

No. 21-1327

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IN THE  
**Supreme Court of the United States**

APPLE, INC.,

*Petitioner,*

v.

QUALCOMM INCORPORATED.,

*Respondent.*

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On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Federal Circuit

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**BRIEF IN OPPOSITION**

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## **QUESTION PRESENTED**

Whether a licensee that offers no evidence linking a patent's invalidation to any concrete consequence for the licensee nevertheless has Article III standing to challenge the validity of the licensed patent.

**CORPORATE DISCLOSURE STATEMENT**

Qualcomm Incorporated has no parent company, and no publicly held corporation owns 10% or more of its stock.

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**BRIEF IN OPPOSITION**

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**INTRODUCTION**

As petitioner openly concedes, the petition in this case is “materially identical” to the one in *Apple Inc. v. Qualcomm Incorporated*, No. 21-746 (U.S.) (“*Apple I*”). See Pet. 1; see also, e.g., Pet App. 2a (“Confronted here with identical operative facts, we do no more than follow in the wake of *Apple I*”). This Court recently denied certiorari in that case. *Apple Inc. v. Qualcomm Incorporated*, \_\_\_ S. Ct. \_\_\_, 2022 WL 2295201 (June 27, 2022). As Apple has effectively admitted, denial is the correct course here as well. Pet. 1-2 (“The Court should \* \* \* dispose of [this Petition] in a manner consistent with the disposition of *Apple I*”).

As in *Apple I*, Apple’s petition presents no important or unsettled legal issues. As in *Apple I*, Apple fails to allege a circuit split. And, as in *Apple I*, Apple’s petition involves only fact-bound questions arising from Apple’s glaring failure to offer any evidence establishing its Article III standing. Apple purports to challenge the validity of three different patents, but it cannot identify a single concrete consequence that would follow from invalidation of any of them. Apple offered no evidence that its royalty payments under its portfolio license would decrease upon the invalidation of any or all of the three patents. Nor did it include a declaration that it would have no need for the portfolio license agreement in the event of the patents’ invalidation. Nor even did Apple provide evidence that it will be selling products that could likely infringe the patents when the license agreement expires years down the road. In short, Apple made no effort whatsoever to link the patents’ invalidation to any cognizable consequence, much less to the alleviation of an actual, Article III injury.

Apple instead purports to believe that the parties’ disagreement over an abstract question of law and fact—that “Qualcomm believes its patents are valid and infringed, whereas Apple does not,” Pet. 16—suffices to establish standing. But without any concrete consequences flowing to Apple from the patents’ invalidation, that academic disagreement cannot support Article III standing.

As in *Apple I*, the Federal Circuit correctly analyzed and resolved these fact-specific standing issues below. And that court routinely evaluates standing under bedrock Article III principles and this Court’s decision in *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007). When a plaintiff submits evidence

establishing that it would concretely benefit from an invalidity finding, the Federal Circuit upholds Article III standing. Indeed, a recent Federal Circuit decision re-emphasized that a patent portfolio licensee *can* have standing to challenge an individual patent in a portfolio, depending on the specific facts. *See ModernaTx, Inc. v. Arbutus Biopharma Corp.*, 18 F.4th 1352, 1362 (Fed. Cir. 2021) (describing earlier decision in *Samsung Electronics Co., Ltd. v. Infobridge Pte. Ltd.*, 929 F.3d 1363 (Fed. Cir. 2019), as holding “that the appellant had standing because, even though multiple patents were licensed, the appellant had provided evidence demonstrating that the express terms of the contract structured the patent pool in such a way that invalidation of the patent at issue in the underlying IPR would have changed the amount of royalties”). But where—as here—a plaintiff falls short of that showing, the Federal Circuit correctly dismisses the appeal, applying black-letter precedent to the specific facts of each case. Apple’s simple failure to demonstrate factually its standing drove the result in this case, not any conflict with *MedImmune* or other precedents of this Court. As in *Apple I*, certiorari should be denied.

## STATEMENT OF THE CASE

### A. Background.

Qualcomm is one of the world’s leading technology companies and a pioneer in the mobile phone industry. Through its own development and investment in technologies, Qualcomm owns more than 100,000 patents and patent applications.

In 2017, Qualcomm filed suit against Apple, alleging Apple’s mobile devices infringed six of its patents, three of which are at issue in this case. *See generally*

Complaint, *Qualcomm Inc. v. Apple Inc.*, No. 3:17-cv-02402, ECF No. 1 (S.D. Cal. Nov. 29, 2017) (“*Qualcomm*”). Apple counterclaimed, arguing that those six patents were invalid and that Apple did not infringe them. *See generally Qualcomm*, ECF No. 47.

Apple simultaneously challenged three of the disputed patents as invalid through inter partes reviews (“IPRs”). Pet. App. 3a. IPRs are conducted by the Patent Trial and Appeal Board (“Board”), a non-Article III tribunal, and may be brought by any person “who is not the owner of [the] patent.” 35 U.S.C. § 311(a). Article III standing is not required before the Board. *See Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 279 (2016) (parties initiating IPRs “need not have a concrete stake in the outcome; indeed, they may lack constitutional standing”). The Board’s decisions are appealable to the U.S. Court of Appeals for the Federal Circuit. 35 U.S.C. § 319; *Thryv, Inc. v. Click-To-Call Techs., LP*, 140 S. Ct. 1367, 1371 (2020).

