No. 25-1011

In the Supreme Court of the United States

DOLBY LABORATORIES LICENSING CORPORATION,
PETITIONER

v.

UNIFIED PATENTS, LLC, ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

A petition to institute an inter partes review of an issued patent may be considered by the Director of the United States Patent and Trademark Office only if (among other requirements) the petition "identifies all real parties in interest," 35 U.S.C. 312(a)(2), and "identifies * * * the grounds" for review, 35 U.S.C. 312(a)(3). "The determination by the Director whether to institute an inter partes review * * * shall be final and nonappealable." 35 U.S.C. 314(d). This Court has held that Section 314(d) bars judicial review of "challenges grounded in 'statutes related to' the institution decision," including challenges to "the agency's application of § 312(a)(3)." *Thryv, Inc.* v. *Click-to-Call Techs., LP*, 590 U.S. 45, 56 (2020) (quoting *Cuozzo Speed Techs., LLC* v. *Lee*, 579 U.S. 261, 275 (2016)). In this case, petitioner prevailed on the merits in an inter partes review, but it nonetheless appealed to challenge the agency's application of Section 312(a)(2). The questions presented are as follows:

1. Whether petitioner, as the prevailing party, lacks Article III standing to appeal.

2. Whether 35 U.S.C. 314(d) bars judicial review of petitioner's challenge to the agency's application of 35 U.S.C. 312(a)(2).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 138 F.4th 1363. The final written decision of the Patent Trial and Appeal Board (Pet. App. 13a-55a) is available at 2022 WL 2165657.

JURISDICTION

The judgment of the court of appeals was entered on June 5, 2025. A petition for rehearing was denied on September 23, 2025 (Pet. App. 10a-12a). On December 19, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including February 20, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. "For several decades," the United States Patent and Trademark Office (USPTO) has "possessed the authority to reexamine—and perhaps cancel—a patent claim that it had previously allowed." *Cuozzo Speed Techs., LLC* v. *Lee*, 579 U.S. 261, 267 (2016). In 2011, Congress established the procedure at issue here, inter partes review, as part of the Leahy-Smith America Invents Act (AIA), Pub. L. No. 112-29, 125 Stat. 284. Inter partes review "allows a third party to ask the [USPTO] to reexamine the claims in an already-issued patent and to cancel any claim that the agency finds to be unpatentable in light of prior art." *Cuozzo*, 579 U.S. at 265; see 35 U.S.C. 311.

Any person other than the patent owner may file a petition to institute inter partes review on the grounds that, at the time the patent was issued, the claimed invention was not novel or was obvious in light of "prior art consisting of patents or printed publications." 35 U.S.C. 311(a) and (b). The USPTO may consider a petition only if it meets certain requirements, including that the petition "identifies all real parties in interest" (RPIs), 35 U.S.C. 312(a)(2); that the petition "identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim," 35 U.S.C. 312(a)(3); and that specified documents are provided to the patent owner, 35 U.S.C. 312(a)(5). The USPTO is required to make the petition available to the public as soon as practicable. 35 U.S.C. 312(b).

When presented with a petition, the Director of the USPTO must decide whether to institute review. 35 U.S.C. 314; see *Thryv, Inc.* v. *Click-to-Call Techs., LP*, 590 U.S.

45, 48 (2020). Among other conditions, "[a]n inter partes review may not be instituted if, before the date on which the petition for such a review is filed, the petitioner or real party in interest filed a civil action challenging the validity of a claim of the patent," 35 U.S.C. 315(a)(1), or if the petition "is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent." 35 U.S.C. 315(b). "The determination by the Director whether to institute an inter partes review * * * shall be final and nonappealable." 35 U.S.C. 314(d).

If the agency institutes an inter partes review, the Patent Trial and Appeal Board (Board or PTAB), a body within the USPTO "composed of administrative patent judges, who are patent lawyers and former patent examiners, among others," *Cuozzo*, 579 U.S. at 268, conducts a proceeding to evaluate the challenged claims' validity, 35 U.S.C. 6, 316(c). The Board "shall issue a final written decision with respect to the patentability of any patent claim challenged by the petitioner," 35 U.S.C. 318(a), which the Director of the USPTO may review, *United States* v. *Arthrex, Inc.*, 594 U.S. 1, 25-26 (2021). "A party dissatisfied with the final written decision * * * may appeal the decision" to the United States Court of Appeals for the Federal Circuit. 35 U.S.C. 319.

