documents. *Foltz*, 331 F.3d at 1135.

8 The strength of the showing required depends upon whether the documents to be  
9 sealed are offered in connection with a motion that is “more than tangentially related to the  
10 merits of the case.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1102 (9th  
11 Cir. 2016). When the underlying motion is more than tangentially related to the merits, the  
12 “compelling-reasons” standard applies. *Id.* at 1096–98. But when the underlying motion  
13 does not surpass the tangential relevance threshold, the “good-cause” standard applies. *Id.*

14 Here, Sywula assumes the Rule 12(b)(1) Motion is more than tangentially related to  
15 the merits of the case and, thus, presupposes the compelling-reasons standard applies.  
16 (Sealing Mot. at 3.) The Court disagrees. Teleport’s Rule 12(b)(1) Motion attacks this  
17 Court’s jurisdiction over Sywula’s suit. Teleport avers in its Rule 12(b)(1) Motion that  
18 Sywula has not identified a cognizable injury in the first instance to vindicate his rights  
19 under § 256; that Motion is not intertwined with, and does not bear at all upon, the issue  
20 whether Sywula is an “inventor” of the Teleport patents under 35 U.S.C. § 101. Nor are  
21 the documents proposed to be sealed at all pertinent to the merits of Sywula’s § 256 claim;  
22 the Intel files bear only upon whether Defendants’ withholding of inventorship credit  
23 caused Sywula economic harm in the form of loss of vocational leverage—a purely  
24 jurisdictional issue. Therefore, the Rule 12(b)(1) Motion’s relation to the merits of this §  
25 256 action is tangential. Hence, the good-cause standard applies. *Cf. Rodriguez v. Just*  
26 *Brands USA, Inc.*, No. 2:20-cv-04829-DDW (PLAx), 2022 WL 2181098, at \*2 (C.D. Cal  
27 Mar. 1, 2022) (finding good-cause standard governed request to seal documents submitted  
28



1 alongside Rule 12(b)(1) motion that went “to a jurisdictional question rather than directly  
2 to the merits of [p]laintiff’s claims”).

3 The good-cause standard is borrowed from Rule 26(c), which authorizes a court to  
4 issue a protective order for materials produced during discovery. *See Pintos*, 605 F.3d at  
5 678 (citing Fed. R. Civ. P. 26(b)). The test applied is whether “‘good cause’ exists to  
6 protect th[e] information from being disclosed to the public by balancing the needs for  
7 discovery against the need for confidentiality.” *Id.* (quoting *Phillips ex rel. Estates of Byrd*  
8 *v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)). Except, in the context of a  
9 motion to seal, the Court substitutes the party seeking discovery’s interest in production  
10 with the *public’s* interest in accessing the underlying, potentially dispositive materials in  
11 order to comprehend the facts that ultimately inform a court’s decision. *Cf. id.* (instructing  
12 courts to apply good-cause standard from Rule 26 to balance public’s interest in documents  
13 marked sealed with the interest in secrecy). Under Rule 26(c), only “a particularized  
14 showing of ‘good cause’ . . . is sufficient to preserve the secrecy of sealed . . . documents.”  
15 *In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th  
16 Cir. 2012) (emphasis added). “Broad allegations of harm, unsubstantiated by specific  
17 examples or articulated reasoning, do not satisfy the Rule 26(c) test.” *Beckman Indus., Inc.*  
18 *v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Sywula satisfies this standard.

19 To start, Sywula summarizes the relevant portions of the Intel Nomination Form and  
20 Presentation in the Second Amended Complaints, and explains how that information  
21 pertains to an alleged economic component of Sywula’s reputational injury. By doing so,  
22 Sywula has made available to the public the relevant facts about the Intel Nomination Form  
23 and Presentation that inform this Court’s standing analysis. The Second Amended  
24 Complaint’s disclosure of this information, therefore, substantially lessens the public’s  
25 need to access the files themselves. Furthermore, apart from a single page, the voluminous  
26 Intel Presentation largely contains irrelevant information that this Court need not—and  
27 does not—rely upon in determining Sywula’s standing. This information does not enhance  
28 the public’s understanding of the instant judicial proceeding. *See Apple Inc. v. Samsung*

1 *Elecs. Co.*, 727 F.3d 1214, 1226 (Fed. Cir. 2013) (finding the public has a more limited  
2 interest accessing information in proposed seal documents that would not “assist . . . in  
3 understanding the proceedings in th[e] case”).

4 On the opposite side of the scale is Intel’s interest in nondisclosure. There is reason  
5 to find disclosure of the files has the propensity to harm non-party Intel. As an initial  
6 matter, Intel designated Exhibit 2 as “Intel confidential,” demonstrating that it did not  
7 intend for those files to be shared beyond Intel employees and that, in the event of  
8 disclosure, that Intel sought to retain at least some measure of protection to ensure against  
9 the widespread dissemination of those materials. Ordinarily, “a party’s designation of a  
10 document as confidential is not *per se* good cause” under Rule 26. *Marsteller v. MD*  
11 *Helicopter Inc.*, No. CV-14-01788-PHX-DLR, 2017 WL 5479927, at \*2 (D. Ariz. Nov.  
12 15, 2017) (first emphasis added) (citing *San Jose Mercury News, Inc. v. U.S. Dist. Ct.–N.*  
13 *Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999)). However, Intel is a *non-party* to  
14 the instant action. Intel did not introduce its internal documents to the record—Sywula  
15 did. Indeed, it does not appear Intel is even aware its former employee, Sywula, filed  
16 “confidential,” internal documents. Because Intel has not had opportunity to be heard on  
17 the issue, the Court affords some weight to Intel’s confidential designation of its  
18 Presentation.

19 Moreover, Intel’s interest in keeping proprietary business information private is self-  
20 evident. *Cf. Carpenter v. United States*, 484 U.S. 19, 25–26 (1987) (“Confidential business  
21 information has long been recognized as property . . . Confidential information acquired or  
22 compiled by a corporation in the course and conduct of its business is a species of property  
23 to which the corporation has the exclusive right and benefit, and which a court of equity  
24 will protect through . . . [an] appropriate remedy.” (citations and quotation marks omitted)).  
25 Disclosure of the standards Intel relies upon when considering whether to hire or promote  
26 a candidate to Principal Engineer could feasibly impact Intel’s competitive standing in its  
27 industry.  
28

1 Given Intel's status as a nonparty and, moreover, the public's minimal interest in  
2 disclosure of the Intel Nomination Form and Presentation, the Court finds Sywula's  
3 proposed seal is warranted after weighing the competing interests. Accordingly, Sywula's  
4 Sealing Motion is **GRANTED**. (ECF No. 60.)

5 **C. Propriety of New Standing Allegations Under Rule 15(d)**

6 Before it can address the substance of Teleport's Rule 12(b)(1) Motion, the Court  
7 must address the threshold question whether Sywula's new standing allegations comport  
8 with the scope of the Dismissal Order's leave to amend under Rule 15(a) and, if not,  
9 whether the new standing allegations are nevertheless permissible.

10 Rule 15(a) governs *amended* pleadings. Rule 15(a)(1) confers litigants with a right  
11 to amend once as a matter of course and Rule 15(a)(2) covers all other amendments. When  
12 the latter applies, "a party may amend its pleading only with the opposing party's written  
13 consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Rule 15(d) covers *supplemental*  
14 pleadings. Supplemental pleadings differ from amended ones because they "se[t] out . . .  
15 transaction[s], occurrence[s] or event[s] that happened after the date of the pleading to be  
16 supplemented." *Id.* 15(d); *see Eid v. Alaska Airlines, Inc.*, 621 F.3d 858, 874 (9th Cir.  
17 2010).

18 Although not raised by Teleport, the Dismissal Order granted Sywula leave to  
19 *amend*, not leave to *supplement*. But Sywula's new standing allegations are supplemental  
20 ones because they detail events that occurred *after* Sywula instituted this action. Hence,  
21 these allegations are covered by the letter of Rule 15(d), not Rule 15(a). Yet this Court has  
22 not conducted any Rule 15(d) analysis to satisfy itself the new standing allegations are  
23 permissible. It undertakes that endeavor now.

24 "[T]he erroneous characterization of the corrected pleading as an 'amended  
25 complaint' rather than a supplemental pleading is immaterial." *United States for use of*  
26 *Atkins v. Reiten*, 313 F.2d 673, 674–75 (9th Cir. 1963). Therefore, it matters not that  
27 Sywula fashions his new pleading as his Second Amended Complaint. Rather, Rule 15(d)  
28 "is intended to give the court broad discretion in allowing supplemental pleading." Fed.

1 R. Civ. P. 15 Advisory Committee Notes to 1963 Amendment. It explicitly allows courts  
2 to permit supplementation of a prior pleading “on just terms.” Fed. R. Civ. P. 15(d).

3 Where, as here, the newly alleged material unquestionably relates to the matters set  
4 forth in the original complaint, the only inquiry that remains is whether supplementation  
5 will “promote speedy disposition of the entire controversy,” or whether it will prejudice  
6 the responding party. *Keith v. Volpe*, 858 F.2d 467, 474–75 (9th Cir. 1988) (citing *Lerman*  
7 *v. Chuckleberry Publ’g, Inc.*, 521 F. Supp. 228, 231–32 (S.D.N.Y. 1981)); *see also Lyon*  
8 *v. U.S Immigration & Customs Enf’t*, 308 F.R.D. 203, 214 (N.D. Cal. 2015) (identifying  
9 the five factors commonly used to evaluate a motion for leave to amend—“(1) undue delay,  
10 (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure of previous  
11 amendments, (4) undue prejudice to the opposing party, and (5) futility of the  
12 amendment”—should be used to evaluate a motion for leave to supplement (quoting  
13 *Forman v. Davis*, 371 U.S. 178, 182 (1962))). To permit supplementation here comports  
14 with the core efficiency interests enshrined by the Federal Rules of Civil Procedure,  
15 including Rule 15(d), and would not inflict any apparent prejudice upon Defendants.