In 2019, Qualcomm and Apple entered into a settlement agreement of all litigation worldwide between the parties and dismissed all the infringement claims with prejudice. Pet. App. 2a; *Qualcomm*, ECF Nos. 197, 198. As part of the settlement, the parties executed a license agreement that covered a portfolio of tens of thousands of Qualcomm patents, including the three at issue in this case. *See* Pet. App. 2a. That agreement requires Apple to pay a royalty in exchange for rights to the patents covered by the agreement. *Id.* at 2a-3a. Apple’s payments are not tied to any single patent. *Id.* Nor do they decrease if one or more patents in the portfolio are declared invalid. *Id.* In exchange for Apple’s payment of royalties, Qualcomm agreed not to sue Apple for infringement of the covered patents

during the term of the agreement. *Id.* The agreement has a six-year term, expiring in 2025, with the option for a two-year renewal. *Id.*

The settlement did not prohibit Apple from continuing to pursue its IPRs before the Board on the patents covered by the license agreement, and Apple elected to do so for the three patents at issue here. The Board issued final written decisions in the IPRs determining that Apple did not prove various claims of the patents were invalid. Pet. App. 3a.

### **B. Proceedings Below.**

Apple appealed the IPR rulings to the Federal Circuit. *Id.* The Federal Circuit, concluding that the case was “on all fours” with its earlier decision in *Apple I*, dismissed the appeal because Apple lacked Article III standing. *Id.* at 6a-7a.

In *Apple I*, the Federal Circuit rejected Apple’s “broad[]” reading of *MedImmune*, which would grant a licensee standing to challenge any single licensed patent in a portfolio, “even if the validity of any one patent would not affect the licensee’s payment obligations.” *Apple I* Pet. App. 6a. The Federal Circuit correctly recognized that in *MedImmune* the invalidation of the patent at issue would have affected the amount of royalty payments owed. *Id.* at 7a. In *Apple I* (and this case), by contrast, Apple had neither alleged nor provided evidence that the validity of the patents at issue would affect its royalty obligations in any way. *Id.* That evidentiary defect was “fatal to establishing standing under the reasoning of *MedImmune*.” *Id.*

The Federal Circuit also rejected Apple’s contention that it had standing based on the possibility that Qualcomm may sue Apple for infringing the patents

years in the future after the license agreement expires. *Id.* at 8a. The court found that possibility “too speculative to confer standing” because Apple failed to offer any evidence that it would engage in conduct after expiration of the license agreement that could lead to an infringement suit. *Id.* at 8a-9a. Indeed, the court noted that Apple had “offer[ed] the sparsest of declarations in support of standing, which [we]re devoid of any of the specificity necessary to establish an injury in fact” and did not “even mention the patents at issue.” *Id.* at 9a. The generic declarations, moreover, were recycled from a different case, involving other patents, to which Apple was not even a party. *See* C.A. Rec. A2252-A2255; *see also* Pet App. 4a (noting that Apple submitted the “exact same declarations” in this case as in *Apple I*). And the court declined to take judicial notice of “products and product features Apple may be selling at the expiration of the license agreement years from now,” given that, as here, Apple had submitted no actual evidence on that issue. *Apple I* Pet. App. 9a-10a.

Lastly, the court rejected Apple’s argument that its injury was compounded by the likelihood that 35 U.S.C. § 315 would estop it from arguing in future disputes that the patents were obvious. *Apple I* Pet. App. 11a. The court relied on its prior holdings to reject that argument as an independent basis for standing, but also noted that any alleged harm Apple would face from estoppel was “particularly suspect” because Apple had failed to offer any evidence showing that it was likely to be subject to an infringement suit on these patents in the future. *Id.*

In *Apple I*, Apple sought rehearing en banc, which was denied without recorded dissent. *Id.* at 81a-84a. As noted, the Federal Circuit simply “follow[ed]”

*Apple I* in this case given that the two cases have “identical operative facts.” Pet. App. 2a.

### **REASONS FOR DENYING THE PETITION**

As the Solicitor General has recognized, the Federal Circuit correctly applied *MedImmune* and this Court’s other standing precedents to resolve, on “case-specific” grounds, both *Apple I* and this indistinguishable, similarly fact-bound case. See Br. for United States as Amicus Curiae, *Apple I* (“S.G. Br.”) 8. *MedImmune* clarified that a licensee need not breach its license agreement to establish standing to challenge a licensed patent’s validity, so long as the licensee can link the patent’s invalidation to a concrete consequence for the licensee. The licensee in *MedImmune* made that showing by demonstrating that the patent’s invalidation would reduce its royalty payments under the license agreement. By contrast, in both this case and *Apple I*, Apple offered no evidence that the patents’ invalidation would reduce its royalty payments under the license agreement or otherwise result in any real-world (or otherwise cognizable) consequence. The Federal Circuit rightly rejected Apple’s claim to standing on this barren evidentiary record and declined to interpret *MedImmune* as creating an unprecedented, one-of-a-kind exception to Article III’s basic requirements.

Apple’s non-*MedImmune* arguments likewise present no plausible conflict with this Court’s precedents, involve fact-bound issues on which Apple presented no evidence, and fail on the merits. Apple contends that the possibility of Qualcomm suing it for infringement of these patents in 2025 or 2027 when the license agreement expires suffices to establish its standing and that such a future infringement suit would be influenced by the potential estoppel effects

of the IPR rulings below. But Apple did not even attempt to show that it intends to engage in potentially infringing conduct in those future years. Instead, Apple relies solely on baseless speculation that it might manufacture products that might infringe these patents years down the line. This Court has never permitted standing based on such a conjectural claim of future injury. The Federal Circuit thus properly rejected Apple's non-*MedImmune* arguments by applying traditional standing principles to the particular facts before it.

