SUPREME COURT OF THE UNITED STATES

No. 10–290

MICROSOFT CORPORATION, PETITIONER *v.* i4i LIMITED PARTNERSHIP ET AL.

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

[June 9, 2011]

JUSTICE THOMAS, concurring in the judgment.

I am not persuaded that Congress codified a standard of proof when it stated in the Patent Act of 1952 that "[a] patent shall be presumed valid." 35 U. S. C. §282; see *ante*, at 7. "[W]here Congress borrows terms of art," this Court presumes that Congress "knows and adopts the cluster of ideas that were attached to each borrowed word . . . and the meaning its use will convey to the judicial mind." *Morissette* v. *United States*, 342 U. S. 246, 263 (1952). But I do not think that the words "[a] patent shall be presumed valid" so clearly conveyed a particular standard of proof to the judicial mind in 1952 as to constitute a term of art. See, *e.g.*, *ante*, at 12, n. 7 ("[S]ome lower courts doubted [the presumption's] wisdom or even pretended it did not exist"); *Philip A. Hunt Co.* v. *Mallinckrodt Chemical Works*, 72 F. Supp. 865, 869 (EDNY 1947) ("[T]he impact upon the presumption of many late decisions seems to have rendered it as attenuated . . . as the shadow of a wraith"); *Myers* v. *Beall Pipe & Tank Corp.*, 90 F. Supp. 265, 268 (D Ore. 1948) ("[T]he presumption of [patent] validity . . . is treated by the appellate courts as evanescent as a cloud"); *American Hoist & Derrick Co.* v. *Sowa & Sons, Inc.*, 725 F. 2d 1350, 1359 (CA Fed. 1984) ("[I]n 1952, the case law was far from consistent—even contradictory—about the presumption"); cf. *Bruesewitz* v.

Wyeth LLC, 562 U. S. ___, ___–___ (2011) (slip op., at 9–10) (Congress' use of a word that is similar to a term of art does not codify the term of art). Therefore, I would not conclude that Congress' use of that phrase codified a standard of proof.

Nevertheless, I reach the same outcome as the Court. Because §282 is silent as to the standard of proof, it did not alter the common-law rule. See *ante*, at 6 ("[§282] includes no express articulation of the standard of proof"). For that reason, I agree with the Court that the heightened standard of proof set forth in *Radio Corp. of America* v. *Radio Engineering Laboratories, Inc.*, 293 U. S. 1 (1934)—which has never been overruled by this Court or modified by Congress—applies.