16 The Federal Rules of Civil Procedure are designed “to simplify judicial procedure,  
17 to adjudicate all phases of litigation involving the same parties, and to avoid a multiplicity  
18 of suits.” *H.F.G. Co. v. Pioneer Publ’g Co.*, 7 F.R.D. 654, 656 (N.D. Ill. 1947), *cited*  
19 *approvingly by Keith*, 858 F.2d at 475. Declining Sywula’s attempt to supplement his last  
20 deficient pleading with new standing allegations would require Sywula to return to square  
21 one and file a new suit alleging precisely the same § 256 claim, just to argue all over again  
22 the cogency of his reputational-interest theory of Article III standing. Rule 15(d) is crafted  
23 to ameliorate the expense and hassle that would otherwise arise in these exact  
24 circumstances.

25 Furthermore, Teleport does not assert undue prejudice from Sywula’s new standing  
26 allegations. Nor could it. This is not an instance in which a plaintiff seeks to bring a new  
27 claim after substantial time and resources have been devoted to litigating the case, thus  
28 requiring the defendant to completely modify its legal theories and obtain new discovery

1 to prepare an adequate defense near trial. *E.g., Eagle View Techs., Inc. v. Xactware Sols.,*  
2 *Inc.* No. C12-1913-RSM, 2013 WL 6086311, at \*\*2–4 (W.D. Wash. Nov. 18, 2013). Nor  
3 is this an instance in which a plaintiff seeks to supplement a claim that already has been  
4 adjudicated to final disposition in defendant’s favor with new facts or legal theories,  
5 effectively starting afresh a litigation that the defendant had reason to believe was nearing  
6 its end.<sup>5</sup> *See Planned Parenthood of S. Ariz. v. Neely*, 130 F.3d 400, 401–02 (9th Cir.  
7 1997). The propensity for prejudice in those scenarios is readily apparent. By contrast,  
8 here, the Dismissal Order subsumed the possibility Teleport and the rest of Defendants  
9 would need to respond to modified standing allegations and, perhaps, litigate Sywula’s §  
10 256 claim if Sywula could show he has standing to proceed. That Order is, by its nature,  
11 transient.

12 Accordingly, the Court finds joinder of Sywula’s new standing allegations  
13 appropriate under Rule 15(d) and, therefore, turns to Teleport’s Rule 12(b)(1) Motion.

#### 14 **D. Rule 12(b)(1) Motion**

15 Teleport moves to dismiss the Second Amended Complaint pursuant to Rule  
16 12(b)(1), launching both facial and factual challenges to Sywula’s alleged bases for Article  
17 III standing to proceed with his § 256 action under *Shukh*. In response, Sywula claims his  
18 Second Amended Complaint adequately invokes *Shukh* and that the extraneous evidence  
19 he proffers adequately rebuts Teleport’s factual challenge.

20 Below, the Court first takes a moment to paint the legal landscape in which this  
21 action takes place, and then to addresses Teleport’s facial and factual challenges in turn.

22 //

23 //

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25  
26 <sup>5</sup> Notably, there is no statute of limitations for correction of inventorship pursuant to 35 U.S.C. §  
27 256. *See Stark v. Advanced Magnetics, Inc.*, 29 F.3d 1570, 1573 (Fed. Cir. 1994) (“Section 256 does not  
28 limit the time during which inventorship can be corrected.”) (citation omitted). Hence, Sywula’s  
supplemental allegations are not time-barred and the Court need not undertake any relationship  
back analysis under Rule 15(c).

1                   **1.     *Shukh* and its Progenies**

2             In the years prior to *Shukh*, several district courts held reputational injury derived  
3 from omitted inventorship status could give rise to Article III standing to pursue a claim  
4 under § 256. *See Czarnik v. Illumina, Inc.*, 437 F. Supp. 2d 252, 256–57 (D. Del. 2006)  
5 (holding putative-inventor plaintiff satisfied Article III standing requirement by showing  
6 omission from a disputed patent harmed plaintiff’s reputation in the scientific community,  
7 deprived the plaintiff of prestige, and impacted the plaintiff’s ability to secure a lucrative  
8 position); *Krauser v. Evollution IP Holding, Inc.*, 975 F. Supp. 2d 1247, 1261 (S.D. Fla.  
9 2013) (analogizing to defamation law to vindicate reputational-interest theory of standing).  
10 However, it was not until *Shukh* the Federal Circuit sanctioned that legal premise. 803  
11 F.3d at 663.

12             *Shukh* involved “a leading scientist in the field of semiconductor physics and an  
13 established inventor,” Dr. Alexander Shukh, who had been employed by the defendant,  
14 Seagate Technology, for approximately 12 years until his termination in 2009. Dr. Shukh  
15 alleged, *inter alia*, Seagate failed to properly credit him for inventing technology claimed  
16 by six of Seagate’s patents. However, by signing and executing his Seagate employment  
17 agreement, Dr. Shukh assigned to Seagate all his “right, title, and interest in and to” the  
18 inventions he developed during his tenure. Nevertheless, Dr. Shukh commenced an action  
19 against Seagate, asserting a claim pursuant to § 256. *Shukh*, 803 F.3d at 661–63.

20             Seagate moved to dismiss Dr. Shukh’s § 256 claim, arguing Dr. Shukh’s  
21 employment agreement foreclosed standing. *Shukh*, 803 F.3d at 661. The trial court agreed  
22 with Seagate that Dr. Shukh lacked standing under *Chou* and *Fina Oil*; however, it “left  
23 open the possibility that Dr. Shukh had standing to sue based on *reputational harm* caused  
24 by his omission from the disputed patents.” *Id.* at 662.

25             Two years later, Seagate moved for summary judgment on Dr. Shukh’s § 256 claim,  
26 contending Dr. Shukh could not sustain his reputational-interest theory of standing. *Shukh*  
27 *v. Seagate Tech., LLC*, No. 10-404 (JRT/JJK), 2013 WL 1197403, at \*1 (D. Minn. Mar. 5,  
28 2013), *aff’d in part, vacated in part Shukh*, 803 F.3d at 659. Dr. Shukh opposed. *Id.* at \*1.

1 He argued Seagate’s omission had injured his professional reputation by depriving him of  
2 additional prestige and adding fodder to his existent reputation as a poor co-worker who  
3 accused others of stealing his inventions, in support of which he proffered testimonial  
4 evidence. *Id.* at \*4–7, \*10–12. He further averred these reputational injuries produced  
5 economic consequences, namely, his inability to secure employment in his field post-  
6 Seagate. *Id.*, at \*12. Dr. Shukh attributed “his failure to be hired to blacklisting and rumors  
7 instigated by Seagate.” *Id.* To demonstrate the connection, Dr. Shukh proffered evidence  
8 showing that during his interview with Hitachi—a peer company of Seagate to which he  
9 unsuccessfully applied for employment—“a Hitachi engineer allegedly told [Dr.] Shukh  
10 that ‘[w]ith your reputation you will not find employ[ment] here.’” *Id.*, at \*5.<sup>6</sup>

11 Based on the evidence proffered, the *Shukh* trial court ultimately held there existed  
12 no genuine dispute of material fact as to whether Dr. Shukh suffered a reputational harm  
13 sufficient to confer standing and ruled in favor of Seagate. In so holding, the *Shukh* trial  
14 court found Dr. Shukh had failed to establish each of the three elements of Article III  
15 standing: injury-in-fact; causation; and redressability. As to injury, the *Shukh* trial court  
16 found Dr. Shukh had failed to show Seagate’s omission had any impact on either Dr.  
17 Shukh’s reputation as a leading scientist in the field of semiconductor physics *or* his  
18 reputation as a difficult co-worker. *Shukh*, 2013 WL 1197403, at \*10. After reviewing  
19 testimonial evidence proffered by Dr. Shukh, it concluded that Dr. Shukh had these  
20 reputations prior to his dispute with Seagate, and that Seagate’s purported withholding of  
21 inventorship credit in six patents did not alter Dr. Shukh’s repute in these areas. *Id.* at \*10–  
22 11 (construing evidence as demonstrating (1) Dr. Shukh’s “reputation as an internationally  
23

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24 <sup>6</sup> Notably, Dr. Shukh also argued he suffered economic consequences as a result of Seagate’s  
25 omission *while still employed* by Seagate. *See* Dr. Shukh’s Opp’n to Mot. for Summ. J. at 27, *Shukh v.*  
26 *Seagate Tech., LLC*, No. 10-cv-404 JRT/JJK (D. Minn. filed July 20, 2012) (“Dr. Shukh’s Opp’n”), ECF  
27 No. 323; *see also Shukh*, 2013 WL 1197403, at \*11 n.14. In particular, Dr. Shukh testified at his  
28 deposition he was damaged “*by the loss of promotions*,” just as Sywula alleges here. *See* Dr. Shukh’s  
Opp’n at 27 (emphasis added). The *Shukh* trial court found this injury to be “entirely speculative,” and,  
thus, did not recognize it as part of the “economic component” of Dr. Shukh’s purported reputational  
injury in the body of its Opinion. *Shukh*, 2013 WL 1197403, at \*11 n.14.

1 renowned inventor in his field did not change after he was not named as an inventor on the  
2 six disputed patents” and (2) Dr. Shukh’s “reputation for accusing others of stealing his  
3 work and insisting on credit for all of his ideas was established well before the disputed  
4 patents became an issue between [Dr.] Shukh and Seagate”).

5 But the *Shukh* trial court determined that even if Seagate’s omission had deprived  
6 Dr. Shukh of additional, attendant reputational prestige, Dr. Shukh failed to proffer  
7 evidence showing his inability to obtain employment stemmed from that injury. *Shukh*,  
8 2013 WL 1197403, at \*12. Citing Dr. Shukh’s own allegations, the *Shukh* trial court noted  
9 the complaint identified “rumors” about Dr. Shukh’s difficult personality as the cause of  
10 his inability to obtain employment post-Seagate, not Seagate’s omission. *Id.* (“[Dr.]  
11 Shukh’s failure to obtain other employment as a result of rumors instigated by Seagate is  
12 irrelevant to the question of whether [Dr.] Shukh’s reputation was damaged when he was  
13 not named as an inventor of the six disputed patents.”). Thus, as to causation, the *Shukh*  
14 trial court concluded, “Because [Dr.] Shukh has presented no evidence indicating that  
15 being omitted from six patents resulted in his ability to find other employment,” Dr. Shukh  
16 lacked standing to pursue his § 256 claim. *Id.*

17 Finally, as to redressability, the *Shukh* trial court held that if Dr. Shukh had shown  
18 Seagate’s omission had “negatively affected [his] reputation as a scientist,” then  
19 “[s]ubsequent correction of inventorship could redress the reputational damage, as the  
20 inventor would be considered more innovative, creative, and technically skilled as a result  
21 of being named on the patent.” *Shukh*, 2013 WL 1197403, at \*11. But Dr. Shukh failed  
22 to demonstrate any such reputational injury to redress. And the *Shukh* trial court further  
23 concluded that to the extent Seagate’s omission—and the subsequent inventorship  
24 litigation—had made Dr. Shukh even more notorious for seeking credit, correcting the  
25 disputed patents could not redress that injury. *Id.* at \*11.