Moreover, this case is just as poor a vehicle as *Apple I* for addressing any issues the petition raises. As in *Apple I*, Apple's wholesale evidentiary failures make it impossible for this Court to grapple with any matters of alleged importance. Meanwhile, the Federal Circuit continues to assess standing to appeal IPRs in a case-by-case manner, based on the facts presented. Contrary to Apple's claim, that court has not foreclosed standing by portfolio licensees if, unlike here, they identify an actual injury. As noted above, the Federal Circuit recently stated that it would *uphold* standing for a portfolio-licensee plaintiff who showed, for instance, that the challenged patent's invalidity would reduce its license payments or otherwise alter the licensee's obligations. Like the *Apple I* petition, the petition in this case fails to establish that this Court's review is warranted. Accordingly, as Apple admits is the proper disposition, *see* Pet. 1-2, the Court should deny certiorari here as it did in *Apple I*.



**I. THE FEDERAL CIRCUIT CORRECTLY APPLIED *MEDIMMUNE* AND TRADITIONAL STANDING PRINCIPLES TO THIS FACT-BOUND CASE.**

**A. As The Solicitor General Has Explained, *MedImmune* Establishes That Traditional Standing Principles Apply In The Licensee Context.**

In *MedImmune*, this Court held that a licensee need not breach its license agreement to prove standing to challenge a licensed patent. 549 U.S. at 137. If the licensee can demonstrate that a declaration of the patent's invalidity would relieve it of a cognizable injury (e.g., payments due under the license agreement), the presence of the license agreement will not negate standing. *Id.* at 128.

MedImmune, which manufactured the drug Synagis, entered into a patent license agreement with Genentech, Inc. that covered an existing patent and a then-pending patent application. *Id.* at 121. After the covered patent application matured into the Cabilly II patent, Genentech informed MedImmune that it believed Synagis was covered by that patent and demanded royalties based on the drug's sales per the terms of the license agreement. *Id.* MedImmune disagreed, believing that the Cabilly II patent was invalid and that, in any event, Synagis did not infringe the patent. *Id.* at 121-22. Nevertheless, unwilling to risk the consequences of termination of the license agreement and potential treble damages for patent infringement, MedImmune paid the demanded royalties under protest and sought a declaration that the Cabilly II patent was invalid and that Synagis did not infringe it. *Id.* at 122.

The issue for this Court was whether MedImmune had Article III standing to seek a declaratory judgment that the patent was invalid, unenforceable, or not infringed even though MedImmune had not terminated or breached the license agreement. *Id.* at 120-21. The Court stated that the only aspect of the case casting doubt on standing was MedImmune's continued payment of royalties, explaining that "but for petitioner's continuing to make royalty payments, nothing about the dispute would render it unfit for judicial resolution." *Id.* at 128. The question, therefore, was whether the continued payment of royalties destroyed MedImmune's standing to challenge patent validity. Relying on *Altvater v. Freeman*, 319 U.S. 359 (1943), which held that coerced royalty payments made under an injunction order did not deprive a licensee of standing to challenge the patent's validity, this Court held that Article III did not require MedImmune to break or terminate the license agreement before seeking a declaratory judgment that the Cabilly II patent was invalid. *MedImmune*, 549 U.S. at 130-31, 137.

As the Solicitor General has explained, *MedImmune* does not hold that the patent-license context is an exception to the ordinary law regarding Article III standing. *See* S.G. Br. 12-18. In fact, *MedImmune* makes clear that the opposite is true. The link between the patent's validity and a cognizable injury was clear in *MedImmune* because invalidation of the patent at issue would eliminate the need to make payments under the license agreement. *Id.* at 15-16 ("In \* \* \* *MedImmune* \* \* \* the plaintiffs were experiencing concrete, real-world injuries that would be redressed by favorable decisions. MedImmune was paying the relevant royalties under protest to avoid

an infringement suit based on the disputed patent, but the company could (and would) stop its payments if a court declared the patent invalid.”). MedImmune contended, and the Court agreed, that a determination that the patent was invalid would relieve MedImmune of specific royalty obligations:

There is no dispute that [Article III’s case-or-controversy requirement] would have been satisfied if petitioner had taken the final step of refusing to make royalty payments under the 1997 license agreement. Respondents claim a right to royalties under the licensing agreement. Petitioner asserts that no royalties are owing because the Cabilly II patent is invalid and not infringed; and alleges (without contradiction) a threat by respondents to enjoin sales if royalties are not forthcoming.

549 U.S. at 128. The patent’s continuing validity was thus directly injuring the licensee through the required payment of royalties or the near-certainty of an infringement action if it repudiated the agreement.

In sum, as the Solicitor General has explained, the Court grounded its holding in *MedImmune* on the close link between the relief sought and a cognizable injury that is the hallmark of Article III standing. See, e.g., *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 107 (1998) (“Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement.”). Specifically, there was a direct link between the payments due under the license agreement and a finding of invalidity because invalidation of the patent would extinguish the licensee’s payment obligations. In other words, the

licensee's successful invalidation of the patent would have a concrete, cognizable effect on the licensee.

Apple makes much of *MedImmune*'s statement that it “probably ma[de] no difference” whether that dispute involved a “freestanding claim of patent invalidity” or “a claim that, both because of patent invalidity and because of noninfringement, no royalties are owing under the license agreement.” *MedImmune*, 549 U.S. at 123; see Pet. 11, 15-16, 18. But as the Solicitor General has explained, that statement means only that “even if MedImmune had acknowledged a contractual obligation to continue paying royalties unless and until the disputed patents were declared invalid, it still would have had standing to seek a declaratory judgment of invalidity because that relief would have allowed it to avoid making *future* royalty payments.” SG Br. 18. Thus, as the Solicitor General has aptly explained, *MedImmune* establishes that a licensee can, in certain circumstances and based on an adequate showing, demonstrate standing “*in spite of*” a licensing agreement. *Id.* at 15.

