

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

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GESTURE TECHNOLOGY PARTNERS, LLC,  
*Petitioner,*

v.

APPLE INC., LG ELECTRONICS INC.,  
LG ELECTRONICS USA, INC., GOOGLE LLC,  
AND ACTING DIRECTOR OF THE U.S. PATENT  
AND TRADEMARK OFFICE,  
*Respondents.*

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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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**REPLY BRIEF FOR PETITIONER**

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### **RULE 29.6 STATEMENT**

Petitioner's Statement pursuant to Rule 29.6 was set forth at page iii of the petition for a writ of certiorari, and there are no amendments to that Statement.

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Gesture Technology Partners and its founder, Dr. Timothy Pryor, own a number of expired patents from Dr. Pryor's inventions over the years. Gesture no longer can enforce its monopoly over these inventions, which now have entered the public domain. But Gesture retains a limited property right for damages from a handful of large infringers who profited from Dr. Pryor's inventions during the patent term.

The question in this case is whether Gesture can vindicate those property rights in an Article III court or whether the infringers can resort to an administrative tribunal to retroactively cancel Gesture's patents before its infringement lawsuits get off the ground. In *Oil States*, this Court held inter partes review was consistent with Article III and the Seventh Amendment, as applied to an *unexpired* patent. A live patent gives rise to an ongoing monopoly enforceable against the public, with attendant constraints on innovation and commerce, and the Executive retains the right to reevaluate that public franchise during its term in light of those weighty features. By contrast, Gesture is now a small property owner like any other, possessing only backward-looking claims for money damages that it seeks to pursue in a court of law.

In their oppositions, respondents and the government do everything possible to minimize the constitutional problem this case presents. They claim that *Oil States* already resolved the question, that an expired patent holder's right to damages is subject to administrative revocation, and that this issue has no substantial real-world impact. They are wrong on each count for the reasons explained below. The decision below damages individual property owners like Gesture and encroaches on the Article III judiciary that should be empowered to protect their rights. This Court should grant certiorari.



## ARGUMENT

### I. *OIL STATES DID NOT RESOLVE THE QUESTION PRESENTED*

Both respondents' and the government's principal argument against certiorari is that *Oil States* already resolved the constitutionality of inter partes review of expired patents. That is incorrect. Respondents and the government rely heavily on the fact that the decision in *Oil States* does not expressly distinguish between expired and unexpired patents to argue that the decision swept broadly enough to encompass both. But by the same token, at no point in *Oil States* did the parties, *amici*, or the Court address the constitutional implications of administrative authority to cancel patents that have expired but as to which important legal rights still may exist. That question remains unresolved, and this case presents it cleanly.

In *Oil States*, the Court considered and rejected the argument that inter partes review was *categorically* unconstitutional because *all* disputes regarding patent validity must be heard in Article III courts. The Court held that inter partes review of *Oil States*'s unexpired patent – which *Oil States* actively was enforcing against then-current infringers – did not offend Article III because the exercise of a patent monopoly is “a matter between ‘the public, who are the grantors, and the patentee.’” 584 U.S. 325, 335 (2018) (quoting *U.S. ex rel. Bernardin v. Duell*, 172 U.S. 576, 586 (1899)) (cleaned up). Therefore, the PTO could act to “protect[] ‘the public’s paramount interest in seeing that patent monopolies are kept within their legitimate scope.’” *Id.* at 336-37 (quoting *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 279-80 (2016)).

When a patent expires, however, the patentee’s monopoly expires with it. The only right retained by

the patent holder is the right to sue private parties for past infringement, a right with no meaningful impact on the public writ large. The question in this case is whether disputes regarding expired patents – which no longer confer an enforceable monopoly – can be adjudicated outside of Article III courts. *Oil States* did not answer that question, and, by insisting that it did, respondents and the government merely assume the answer to the question presented here.

Contrary to respondents’ and the government’s interpretation, the *Oil States* Court expressly “emphasize[d] the narrowness of [its] holding,” addressing “*only* the precise constitutional challenges that *Oil States* raised.” *Id.* at 344 (emphasis added). The Court left open, for example, “whether other patent matters, such as infringement actions, can be heard in a non-Article III forum.” *Id.* Respondents and the government emphasize that *Oil States* did not expressly reserve the question presented here, but the Court left no doubt its constitutional analysis was limited to the specific question before it. The Court was not required to enumerate all possible follow-on issues from its holding.