26 Dr. Shukh appealed, placing before the Federal Circuit the question whether  
27 reputational injury is sufficient to confer standing in the § 256 context and, if so, precisely  
28 when. *Shukh*, 803 F.3d at 659. The Federal Circuit answered the first question posed



1 affirmatively, reasoning a “concrete and particularized reputational injury” may give rise  
2 to standing. *Id.* at 663. It further instructed a reputational injury is “concrete” only when  
3 it can be shown to have an “economic component,” such as affecting the putative-inventor  
4 plaintiff’s employment. *Id.*

5 Applying this standard to the facts proffered on summary judgment, the Federal  
6 Circuit first concluded the *Shukh* trial court had failed to properly recognize Dr. Shukh’s  
7 reputational injuries stemming from Seagate’s omission and, therefore, had misanalysed  
8 each of the standing elements. It found evidence developed in the record could demonstrate  
9 two items of reputational harm: (1) that Seagate’s omission injured Dr. Shukh’s  
10 “reputation as an inventor in the field of semiconductor physics” because his “reputation  
11 as an inventor would have been higher had he been named on the patents”; and (2) the  
12 omission could, in fact, have “contributed to [Dr. Shukh’s] reputation for poor teamwork  
13 due in part to his accusations that others were stealing his work.” 803 F.3d at 664–65.  
14 Simply put, the Federal Circuit rejected the notion accepted by the *Shukh* trial court that  
15 Dr. Shukh’s professional reputation essentially was set in stone prior to his dispute with  
16 Seagate, and found a genuine dispute of fact existed whether the omission of inventorship  
17 credit in a few patents can affect the professional reputation of an established inventor.

18 Having determined Dr. Shukh demonstrated a reputational injury, the Federal Circuit  
19 turned to whether Dr. Shukh adequately demonstrated “his alleged reputational harm had  
20 an economic component.” *Shukh*, 803 F.3d at 667. The Federal Circuit concluded he had  
21 done so by establishing he could not find employment post-Seagate. *Id.* Moreover, the  
22 Federal Circuit held Dr. Shukh had sufficiently shown his inability to obtain employment  
23 was fairly traceable to his purported reputational injuries and, thus, Seagate’s omission,  
24 because: (1) logic dictates “the stronger Dr. Shukh’s reputation as an inventor, the more  
25 likely he is to be hired”; and (2) the statement Hitachi’s engineer told Dr. Shukh during a  
26 job interview supported the notion Dr. Shukh’s difficult personality—which was further  
27 perpetuated by Seagate’s omission—was a reason for his prolonged unemployment. *Id.*

28

1 Finally, the Federal Circuit held a genuine dispute of fact existed whether favorable  
2 decision on Dr. Shukh’s § 256 claim could redress both Dr. Shukh’s damaged reputation  
3 *and* his inability to find employment. *Shukh*, 803 F.3d at 665, 667. Specifically, the  
4 Federal Circuit concluded a trier of fact reasonably could infer correcting the disputed  
5 patents would award Dr. Shukh with additional repute as an inventor, “rehabilitate” his  
6 reputation for poor teamwork, and improve his employment prospects. *Id.* at 665. *Id.*

7 Accordingly, the Federal Circuit vacated the district court’s summary judgment  
8 ruling on Dr. Shukh’s § 256 claim and remanded.

9 *Shukh* vindicates the rights of putative inventors who have assigned away all their  
10 rights in an invention—whether due to a lopsided power dynamic between the putative  
11 inventor and his or her employer or otherwise—to pursue correction of the inventorship  
12 acknowledgments in the patent at issue. Yet despite this seemingly momentous decision,  
13 this Court’s own research reveals no putative-inventor plaintiff has successfully invoked  
14 *Shukh* to establish Article III standing to pursue a § 256 claim.

15 Since *Shukh*, the Federal Circuit has in unpublished opinions twice rejected the  
16 attempts of putative-inventor plaintiffs to invoke *Shukh* at the pleading stage. In *Kamdem-*  
17 *Ouaffo v. PepsiCo, Inc.*, the Federal Circuit affirmed a trial court’s rejection of a putative  
18 inventor’s reputational-interest theory of standing. 657 F. App’x at 954. There, the  
19 plaintiff’s complaint merely alleged, “Plaintiff sustains and/or might sustain damages in  
20 terms of the loss of ownership, inventorship, and the honor for his Intellectual Property.”  
21 *Id.* The Federal Circuit held the plaintiff had alleged a pure reputational injury without any  
22 “economic consequences, such as loss of employment prospects,” and thus could not  
23 proceed under *Shukh*. *Id.* (citing *Shukh*, 803 F.3d at 663). In *Huster v. j2 Cloud Services,*  
24 *Inc.*, the Federal Circuit summarily rejected the putative-inventor plaintiff’s claimed  
25 standing under *Shukh* where she merely alleged patent acknowledgment can impact an  
26 inventor’s reputation, but did not allege or proffer evidence showing she suffered any  
27 reputational injury herself. 682 F. App’x 910, 916 (Fed. Cir. 2017).

28

1 Three trial courts also have addressed standing in § 256 actions in which the  
2 putative-inventor plaintiffs sought to invoke *Shukh*. Like the Federal Circuit, those courts  
3 also rejected the reputational-interest theory of standing arguments with which they were  
4 presented, finding the putative-inventor plaintiffs had failed to allege a “concrete”  
5 reputational injury. In *Pedersen v. Geschwind*, the Honorable James K. Bredar, District of  
6 Maryland, applied *Shukh* to the § 256 claim of a plaintiff who sought to challenge his  
7 *inclusion* as inventor on disputed patents. 141 F. Supp. 3d 405 (D. Md. 2015). The  
8 operative pleading alleged his “status as a fair and honest academician is and will be  
9 adversely affected” unless his co-inventor status was removed from the patents. *Id.* at 417.  
10 Judge Bredar found this lone allegation simply “raise[d] a pure reputational interest,” as  
11 opposed to one tied to a concrete, economic injury, and, thus, was too nebulous to give rise  
12 to standing. *Id.* at 416–17. In *VariBlend Dual Dispensing Systems LLC v. Crystal*  
13 *International (Group) Inc.*, the Honorable Edgardo Ramos, Southern District of New York,  
14 applied *Shukh* to a § 256 claim practically identical to the one asserted in *Pedersen*. No.  
15 18 Civ. 10758 (ER), 2019 WL 4805771, at \*15 (Sept. 30, 2019). Judge Ramos held the  
16 plaintiff’s bald assertion of reputational harm in his complaint—that his inventorship status  
17 “placed a cloud over his business activities and reputation”—failed to establish the  
18 concrete and particularized injury needed to proceed. *Id.* And finally, in *Feuss v. Enica*  
19 *Engineering, PLLC*, the Honorable Kevin McNulty, District of New Jersey, similarly  
20 applied *Shukh* to the claim of putative inventors who merely alleged that inventorship credit  
21 would confer them “reputational benefit.” Civ. No. 20-2034 (KM) (JBC), 2021 WL  
22 1153146, at \*4 (D.N.J. Mar. 26, 2021). Judge McNulty found the plaintiff’s alleged  
23 reputational injury to be insufficiently concrete. *Id.*

24 Taken together, *Shukh* and its progenies stand for the legal premise that, to have  
25 standing absent an ownership or financial interest in the disputed patent, it is necessary but  
26 not sufficient for the putative-inventor plaintiff to allege reputational damage arising from  
27 the purportedly wrongful omission of his or her inventorship status. The injury also must  
28 be a “concrete” one to confer Article III standing. *See, e.g., Kamdem-Ouaffo*, 657 F. App’x

1 at 954 (opining *Shukh* does not authorize standing when the “sole claim of injury” is  
2 plaintiff’s bare assertion he will “sustain and/or might sustain” reputation injury). To show  
3 concreteness, the putative-inventor plaintiff must identify an “economic consequence[.]”  
4 flowing from the alleged reputational injury. *Shukh*, 803 F.3d at 663.

5 Put differently, the reputational injury *Shukh* recognizes as conferring Article III  
6 standing is not the loss of “the dignity of and accompanying self-satisfaction of official  
7 inventorship recognition” arising out of wrongful omission of inventorship status. *See*  
8 *Dennis Crouch, Reattribution, The Poison Pill & Inventorship*, 5 BUS. ENTREPRENEURSHIP  
9 & TAX L. REV. 138, 144 (Fall 2021). These benefits of inventorship recognition simply  
10 are too nebulous. *E.g.*, *Kamdem-Ouaffo*, 657 F. App’x at 954; *Pedersen*, 141 F. Supp. 3d  
11 at 417–18; *VariBlend*, 2019 WL 4805771, at \*15. Instead, *Shukh* cabins cognizable  
12 reputational injuries to those that materialize in the loss of benefits flowing from  
13 inventorship that have an economic flavor: employment opportunities, vocational  
14 leverage, and other pecuniary consequences that stem from the public recognition that  
15 patent-inventorship credit provides. *See Pedersen*, 141 F. Supp. 3d at 417; *see also Shukh*,  
16 803 F.3d at 663. The loss of these sorts of benefits is pecuniary in nature and, thus, is  
17 concrete.

## 18 2. Facial Challenge

19 As explained above, *see supra* Sec. I.A, this Court already found Sywula sufficiently  
20 alleged two items of reputational damage stemming from Defendants’ purported omission  
21 of inventorship credit. First, Sywula alleged his omission from the Teleport patents  
22 artificially restrains his reputation as a software engineer from reaching its true potential.  
23 Had Defendants properly recognized him as a co-inventor of the disputed patents, Sywula  
24 alleges his professional reputation would have been higher. Second, Sywula sufficiently  
25 alleged that Defendants’ omission gave an air of legitimacy to their subsequent diminishing  
26 statements about Sywula’s contributions to the ride-sharing technology and painted Sywula  
27 in a negative light for pursuing his § 256 claim. (*See* Dismissal Order at 11–12 (“When  
28 generously construed, these allegations state an injury that is comparable to the first two

1 items of reputational harm considered in *Shukh*: injury to Sywula’s reputation in his field  
2 of work and a negative reputation arising from his claim Teleport wrongly omitted him  
3 from the patents.”.) These allegations all are repeated in the Second Amended Complaint.  
4 (SAC ¶¶ 83–103, 107–10.)