What *MedImmune* does not establish—and what the Court's precedent forecloses—is Apple's proposed rule, under which *every* multi-patent licensing agreement would establish standing *per se*, even in the *absence* of any evidence of concrete harm. *See id.* Here, by contrast to *MedImmune*, Apple has not established that it suffers such harm (much less that such harm is fairly traceable to the patents and remediable upon a favorable decision), because it has failed to create any record that would support a finding that it would or could stop making royalty payments under its global license agreement if the three patents at issue in this case were held to be

invalid. Nor has Apple even demonstrated a “substantial probability” of that result. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 (1977) (citation omitted); *Apple I* Pet. App. 7a-8a & n.4 (“Apple fails to explain why the \* \* \* patent creates a significant barrier, and we see no evidence that the cancellation of the \* \* \* patent is likely to affect Apple’s ongoing payment obligations”). As a result of Apple’s failures, and as the Solicitor General has observed, the record in these cases is completely devoid of evidence suggesting that the patents’ continuing validity has any concrete or real-world effect on Apple whatsoever.

**B. As The Solicitor General Agrees, The Federal Circuit’s Opinion Is Faithful To *MedImmune*.**

The link between the relief sought and a cognizable injury that was central to *MedImmune*’s holding is thus missing here. Whereas in *MedImmune* the patent’s invalidation would eliminate the licensee’s royalty obligations, here Apple offered no evidence that invalidation of any patent at issue would have any concrete effect on its rights or obligations under its license agreement. Nor did it attempt to tie the patents’ invalidation to any other cognizable consequences. Thus, on this record, Apple has merely an academic interest in the patents’ validity.

Apple’s generic allegations of coercion, *see* Pet. 15-17, 19, do not confer standing. The supposed coercion is making payments to avoid an infringement suit related to the three challenged patents. But Apple never claimed, much less proved, that its royalty payments would change if the court invalidated certain claims of these three patents. Thus, on this record, Apple’s payments will not change even if the

three patents at issue are invalidated. As the Solicitor General has explained, that differs sharply from the coercion theory in *MedImmune*, because MedImmune's royalty payments on sales of its new drug would have been eliminated if the patent were held invalid. *See* 549 U.S. at 121-122; S.G. Br. 10, 15-18.

Nor is it relevant whether Qualcomm would sue *if* Apple were to breach its license agreement. *Cf.* *Apple I* Supp. Br. for Pet'r 3 (“[I]f Apple were to repudiate the license agreement based on its conviction that the [challenged] patents are invalid, Qualcomm would sue[.]”). Apple, not Qualcomm, bore the burden to prove standing. And Apple has never suggested, much less proved, that Apple *would* breach if the patents at issue were found invalid. Apple's argument merely highlights Apple's own failure to introduce evidence, or even an allegation, suggesting that Apple's willingness to pay the royalties it owes has anything to do with the three patents it seeks to challenge. Unlike in *MedImmune*, there is no basis to conclude that the royalties are being paid under protest, because Apple has failed to aver that it would cease paying the royalties if the challenged patents were determined to be invalid. *See, e.g.*, S.G. Br. 7 (noting that *MedImmune* is “inapposite” because there, “[i]t was clear that, if the patent was declared invalid, the licensee would no longer be required to pay royalties on the allegedly infringing product”).

Recognizing these flaws in Apple's arguments, the Federal Circuit properly held in *Apple I* that Apple's failure to demonstrate that the invalidation of the challenged patents would affect its ongoing payment obligations was fatal to establishing standing under *MedImmune*:

Apple nowhere argues or provides evidence that the validity of any single patent, including the [challenged patents], would affect its ongoing payment obligations. Nor does Apple identify any contractual dispute involving its ongoing royalty obligations (e.g., a disagreement over whether certain Apple product sales trigger additional royalty payments) that relates to, or could be resolved through a validity determination of, the patents at issue. Because the validity of the challenged patents would not impact Apple's ongoing payment obligations, the reasoning of *MedImmune* does not apply.

*Apple I* Pet. App. 7a-8a. That holding, which applies equally here, is both unremarkable and unmistakably correct. As the Federal Circuit recognized, Apple's failure to provide evidence is especially relevant in a case such as this one (and *Apple I*), where Qualcomm's previous infringement claims for the same patents were dismissed with prejudice. *Id.* at 10a; see *Grit Energy Sols., LLC v. Oren Techs., LLC*, 957 F.3d 1309, 1320 (Fed. Cir. 2020) (finding standing because previous claims were dismissed without prejudice).

As noted, and as the Solicitor General has also explained, Apple might have avoided its standing problem if it offered evidence demonstrating that invalidation of the patents would remedy an injury. S.G. Br. 19-20. But it made not the slightest effort in that regard. As the Federal Circuit observed in *Apple I*, Apple's evidence there (which was *exactly the same* as its evidence here) comprised only "the sparsest of declarations in support of standing, which are devoid of any of the specificity necessary to establish an injury in fact." *Apple I* Pet. App. 9a; see

*also* Pet App. 6a (noting that “Apple’s declarations in support of standing” are “the same” in both cases).

Apple offered recycled, generic declarations that do not even mention the three patents at issue. *See* C.A. Rec. A2252-A2255.<sup>1</sup> Instead, the declarations merely assert that Apple and Qualcomm entered into a settlement that included a license agreement with ongoing payment obligations and permitted Apple to continue certain IPRs. *Id.* The declarations also note that in the settlement negotiations Qualcomm rejected Apple’s proposal of a permanent, irrevocable license. *Id.*; *see also* Pet. 9. That is it. Nothing else is asserted. That is the entire evidentiary foundation on which Apple rests its argument.

