SUPREME COURT OF THE UNITED STATES

No. 92–1123

IZUMI SEIMITSU KOGYO KABUSHIKI KAISHA, PETITIONER *v.* U. S. PHILIPS CORPORATION ET AL.

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

[November 30, 1993]

PER CURIAM.

In order to reach the merits of this case, we would have to address a question that was neither presented in the petition for certiorari nor fairly included in the one question that was presented. Because we will consider questions not raised in the petition only in the most exceptional cases, and because we conclude this is not such a case, we dismiss the writ of certiorari as improvidently granted.

Petitioner was named as a defendant, along with respondent Windmere Corporation, in an action brought by respondent U. S. Philips Corporation in the District Court for the Southern District of Florida claiming that the defendants had infringed Philips' patent rights and engaged in unfair trade competition. Windmere counterclaimed for antitrust violations. At the first trial of the action, judgment was entered on a jury verdict for Philips on its patent infringement claim, and neither Izumi nor Windmere appealed. Philips also prevailed on Windmere's antitrust counterclaim, and the District Court ordered a new trial on the unfair competition claim. On Windmere's interlocutory appeal, the United States Court of Appeals for the Federal Circuit reversed the

judgment on the antitrust counterclaim and remanded the case for a new trial. *U. S. Philips Corp.* v. *Windmere Corp.,* 861 F. 2d 695 (CA Fed. 1988), cert. denied, 490 U. S. 1068 (1989). Izumi took no further part in the litigation.

A second jury found in favor of Windmere both on Philips' unfair competition claim and on Windmere's antitrust counterclaim, and judgment was entered in favor of Windmere on the latter for more than $89 million. Philips appealed both judgments to the Federal Circuit. Before the Court of Appeals decided the case, however, Windmere and Philips reached a settlement wherein Philips agreed to pay Windmere $57 million. Windmere and Philips also agreed jointly to request the Court of Appeals to vacate the District Court's judgments, although the settlement was not conditioned on the Federal Circuit granting the vacatur motion. After Windmere and Philips filed their joint motion to vacate, petitioner sought to intervene on appeal for purposes of opposing vacatur.

The Court of Appeals denied Izumi's motion to intervene. *U. S. Philips Corp.* v. *Windmere Corp.,* 971 F. 2d 728, 730–731 (CA Fed. 1992). It reasoned that Izumi was not a party to the second trial, and that its financial support of Windmere's litigation as an indemnitor was not sufficient to confer party status. The Court of Appeals also concluded that Izumi's interest in preserving the judgment for collateral estoppel purposes was insufficient to provide standing.[1] *Ibid.* The Court of Appeals proceeded to review the vacatur motion and concluded that, because the settlement included all the parties to the appeal, vacatur was appropriate. *Id.*, at 731.

Title 28 U. S. C. §1254(1) provides, in relevant part:

> "Cases in the courts of appeals may be

---

[1]Petitioner hoped to preserve the judgment for use in a suit brought by Philips against Sears and Izumi in the United States District Court for the Northern District of Illinois. As with Windmere, Izumi has agreed to indemnify Sears' litigation expenses.

reviewed by the Supreme Court . . .

"(1) [B]y writ of certiorari granted upon the petition of any *party* to any civil or criminal case, before or after rendition of judgment or decree." (Emphasis added).

Because the Court of Appeals denied petitioner's motion for intervention, Izumi is not a party to this particular civil case. One who has been denied the right to intervene in a case in a court of appeals may petition for certiorari to review that ruling, *Auto Workers* v. *Scofield*, 382 U. S. 205, 208–209 (1965), but Izumi presented no such question in its petition for certiorari. It presented a single question for our review: "Should the United States Courts of Appeals routinely vacate district court final judgments at the parties' request when cases are settled while on appeal?" Because this question has divided the Courts of Appeals,[2] we granted certiorari. 507 U. S. ___ (1993). In its brief on the merits, petitioner added the following to its list of questions presented: "Whether the court of appeals should have permitted Petitioner to oppose Respondents' motion to vacate the district court judgment."

This Court's Rule 14.1(a) provides, in relevant part: "The statement of any question presented [in a petition for certiorari] will be deemed to comprise every subsidiary question fairly included therein.

