

No. 25-1011

IN THE
Supreme Court of the United States

DOLBY LABORATORIES
LICENSING CORPORATION,

Petitioner,

v.

UNIFIED PATENTS, LLC,

Respondent.

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

**BRIEF FOR *AMICUS CURIAE*
ALLIANCE OF U.S. STARTUPS & INVENTORS FOR
JOBS (“USIJ”) IN SUPPORT OF APPELLANT DOLBY
LABORATORIES LICENSING CORPORATION
PETITION FOR WRIT OF CERTIORARI**

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The Alliance of U.S. Startups and Inventors for Jobs (“USIJ”) submits this brief pursuant to Rule 37 of the U.S. Supreme Court as *amicus curiae* in support of Petitioner Dolby Laboratories Licensing Corporation (“Dolby”), requesting review of the following ruling of the United States Court of Appeals for the Federal Circuit: *Dolby Laboratories Licensing Corp. v. Unified Patents, LLC*, No. 23-2110 (June 5, 2025), *reh’g denied* (September 23, 2025).

INTEREST OF AMICUS CURIAE

Amicus curiae USIJ is a coalition of startup companies, inventors, entrepreneurs and investors whose businesses depend upon stable and reliable patent protection as an essential foundation for making long-term investments of capital and time commitments to high-risk ventures developing new technologies. USIJ’s fundamental mission is to assist and help inform members of Congress, the Federal Judiciary and leaders in the Executive branch regarding the critical role that patents play in our nation’s economic system, and the particular importance of innovative small companies to our country’s economic health and its continued leadership role in the development of strategically critical technologies.¹

1. No counsel of a party authored this brief in whole or in part. No party or counsel of a party contributed money that was intended to fund preparing or submitting this brief. No person (other than *amicus curiae*, its members, or its counsel) contributed money intended to fund preparing or submitting the brief. *Amicus curiae* was not able to provide the full ten days’ notice of our intent to file, but the parties have nevertheless affirmatively consented to this filing.

SUMMARY OF ARGUMENT

The Patent Act was amended in 2011 to provide for a new procedure called Inter Partes Review or IPR, wherein the owner of an issued patent could be required to defend its validity before a newly created Patent Trial and Appeal Board (“PTAB”). 35 U.S.C. §§ 311 – 319. In defining this new procedure, Congress provided for the possibility – indeed the likelihood – that large entrenched incumbents might attempt to use the IPR procedures to harass smaller and more innovative companies and thereby suppress incipient competition. Section 315, entitled “estoppel,” provides that once an IPR ends in a final written decision, neither the petitioner nor any **“real party in interest real or privy of the petitioner”** is permitted to challenge the validity of the patent in either a subsequent IPR proceeding, in District Court or before the International Trade Commission, on any ground that was raised or could have been raised in the IPR proceeding.

To assure that patent owners are accorded the full benefit of the estoppel provision – in exchange for imperiling the enforceability of their property rights – Section 312(a) states expressly that an IPR petition “may be considered only if ... (2) the petition identifies all real parties in interest.” A party dissatisfied with the decision of the PTAB is allowed to appeal to the Federal Circuit for relief.

The decision of the Federal Circuit in this case is flawed in two respects. First, neither the Federal Circuit nor the PTAB should be allowed to ignore a statutory provision that is both unambiguous and clearly applicable

and that was intentionally crafted for the protection of the patent owner. The Federal Circuit has the statutory duty to rule on whether a decision of the PTAB meets the statutory requirements, which clearly it does not in this case. And the Court has a supervisory duty to make sure that the rest of the judicial system acts in accordance with statutory dictates from Congress.²

Second, there is no question that the patent owner here is entitled to an identification of other entities, in addition to the surrogate petitioner Unified Patents, that are estopped from challenging the validity of its patent. The tautological analysis of harm by the panel is simply wrong. Blocking a patent owner from information as to the real party or parties in interest (“RPIs”), in and of itself, is sufficient injury to support a review by the court. The panel dismisses the patent owner’s right to the information with a back-of-the hand pronouncement that the identification of RPIs should be part of the Director’s institution decision, and therefore is nonappealable under Section 314. This is entirely too facile and fails to account for the absence of discovery prior to institution.

2. In *Dickerson v. United States*, 530 U.S. 428 (2000), the Court held unequivocally that it has the authority under the U.S. Constitution to supervise and manage the procedures and rules of the remainder of the federal judiciary:

“This Court has supervisory authority over the federal courts, and we may use that authority to prescribe rules of evidence and procedure that are binding in those tribunals.” *Id.* at 437.

We respectfully submit that supervisory authority carries with it the corollary responsibility to ensure that each of the lower courts conducts its affairs in a manner consistent with its statutory mandate.

In considering whether to grant certiorari in this case, it should not be lost on the Court that the panel decision of the court below, if left standing, is an open invitation for any entity that acts routinely as a surrogate petitioner for others simply to ignore the requirements of Sections 312 and 315. That is a far cry from what Congress intended in trying to limit petitioners to “one bite at the apple.”