Chronicling the deficiencies of Apple’s declarations, they provide no evidence:

- (1) that the patents’ invalidation would alter Apple’s payment obligations under the license agreement,
- (2) of a contractual dispute that would be affected by the validity of the patents,
- (3) that Apple would no longer need its portfolio license agreement if these three patents are invalidated, or
- (4) that the patents’ invalidation would have any other cognizable consequence for Apple.

*Apple I* Pet. App. 7a-8a. In short, the declarations do not even attempt to link the invalidation of the three

<sup>1</sup> Apple has used these exact same cursory declarations in numerous appeals involving different patents. *See, e.g.*, Pet. App. 4a (noting that Apple’s declarations in this case are “the exact same declarations it submitted in *Apple I*”); Ex. 4 to Apple’s Motion for Leave to Intervene, *Intel. Corp. v. Qualcomm Inc.*, Nos. 20-1828, 20-1867, ECF No. 28 (Fed. Cir. June 29, 2020).



patents at issue to a reduction in royalties owed or any other consequence for Apple. As the Solicitor General recognized in *Apple I*, if another party in another case offers any such evidence—through proper declarations or otherwise—then the result of that case may well be different from the “case-specific determination” here. S.G. Br. 8.

3. As the Solicitor General has further explained, Apple’s fundamental evidentiary failing makes these cases easy under *MedImmune*. If the patent in *MedImmune* were to be invalidated, everything would have changed for the licensee. The licensee would cease making royalty payments on the sales of its new drug because the license agreement would no longer apply. *MedImmune*, 549 U.S. at 128. Based on the record in this case, if the patents at issue were to be invalidated, nothing would change for Apple. Apple would be obligated to continue making precisely the same payments under the portfolio license agreement that it is making now. In other words, regardless of whether Apple wins or loses, it will pay the same fee to have access to the same patented technology under the same license. That evidentiary reality drove the outcome here, not some consequential dispute over how to interpret or apply *MedImmune*.

The decision below reflects a fact-bound application of *MedImmune* and traditional standing principles to a strikingly deficient evidentiary record. As the Solicitor General has explained and the denial of certiorari in *Apple I* reflects, there is nothing remotely certworthy about its reasoning or result.

## II. APPLE MISUNDERSTANDS *MEDIMMUNE* AND EXAGGERATES THE CONSEQUENCES OF THE DECISION BELOW.

### A. Neither *MedImmune* Nor Other Precedents Support An Exception To Article III Standing Principles For Patent Licensees.

1. Apple erroneously asserts that *MedImmune* establishes the patent-license context as an exception to the case-or-controversy requirement. Specifically, Apple contends that a licensee can establish Article III standing merely by pointing to an abstract disagreement about the validity of any patent covered by a license—regardless of whether the resolution of that abstract disagreement would concretely affect anything.

In line with this proposed rewrite of standing law, Apple identifies the parties’ “concrete controversy” as their disagreement over the validity of the patents—and nothing more: “Apple and Qualcomm have a concrete controversy—Qualcomm believes its patents are valid and infringed, whereas Apple does not.” Pet. 16. But it is canonical that a mere disagreement about the law, or about the application of law to fact, is not by itself a case or controversy under Article III. *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240 (1937); *see also, e.g., Diamond v. Charles*, 476 U.S. 54, 62 (1986) (“The presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself to meet Art. III’s requirements.”). Instead, that disagreement must be accompanied by an “actual or imminent” injury that is traceable to the defendant’s actions and remediable by the federal courts. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Apple cannot identify such an injury.

And, as explained above and reinforced by the Solicitor General in *Apple I*, neither *MedImmune* nor any other case excuses Apple's failure.

2. Indeed, as the Solicitor General cogently explained in *Apple I*, *MedImmune* stands for the proposition that licensees are subject to *the same* standing burden as all other litigants. S.G. Br. 15. Thus, as with single-patent licensees, portfolio licensees must show that invalidating the challenged patent would concretely alter the licensee's rights or obligations or otherwise cognizably affect the licensee to establish Article III standing—no more and no less. While the *Medimmune* Court explained that the continued payment of disputed royalties by the licensee “eliminate[d] the imminent threat of harm” posed by an infringement suit, 549 U.S. at 128-129, this observation does not mean that a portfolio licensee automatically has Article III standing to challenge every patent in the license merely because it continues to pay royalties under the agreement. Rather, the Court went on to explain that the licensee had standing because “the threat-eliminating behavior *was effectively coerced*” by the ongoing validity of the challenged patents. *Id.* at 129 (emphasis added). As explained above, unlike in *MedImmune*, Apple presented no evidence of coercion, and there could be no such coercion because Apple has never disputed that it must make *the same* licensing payments regardless of whether the challenged patents are declared invalid.

3. Neither *Altwater* nor *Cardinal Chemical Co. v. Morton International, Inc.*, 508 U.S. 83 (1993), alters that conclusion or otherwise conflicts with the decision below. *Altwater*, like *MedImmune*, involved a licensee disputing its royalty obligations while

continuing to make payments under protest for fear of infringement litigation. 319 U.S. at 360-361. As in *MedImmune*, the evidence there showed that invalidating the challenged patents would eliminate payment obligations. *Id.* at 364-365. That evidence is precisely what is lacking here.

