

No. 24A_____

IN THE
SUPREME COURT OF THE UNITED STATES

GESTURE TECHNOLOGY PARTNERS, LLC,
Applicant,

v.

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

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

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April 17, 2025

PARTIES TO THE PROCEEDINGS

Applicant Gesture Technology Partners, LLC was the patent owner in the proceedings before the Patent Trial and Appeal Board, the appellant in Nos. 2023-1463, 2024-1037, and 2024-1038 in the proceedings in the Federal Circuit, and the cross-appellant in Nos. 2023-1501 and 2023-1554 in the proceedings in the Federal Circuit.

Respondent Apple Inc. was a petitioner in the proceedings before the Patent Trial and Appeal Board, an appellant in Nos. 2023-1501 and 2023-1554 in the proceedings in the Federal Circuit, and an appellee in No. 2023-1463 in the proceedings in the Federal Circuit.

Respondents LG Electronics Inc., LG Electronics USA, Inc., and Google LLC were petitioners in the proceedings before the Patent Trial and Appeal Board and appellees in Nos. 2023-1463, 2023-1501 and 2023-1554 in the proceedings in the Federal Circuit.

Respondent Acting Director of the U.S. Patent and Trademark Office was the appellee in Nos. 2024-1037 and 2024-1038 in the proceedings in the Federal Circuit.

RULE 29.6 STATEMENT

Applicant Gesture Technology Partners, LLC is a private limited liability company that has no parent company; no publicly held company holds 10% or more of its stock.

RELATED CASES

Decisions Under Review

Apple Inc. v. Gesture Tech. Partners, LLC, 127 F.4th 364 (Fed. Cir. Jan. 27, 2025) (Nos. 2023-1501, 2023-1554) (affirming and reversing in part *inter partes* review of final written decision of the Patent Trial and Appeals Board)

In re Gesture Tech. Partners, LLC, 2025 WL 303650 (Fed. Cir. Jan. 27, 2025) (No. 2024-1037) (affirming *ex parte* reexamination of final written decision of the Patent Trial and Appeals Board)

In re Gesture Tech. Partners, LLC, 2025 WL 303446 (Fed. Cir. Jan. 27, 2025) (No. 2024-1038) (affirming *ex parte* reexamination of final written decision of the Patent Trial and Appeals Board)

Gesture Tech. Partners, LLC v. Apple Inc., 2025 WL 303653 (Fed. Cir. Jan. 27, 2025) (No. 2023-1463) (affirming *inter partes* review of final written decision of the Patent Trial and Appeals Board)

Ex parte Gesture Tech. Partners, LLC, 2023 Pat. App. LEXIS 2535 (Bd. of Patent Appeals & Interferences Aug. 8, 2023) (Appeal 2023-001713)

Ex parte Gesture Tech. Partners, LLC, 2023 Pat. App. LEXIS 2536 (Bd. of Patent Appeals & Interferences Aug. 8, 2023) (Appeal 2023-001857)

Apple Inc. v. Gesture Tech. Partners, LLC, 2022 WL 17254070 (Patent Tr. & App. Bd. Nov. 28, 2022) (Nos. IPR2021-00922, IPR2022-00090, IPR2022-00360)

Apple Inc. v. Gesture Tech. Partners, LLC, 2022 WL 17418636 (Patent Tr. & App. Bd. Dec. 5, 2022) (Nos. IPR2021-00921, IPR2022-00092, IPR2022-00362)

Related Decisions Not Under Review

Gesture Tech. Partners, LLC v. Unified Pats., LLC, 2025 WL 687040 (Fed. Cir. Mar. 4, 2025) (No. 2023-1444) (affirming *inter partes* review of final written decision of the Patent Trial and Appeals Board)

Unified Pats., LLC v. Gesture Tech. Partners, LLC, 2022 WL 17096296 (Patent Tr. & App. Bd. Nov. 21, 2022) (No. IPR2021-00917)

Apple Inc. v. Gesture Tech. Partners, LLC, 129 F.4th 1367 (Fed. Cir. Mar. 4, 2025) (Nos. 2023-1475, 2023-1533) (affirming *inter partes* review of final written decision of the Patent Trial and Appeals Board)

Apple Inc. v. Gesture Tech. Partners, LLC, 2022 WL 17364390 (Patent Tr. & App. Bd. Nov. 30, 2022) (Nos. IPR2021-00920, IPR2022-00091, IPR2022-00359)

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and
Circuit Justice for the Federal Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules
of this Court, applicant Gesture Technology Partners, LLC respectfully requests a
45-day extension of time, up to and including June 11, 2025, within which to file a
petition for a writ of certiorari to review the judgment of the United States Court
of Appeals for the Federal Circuit.

The Federal Circuit entered its judgment and issued an opinion on January
27, 2025 in Nos. 2023-1501 and 2023-1554. The court of appeals' opinion (reported
at 127 F.4th 364) is attached as Exhibit A. The December 5, 2022 final written
decision of the Patent Trial and Appeal Board is not reported (but is available at
2022 WL 17418636 and attached as Exhibit B). The Federal Circuit entered its
judgment and issued an opinion on January 27, 2025 in No. 2023-1463. The court
of appeals' opinion is not reported (but is available at 2025 WL 303653 and
attached as Exhibit C). The November 28, 2022 final written decision of the Patent
Trial and Appeal Board is not reported (but is available at 2022 WL 17254070 and
attached as Exhibit D). The Federal Circuit entered its judgment and issued an
opinion on January 27, 2025 in No. 2024-1037. The court of appeals' opinion is
not reported (but is available at 2025 WL 303650 and attached as Exhibit E).
The August 8, 2023 *ex parte* reexamination decision of the Patent Trial and Appeal

Board is not reported (but is available at 2023 Pat. App. LEXIS 2535 and attached as Exhibit F). The Federal Circuit entered its judgment and issued an opinion on January 27, 2025 in No. 2024-1038. The court of appeals' opinion is not reported (but is available at 2025 WL 303446 and attached as Exhibit G). The *ex parte* reexamination decision of the Patent Trial and Appeal Board is not reported (but is available at 2023 Pat. App. LEXIS 2536 and attached as Exhibit H).