Following any appeal of a final written decision, the USPTO issues and publishes a certificate canceling any claim finally determined to be unpatentable and confirming any claim determined to be patentable. 35 U.S.C. 318(b). A final written decision also estops the "petitioner * * * or the real party in interest or privy of the petitioner" from subsequently challenging a patent in administrative proceedings or in district court on any

ground that reasonably could have been raised during the inter partes review. 35 U.S.C. 315(e)(1) and (2). The Director may designate a past decision as "precedential" for future cases. *Arthrex*, 594 U.S. at 14.

2. Over the years since the AIA's enactment, the USPTO has changed its approach to Section 312(a)(2)'s requirement that a petition for inter partes review must identify all real parties in interest. Originally, the Board often resolved disputes concerning real parties in interest as a condition for instituting an inter partes review, even when resolution of such disputes would not implicate the estoppel or time-bar provisions of Sections 315(a)(1), (b), and (e). See *Corning Optical Commc'ns RF, LLC* v. *PPC Broadband, Inc.*, No. IPR2014-00440, 2015 WL 14109211, at *10 (Aug. 18, 2015) (collecting cases). In 2020, however, the Director designated as precedential the Board's contrary decision in *SharkNinja Operating LLC* v. *iRobot Corp.*, No. IPR2020-00734, 2020 WL 5938681 (Oct. 6, 2020), in which the Board declined to resolve whether a petition for inter partes review had correctly named all real parties in interest. The Board found it unnecessary to resolve that issue because, in the circumstances of that case, identification of the real parties in interest "would not create a time bar or estoppel," *id.* at *7, and therefore "would not impact the Board's institution decision," USPTO, *PTAB designates three decisions as precedential* (Dec. 4, 2020), https://perma.cc/EM9F-BPYS.

In late 2025, the USPTO returned to its original approach. USPTO, *Memorandum to All PTAB Judges* 1 (Oct. 28, 2025), https://perma.cc/GAY2-B467. The agency determined that the AIA is "best understood to require the Director to resolve disputes concerning real parties in interest * * * before considering a petition, even

when the issue will not affect the statute's estoppel or time-bar provisions." 24-1235 C.A. Doc. 96, at 1 (Fed. Cir. Oct. 28, 2025). The USPTO removed the precedential status of *SharkNinja* and designated as precedential the relevant portions of the Board's decision in *Corning*, which reflected the agency's original approach. See USPTO, *PTAB de-designates a decision* (Sept. 26, 2025), https://perma.cc/7KPV-RW8T; USPTO, *PTAB designates a precedential decision* (Oct. 28, 2025), https://perma.cc/Z3RQ-NNBA.

3. Petitioner owns U.S. Patent No. 10,237,577, which describes a "prediction method using an in-loop filter." Pet. App. 2a. In 2020, respondent Unified Patents, LLC, petitioned to institute inter partes review of the '577 patent. *Ibid.*; Pet. 7. In its petition to institute inter partes review, Unified Patents certified that it was the sole real party in interest. Pet. App. 2a. Petitioner opposed institution of inter partes review on the ground that, under Section 312(a)(2), Unified Patents' petition should also have named nine of Unified Patents' members as real parties in interest. *Id.* at 2a, 16a.