Apple latches onto the fact that the license agreement in *Altwater* was no longer in place, inferring that a contractual claim under a license agreement is not necessary to confer standing. Pet. 19. But that argument misses the point. In *Altwater*, royalties were being paid under the compulsion of an injunction decree, and defying that decree “risk[ed] not only actual but treble damages in infringement suits.” 319 U.S. at 365. Thus, a determination that the patent was invalid would affect the “legal relations of [the] parties” by eliminating payment obligations. *Id.* at 364-65. It is irrelevant that the source of the payment obligation was an injunction instead of a license agreement.

Apple also interprets *Cardinal Chemical* incorrectly. That case addressed the Federal Circuit’s then-extant practice of vacating a district court’s ruling on patent validity when it affirmed a determination of noninfringement. 508 U.S. at 89-90. The Federal Circuit had reasoned that the determination of noninfringement mooted the patent invalidity question on appeal. *Id.* at 90. This Court disagreed, instead concluding that the Federal Circuit in fact had jurisdiction to consider an appeal from a declaratory judgment of invalidity on “two independent bases,” neither of which is present here. *Id.* at 97.

First, the Federal Circuit’s determination of noninfringement in *Cardinal Chemical* was subject to review by this Court. *Id.* The noninfringement claim

was therefore still live, which elevated the validity question above a mere academic concern. Here, by contrast, the noninfringement claim was jointly dismissed with prejudice and not appealed. Pet. App. 3a. It is not subject to review by this Court or any other court.

Second, this Court emphasized that “while the initial burden of establishing the trial court’s jurisdiction rests on the party invoking that jurisdiction, once that burden has been met courts are entitled to presume, absent further information, that jurisdiction continues.” *Cardinal Chem.*, 508 U.S. at 98. If circumstances have changed, rendering the controversy moot, the party alleging mootness bears the burden of demonstrating the events causing mootness. *Id.* But that burden-shifting framework does not apply here because no Article III court had yet addressed standing before the Federal Circuit confronted the issue. See *Oil States Energy Servs., LLC v. Greene’s Energy Grp., LLC*, 138 S. Ct. 1365, 1378 (2018) (stating that IPR in the PTAB is not subject to Article III requirements). Accordingly, Apple, the party initially invoking federal jurisdiction, still faced the burden of establishing standing, *Lujan*, 504 U.S. at 561, but Apple failed to do so. Neither ground on which *Cardinal Chemical* rested has any application here.

**B. The Federal Circuit’s Decision Neither Limits *MedImmune* To Single-Patent Licenses Nor Threatens The Rights of Portfolio Licensees.**

Apple mischaracterizes the opinion below by claiming that the Federal Circuit “limit[ed] *MedImmune* to the single-patent license context.” Pet. 21. The opinion does nothing of the sort. It

merely requires a link between patent invalidation and royalty payment (or some other cognizable injury) of the type that supported Article III standing in *MedImmune*. Pet. App. 2a-7a; *see also Apple I* Pet. App. 7a-8a; S.G. Br. 18-20 (“The Court’s reasoning in *MedImmune*, like the Article III principles underlying it, applies equally whether a license agreement covers one patent or multiple patents.”).

To be sure, in *MedImmune* and cases involving single-patent licenses, standing may often be more readily established because the link between invalidation and royalty payments may be more apparent. “When a license agreement covers only a single patent, \* \* \* standing will generally be obvious because the licensee’s royalty payments will be eliminated \* \* \* if the challenged patent is held invalid.” S.G. Br. 19. But any licensee—including those under a portfolio license—may potentially establish that same necessary link between the invalidation of the challenged patents and actual, non-speculative consequences for the licensee, whether in the form of reduced or eliminated licensing payments or otherwise. *See id.* (noting that standing will generally be just as “obvious” when, “as in *MedImmune*,” a “multi-patent agreement provides that royalty payments will be calculated on a patent-by-patent basis”). The critical question for standing purposes, then, is not whether a licensing agreement involves a single patent or multiple patents, but instead the same question on which Article III standing depends in every case: whether the party seeking to invoke federal jurisdiction has established a concrete, cognizable injury fairly traceable to the defendant’s conduct and capable of being remedied by a favorable decision.

1. As the Solicitor General explained, the Federal Circuit’s own decisions reflect this point, fatally undermining Apple’s caricature of that court’s jurisprudence. In a decision issued after the petition in *Apple I* was filed, but before the petition in this case, the Federal Circuit again addressed standing for a portfolio licensee. In that case, the court described its earlier decision in *Samsung* as “h[olding] that the appellant had standing because, even though multiple patents were licensed, the appellant had provided evidence demonstrating that the express terms of the contract structured the patent pool in such a way that invalidation of the patent at issue in the underlying IPR would have changed the amount of royalties.” *ModernaTx*, 18 F.4th at 1362 (citing *Samsung*, 929 F.3d at 1368). The *ModernaTx* court then contrasted the evidence presented in *Samsung* with the paucity of standing evidence presented by the portfolio licensee in *ModernaTx*. *Id.* The court explained that “[t]he facts [in *ModernaTx*] resemble those in [*Apple I*], not those in *Samsung*,” because “Moderna ha[d] provided no evidence as to how, if at all, its obligations under the Acuitas sublicenses would change if it [were] successful in its attempts to have the ’435 patent declared invalid while the remaining licensed patents continue to exist.” *Id.* Apple briefly mentions *ModernaTx* in its petition in this case, Pet. 4, yet does not even attempt to address its devastating effect on Apple’s arguments.