The opinion below obscures the harm that Dolby, and myriad patent owners similarly situated, face when denied information as to the entity that is actually behind an IPR petition. The panel decision is wrong in suggesting that Dolby had not suffered an injury-in-fact, because it applied the wrong legal standard for finding injury from a failure to divulge required information. 35 U.S.C. §312(a)(2); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442-43 (2021) (holding that aggrieved plaintiffs only must show that failing to receive required information “hindered their ability” to redress their rights).

The panel assumed, without any factual basis, that Dolby could identify the RPIs from other sources of information. 138 F.4th 1363, at 1386. This assumption fails to appreciate the difficulty, if not impossibility, of unearthing RPI information that is not divulged in the original petition, as mandated in Section 312(a)(2). USIJ submits that if Dolby does not have standing in this case, no patent owner would, and this is of grave concern to the USIJ cohort.

The USIJ cohort consists of highly innovative companies and their investors that depend on a healthy patent system for survival. Many of these innovators know all-too-well the specter of serial and/or repetitive PTAB

petitions filed to invalidate their most valuable patents. It is not the “weak” or so-called “bad” patents that are the target of most IPRs, because such patents rarely are asserted or, if they are, can be invalidated easily with a single petition. Instead, it is the most valuable patents that survive one or more challenges that continue to be plagued with repetitive IPR petitions, often instigated by the same or closely related petitioners. By blocking the patent owner from obtaining the RPI information to which it is entitled, the Federal Circuit essentially nullifies the estoppel provision in Section 315. Like Dolby, America’s upstart innovators need access to RPI information to prevent the serial onslaught of petitions to invalidate their most valuable patents.

Because the Federal Circuit, alone, interprets the relevant statutory provisions underlying this case, and thus sets national law through a single erroneous decision, USIJ respectfully requests that the Court grant the writ of certiorari.

ARGUMENT

I. The Patent Act States Unambiguously That a Patentee Is Entitled to Know the Identity of All of the Real Parties in Interest Behind a Petition for IPR.

Congress mandated transparency to create balance between the interests of patent owners and accused infringers. When a patent has been subjected to an IPR proceeding, the patent owner is entitled to all the protections that the AIA provides, including in particular that: 1) all RPIs must be disclosed in the petition (*see* 35 U.S.C. § 312(a)(2)); and 2) the estoppel provisions apply to all RPIs and their privies (*see* 35 U.S.C. § 315(e)(1)). The Federal Circuit's decision, if allowed to stand, will create a precedent that injures all patent owners – including the USIJ cohort – who might be attacked by anonymous challengers using stand-ins, such as Unified Patents. It also will encourage such stand-ins to falsify the absence of RPIs whenever they think they may not get caught. If Dolby does not have standing to force disclosure of the RPI(s) behind an anonymous challenge, then no patent owner can have such standing.

The patent owner is entitled to know the identity of the entities that will be estopped from challenging its validity in the future – first, because Section 312(a)(2) unequivocally requires it, and equally important, because it may be impossible to extract the information from a subsequent challenger. The paucity of discovery at the PTAB is well-known and will, in many cases, prevent discovery as to previous petitions, which is the reason Congress required that this information be disclosed at the outset.

Dolby's petition succinctly and accurately describes the legal right of patent owners to know the RPIs behind PTAB petitions, and USIJ sees no need to repeat the same points. The Federal Circuit decision holds that petitioner's statutory obligation to disclose RPIs is a requirement of the petition itself, and once institution occurs, Section 314(d) cuts off any appeal from a petitioner's failure to do so. *Id.* at 1367. That cannot be the law. Neither the patent owner nor the PTAB can know, at the time of institution, whether the nominal petitioner is actually an RPI or is a stand-in being compensated by others. Left alone, the Federal Circuit decision means that any entity acting as a front for an RPI is free to choose whether or not to comply with Section 312(a)(2), and there are no consequences for refusing to do so.

Dolby's exposition of its fundamental legal right to RPI information is correct – information rights as to RPIs should never be extinguished during the conduct of the IPR, where the petition is secretly deficient in this regard.

II. Congress Foresaw the Potential Use of IPRs to Harass Patent Owners.

The information Dolby seeks, and to which every patent owner subjected to an IPR is entitled, is a cornerstone of Congress' compromise. In striking a balance between the interests of patent owners and accused infringers, Congress foresaw the burdens that PTAB proceedings could impose on patent owners and the potential for abuse. Thus, Congress' deliberations affirmed the commitment to allow challengers only "one bite at the apple." Senate Report 110-259, The Patent Reform Act of 2007, 110th Congress, to accompany S. 1145,

at 22. Recognizing that duplicative petitions are “one of the worst evils” of administrative proceedings, Congress sought to all-but eliminate such proceedings. *Id.* at 228 (Senator Kyl speech) (“It is a rare patent that should be twice subjected to second-window proceedings.”).³

The AIA was enacted with a congressional directive to shut down duplicative challenges through a robust estoppel provision. Senate Debate 2-28-2011 (157 Cong. Rec. S936-S953) (comments of Senator Grassley) [at 254] (“It would also include a strengthened estoppel standard to prevent petitioners from raising in a subsequent challenge the same patent issues that were raised or reasonably could have been raised in a prior challenge.”). Congress sought to ensure that a “party that uses inter partes review is estopped from raising in a subsequent PTO proceeding (such as an ex parte reexam or inter partes review) any issue that it raised or reasonably could have raised in the inter partes review.” House Report 112-98 – 112th Congress – To Accompany HR 1249 [at 496].