---

[2]Like the Federal Circuit, the Second Circuit will generally grant motions to vacate when parties settle on appeal. See *Nestle Co.* v. *Chester's Market, Inc.*, 756 F. 2d 280, 282–284 (CA2 1985). The Third, District of Columbia, and Seventh Circuits will generally deny such motions. See *Clarendon Ltd.* v. *Nu-West Industries, Inc.*, 936 F. 2d 127 (CA3 1991); *In re United States*, 927 F. 2d 626 (CADC 1991); *In re Memorial Hospital of Iowa County, Inc.*, 862 F. 2d 1299 (CA7 1988). The Ninth Circuit requires district courts to balance "the competing values of finality of judgment and right to relitigation of unreviewed disputes." *Ringsby Truck Lines, Inc.* v. *Western Conference of Teamsters*, 686 F. 2d 720, 722 (1982).

Only the questions set forth in the petition, or fairly included therein, will be considered by the Court."[3] Unless we can conclude that the question of the denial of petitioner's motion to intervene in the Court of Appeals was "fairly included" in the question relating to the vacatur of final judgments at the party's request, Rule 14.1 would prevent us from reaching it.

---

[3]The initial version of this Rule, promulgated in 1954, stated: "The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court." Rule 23.1(c), Rules of the Supreme Court of the United States, 346 U. S. 951, 972 (1954). The current version dates back to 1980, when we amended the Rules. The 1980 changes in syntax obviously did not alter the substance of the Rule.

It seems clear that a challenge to the Federal Circuit's denial of petitioner's motion to intervene is not "subsidiary" to the question on which we granted certiorari. On the contrary, it is akin to a question regarding a party's standing,[4] which we have described as a "threshold inquiry" that "`in no way depends on the merits'" of the case. *Whitmore* v. *Arkansas*, 495 U. S. 149, 155 (1990) (quoting *Warth* v. *Seldin*, 422 U. S. 490, 500 (1975)).

We also believe that the question is not "fairly included" in the question presented for our review.[5] A question which is merely "complementary" or "related" to the question presented in the petition for certiorari is not "fairly included therein." *Yee* v. *City of Escondido,* 503 U. S. ___ (1992). Thus, in *Yee*, we concluded that the question whether an ordinance effected a physical taking did not include the related question of whether it effected a regulatory taking. *Ibid.* Whether petitioner should have been granted leave to intervene below is quite distinct, both analytically and factually, from the question of

---

[4]The Court of Appeals actually dismissed Izumi's motion in terms of standing, concluding that Izumi did "not have standing to oppose the joint motion." *U. S. Phillips Corp.* v. *Windmere Corp.,* 971 F. 2d, 728, 731 (CA Fed. 1992).

[5]We note that the fact that the parties devoted a portion of their merits briefs to the intervention issue does not bring that question properly before us. *Radzanower* v. *Touche Ross & Co.*, 426 U. S. 148, 151, n. 3 (1976). Nor does "[t]he fact that the issue was mentioned in argu–

ment . . . bring the question properly before us." *Mazer* v. *Stein*, 347 U. S. 201, 206, n. 5 (1954). Contrary to dissent's suggestion, see *ante*, at 2, the fact that Izumi discussed this issue in the text of its petition for certiorari does not bring it before us. Rule 14.1(a) requires that a subsidiary question be fairly included in the *question presented* for our review.

whether the Court of Appeals should vacate judgments where the parties have so stipulated. The questions are even less related or complementary to one another than were the questions in *Yee*.

The intervention question being neither presented as a question in the petition for certiorari nor fairly included therein, "Rule 14.1(a) creates a heavy presumption against our consideration" of that issue. *Id.,* at ___. Rule 14.1(a), of course, is prudential; it "does not limit our power to decide important questions not raised by the parties." *Blonder-Tongue Laboratories, Inc.* v. *University of Ill. Foundation*, 402 U. S. 313, 320, n. 6 (1971). A prudential rule, however, is more than a precatory admonition. As we have stated on numerous occasions, we will disregard Rule 14.1(a) and consider issues not raised in the petition "`only in the most exceptional cases.'" *Yee*, *supra*, at ___ (quoting *Stone* v. *Powell*, 428 U. S. 465, 481, n. 15 (1976)); see also *Berkemer* v. *McCarty*, 468 U. S. 420, 443, n. 38 (1984) ("Absent unusual circumstances, . . . we are chary
of considering issues not presented in petitions for certiorari").[6]

