

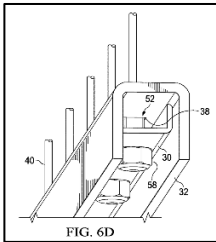


Unnamed Inventor, Invalid Patent

Fortress Iron, LP v. Digger Specialties, Inc., 2026 WL 899158 (Fed. Cir. April 2, 2026)

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The Constitution mandates that the U.S. patent system promote the progress of science and useful arts. Naming and crediting all inventors has long been central to that mandate. While the Patent Act allows correction of inventorship errors, patentees should not take that remedy for granted. In *Fortress*, the Federal Circuit held that failure to name all inventors renders a patent invalid if the error cannot be cured.



Plaintiff and patent owner Fortress Iron, LP (“Fortress”) developed a vertical cable railing system. Its employees initially conceived of and sketched the system, then worked with manufacturing partners in China to build a prototype. This revealed a problem where the vertical cables rotated during tensioning. Employees of the partner company, Lin and Huang, proposed solutions that were incorporated into the product. Fortress obtained patents covering the advancements, but named only its own employees as inventors. Fortress sued competitor Digger Specialties, Inc. (“DSI”) for infringement. DSI identified Lin and Huang as contributors. Fortress conceded they were co-inventors.

As a result, Fortress tried to correct inventorship via the Patent Act’s “savings provision,” 35 U.S.C. § 256. Under § 256(a), the USPTO Director may correct inventorship of a patent on application of all parties and proof of necessary facts. Alternatively, under § 256(b), a court may order correction “on notice and hearing of all parties concerned,” and further states the error “shall not invalidate the patent ... if it can be corrected[.]”

Fortress added Lin as an inventor via an application to the USPTO under § 256(a). However, Huang had left the partner company, and Fortress could not locate him. Fortress sought partial summary judgment for correction under § 256(b), arguing Huang was not a “party concerned” because adding him as a co-inventor would not adversely affect him. The district court disagreed, finding Huang a “party concerned,” denied Fortress’ motion, and granted DSI’s cross-motion for summary judgment of invalidity based on the error.

The Federal Circuit affirmed as to both determinations. It held that an omitted co-inventor is a “party concerned” under § 256(b), and must be given notice and hearing as a “prerequisite to relief [under § 256(b)], not a mere formality.” The court found that “to conflate a ‘party concerned’ with those with potentially adversely affected property interests would be to rewrite the language of the statute[.]” It further rejected Fortress’ argument that § 256, as a savings permission, should be read “broadly and permissively,” finding such application appropriate only when § 256’s prerequisites are satisfied. However, the court found that “the necessary and opposite implication” of the savings provision’s plain language is that if the patentee is unable to obtain correction under § 256, then the patent is invalid.

As the court underscored: “Inventors occupy the central role in the patent process. They are where it all begins” Patentees and practitioners should vet and document contributions and ensure all inventors are named and credited, including third party collaborators.