This Court regularly grants certiorari to clarify its prior, more general pronouncements or to decide whether they merit extensions or admit exceptions. *See, e.g., Hencely v. Fluor Corp.*, No. 24-924 (granting certiorari to determine whether to extend *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988)); *Oklahoma v. Castro-Huerta*, No. 21-429 (granting certiorari to resolve a follow-on question presented by the Court’s decision in *McGirt v. Oklahoma*, 591 U.S. 894 (2020)); *Apple Inc. v. Pepper*, No. 17-204 (granting certiorari to determine the reach of *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977)). The Court should do

so here and grant review to resolve an important issue left unaddressed in *Oil States*.

## II. DISPUTES OVER THE VALIDITY OF EXPIRED PATENTS DO NOT IMPLICATE THE PUBLIC-RIGHTS DOCTRINE AND MUST BE ADJUDICATED IN ARTICLE III COURTS

### A. Disputes Related To Expired Patents Are Fundamentally Private Disputes In Which The Public Has No Relevant Stake

1. The exercise of a patent monopoly falls within the public-rights doctrine because it implicates the public's ability to innovate freely. The patent monopoly is "a special privilege designed to serve the public purpose of promoting the 'Progress of Science and useful Arts'" and "an exception to the general rule against monopolies and to the right to access to a free and open market." *Precision Instrument Mfg. Co. v. Automobile Maint. Mach. Co.*, 324 U.S. 806, 816 (1945). In this way, in granting patents, the government "take[s] from the public rights of immense value" – to develop and market products using patented technology – and "bestow[s] them upon the patentee" as a time-bound reward for her contributions. *United States v. American Bell Tel. Co.*, 128 U.S. 315, 370 (1888).

By contrast, the public has no constitutionally relevant interest in the outcome of disputes over expired patents that would permit adjudication in a non-Article III forum. After expiration of the patent, the underlying technology is returned to the public domain, allowing the public to innovate freely again. Accordingly, the public's "paramount interest in seeing that patent monopolies are kept within their legitimate scope," *Cuozzo*, 579 U.S. at 279-80 (cleaned up), is no longer in play, and the public has no interest in an expired patent's cancellation.

Rather, the only purpose of cancelling an expired patent is to bar the patentee from bringing suit against prior infringers. Only that discrete set of actors – potential defendants to an infringement suit like Apple or Google – have any interest in such proceedings. A dispute involving an expired patent is thus no longer a matter “between the government and others,” *Oil States*, 584 U.S. at 343, but between private parties like Gesture and respondents here.

2. Respondents’ claim that the public has a relevant interest in disputes over expired patents turns the public-rights doctrine on its head. To start, respondents conflate their own interests with those of the public. Respondents assert (at 26-27) that expired patents “can still be enforced against the public” through infringement suits. But only those individuals that *already* have infringed (like respondents here) may be held liable for infringement.

Next, respondents assert (at 27) that the public has an interest “in seeing that damages are not paid on patents that should never have issued.” But that abstract legal interest is not the type implicated by the public-rights doctrine. Whether a now-expired patent was improperly granted has no effect on anyone’s ability or incentives to innovate. Respondents’ interest in the correct construction of the law applies to any legal dispute and cannot justify removing this case from the Article III courts.

Likewise, respondents’ theory (at 28) that the public interest is implicated because damages against accused infringers may “increase prices” would subject huge swaths of private litigation to the public-rights doctrine. As this Court repeatedly has recognized, “effects like increasing efficiency and reducing public costs are not enough to trigger” the doctrine. *SEC*

*v. Jarkesy*, 603 U.S. 109, 140 (2024); *see Stern v. Marshall*, 564 U.S. 462, 501 (2011).

**B. Respondents And The Government Incorrectly Conflate An Expired Patent Holder’s Right To Damages With An Existing Patent Monopoly**

1. This Court long has recognized that the right to seek infringement damages – the only right retained by an expired patent holder – must be vindicated in courts of law. *See Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 377 (1996) (patent-infringement actions “today must be tried to a jury, as their predecessors were more than two centuries ago”). Respondents and the government assert several reasons why the right to retrospective damages for patent infringement should be deemed part of the “public franchise” that the PTO can revoke at will, but those proffered contentions fail.

First, the fact that a patentee’s right to seek damages derives from the initial cluster of rights conferred by the Patent Act does not mean it is a “public right” subject to agency adjudication once the patent has expired. Respondents assert (at 21) that, because patentees’ right to seek damages arises from a statutory grant, that right is “always subject to the franchise’s statutory conditions and limits.” But that argument begs the question. Where a statutory claim does not fall within the public-rights doctrine, Congress may not abrogate the protections of Article III and the Seventh Amendment. *See Jarkesy*, 603 U.S. at 122 (whether claim is statutory is “immaterial” to application of Seventh Amendment).