The “one bite at the apple” rule is codified through the requirement to disclose RPIs, *see* 35 U.S.C. § 312(a)(2), and through the requirement that such RPIs be estopped from mounting successive challenges, *see* 35 U.S.C. § 315(e). This rule is clear: a petitioner and its RPIs get one shot at a patent. It is this right to preclude subsequent challenges by the same RPIs that hangs in the balance here.

3. For a more complete recap of the legislative history of the IPR provision in the America Invents Act, *see* USIJ White Paper entitled “How ‘One Bite at the Apple’ Became Serial Attacks on High Quality Patents at the PTAB,” <https://usij.org/2018-serial-attacks>.

III. The Injury-in-Fact is Real

The Federal Circuit stated that Dolby had failed to establish an injury-in-fact because the panel surmised that Dolby could obtain the information elsewhere. 138 F.4th at 1368 (“Third, Dolby provides no evidence that it will be barred from asserting estoppel against the Alleged RPIs in hypothetical future litigation.”). Notably, this standard exceeds what the Court has established as the standard for an “informational right.” *E.g., TransUnion*, 594 U.S. at 442-43 (requiring a showing that the “information deficit hindered” the aggrieved party’s interests). Undoubtedly, Dolby has established that the information deficit it has suffered by being deprived of the identity of the Alleged RPIs behind Unified Patents’ petition, has “hindered its interests.”

The Federal Circuit did not deny that Dolby suffered from being deprived of the identity of the RPI’s here, but played down this loss by assuming that Dolby can obtain the information in a future proceeding. *Dolby*, 138 F.4th at 1368. There is no basis for such an assumption. In addition to the reasons stated in Dolby’s petition, we invite the Court to consider the following hypothetical scenario: Assume that Unified Patents fails in its initial IPR challenge to a patent, after refusing to identify the RPIs, one of which later files a second petition challenging the same patent, but now having the benefit of the earlier loss to guide its litigation strategy. This is not an unlikely scenario. Many large technology companies pay for subscriptions to Unified Patents to preserve that very opportunity. The mere fact that repetitive IPRs can be filed is itself additional injury-in-fact, because under a proper disclosure of RPIs in the first proceeding, the RPI would be estopped from a second filing under 35 U.S.C. § 315(e)(1). Every dollar and every hour spent defending

against this second IPR from an RPI of the first petition becomes further injury-in-fact. And the limited ability to take discovery from third party sources (of which Unified Patents would at least be one) in PTAB proceedings may curtail a patent owner's ability to prove the existence of RPIs. Moreover, the cost of such discovery would simply compound the injury-in-fact that flows from the first unlawful IPR. In short, the patent owner would thus be faced with a second existential attack on its rights by the same entity – precisely what Congress tried to avoid in crafting the IPR provisions.

All PTAB challenges create a burden for the patent owner. Such challenges disrupt business operations, create uncertainty as to enforceability of the property right, and often force business dealings to be put on hold, awaiting a Final Written Decision and resolution of issues on appeal. These disruptions cast a long shadow, thwarting partnerships and fundraising and distracting the attention of a company's team.

And filing a subsequent litigation to determine the RPIs would be a costly burden, if not fruitless. The patent owner should not have to guess at which infringers are estopped. Deprived of the information that should have been on the face of the original PTAB petition, the patent owner would then have to launch a new litigation unsure of whether or not the new defendant is estopped. This completely upsets the calculus of patent litigation to the detriment of the patent owner. Moreover, any district court litigation, if it is not stayed pending a second IPR, would likely be exorbitantly costly, and consume untold cycles of the company's focus. None of this effort and expense would be necessary, of course, had the RPI information been

originally disclosed, as required under 35 USC § 312(a) (2). Rather than resolving an invalidity challenge with a straightforward Rule 12 motion to establish estoppel, the patent owner would have to run an entirely new, risky, and costly exercise to try to uncover essential information to which it was entitled at the outset.

The Federal Circuit decision, if allowed to stand, will only worsen an already difficult and injurious process for patent owners.

CONCLUSION

Review of the Federal Circuit decision is essential to maintain the balance that Congress tried to achieve in allowing IPRs in the first instance. Congress did not intend, nor does any sense of fairness allow, for deep-pocketed infringers to hire bounty hunters to challenge valuable patents without repercussions. USIJ submits that there should be no free swing at a patent.

Respectfully submitted,

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