As *Samsung*, *ModernaTx*, and the decision below all confirm, and as the Solicitor General has now reinforced, the Federal Circuit’s approach to standing properly depends on the facts presented—not on any rule that prevents standing under *MedImmune* for portfolio licensees. Indeed, the legal rule is precisely

the same as in the single-patent context (and every other context). Where there is evidence that a finding of invalidity would have concrete effect, standing exists. Where there is no such evidence, standing is lacking. That basic principle, which neither *MedImmune* nor any other decision of this Court has ever purported to alter, applies neutrally to any type of license agreement, whether single- or multi-patent. And that need to show a cognizable and redressable injury is at the core of Article III standing. *See, e.g.*, S.G. Br. 17 (“[N]othing in *MedImmune* suggests that [a] petitioner’s status as a licensee entitles it to pursue a challenge that would not otherwise present an Article III controversy.”).

2. Thus, there is no basis for Apple’s claim that the Federal Circuit’s approach would disincentivize settlements, burden judicial review, or otherwise unfairly disadvantage portfolio licensees. *See* Pet. 25-30; S.G. Br. 20 (noting that Apple’s “policy arguments” largely rest on the incorrect “premise that the decision below categorically precludes standing in the context of multi-patent licenses”). License agreements are not contracts of adhesion in which the licensee is powerless to bargain with the licensor over terms and conditions. A licensee could, for example, ensure standing for a future challenge by negotiating a license agreement that provides for a reduction in payments if one of the patents is invalidated. *Cf. ModernaTx*, 18 F.4th at 1362; S.G. Br. 20 (noting that “there are various ways in which licensees operating under multi-patent licenses can seek to establish standing to challenge particular patents covered by the license”). As “the first publicly traded company to ever reach” a \$3 trillion market value, Apple’s claim of helplessness is baseless. *See* Jack Nicas, *Apple*



*Becomes First Company to Hit \$3 Trillion Market Value*, N.Y. Times (Jan. 3, 2022) (<https://www.nytimes.com/2022/01/03/technology/apple-3-trillion-market-value.html>) (stating Apple is worth more than the combined value of “Walmart, Disney, Netflix, Exxon Mobil, Coca-Cola, Comcast, Morgan Stanley, McDonald’s, AT&T, Goldman Sachs, Boeing, IBM and Ford”); *United States v. Arthrex, Inc.*, 141 S. Ct. 1970, 1993 (2021) (Gorsuch, J., concurring in part and dissenting in part) (calling Apple “one of the world’s largest technology companies”).<sup>2</sup>

### III. APPLE’S NON-MEDIMMUNE THEORIES OF STANDING FAIL FOR EVIDENTIARY REASONS AND PRESENT NO ISSUES WORTHY OF REVIEW.

While Apple’s Question Presented invokes *MedImmune*, Apple confusingly seeks to rely on other, unrelated theories of standing throughout its petition. Specifically, Apple asserts two standing arguments that have nothing to do with *MedImmune*. First, Apple asserts standing exists because Qualcomm could sue for infringement of the three patents when the license agreement expires in 2025 (or 2027 if it is extended). *See* Pet. 13, 17, 23-25. Second, Apple seeks to base standing on the possibility that its unsuccessful IPR attempt may estop it from

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<sup>2</sup> Nor is Apple a stranger to the IPR process and the well-settled law governing it. *See* Apple Amicus Br. 2, *Oil States Energy Servs. v. Greene’s Energy Servs., LLC*, No. 16-712 (filed Oct. 30, 2017) (noting that Apple had filed the most IPR petitions of any petitioner, accounting for 5% of petitions filed from 2012-16). Thus, even more than any other party, Apple was undoubtedly aware of the need to support its appellate standing allegations with actual evidence rather than generic, rank speculation.

challenging the patents' validity in such a future infringement suit. *See* Pet. 22, 24-25. These are fact-bound claims that the Federal Circuit resolved correctly because Apple presented no evidence to support them. They present no matters of broader legal significance and no credible claim of conflict with this Court's precedent. If anything, the potential availability of these alternate routes to standing (for litigants who bother to present evidence) lessens the need to consider, let alone adopt, Apple's extravagant reading of *MedImmune*.

A. Both of Apple's non-*MedImmune* theories depend on the factual predicate that Apple will manufacture products that would potentially infringe the three patents in 2025 or 2027, when Apple's license agreement expires. Without that factual premise, Apple cannot establish a credible threat of an infringement action by Qualcomm in the distant future. And absent the threat of a post-expiration infringement action, the possibility that Apple may be estopped from challenging the patents' validity in such an action becomes irrelevant.

Yet, as the Federal Circuit recognized in *Apple I*—and as applies equally here, given the identical declarations—Apple presented no evidence that unspecified products it sells in 2025 or 2027 may infringe any of these three patents. *Apple I* Pet. App. 11a (Apple “has failed to show it will likely be engaging in activities that could give rise to a potential suit based on the [challenged] after the expiration of the license agreement.”). As in *Apple I*, Apple's cursory declarations do not even mention this point, much less make any concrete assertions regarding relevant details of Apple's smartphone offerings after the license expires. *See* C.A. Rec.

A2252-A2255. Apple’s reticence may well have been intentional. The smartphone market evolves rapidly, and Apple did not even try to predict what specific features it will include in the phones it manufactures years down the line. Apple even went so far as to request during oral argument in *Apple I* that the Federal Circuit remedy its deficient evidence through judicial notice, but the court properly refused, noting “[w]e are not fortune-tellers.” *Apple I* Pet. App. 10a.