2. Respondents next assert (at 18, 22) that recouping damages is just another way for patentees to enforce their monopolies, but backward-looking damages

and injunctive relief serve different functions in the patent system. During the patent's term, the government's conferral of monopoly power enforceable through injunctive relief gives the patentee exclusive control over the market for products implementing the patent. *See* 35 U.S.C. §§ 154(a)(1), 283; *Miller Insituform, Inc. v. Insituform of N. Am., Inc.*, 830 F.2d 606, 609 (6th Cir. 1987).

By contrast, an infringement suit for damages does not stop the public from developing or marketing a product, nor can it prospectively dictate who enters the market or on what terms. Courts have recognized that, because "the principal right afforded by a patent is the 'right to exclude,'" damages will not "always suffice to make the patentee whole." *Kearns v. Chrysler Corp.*, 32 F.3d 1541, 1549-50 (Fed. Cir. 1994). Accordingly, backward-looking damages suits, where defendants already have subverted the patentees' monopoly, do not fully vindicate patent holders' right to exclude.

3. Finally, respondents' argument (at 24) that infringement and validity are legally distinct is academic. Invalidity is an important affirmative defense to infringement claims. *See* 35 U.S.C. § 282(b)(2). The only real-world consequence of PTAB's cancellation of expired patents is to shield would-be infringers from liability in private infringement actions, yet determining such liability is precisely the role Article III courts perform in the civil justice system.

### **C. History And Practice Confirm That Disputes Related To Expired Patents Must Be Adjudicated In Article III Courts**

1. Respondents and the government fail to meaningfully counter the history supporting Gesture's position. First, this Court previously considered the status of expired patents in *Root v. Lake Shore &*

*Michigan Southern Railway Co.*, 105 U.S. 189 (1882), and it held that the proper remedy for infringement of an expired patent was “an action at law for the recovery of damages.” *Id.* at 216-17. The Court reasoned that a court of equity “has no jurisdiction to give to a plaintiff a remedy for an alleged piracy,” and so “his remedy, as in the case of any other injury to his property, must be at law.” *Id.* at 209-10 (quoting *Smith v. The London & South-Western Ry. Co.* (1854) 69 Eng. Rep. 173, 176). The government argues (at 18) that this history is reconcilable with the revocation of patents by an administrative agency. But a patent’s expiration limits patent holders to a single remedy, and *Root* makes clear that adjudication of this remedy is exclusively vested in courts of law.

The government’s treatment of the Privy Council is likewise inapt. As *Oil States* recognized, the Privy Council had some limited authority prior to the late eighteenth century to refer petitions to the Attorney General for potential cancellation. But *Oil States* expressly distinguished the Privy Council’s role from “proceedings . . . between private parties,” 584 U.S. at 340, such as an infringement lawsuit in a court of law or a writ of *scire facias* in the Court of Chancery (which sat as a law court to adjudicate such writs). After expiration, patents can only produce such private disputes, and respondents and the government offer no historical precedent for agency adjudication of such proceedings. Thus, while Privy Council historical practice supported the result in *Oil States*, it provides no relevant guidance to the question of expired patents here.

2. Finally, both trademark and copyright law reflect the precise distinction that Gesture advocates. Both the PTO in the context of trademark law and the

Copyright Office follow revocation procedures that are limited to *currently registered* franchises. Pet. 20.

Neither the government nor respondents seriously engage with these analogous regimes. The government attacks a straw man, arguing (at 19) that “the existence of statutory and regulatory limits on administrative reconsideration of trademarks and copyrights does not suggest that Article III imposes the same restrictions on the USPTO’s post-issuance review proceedings.” But the question in this case is whether an intellectual property right, like a patent, is “by its nature” susceptible to re-adjudication in an administrative agency after expiration. Well-established limitations on that practice in the trademark and copyright contexts shed light on that question. Respondents, for their part, draw (at 30) irrelevant distinctions between patent, copyright, and trademark; all three confer rights to exclude the public that convert into private rights to damages under certain circumstances.