5 However, this Court found the First Amended Complaint failed to allege these  
6 reputational injuries had an “economic component,” without which Sywula cannot invoke  
7 *Shukh*. (See Dismissal Order at 12 (“Missing [are] any allegations concerning economic  
8 harm or concrete consequences.” (citing, *inter alia*, *Shukh*, 803 F.3d at 663, 667)).)

9 Sywula now seeks to identify economic consequences arising from both his alleged  
10 reputational injuries. Teleport asserts the Second Amended Complaint still is devoid of  
11 factual allegations to support the “irreducible constitutional minimum” of Article III  
12 standing: (1) an injury-in-fact; (2) a causal link between the injury-in-fact and the conduct  
13 complained of; and (3) redressability. (See Rule 12(b)(1) Mot.); *Lujan*, 504 U.S. at 560–  
14 61.

15 **a. Loss of Vocational Leverage**

16 Sywula alleges Defendants’ omission of his inventorship status in the Teleport  
17 patents deprived him of the “vocational leverage that comes from being named as an  
18 inventor on a patent in one’s field.” (SAC ¶ 82.) In particular, he avers Defendants’  
19 omission effectively doomed his prospects for promotion at Intel from Software Engineer  
20 to the higher-ranking Principal Engineer role. (*Id.* ¶¶ 84–91.) Teleport contends Sywula’s  
21 alleged inability to advance within Intel is too nebulous and speculative to be considered a  
22 “concrete” economic consequence; Sywula has failed to demonstrate his loss of vocational  
23 leverage is “fairly traceable” to Defendants’ omission; and correcting the disputed patents  
24 will not ameliorate Sywula’s inability to move up the hierarchical ladder at Intel. (Rule  
25 12(b)(1) Mot. at 11–14.) Contrary to Teleport’s assertion otherwise, the Court finds the  
26 Second Amended Complaint has adequately alleged a reputational-interest theory under  
27 *Shukh* to establish Article III standing to pursue his § 256 claim.

28 //

1                                    **i.      Injury-in-Fact**

2                    “To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion  
3 of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent,  
4 not conjectural or hypothetical.’” *Spokeo*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S. at  
5 560). For a putative-inventor plaintiff who seeks to vindicate his or her § 256 rights  
6 pursuant to a reputational-interest theory of standing, that means showing the “alleged  
7 reputational harm [attributable to the omission of inventorship credit] had an *economic*  
8 *component*.” *Shukh*, 803 F.3d at 666–67.

9                    In *Shukh*, the Federal Circuit opined that, “[W]hen the claimed inventor is employed  
10 or seeks to be employed in the field of his or her claimed invention,” “[p]ecuniary  
11 consequences may well flow from being designated as an inventor.” 803 F.3d at 663. For  
12 that reason, *Shukh* instructs, “[I]f the claimed inventor can show that being named as an  
13 inventor on a patent would *affect* his employment, the alleged reputational injury likely has  
14 an economic component sufficient to demonstrate Article III standing.” *Id.* (emphasis  
15 added).

16                    Sywula has shown just that. Sywula adequately pleads he sought employment in the  
17 field of his claimed invention. (SAC ¶¶ 84–87); *see Shukh*, 803 F.3d at 663. That is,  
18 Sywula, a software developer who purportedly architected, developed, and wrote the  
19 software for Teleport’s ride-sharing application, alleges he aspired to climb the hierarchical  
20 ladder for software developers and obtain a Principal Engineer role. (*Id.* ¶¶ 11, 87.)  
21 Sywula also adequately pleads Teleport’s omission “affect[ed] his employment” by  
22 severely diminishing, if not foreclosing entirely, his opportunity for a promotion to  
23 Principal Engineer at Intel. (*See id.* ¶¶ 85–88, 91); *see Shukh*, 803 F.3d at 663. Importantly,  
24 he alleges the prospects of his promotion from Software Engineer to Principal Engineer at  
25 Intel were not merely illusory or wishful thinking. He claims to have met nearly all of  
26 Intel’s experience- and skills-based criteria to be eligible for a promotion. (*See id.* ¶ 83.)  
27 However, he is missing one purportedly crucial qualification: he cannot claim to be an  
28 inventor of any patented technology. According to Sywula, “[p]ublished patents are

1 usually required for software engineers to attain higher-ranked roles.” (*Id.* ¶ 85.) And  
2 Intel, in particular, considers published patents as relevant to at least three qualities and  
3 skills it looks for in prospective Principal Engineers. (*See id.* ¶ 87 (“On Intel’s nomination  
4 form for Principal Engineers, patent publications are listed as a criterion in three different  
5 places, under categories for ‘Expertise,’ ‘Leadership,’ and ‘Impact.’”))

6         Simply put, the Second Amended Complaint contains enough factual material for  
7 this Court to infer Defendants’ withholding of inventorship credit in the Teleport patents  
8 plausibly diminished or even foreclosed his prospects of career-advancement at Intel and,  
9 more generally, in whatever software-developer position he holds or will hold. Hence,  
10 Defendants’ omission plausibly strips Sywula of the pecuniary benefits attendant to  
11 promotion. Accordingly, Sywula has adequately alleged an economic component to one  
12 of his reputational injuries.

13         The Court is unconvinced by Teleport’s argument Sywula’s loss of vocational  
14 leverage is hypothetical. To be concrete, Teleport avers, Sywula needed to have  
15 unsuccessfully applied for the Principal Engineer position at Intel. Without doing so, it  
16 cannot be known whether Intel would have passed over him for promotion and, thus,  
17 whether Sywula would have sustained an economic injury. (*See* Rule 12(b)(1) Mot. at 13  
18 (“The injury of missing out on career advancement is entirely speculative and conjectural  
19 where Sywula did not even apply for the job.”)) But the economic impact Sywula’s lack  
20 of inventorship credit had upon Sywula’s professional reputation and, thus, his prospect  
21 for promotion to Principal Engineer is not conjectural at all. Assuming all the facts alleged  
22 in the Second Amended Complaint as true, and gleaning all reasonable inferences  
23 therefrom in Sywula’s favor as this Court must, inventorship is a critical consideration for  
24 career advancement among software developers. The Court need not strain to infer  
25 Sywula’s inability to call himself an inventor weakens his candidacy as to any higher-  
26 ranking and better-paying position for which patent inventorship is relevant—including the  
27 Principal Engineer position at Intel. That injury carries with it those pecuniary  
28 consequences that accompany career advancement, *e.g.*, a higher salary.

1 Finding otherwise would be to turn a blind eye to a concept twice recognized by the  
2 Federal Circuit. “[B]eing considered an inventor of important subject matter is a mark of  
3 success in one’s field, comparable to being an author of an important scientific paper.”  
4 *Shukh*, 803 F.3d at 663 (quoting *Chou*, 254 F.3d at 1359). Because they are indicators of  
5 an inventor’s innovative, creative, and technical skill in the field of the underlying  
6 invention, patents serve an important credentialing function for employers in evaluating  
7 prospective job candidates. Jason Rantanen & Sarah E. Jack, *Patents As Credentials*, 76  
8 WASH. & LEE REV. 311, 339–62 (Winter 2019) (describing how prospective employers  
9 rely upon patents in evaluating job candidates). “Being recognized as an inventor will . . .  
10 increase an employee-inventor’s marketability as a potential employee, both outside and  
11 within the company where he or she is currently employed.” Emily A. Sample, *Assigned*  
12 *All My Rights Away: The Overuse of Assignment Provisions in Contracts for Patent Rights*,  
13 104 IOWA L. REV. 447, 470 (November 2018) (citing *Chou*, 254 F.3d at 1359). Indeed,  
14 Sywula expressly alleges Intel employs patents as a credentialing device in hiring Principal  
15 Engineers. (See SAC ¶ 87.)

16 Teleport’s argument might be more compelling if Sywula were more similarly  
17 situated to Dr. Shukh. When Dr. Shukh sought employment post-Seagate he already had  
18 been recognized as an inventor of “twenty United States patents.” *Shukh*, 2013 WL  
19 1197403, at \*3. Unlike Dr. Shukh, Sywula had no patents to his name—besides the  
20 disputed Teleport patents—when he began exploring the prospects of promotion at Intel.  
21 Hence, Sywula’s status as an inventor is contingent upon whether he can claim  
22 inventorship credit in the Teleport patents. In other words, unless the Teleport patents are  
23 corrected, the economic benefits accessible to those who attain inventorship status are out  
24 of reach for Sywula. See *Pedersen*, 141 F. Supp. 3d at 417 (“At bottom the reputational  
25 interest recognized by a handful of courts and now sanctioned by the Federal Circuit is an  
26 interest in the benefits that flow from inventorship: public recognition; vocational  
27 leverage; and pecuniary gain. These benefits are concrete and fairly traceable to named  
28 inventorship on a patent[.]”).



1 Because Sywula has plausibly alleged his lack of inventorship credit effectively  
2 dashes his prospects of promotion to the higher-ranking Principal Engineer position, he has  
3 adequately shown an economic consequence attributable to his reputational injury  
4 sufficient to pass muster of a facial attack under Rule 12(b)(1).