The petition would be due on April 27, 2025; because April 27 falls on a Sunday, the petition would be timely if filed on April 28, and this application is made at least 10 days before that date. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. This case presents an important question about whether the Patent Trial and Appeal Board ("PTAB") may adjudicate the validity of expired patents under the public-rights doctrine or if such disputes involving private rights must be resolved by Article III courts. The public-rights doctrine provides Congress significant latitude to permit tribunals other than Article III courts to adjudicate "public rights." *Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC*, 584 U.S. 325, 334 (2018). Patents are government-granted "public franchises" that confer "the right to exclude others from making, using, offering for sale, or selling the invention," 35 U.S.C. § 154(a)(1)—a right that "did not exist at common law." 584 U.S. at 335 (quoting *Gayler v. Wilder*, 51 U.S. (10 How.) 477, 494 (1851)). In *Oil States*, this Court upheld the constitutionality of *inter partes* review ("IPR") proceedings under the public-rights doctrine because "inter partes review involves

the same basic matter as the grant of a patent” and constitutes a “second look” at an earlier administrative grant. *Id.* at 325, 336. As this Court explained, an IPR proceeding “does not make any binding determination regarding ‘the liability of [one individual] to [another] under the law as defined,’” but rather “remains a matter involving public rights . . . ‘between the government and others.’” *Id.* at 343 (quoting *Crowell v. Benson*, 285 U.S. 22, 51 (1932), and *Ex parte Bakelite Corp.*, 279 U.S. 438, 451 (1929)). Accordingly, the Court’s holding was grounded in the ongoing nature of the public franchise and the public’s interest in ensuring 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)).

Expired patents, by contrast, do not implicate the right to exclude, the right to amend patent claims, or the public’s interest in policing a patentee’s exercise of that right. *See Kimble v. Marvel Entm’t, LLC*, 576 U.S. 446, 451 (2015) (“And when the patent expires, the patentee’s prerogatives expire too, and the right to make or use the article, free from all restriction, passes to the public.”) (citing *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 230 (1964)); *Brulotte v. Thys Co.*, 379 U.S. 29, 31 (1964) (patentee’s “rights become public property once the [term] expires”) (citing *Singer Mfg. Co. v. June Mfg. Co.*, 163 U.S. 169, 185 (1896)). The owner of an expired patent, however, retains limited rights to bring infringement actions against private parties for damages. Article III courts have exclusive jurisdiction over such claims. *Cf. Stern v. Marshall*, 564 U.S. 462, 484 (2011); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41-42 (1989).

Contrary to this Court’s instruction that expired patents cease to function as a public franchise, the Federal Circuit held in this case that the public-rights doctrine extends to IPR proceedings in cases where the *challenged patent has expired* and no longer confers the government-granted right to exclude. *See Apple Inc. v. Gesture Tech. Partners, LLC*, 127 F.4th 364, 368-69 (Fed. Cir. 2025); *In re Gesture Tech. Partners, LLC*, 2025 WL 303650, at *2 (Fed. Cir. Jan. 27, 2025); *In re Gesture Tech. Partners, LLC*, 2025 WL 303446, at *3 (Fed. Cir. Jan. 27, 2025). The court relied on *Oil States* to conclude that the PTAB’s “second look” at the earlier administrative grant of a patent remains consistent with the public-rights doctrine, even after the patent has expired and the PTAB no longer has the authority to cancel or amend it. *Apple*, 127 F.4th at 368-39.

The Constitution does not allow this result. Disputes concerning expired patents do not implicate the public right to exclude, but rather the common-law right to initiate infringement claims for damages against private parties. The adjudication of such rights requires courts to determine “the liability of [one party] to [another] under the law as defined,” *Oil States*, 584 U.S. at 343 (quoting *Crowell*, 285 U.S. at 51), and thus fall outside the scope of the public-rights doctrine and must be heard by independent, Article III courts.

2. The 45-day extension to file a certiorari petition is necessary because undersigned counsel has been retained in this matter only recently and needs the additional time to review the record and prepare the petition and appendix in light of other, previously engaged matters, including: (1) a reply brief in the Texas Court

of Appeals in *In re Kent Bates, et al.*, No. 01-25-00075-CV (due May 5, 2025); (2) oral argument in the Fourth Circuit in *Bestwall LLC v. Official Committee of Asbestos Claimants*, No. 24-1493 (scheduled for May 8, 2025); (3) a petition for a writ of certiorari in this Court in *Batson v. Florida Department of Corrections*, No. 24A-938 (due May 12, 2025); (4) a brief in opposition in this Court in *Merck Sharp & Dohme Corp. v. Albrecht*, No. 24-977 (due May 12, 2025); and (5) a cert-stage reply brief in this Court in *Rutherford v. United States*, No. 24-820 (due May 20, 2025).

For all these reasons, there is good cause for a 45-day extension of time, up to and including June 11, 2025, within which to file a certiorari petition in this case to review the judgment of the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,



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