We have made exceptions to Rule 14.1(a) in cases

---

[6]Even before the first version of the current Rule 14.1(a) was adopted, we indicated our unwillingness to decide issues not presented in petitions for certiorari. As we stated in *General Talking Pictures Corp.* v. *Western Electric Co*, 304 U. S. 175, 179 (1938): "One having obtained a writ of certiorari to review specified questions is not entitled here to obtain decision on any other issue." And as Justice Jackson stated, writing for a plurality in *Irvine* v. *California*, 347 U. S. 128, 129–130 (1954): "We disapprove the practice of smuggling additional questions into a case after we grant certiorari. The issues here are fixed by the petition unless we limit the grant, as frequently we do to avoid settled, frivolous or state law questions."

where we have overruled one of our prior decisions even though neither party requested it. See, *e.g.*, *Blonder-Tongue*, *supra*, at 319–321. We have also decided a case on nonconstitutional grounds even though the petition for certiorari presented only a constitutional question. See, *e.g.*, *Boynton* v. *Virginia*, 364 U. S. 454, 457 (1960); *Neese* v. *Southern R. Co.*, 350 U. S. 77, 78 (1955). We must also notice the possible absence of jurisdiction because we are obligated to do so even when the issue is not raised by a party. See, *e.g.*, *Lake Country Estates, Inc.* v. *Tahoe Planning Agency*, 440 U. S. 391, 398 (1979); *Liberty Mutual Ins. Co.* v. *Wetzel*, 424 U. S. 737, 740 (1976). And we may, pursuant to this Court's Rule 24.1(a), "consider a plain error not among the questions presented but evident from the record and otherwise within [our] jurisdiction to decide." See, *e.g.*, *Wood* v. *Georgia*, 450 U. S. 261, 265, n. 5 (1981); see generally R. Stern, E. Gressman, & S. Shapiro, Supreme Court Practice § 6.26 (6th ed. 1986) (discussing Rule 14.1(a) and its exceptions).

The present case bears scant resemblance to those cited above in which we have made exceptions to the provisions of Rule 14.1. While the decision on any particular motion to intervene may be a difficult one, it is always to some extent bound up in the facts of the particular case. Should we undertake to review the Court of Appeals' decision on intervention, it is unlikely that any new principle of law would be enunciated, as is evident from the briefs of the parties on this question. As we said in *Yee*, Rule 14.1(a) helps us "[t]o use our resources most efficiently" by highlighting those cases "that will enable us to resolve particularly important questions." 503 U. S., at ____. The Court of Appeals' disposition of petitioner's motion to intervene is simply not such a question.[7]

---

[7]Justice STEVENS in dissent urges that our disposition of

Should we disregard the Rule here, there would also be a natural tendency — to be consciously resisted, of course — to reverse the holding of the Court of Appeals on the intervention question in order that we could address the merits of the question on which we actually granted certiorari; otherwise, we would have devoted our efforts *solely* to addressing a relatively factbound issue which does not meet the standards that guide the exercise of our certiorari jurisdiction. Our faithful application of Rule 14.1(a) thus helps ensure that we are not tempted to engage in ill-considered decisions of questions not presented in the petition. Faithful application will also inform those who seek review here that we continue to strongly "disapprove the practice of smuggling additional questions into a case after we grant certiorari." *Irvine* v. *California*, 347 U. S. 128, 129 (1954) (plurality opinion).

Izumi was not a party to the appeal below, and the Court of Appeals denied its motion to intervene there. Because we decline to review the propriety of the Court of Appeals' denial of intervention, petitioner lacks standing under §1254(1) to seek review of the question presented in the petition for certiorari. The writ of certiorari is therefore dismissed as improvidently granted.

It is so ordered.

United States v. *Williams*, ___ U. S. ___ (1992) provides authority for reaching the merits of this case. We disagree. There we applied a different prudential rule — the one which precludes our review of an issue that "was not pressed or passed upon below." *Id.*, at ___. Because the issue there *had been passed upon* by the lower court, see *id.*, at ___, we reviewed it.