5 **ii. Causation**

6 To survive a motion to dismiss for lack of Article III standing, a “plaintiff[] must  
7 establish a ‘line of causation’ between defendants’ action and their alleged harm that is  
8 more than ‘attenuated.’” *Maya*, 658 F.3d at 1070 (quoting *Allen v. Wright*, 468 U.S. 737,  
9 757 (1984)). A causal chain does not fail simply because there are several links so long as  
10 those links are not hypothetical or tenuous, but rather are plausible. *Id.* (citing *Nat’l*  
11 *Audubon Soc., Inc. v. Davis*, 307 F.3d 835, 849 (9th Cir. 2002)). Indeed, the alleged injury  
12 must be “fairly traceable” to Defendants’ conduct. *Spokeo*, 578 U.S. at 338. “This is akin  
13 to but-for causation, not proximate causation.” *Adam v. Barone*, 41 F.4th 230, 235 (3d Cir.  
14 2022) (citing *Mielo v. Steak’n Shake Operations., Inc.*, 897 F.3d 467, 481 (3d Cir. 2018)).  
15 “But-for causation is established whenever an injury would not have occurred without the  
16 alleged action or event.” *Id.* (citing *Univ. of Tex. S.W. Med. Ctr. v. Nassar*, 570 U.S. 338,  
17 346–47 (2013)). On the other hand, proximate causation requires the plaintiff to establish  
18 the “injury is sufficiently related to the action or event that the law deems the injury to have  
19 been caused by the action or event.” *Id.* (citing *Lexmark Int’l, Inc. v. Static Control*  
20 *Components, Inc.*, 572 U.S. 118, 132–34 (2014)).

21 Teleport avers Sywula’s loss of vocational leverage is not fairly traceable to  
22 Defendants’ omission of inventorship credit on the Teleport patents. (Rule 12(b)(1) Mot.  
23 at 13.) Teleport claims the Second Amended Complaint does not foreclose that factors  
24 having nothing to do with the underlying inventorship issue stripped Sywula of vocational  
25 leverage. In so arguing, Teleport clearly alludes both to the fact that employers, like Intel,  
26 examine many different factors when selecting the most qualified person for a competitive  
27 position and, moreover, to Teleport’s theory that Sywula sullied his own reputation through  
28

1 his work performance at Intel and the manner in which he left Teleport.<sup>7</sup> But this argument  
2 misapprehends Ninth Circuit law. In this Circuit, a plaintiff “need not eliminate any other  
3 contributing causes” beyond the defendant’s purportedly wrongful conduct “to establish  
4 [his or her] standing.” *Barnum Timber Co. v. U.S. E.P.A.*, 633 F.3d 894, 901 (9th Cir.  
5 2011) (citing *Ocean Advocates v. U.S. Army Corps of Engr’s*, 402 F.3d 846, 860 (9th Cir.  
6 2005)). Indeed, “other factors may also cause” the injury-in-fact upon which a plaintiff  
7 predicates his or her standing, but if “the link between the [defendant’s challenged action]  
8 and [the alleged injury] is not tenuous or abstract,” those extraneous factors do not break  
9 the causal connection. *Id.*

10 The Second Amended Complaint alleges a sufficiently cogent nexus for this Court  
11 to infer Sywula’s omission from the Teleport patents contributed to Sywula’s loss of  
12 vocational leverage. Sywula avers “[p]ublished patents are usually required for software  
13 engineers to attain higher-ranked roles,” like Principal Engineer. (SAC ¶ 85.) Indeed,  
14 according to Sywula, large technology companies, like Intel, use patent-inventorship credit  
15 to assess job candidates: he alleges inventorship credit “signals to . . . hiring manager[s]  
16 that the candidate can recognize niches in the market, recognize potentially patentable  
17 inventions where they exist, and ultimately transform an idea into a product.” (*Id.* ¶ 86.)  
18 Moreover, he alleges Intel, itself, utilized patent-inventorship credit as an “important”  
19 factor in making Principal Engineer hiring decisions. (*Id.* ¶ 87.) The Second Amended  
20 Complaint alleges that Intel’s Nomination Form for Principal Engineers lists patent  
21 publications as relevant to whether a candidate has the “[e]xpertise” and “[l]eadership”  
22 qualities necessary for the job and to whether a candidate has made an “[i]mpact” in the  
23 field of the subject patent one might expect for a high-ranking Intel employee. (*Id.*); *see*  
24 *supra* Sec. III.B. From these allegations, the Court has no trouble gleaned that but for  
25

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26  
27 <sup>7</sup> In its factual challenge, Teleport specifies what it contends are the more likely reasons Intel did  
28 not promote—or would not have promoted—Sywula during his tenure. *See infra* Sec. III.D.3. But because  
the Second Amended Complaint is bereft of those underlying facts, this Court does not consider them in  
Teleport’s facial challenge. *See Thornhill Publ’g.*, 594 F.2d at 733.

1 Defendants’ purportedly wrongful omission of Sywula from the Teleport patents, Sywula  
2 would have been a stronger candidate for Intel’s more lucrative Principal Engineer  
3 position.

### 4 **iii. Redressability**

5 To establish standing, it is not enough that the plaintiff’s injury is “concrete and  
6 particularized” and “fairly traceable” to the defendant’s challenged conduct. A plaintiff  
7 must also demonstrate the relief he or she seeks will “likely” remediate the injury upon  
8 which standing is premised. *Lujan*, 504 U.S. at 560–61. In a § 256 action, a court can  
9 issue but one remedy: an order directing the USPTO to correct the inventorship  
10 acknowledgments in the disputed patent(s). *See* 35 U.S.C. § 256; *Shukh*, 803 F.3d at 665.

11 Although it acknowledges that an order directing the USPTO to correct the disputed  
12 patents will redress Sywula’s *reputational* injury, Teleport contends this Court lacks the  
13 power to issue a remedy that would ameliorate Sywula’s alleged *economic* injury. “A  
14 favorable ruling in this case,” Teleport avers, “will not elevate [Sywula’s] rank or make  
15 him a Principal Engineer at Intel” because “[h]e has already departed Intel and does not  
16 allege an intent to return there.” (Reply at 6.)

17 But Teleport’s argument sees the forest for the trees. Again, *Shukh* is instructive.  
18 There, Dr. Shukh’s inability to obtain employment post-Seagate comprised the economic  
19 component of the reputational harm he had sustained from Seagate’s withholding of  
20 inventorship credit. Dr. Shukh unsuccessfully applied to over 100 jobs, including to one  
21 at Hitachi. The *Shukh* trial court lacked authority to reinstate Dr. Shukh at Seagate or to  
22 reverse the hiring decisions of any one of Seagate’s peer companies who rejected Dr.  
23 Shukh’s application. Still, the Federal Circuit held Dr. Shukh’s economic injury was  
24 redressable because “a trier of fact could infer that Dr. Shukh’s employment prospects  
25 would improve if the inventorship of the disputed patents was corrected.” *Shukh*, 803 F.3d  
26 at 667. Similarly, here, if Sywula prevails in this lawsuit, he will be able to present himself  
27 to potential employers as a software engineer *and* inventor, which, in turn, will improve  
28

1 his marketability and, thus, his range of employment opportunities. *Id.* at 666. Therefore,  
2 Sywula has adequately alleged his reputational injuries are redressable.

3 Accordingly, Teleport’s facial challenge to Sywula’s reputational-interest theory of  
4 standing fails to the extent it is directed at Sywula’s loss-of-vocational-leverage  
5 allegations.

6 \* \* \* \*

7 Having concluded Sywula’s allegations concerning his loss of vocational leverage  
8 within Intel are sufficient on their face to confer Article III standing, this Court need not  
9 analyze Sywula’s second claimed basis for standing: Apple’s revocation of its Build  
10 Integration and Release Firmware Engineer offer in early 2022. Nevertheless, it does so  
11 in the interest of completeness.

12 **b. Apple’s Rescinded Job Offer**

13 Sywula alleges he applied for a Build Integration and Release Firmware Engineer  
14 position at Apple in early 2022. (SAC ¶ 92.) After interviewing for the job, an Apple  
15 recruiter gave him verbal confirmation in mid-March 2022 that he had been selected for  
16 the role and that he should expect to receive a formal job offer. (*Id.*) However, a few  
17 weeks later, the Apple recruiter rescinded Sywula’s offer. (*Id.* ¶ 93.) The recruiter  
18 informed Sywula Apple had revoked the offer following its vetting process. (*Id.*)

19 Sywula alleges that Apple’s vetting process would have included an “[i]nternet  
20 search” of Sywula’s “online presence.” (SAC ¶¶ 90, 93.) According to Sywula, that search  
21 would have unearthed two statements Defendants made during this litigation that downplay  
22 Sywula’s contribution to the technologies claimed by the Teleport patents and cast him as  
23 merely bringing DaCosta’s ideas and instructions to life. (*See id.* ¶¶ 89–93; Defs.’ Opp’n  
24 to TRO App. at 4, 23–24.) Sywula attributes Apple’s revocation to the negative reputation  
25 perpetuated by these diminishing statements. (*See SAC ¶¶ 90, 93.*) Although Sywula  
26 ultimately secured a Software Engineer position with TikTok, that job pays approximately  
27 \$42,000 less than the revoked position at Apple. (*See id.* ¶¶ 96–97.)

28

1 Teleport contends these facts do not support Article III standing. (Rule 12(b)(1)  
 2 Mot. at 15–18.) Specifically, Teleport claims Sywula cannot rely upon Apple’s revocation  
 3 for standing purposes because that purported injury is based upon statements that are  
 4 protected under California’s litigation privilege. (*Id.* at 18.) Furthermore, Teleport avers  
 5 Apple’s revocation is not “concrete” because it is unclear from the face of the Second  
 6 Amended Complaint whether Sywula is worse off financially having taken the TikTok job.  
 7 (*Id.* at 16 & n.10.) Finally, Teleport argues the causal link between Sywula’s omission  
 8 from the Teleport patents and Apple’s revocation is too attenuated.<sup>8</sup> (*Id.* at 15–17.)

9 **i. Injury-in-Fact**

10 California’s Litigation Privilege: Teleport argues that California’s litigation  
 11 privilege, codified at California Civil Code § 47(b), precludes Apple’s revocation as a basis  
 12 for standing. (Rule 12(b)(1) Mot. at 18.) California Civil Code § 47(b) provides immunity  
 13 from tort liability for statements made in connection with a judicial proceeding. The  
 14 California Supreme Court has formulated this privilege as applicable to “any  
 15 communication ‘(1) made in judicial or quasi-judicial proceedings; (2) by litigants or other  
 16 participants authorized by law; (3) to achieve the objects of the litigation; and (4) that ha[s]  
 17 some connection or logical relation to the action.’” *Graham-Sult v. Clainos*, 756 F.3d 724,  
 18 741 (9th Cir. 2014) (quoting *Mansell v. Otto*, 108 Cal. App. 4th 265, 271 (2003)). Teleport  
 19 contends standing to pursue this § 256 action cannot rest upon Apple’s revocation because  
 20 Sywula alleges that injury stemmed from Apple unearthing two statements Defendants  
 21 made in the instant litigation. Teleport’s argument is misguided.

