

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**In re: CROSS ENGINEERING, LLC, dba Cross Ar-
mory, WES CROSS,**
Petitioners

2020-131

On Petition for Writ of Mandamus to the United States
District Court for the Southern District of California in No.
3:18-cv-00871-MSB.

ON MOTION

Before PROST, *Chief Judge*, MOORE and HUGHES, *Circuit
Judges*.

PROST, *Chief Judge*.

O R D E R

Evolution Concepts, Inc. (“Evolution”) moves pursuant
Rule 38 of the Federal Rule of Appellate Procedure to sanc-
tion Cross Engineering, LLC and Wes Cross (collectively,
“Cross”) and their counsel by ordering them to pay Evolu-
sion’s attorney fees and expenses for responding to Cross’s
mandamus petition and the filing of its motion. Cross op-
poses and requests oral argument.

Rule 38 provides that “[i]f a court of appeals determines that an appeal is frivolous, it may . . . award just damages and single or double costs to the appellee.” Fed. R. App. P. 38. This court has recognized that sanctions may be appropriate “when an appellant has raised issues that are beyond the reasonable contemplation of fair-minded people.” *Sparks v. Eastman Kodak Co.*, 230 F.3d 1344, 1345 (Fed. Cir. 2000). This court has also recognized that an appeal can be “frivolous as argued” such as when “an appellant has not dealt fairly with the court, has significantly misrepresented the law or facts, or has abused the judicial process by repeatedly litigating the same issue in the same court.” *Id.* at 1345–46 (citations omitted). Under either standard, we conclude that Evolusion has not demonstrated entitlement to sanctions.

Accordingly,

IT IS ORDERED THAT:

Evolusion’s motion is denied. Cross’s request for oral argument is denied as moot.

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

August 26, 2020
Date