The only difference between *Apple I* and this case is that here, Apple did not even request such clairvoyance. Thus, Apple is left with mere attorney speculation—supported by no evidence whatsoever—that it may include features that implicate these particular patents in the phones it sells years into the future. As the Solicitor General observed, that conjecture falls far short of establishing a future injury that is “certainly impending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013) (recognizing the “requirement that threatened injury must be certainly impending to constitute injury in fact”) (internal quotation marks omitted); S.G. Br. 11 (“The mere possibility of future injury is not sufficient to establish Article III standing.”). This Court will not presume without evidence that the party seeking jurisdiction will take actions in the future to expose itself to harm. *Lujan*, 504 U.S. at 564 n.2; *see also* S.G. Br. 11 (noting that in *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983), this Court declined to find Article III standing based on a plaintiff’s “speculative” claim that “he w[ould] again experience injury as the result of” the challenged practice). The Federal Circuit faithfully followed that rule below.

As in *Apple I*, the Federal Circuit’s resolution of this fact-specific issue is thus utterly unworthy of certiorari. The Federal Circuit does not hesitate to uphold standing where the appellant provides evidence that it is engaging in—or intends to engage in—activity that reasonably could give rise to an infringement suit. See *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 784, 789-90 (Fed. Cir. 2021); *Adidas AG v. Nike, Inc.*, 963 F.3d 1355, 1357 (Fed. Cir. 2020), *cert. denied*, 141 S. Ct. 1376 (2021); *Gen. Elec. Co. v. Raytheon Techs. Corp.*, 983 F.3d 1334, 1342 (Fed. Cir. 2020). But a licensee’s speculation cannot satisfy Article III in the absence of evidence that it might sell a potentially infringing product when the license expires.

B. Apple’s estoppel theory of standing also does not merit certiorari. First, because, as just discussed, Apple has not provided any evidence that it will be subject to a future infringement suit, it necessarily has not shown that the estoppel statute would ever come into play.

Second, it is an open question in the Federal Circuit—to say nothing of this Court—whether Apple would in fact be estopped from making a future validity challenge given that it lacks standing to appeal the IPR ruling. See *AVX Corp. v. Presidio Components, Inc.*, 923 F.3d 1357, 1363 (Fed. Cir. 2019) (“[T]his court has not decided whether the estoppel provision would have the effect that AVX posits—specifically, whether § 315(e) would have estoppel effect even where the IPR petitioner lacked Article III standing to appeal the Board’s decision to this court.”). The issue of whether estoppel exists on such facts raises an additional, antecedent, and contestable legal question of first impression that is not directly presented here and was not resolved

below, but that this Court would have to address before it could even consider whether a risk of estoppel confers standing. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (stating this Court is “a court of review, not of first view”); S.G. Br. 21 n.\* (similar).

Finally, any estoppel problem that Apple may have is wholly of its own making. After all, Apple freely chose to continue with the IPR after the settlement. The statutory estoppel provision applies only once the IPR proceedings have “result[ed] in a final written decision under § 318(a),” which directs the Board to “issue a final written decision with respect to the patentability of any patent claim challenged by the petitioner.” 35 U.S.C. §§ 315(e)(1), 318(a). Apple could have dismissed the IPR proceeding before the final written decision and avoided potential estoppel effects. Apple cannot bootstrap into Article III standing its own strategic choice to proceed.

C. In *Apple I*, various *amici* suggested that Article III’s requirements should be relaxed because Congress has created a statutory right to appeal IPRs to the Federal Circuit. 35 U.S.C. § 141(a); *see Leahy Apple I Amicus Br. 13*; *Engine Advocacy Apple I Amicus Br. 16*; *Unified Patents Apple I Amicus Br. 13-15*. Judge Newman’s lone dissent below sounded a similar note. *See Pet. App. 18a-21a*.

That is not the law. Congress can grant a right to appeal IPRs where standing exists. But it cannot create standing by purporting to grant a right to appeal IPRs. For example, even though there is a general statute authorizing appeals from all final district-court decisions, *see* 28 U.S.C. 1291, this Court has long held that standing “must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance.”

*Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997). That principle applies equally to appeals from agency adjudications like IPRs: “If the petitioner has no Article III concrete interest in receiving the relief requested before the agency, \* \* \* Congress has no power to grant a petitioner a right to seek judicial review of an agency’s decision to deny him relief.” *Hydro Invs., Inc. v. FERC*, 351 F.3d 1192, 1197 (D.C. Cir. 2003). Thus, even though Congress has granted a right to appeal IPRs, it is hornbook law that Apple must still provide evidence that it is concretely harmed by the continued existence of Qualcomm’s patents before it can challenge their validity in federal court.

**IV. THIS CASE IS AN EXCEEDINGLY POOR VEHICLE TO ADDRESS *MEDIMMUNE*’S APPLICATION TO PORTFOLIO LICENSES.**

As explained above, the Federal Circuit is faithfully applying *MedImmune* to single-patent and multi-patent licenses alike. There is no confusion for the Court to allay, much less a conflict with this Court’s decisions. Even if there were uncertainty regarding how *MedImmune* applies to portfolio licenses, this case would be a very poor vehicle for addressing that issue. The Federal Circuit’s opinion turned entirely on evidentiary, not legal, issues, because, as in *Apple I*, Apple did not even attempt to put on the necessary evidence to support standing. Apple’s evidentiary shortcomings force it to proffer a sweeping Question Presented that is divorced from concrete harm, bears no relation to the Federal Circuit’s nuanced, fact-specific approach to standing, and could be answered in Apple’s favor only if this Court adopted out of thin air a holding that the bedrock

tenets of Article III jurisdiction, which apply everywhere else, for some reason cease to apply in the context of multi-patent licenses. If the Federal Circuit's case law exhibits confusion or conflict in the future regarding the application of *MedImmune* (which it currently does not), there will be time enough to review a petition that presents a discrete legal issue against a developed evidentiary record. This is not that case. The Court should deny the petition, just as it did in *Apple I*.

**CONCLUSION**

For the foregoing reasons, this Court should deny the petition.

Respectfully submitted,

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