22 California’s litigation privilege is inapplicable here because the federal law of  
 23 privilege—not California law—applies in purely federal question cases such as this. *Lewis*  
 24 *v. United States*, 517 F.2d 236, 237 (9th Cir. 1975) (“[I]n federal question cases the clear  
 25 weight of authority and logic supports reference to federal law on the issue of the existence  
 26 and scope of an asserted privilege.” (citing *Heathman v. United States Dist. Ct. for the*

27 \_\_\_\_\_  
 28 <sup>8</sup> Notably, Teleport advances the same redressability argument as it did with respect to Sywula’s  
 loss-of-vocational-leverage allegations. *See supra* Sec. III.D.1.a.iii.

1 *Cent. Dist. of Cal.*, 503 F.2d 1032, 1034 (9th Cir. 1974)). Teleport does not cite a single  
2 instance in which the Ninth Circuit has applied California’s litigation privilege in a federal  
3 question case, and this Court’s own research discloses that the Ninth Circuit has refused to  
4 recognize that privilege as a matter of federal common law. *Religious Tech. Ctr. v.*  
5 *Wollersheim*, 971 F.2d 364, 367 n.10 (9th Cir. 1992). Even if California’s litigation  
6 privilege was recognized as part of the federal common law of privileges (it has not been),  
7 it would still be inapplicable here because the instant action does not sound in tort. This  
8 matter is purely one for correction of inventorship under § 256. There is no remedy this  
9 Court can issue that would expose Defendants to tort liability. *Cf. Graham-Sult*, 756 F.3d  
10 at 741 (“The privilege ‘immunizes defendants from virtually any *tort liability* (including  
11 claims of fraud), with the sole exception of causes of action for malicious prosecution.”  
12 (quoting *Olsen v. Harbison*, 191 Cal. App. 4th 325, 333 (2010) (emphasis added)).  
13 Accordingly, Teleport cannot utilize California’s litigation privilege to preclude this Court  
14 from recognizing an injury-in-fact that flows from Defendants’ diminishing statements.

15 Concreteness: Teleport asserts that Apple’s revocation is not a “concrete” injury  
16 because “Sywula does not allege the composition of” his TikTok compensation package,  
17 *e.g.*, “how much was salary vs. bonus, vs. stock, what the qualifying metrics were for the  
18 bonus and stock, and whether the stock was a grant or option.” (Rule 12(b)(1) Mot. at 15–  
19 16.) Thus, Teleport insinuates, the Second Amended Complaint does not provide firm  
20 basis upon which to infer Sywula is financially worse off at TikTok than he otherwise  
21 would have been at Apple. But this level of detail is not needed for Sywula to defeat a  
22 motion on the pleadings. Sywula has demonstrated adequately his economic position was  
23 harmed by Apple’s revocation by alleging Apple’s total annual compensation package was  
24 approximately \$42,000 more valuable than his current compensation package at TikTok.  
25 (See SAC ¶¶ 96–97.)

26 //

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1                           **ii. Causation**

2           Teleport advances three arguments in an attempt to break the causal chain between  
3 Defendants' omission of inventorship credit and Apple reneging its offer to Sywula. All  
4 fail.

5           First, Teleport argues that even assuming Apple rescinded Sywula's offer due to  
6 Defendants' diminishing statements, the reputational injury inflicted by those statements  
7 is not fairly traceable to Defendants' withholding of Sywula's inventorship credit. (Reply  
8 at 6 n.4.) This Court disagrees. Defendants' diminishing statements inflict harm to  
9 Sywula's professional reputation in two distinct ways. Most obviously, the diminishing  
10 statements perpetuate the damage Defendants already wrought upon Sywula's reputation  
11 by omitting him from the Teleport patents. That is, Defendants' statements provide further  
12 confirmation in the eyes of outsiders that Sywula is not an inventor of Teleport patents and,  
13 therefore, has invented nothing in his 12 years as a Software Engineer. Teleport is correct  
14 that Apple's revocation is not fairly traceable to this strand of reputational injury. The  
15 Second Amended Complaint does not allege Apple reneged its offer because Sywula is not  
16 an inventor. Indeed, Sywula alleges he applied to Apple precisely because other  
17 opportunities were foreclosed by his lack of published patents. (SAC ¶ 92.)

18           But Defendants' diminishing statements also give rise to a second reputational  
19 injury, which, although not explicitly alleged, is plausibly inferable from the Second  
20 Amended Complaint and is akin to one of the reputational injuries identified in *Shukh*.  
21 That is, the diminishing statements, along with the instant litigation, cast Sywula as a  
22 disgruntled employee who will sue to obtain inventorship credit in patented technology he  
23 did not actually create. *Cf. Shukh*, 803 F.3d at 666 (finding Dr. Shukh had a "reputation  
24 for poor teamwork" and that "his disputes with Seagate over his omission from the patents  
25 and this subsequent lawsuit have likely significantly worsened Dr. Shukh's reputation on  
26 this front"). This strand of reputational injury is fairly traceable to Defendants' omission  
27  
28

1 of Sywula from the patents.<sup>9</sup> Moreover, it is clear how this negative reputation would  
2 cause Apple to renege its offer: if true, Defendants’ statements suggest Sywula is willing  
3 to sue his employer if he is not listed as an inventor in technology on which he works  
4 during his employment, even if he objectively does not qualify for inventor status. It is  
5 plausible Apple concluded on that basis the risk of adding Sywula to its team is not worth  
6 the reward and, thus, did not move forward with Sywula’s offer.

7 Second, Teleport argues there exist many other, more plausible reasons Apple  
8 rescinded its offer to Sywula after vetting him. Because this assertion relies upon  
9 extraneous facts submitted with Teleport’s Motion to Dismiss, the Court reserves  
10 consideration of this argument to the portion of this Order addressing Teleport’s factual  
11 challenge to subject matter jurisdiction below, *see infra* Sec. III.D.2.

12 Finally, Teleport argues the Second Amended Complaint does not allege Apple ever  
13 discovered Defendants’ diminishing statements and, thus, Sywula’s assertion Apple chose  
14 to rescind its job offer on that basis is purely speculative. (*See* Reply at 6–7 (“[Sywula]  
15 cannot plausibly allege that any of the alleged [diminishing] statements [caused Apple to  
16 rescind its job offer because] Sywula does not, and cannot, allege the reason for why . . .  
17 Apple rescinded its job offer other than to state that it was based on an ‘internet search.’”))  
18 In support of that argument, Teleport contrasts Sywula’s allegations to the evidence offered  
19 on summary judgment in *Shukh*. (*Id.* at 7.) There, Dr. Shukh presented evidence that  
20 Hitachi rejected his job application due to “rumors” about his negative reputation that  
21 Seagate personnel had shared with Hitachi personnel, and that a Hitachi manager “told Dr.  
22 Shukh during his interview that he would never find employment at Hitachi with his  
23 reputation.” 803 F.3d at 662. By contrast, here, Sywula alleges only that Apple rescinded  
24

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25 <sup>9</sup> Teleport claims this Court previously held the reputational injury inflicted by Defendants’  
26 “statements made in judicial proceedings relating to Sywula’s job function at Teleport” are not fairly  
27 traceable to Defendants’ omission of Sywula from the disputed patents (Rule 12(b)(1) Mot. at 15 (citing  
28 Dismissal Order at 11).) That is not so. In its Dismissal Order, this Court held Sywula failed to “plausibly  
allege that a reputational injury stemming from *police reports and a state court civil restraining order* is  
fairly traceable to the omission of his inventorship.” (Dismissal Order at 11.) This is distinct and separate  
from the claimed reputational injury arising from the above-referenced diminishing statements.



1 its offer following an “internet search” as part of its vetting procedures, and that such a  
2 search would have disclosed Defendants’ diminishing statements.

3 Teleport’s reliance upon the summary judgment decision in *Shukh* is misplaced  
4 given the difference in procedural posture between the two cases. The relevant question at  
5 this early stage of proceedings is not whether Sywula has presented evidence tending to  
6 show Apple actually uncovered Defendants’ diminishing statements. That information is  
7 likely to be uniquely in the custody and control of Apple, and Sywula cannot be expected  
8 to represent that fact in good faith absent third-party discovery. Rather, the relevant  
9 question here is whether Second Amended Complaint contains factual allegations that—  
10 when construed in the light most favorable to Sywula—permit a plausible inference Apple  
11 discovered Defendants’ publicly available diminishing statements when it vetted Sywula.

12 This Court finds the complaint in *Shukh* far more instructive in this regard. *See*  
13 Complaint, *Shukh v. Seagate Tech., LLC*, 0:10-cv-00404-JRT-JJK (D. Minn. Jan. 4, 2012),  
14 ECF No. 258-3 (“*Shukh* Compl.”). The *Shukh* Complaint is bereft of allegations  
15 concerning Dr. Shukh’s application to Hitachi; those facts only entered the record on  
16 summary judgment. Rather, all the *Shukh* Complaint alleged is that Dr. Shukh had  
17 unsuccessfully applied “to other companies for jobs within the field of his special  
18 expertise” following his termination from Seagate. *Shukh* Compl. ¶ 259. Like Sywula, he  
19 did not articulate the reason why his applications were unsuccessful. *Id.* Rather, he alleged  
20 that he was “informed by other employees of Seagate that there [were] ‘rumors’ out there  
21 about him, which he *believe[d]* ha[d] been circulated by officers or employees of Seagate  
22 to prevent him from becoming employed[.]” *Id.* (emphasis added).

23 In comparison, the Second Amended Complaint contains a more robust set of factual  
24 allegations from which this Court can infer Apple unearthed Defendants’ diminishing  
25 statements and, thus, gleaned the negative implications arising therefrom about Sywula’s  
26 professional reputation. Unlike Dr. Shukh, who alleged prospective employees learned of  
27 his negative reputation based upon his *belief* that “rumors” about his negative reputation  
28 had spread beyond Seagate to other companies, *see Shukh* Compl. ¶ 259, Sywula alleges

1 Defendants’ diminishing statements are posited in publicly available court filings, which  
2 would be captured by an internet search designed to vet an applicant’s online presence.  
3 (SAC ¶ 90). Furthermore, Sywula alleges Apple informed him it had conducted such a  
4 search in connection with its vetting process and reneged its offer after doing so. (*Id.* ¶  
5 93.) These allegations provide a sufficiently firm basis for this Court to infer Apple  
6 plausibly could have uncovered Defendants’ diminishing statements in its background  
7 check of Sywula.