### **III. THE QUESTION PRESENTED IS IMPORTANT, AND RESPONDENTS DO NOT DISPUTE THIS CASE’S FITNESS AS A VEHICLE FOR RESOLUTION**

1. Contrary to the government’s unsupported assertion (at 19-20), reconsideration proceedings involving expired patents are not “infrequent.” A review of published PTAB decisions reveals dozens of proceedings related to expired patents in the last three years, including several decided in the last few months alone. *See, e.g., Ex parte Bel Power Sols., Inc. Pat. Owner & Appellant*, 2025 WL 2721011, at \*1 n.2 (P.T.A.B. Sept. 9, 2025); *Samsung Elecs. Co. v. KP Innovations 2, LLC*, 2025 WL 1369735, at \*15 (P.T.A.B. May 12, 2025); *Roku, Inc. v. Dolby Int’l AB*, 2025 WL



1005499, at \*1 (P.T.A.B. Apr. 3, 2025). And the Federal Circuit recognized below that it has “previously reviewed IPR decisions involving expired patents.” App. 4a-5a (citing cases); *see also Immunex Corp. v. Sanofi-Aventis U.S. LLC*, 977 F.3d 1212, 1217 (Fed. Cir. 2020) (citing cases).

Docket analytics confirm the real-world prevalence of this issue. There were 7,072 district-court patent cases filed between January 1, 2009 and October 10, 2025, in which filings reference expired-term status (e.g., “patent expired,” “patent term expired,” or similar language).<sup>1</sup> There were 524 Federal Circuit appeals filed between January 1, 2012 and October 10, 2025, arising from patent cases, in which the filings reference such expired-term language.<sup>2</sup> Of 2,311 PTAB IPR trials identified between May 1, 2020 and October 10, 2025, 394 expressly reference expired-term status in the decision itself.<sup>3</sup> These data underscore the national importance of resolving the Article III question presented here.

**2.** Respondents and the government fail to grapple with the importance of an independent judicial forum to vindicate private property rights of small patent holders like Gesture. Instead, respondents speculate

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<sup>1</sup> Lex Machina district-court query (2009-2025) (shared results link): <https://law.lexmachina.com/shared/eyJzaGFyZWV9pZCI6MTQzMTQ2fQ.aOf8EA.fgNbIft6fUSE3X6QIV1-5NRAusA>.

<sup>2</sup> Lex Machina appeals query (2012-2025) (shared results link): [https://law.lexmachina.com/shared/eyJzaGFyZWV9pZCI6MTQzMTQ4fQ.aOf8lQ.Jp30wVX6Z5c19LGstEf3TL\\_43DI](https://law.lexmachina.com/shared/eyJzaGFyZWV9pZCI6MTQzMTQ4fQ.aOf8lQ.Jp30wVX6Z5c19LGstEf3TL_43DI).

<sup>3</sup> Lex Machina PTAB Trial query (keyword hits for “expired” terminology): [https://law.lexmachina.com/shared/eyJzaGFyZWV9pZCI6MTQzMTcyfQ.aOgPrQ.Q1Yxpeby1MOFiot9t5LO6m\\_vQGE](https://law.lexmachina.com/shared/eyJzaGFyZWV9pZCI6MTQzMTcyfQ.aOgPrQ.Q1Yxpeby1MOFiot9t5LO6m_vQGE).

(at 32-33) that patent holders might “tactically delay” infringement suits until after expiration of their patents to avoid administrative review.

Respondents’ speculation is unfounded in several respects. First, the compensable damages window shrinks with every month of delay, *see* 35 U.S.C. § 286 (limiting recovery to the “six years prior to the filing of the complaint”), so waiting to file an infringement action sacrifices damages from earlier years and limits the potential recovery. Second, delay eliminates forward-looking remedies like injunctions – “the principal right afforded by a patent.” *Kearns*, 32 F.3d at 1549. Third, delay risks the loss of critical evidence – like source code, sales records, and witness recollections – depressing settlement value and jeopardizing apportionment proof.

Equitable estoppel also bars sandbagging by affording a complete defense when a patentee’s misleading silence induces reliance and prejudice. *See, e.g., SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 580 U.S. 328, 345-46 (2017). And to the extent PTAB re-adjudication is foreclosed, invalidity defenses remain fully available to alleged infringers in Article III litigation. *See Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. 91, 95 (2011); 35 U.S.C. § 282.

In short, patent holders have major disincentives to delay filing infringement lawsuits, and respondents overstate the putative benefits of doing so. More importantly, to the extent the distinction between live and unexpired patents presents a policy problem, Congress may revise the statutory scheme accordingly. But it cannot authorize administrative adjudications of expired patents that displace some private infringement lawsuits wholesale.

3. Finally, neither respondents nor the government dispute that this case presents an excellent vehicle for the Court to resolve the constitutional question presented. Because the Federal Circuit has exclusive jurisdiction over appeals from inter partes review and ex parte reexamination proceedings, there is no prospect of any further percolation that would benefit this Court's ultimate review. Instead, on the authority of the judgment below, any subsequent efforts to attain reassessment by the Federal Circuit will be futile.

### CONCLUSION

The Court should grant the petition for a writ of certiorari.

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