8 **iii. Redressability**

9 Teleport again argues Sywula’s reputational injury is not redressable because the  
10 economic component of that injury—losing the Apple job offer—cannot be ameliorated  
11 by a favorable ruling. For the reasons already stated above, *see supra* Sec. III.D.2.iii, this  
12 argument is incongruent with *Shukh*. It is true this Court cannot compel Apple to reinstate  
13 its offer to Sywula. But a favorable ruling on Sywula’s § 256 claim plausibly can improve  
14 his employment prospects because awarding Sywula inventorship credit could change  
15 Sywula’s reputation as a software engineer who seeks inventorship credit for inventions he  
16 did not actually create “to that of an inventor wronged by his employer, properly seeking  
17 credit for his work.” *Shukh*, 803 F.3d at 666. Simply put, a favorable § 256 ruling would  
18 lift the stigma associated with Defendants’ diminishing statements and this inventorship  
19 action that otherwise might befall Sywula in the eyes of prospective employers.  
20 Accordingly, Sywula has adequately alleged his injuries are redressable.

21 \* \* \* \*

22 Having determined Teleport’s facial challenge to standing falls short in its entirety,  
23 this Court proceeds to Teleport’s factual challenge. However, it first pauses to address an  
24 argument Teleport did not explicitly raise but nevertheless deserves attention. Ordinarily,  
25 where the independent decision of a third party has a significant effect on the plaintiff’s  
26 injuries, the causal chain is too weak to support standing at the pleading stage. *Allen*, 468  
27 U.S. at 759. Here, Defendants had no role in deciding whether to promote Sywula to  
28

1 Principal Engineer—that decision was left to Intel’s discretion. And Defendants did not  
2 renege Sywula’s Build Integration and Firmware Engineer offer— Apple did.

3 Still, the causal links between Defendants’ conduct and Sywula’s standing injuries  
4 remain intact. Defendants allegedly are directly responsible for inflicting the reputational  
5 harms upon Sywula, out of which the alleged injuries flow. Once again, *Shukh* is  
6 instructive. Dr. Shukh claimed that he could not obtain employment at peer companies  
7 following his termination from Seagate because of the negative reputation Seagate had  
8 castigated upon him. Seagate did not choose for those peer companies to reject Dr. Shukh;  
9 the companies chose for themselves. Yet Dr. Shukh still adequately demonstrated a causal  
10 link between Seagate’s conduct and his economic injury because he was able to show his  
11 inability to find employment stemmed from Seagate’s conduct that had diminished his  
12 professional reputation. Sywula has alleged substantially similar circumstances here.  
13 Defendants’ purportedly wrongful withholding of inventorship credit, and their subsequent  
14 diminishing statements, polluted the mix of considerations Intel and Apple plausibly would  
15 examine in deciding whether to promote or hire Sywula, respectively. Indeed, the Second  
16 Amended Complaint alleges the reputational harm inflicted by Defendants was, in fact,  
17 dispositive in bringing about the economic consequences attendant to Intel’s and Apple’s  
18 decisions. Accordingly, Intel’s discretion and Apple’s decision do not break that chain of  
19 causation. *Cf. Parsons v. U.S. Dep’t of Just.*, 801 F.3d 701, 714 (“In the nebulous land of  
20 ‘fairly traceable,’ where causation means more than speculative but less than but-for, the  
21 allegation of a defendant’s conduct was a motivating factor in the third party’s injurious  
22 actions satisfies the requisite standard.”).

### 23 3. Factual Challenge

24 In addition to its facial challenge, Teleport also advances several factual challenges  
25 to standing, which are primarily directed at causation. Teleport presents evidence that  
26 purportedly severs the causal link between Defendants’ conduct and both of Sywula’s  
27 reputational injuries. Sywula proffers evidence in rebuttal.  
28

1 Teleport raises a bevy of cursory evidentiary objections to the attestations in the  
2 Sywula, Peplinski, Maciej, Ramon, and Park Declarations. (Rule 12(b)(1) Mot. at 19–20.)  
3 On a factual challenge to subject matter jurisdiction, courts adopt the same evidentiary  
4 standard that governs summary judgment. *Leite v. Crane Co.*, 749 F.3d 1117, 1121–22  
5 (9th Cir. 2014). For a motion for summary judgment, “a party does not necessarily have  
6 to produce evidence in a form that would be admissible at trial.” *See Block v. City of Los*  
7 *Angeles*, 253 F.3d 410, 418–19 (9th Cir. 2001). “Rule 56(c) requires only that evidence  
8 ‘would be admissible,’ not that it presently be admissible.” *Burch v. Regents of Univ. of*  
9 *Cal.*, 433 F. Supp. 2d 1110, 1120 (E.D. Cal. 2006). And while a court will consider a  
10 party’s evidentiary objections to a motion for summary judgment, “[o]bjections such as  
11 lack of foundation, speculation, hearsay and relevance are duplicative of the summary  
12 judgment standard itself.” *All Star Seed v. Nationwide Agribusiness Ins. Co.*, No. 12CV146  
13 L BLM, 2014 WL 1286561, at \*16–17 (S.D. Cal. Mar. 31, 2014) (citing *Burch*, 433 F.  
14 Supp. 2d at 1119–20),

15 Accordingly, unless explicitly mentioned herein, *see infra* Sec. III.D.2.a n. 11–13,  
16 many of Teleports objections are subsumed within this Court’s application of the summary  
17 judgment standard below. To the extent Teleport objects to attestations this Court does not  
18 rely upon in reaching its decision here, those objections are denied as moot. *See, e.g.*,  
19 *Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation. v. California*,  
20 343 F. Supp. 3d 952, 974 n.3 (S.D. Cal. 2018).

21 **a. Loss of Vocational Leverage**

22 Teleport asserts Sywula’s loss of vocational leverage has nothing to do with the  
23 inventorship issue at the heart of this case. First, Teleport avers that despite Sywula’s  
24 allegations otherwise, he truly had no interest at advancing or even remaining long-term at  
25 Intel. (Rule 12(b)(1) Mot. at 5.) In support of this assertion, Teleport proffers three  
26 excerpts of electronic communications Sywula sent to DaCosta, the most recent one being  
27 approximately two years before Sywula commenced this action and approximately three  
28 years before Sywula began exploring the Principal Engineer opportunity:

- 1 • An instant message, dated June 19, 2018, in which Sywula states, “good as  
2 usual, I’m pissed at Intel I want to be on my own.” (Ex. 4 to DaCosta Decl.,  
3 ECF No. 65-2.)
- 4 • An email, dated February 23, 2019, about putting together a “Teleport team  
5 deck” and business cards, in which Sywula lists one of the “[p]otential  
6 implications” of doing so is “losing a job,” which he states would be  
7 “relatively fine with me.” (Ex. 5 to DaCosta Decl.)
- 8 • An instant message dated November 16, 2016, in which Sywula states “that  
9 means in 6 months I can dump Intel.” (Ex. 6 to DaCosta Decl.)<sup>10</sup>

10 In response, Sywula, himself, attests that his “goal was to be promoted to a Principal  
11 Engineer [] role at Intel, where [he] had been working for more than 10 years,” and that  
12 “[i]n early 2022, . . . [he] started exploring avenues towards advancement to [that  
13 position].” (Sywula Decl. ¶¶ 4, 7.)<sup>11</sup> He further attests he took affirmative steps to gather  
14 more information about the process of seeking a promotion to Principal Engineer and to  
15 determine his prospects for such a promotion by consulting with Maciej Peplinski, a  
16 “software engineering manager” at Intel, who is “responsible for managing a team [of  
17 Software Engineers] and making hiring decisions.” (*Id.* ¶ 8; Peplinski Decl. ¶¶ 2–3, 8–  
18 12.)<sup>12</sup> However, Sywula did not apply based on the advice he received from Peplinski,  
19 who opined his lack of inventorship made his promotion at Intel unlikely. (Sywula Decl.  
20

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21 <sup>10</sup> All exhibits to the DaCosta Declaration are annexed at ECF No. 65-2.

22 <sup>11</sup> Teleport objects to Paragraph 4 of the Sywula Declaration, in which he attests he began  
23 “exploring avenues towards career advancement to Principal Engineer” as “irrelevant.” (Rule 12(b)(1)  
24 Mot. at 19.) This Court disagrees; that attestation bears directly upon Teleport’s contention Sywula had  
25 no desire to advance his career at Intel and, thus, upon the issue of Article III standing. Teleport further  
26 objects to Paragraph 7 of the Sywula Declaration, in which he attests it was his “goal” to become a  
27 Principal Engineer, as “inadmissible hearsay” and “speculation.” (*Id.*) Neither of these grounds for  
28 exclusion are applicable to the statements at which Teleport’s objections are directed.

<sup>12</sup> Teleport objects to Paragraph 8 of the Sywula Declaration, in which he attests Peplinski advised  
him not to apply to the Principal Engineer position at Intel, as “inadmissible hearsay.” (Rule 12(b)(1) Mot.  
at 19.) But Sywula has proffered evidence from Peplinski, the declarant herself, in the form of a  
declaration in which she attests she advised Sywula not to apply for a promotion at Intel due to his lack  
of patent publications. (*See* Peplinski Decl. ¶¶ 2–3.) By doing so, Sywula has cured any perceptible  
hearsay issue at this stage.

1 ¶ 8; Peplinski Decl. ¶¶ 8–11, ¶ 12 (“Knowing the negative rumors and lack of his  
2 inventorship credit, I advised [Sywula] to seek a job outside of Intel since I did not believe  
3 he would be able to advance to [the] Principal Engineer role at Intel.”).)

4 The Court finds Sywula has submitted ample evidence to create a genuine dispute  
5 of fact concerning his intent to advance his career at Intel. The Court finds Sywula’s recent  
6 sworn testimony to be more indicative of Sywula’s aspirations in early 2022 than the  
7 electronic communications proffered by Teleport, the most recent of which pre-dates  
8 Sywula’s job search by approximately three years. The Court further finds the electronic  
9 communications Teleport proffers to be of little evidentiary value because they consist of  
10 mere single-line excerpts of Sywula’s messages to DaCosta, which clearly omit the  
11 surrounding conversation that could potentially provide additional context. (*See* Exs. 4–6,  
12 DaCosta Decl.) Finally, the Court finds Sywula has presented evidence that adequately  
13 rebuts the notion raised by Teleport’s evidence that he chose not to apply for a promotion  
14 because he did not wish to remain at Intel. Sywula shows that he consulted colleagues with  
15 experience hiring software developers and apply to software-developer positions, including  
16 a colleague at Intel responsible for making hiring decisions, Peplinski, who advised Sywula  
17 he stood no chance of being promoted by Intel.<sup>13</sup>

18 Second, Teleport argues Intel’s unwillingness to promote Sywula to a higher-  
19 ranking position and Apple’s revocation of its job offer both are “[m]ore likely” attributable  
20 to “Sywula’s own behavior”—not to any reputational injury allegedly inflicted by  
21 Defendants. (Rule 12(b)(1) Mot. at 1; *see also id.* at 14 (“Sywula has done much to tarnish  
22 his own reputation and little to advance his own career at Intel.”).) Teleport submits  
23 evidence it avers supports multiple other causes of Sywula’s loss of vocational leverage at  
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25  
26 <sup>13</sup> Teleport argues that Peplinski’s opinion Intel would not promote Sywula should not be relied  
27 upon as expert evidence regarding the strength of Sywula’s candidacy as a Principal Engineer or construed  
28 as a legal opinion. (Rule 12(b)(1) Mot. at 9 n.5, 19.) But this Court does not consider Peplinski’s  
attestations for that purpose. Rather, it merely attaches weight to those attestations for the purpose of  
deciphering whether Sywula’s decision to forego an application for Principal Engineer should be  
construed as his lack of interest in advancing his career at Intel.

1 Intel: it demonstrates Intel investigated Sywula in 2019 because his work for another side  
2 venture, Neural HD, presented “a conflict of interest” (Ex. 2 to DaCosta Decl.); it shows  
3 that Sywula had taken an “ergonomic chair” belonging to Intel and brought it to Teleport’s  
4 office space (Ex. 3 to DaCosta Decl.); and it proffers Sywula’s Intel performance reviews  
5 for 2017 and 2018, which show Sywula was repeatedly encouraged to develop new IP but  
6 did not do so during his tenure with Intel (Ex. 3 to Ludwig Decl., ECF No. 72-1).

7 As explained above, *supra* Sec. III.D.2.a.ii, the problem with Teleport’s argument is  
8 that Sywula “need not eliminate any other contributing causes to establish [his] standing.”  
9 *See Barnum Timber*, 633 F.3d at 901. The Ninth Circuit has instructed the “Article III  
10 causation threshold” is “less rigorous” than proximate causation. *Canyon Cty. v. Syngenta*  
11 *Seeds, Inc.*, 519 F.3d 969, 974 n.7 (9th Cir. 2008); *see also Rothstein v. UBS AG*, 708 F.3d  
12 82, 92 (2d Cir. 2013) (“[T]he test for whether a complaint shows the ‘fairly traceable’  
13 element of Article III standing imposes a lower standard than proximate cause.”). Sywula  
14 need not demonstrate that Defendants were the “sole source of” his injury. *Barnum*  
15 *Timber*, 633 F.3d at 901. Rather, he must only “establish a line of causation’ between  
16 [D]efendants’ action and [his] alleged harm that is more than ‘attenuated.’” *See Maya*, 658  
17 F.3d at 1070. In this regard, Teleport’s evidence is not directed at the well-pleaded  
18 allegations in the Second Amended Complaint from which this Court can reasonably infer  
19 Teleport’s omission at least contributed to Sywula’s loss of vocational leverage. All  
20 Teleport’s evidence does is suggest there are other factors that may have also weakened  
21 Sywula’s candidacy for the Principal Engineer position.

22 Finally, Teleport offers a declaration from Jonathan Bendor, a professional software  
23 developer it retained to provide an opinion in this matter, in which Bendor attests the impact  
24 of Sywula’s lack of inventorship credit had on his promotion prospects was negligible.  
25 (Bendor Decl. ¶¶ 1, 8, ECF No. 65-4.) Bendor states, “The practical value for hiring  
26 decisions of being named as an inventor or co-inventor is *negligible* when compared to the  
27 education and relevant hands-on experience[]” of a candidate, and that he “ha[s] never  
28 encountered a situation where inventorship made any difference in the final hiring

1 decision.” (*Id.* ¶ 10(b).) Bendor did not attest he reviewed any Intel hiring guidelines in  
2 reaching this opinion. Nor does Bendor have experience working at Intel.

3 In response, Sywula offers the declaration of Matthew Strebe, who is also an  
4 experienced software engineer and an inventor. (Strebe Decl. ¶¶ 9–10, ECF No. 70-1.)  
5 Conversely, he opines, “[T]he credibility denoted to inventors with software patents is very  
6 important within the hierarchy of corporate career development” and that “[b]eing listed as  
7 an inventor on software patents brings opportunities for employment and advancement  
8 within that employment, beyond those opportunities available to non-inventors.” (*Id.* ¶¶  
9 17–18.) He further opines that inventorship credit is particularly important for a software  
10 developer who, like Sywula, holds a “degree issued by a foreign, lesser-known  
11 university[y] without accreditation in the United States.” (*Id.* ¶ 16.) For these software  
12 developers, Strebe attests, obtaining a Principal Engineer role is an especially uphill battle.  
13 (*Id.* (attesting Sywula “face[s] severe difficulties in seeking senior positions in  
14 employment” in the United States because he was educated in Poland).) Moreover, Sywula  
15 proffers two internal Intel documents that delineate the relevant considerations for hiring  
16 and promoting candidates to Principal Engineer: the Intel Nomination Form and  
17 Presentation. These documents reflect Intel considers patent-inventorship credit as  
18 relevant to several qualities it looks for in Principal Engineers.

19 Viewing the disputed facts in the light most favorable to Sywula as it must, the Court  
20 finds the competing affidavits and the Intel files create a genuine dispute of fact concerning  
21 the significance Sywula’s lack of inventorship credit played in weakening his candidacy  
22 for promotion within Intel. In so finding, the Court is guided by the Federal Circuit’s own  
23 observation in *Chou*, which it reaffirmed in *Shukh*, that “being considered an inventor of  
24 important subject matter is a mark of success” from which “[p]ecuniary consequences may  
25 well flow.” *Shukh*, 803 F.3d at 663 (quoting *Chou*, 254 F.3d at 1359).<sup>14</sup>

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27 <sup>14</sup> *Shukh* holds the importance of patent-inventorship is heightened when the claimed invention is  
28 relevant to the field of work in which the putative inventor is employed. 803 F.3d at 663. Teleport has  
neither argued nor shown the inventions claimed by the Teleport patents are irrelevant to Sywula’s field



1                   **b.     Apple’s Rescinded Job Offer**

2           Again, Teleport asserts that reasons having nothing to do with Defendants’ conduct  
3 were the cause of Apple’s decision to renege its job offer to Sywula. (Rule 12(b)(1) Mot.  
4 at 17 (“[T]here are multiple other, more probable reasons for why a prominent, cutting-  
5 edge technology company such as Apple might cho[ose] not to hire Sywula, not least of  
6 which is his behavior[.]”).) Teleport points to the reputational harm Sywula purportedly  
7 inflicted onto himself by taking Teleport’s trade secrets when he left the Company. (Rule  
8 12(b)(1) Mot. at 1.) Specifically, Sywula attested in a publicly available declaration filed  
9 in the Northern District Action that he “cop[ied]/download[ed]” without permission  
10 Teleport’s files “relating to the work [he] performed [for Teleport] and [his] status as an  
11 inventor of the patented materials.” (Ex. 3 ¶ 8 to Ludwig Decl., ECF No. 65-3.) As a  
12 result, the Northern District Action Court ordered Sywula to preserve as evidence the files  
13 he had taken. Northern District Action, ECF No. 30. Teleport also points to Sywula’s self-  
14 inflicted reputational harm stemming from a publicly available civil harassment restraining  
15 order a California State court issued against him in approximately February 2021, which  
16 prohibited Sywula from coming within 300 yards of DaCosta until March 23, 2021. (Ex.  
17 8 to DaCosta Decl.)

18           Again, this argument is unavailing for the reasons already stated above. The  
19 negative light in which Defendants’ diminishing statements painted Sywula need not be  
20 the sole cause of Apple’s decision to renege its offer. *Barnum Timber*, 633 F.3d at 901.  
21 The Second Amended Complaint demonstrates it is plausible that reputational injury  
22 influenced Apple’s decision. None of the evidence Teleport proffers contests that notion;  
23 instead, it offers additional factors that also may have contributed to Sywula’s lost

24 \_\_\_\_\_  
25 of work. Sywula alleges his specific work in the field of software development includes “conception,  
26 design, development, implementation and maintenance of complex software systems.” (SAC ¶ 12.)  
27 Sywula alleges that he contributed to the Teleport patents by developing the Teleport ride-sharing  
28 application’s “software technologies.” (*Id.* ¶¶ 20–24 (delineating Sywula’s contributions to the Teleport  
application’s software technologies).) Hence, the Second Amended Complaint contains sufficient factual  
allegations from which a plausible inference arises the Teleport patents are relevant to Sywula’s work as  
a software engineer.

1 opportunity. At this relatively early stage of the case, neither party should be expected to  
2 know, let alone proffer evidence tending to show, precisely the grounds upon which Apple  
3 rescinded its offer. The answer to that question—presumably known only to Apple—  
4 inevitably will reveal itself during fact discovery.


5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court **DENIES** Teleport’s Motion to Strike,  
7 **GRANTS** Sywula’s Sealing Motion, and **DENIES** Teleport’s Rule 12(b)(1) Motion to  
8 dismiss this action for lack of standing. The Court further **ORDERS** Defendants to file an  
9 Answer to the Second Amended Complaint **by no later than February 13, 2023.**

10 The Clerk of Court is directed to accept and file under seal the proposed sealed  
11 lodged documents. (ECF No. 58.)

12 **IT IS SO ORDERED.**

13 **DATED: January 23, 2023**

  
**Hon. Cynthia Bashant**  
**United States District Judge**

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