In 2021, the Board instituted inter partes review. C.A. App. 5043-5080. In its institution decision, the Board rejected petitioner's contention that the Board "should decline institution" on the ground that Unified Patents had "purposefully omitted naming additional parties to gain an advantage." *Id.* at 5046. The Board found that "alleged advantage to be speculative." *Ibid.* The Board also noted that petitioner had "failed to raise any allegations regarding time bar or estoppel with respect to [Unified Patents'] failure to name the nine additional parties." *Id.* at 5047. Accordingly, consistent with the then-precedential decision in *SharkNinja*, the Board declined to decide before instituting inter partes review

whether the petition should have named those entities as real parties in interest. *Ibid.*

In 2022, the Board issued a final written decision on patentability, ruling in favor of petitioner. Pet. App. 13a-55a. The Board agreed with petitioner that Unified Patents had failed to show that any of the challenged claims are unpatentable. *Id.* at 15a. The Board again declined, however, to address whether Unified Patents had improperly omitted real parties in interest from its petition to institute inter partes review. *Id.* at 16a-18a. The Board reiterated that "there is no allegation or evidence that any of the Alleged RPIs is barred or estopped from this proceeding"—which petitioner "d[id] not dispute"—or that Unified Patents had "purposefully omitted any of the Alleged RPIs to gain some advantage." *Id.* at 18a. Accordingly, "[o]n this record," the Board again "determine[d] that [it] need not address whether the Alleged RPIs were improperly excluded because, 'even if [they] were, it would not create a time bar or estoppel'" barring institution, as petitioner "d[id] not dispute." *Id.* at 17a-18a (quoting *SharkNinja*, 2020 WL 5938681, at *7) (fourth set of brackets in original).

4. Notwithstanding its successful defense of its patent before the Board, petitioner appealed to challenge the Board's determination not to resolve the real-party-in-interest issue. The Director intervened to seek dismissal of the appeal. See Pet. App. 3a. The court of appeals, in a unanimous decision, dismissed petitioner's appeal for lack of jurisdiction. *Id.* at 1a-9a.

a. The court of appeals agreed with the Director and Unified Patents that petitioner had "fail[ed] to establish an injury in fact sufficient to confer standing to appeal." Pet. App. 2a; see *id.* at 3a. The court explained that, "[a]l-

though a party does not need Article III standing to file an [inter partes review] petition or obtain a Board decision, the party must establish standing once it seeks [the Federal Circuit's] review of the Board's final decision," and that "[a]s the party seeking judicial review, [petitioner] bears the burden of establishing it has standing." *Id.* at 3a-4a. The court concluded that petitioner had "failed to meet its burden to establish standing on any ground." *Id.* at 4a.

The court of appeals first rejected petitioner's contention that Section 312(a)(2) "grants patent owners an informational right to know the identities of all RPIs in [inter partes review] proceedings," such that petitioner's failure to receive that information could constitute "injury in fact." Pet. App. 5a. The court explained that, in "contrast" to "'public-disclosure or sunshine laws'" that have an "express purpose[] * * * to allow the public access to certain information," *id.* at 5a-6a (quoting *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 441 (2021)), the "purpose of the AIA is 'to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs,'" *id.* at 6a (quoting *Thryv*, 590 U.S. at 54). The court therefore held that, for purposes of Article III standing, "the AIA does not create an informational right" to the identities of real parties in interest. *Id.* at 7a.

The court of appeals additionally found that petitioner's "purported injuries are too speculative to establish Article III standing." Pet. App. 7a. Petitioner alleged that the failure to identify Unified Patents' members as real parties in interest "may" affect petitioner's "license agreements" and its ability to ensure that the members are "properly estopped in future proceedings."

Ibid. But petitioner "d[id] not argue [that] any of the Alleged RPIs are subject to license agreements with [petitioner], much less provide evidence the Alleged RPIs are breaching license agreements." *Ibid.* Petitioner also "provide[d] no evidence it will be barred from asserting estoppel against the Alleged RPIs in hypothetical future litigation." *Id.* at 8a. "Nor d[id] [petitioner] claim that any of the Alleged RPIs is engaged in, or intends to engage in, activity that may trigger an infringement suit." *Ibid.* Indeed, it was "undisputed" both that "there is no pending or threatened litigation related to the '577 patent such that estoppel issues would be implicated," and that "there is no collateral estoppel effect of the Board's refusal to adjudicate the RPI dispute that would prevent [petitioner] from raising the issue in future proceedings, whether before the Board or in district court." *Ibid.* The court of appeals also observed that petitioner had "provide[d] no evidence Unified [Patents] would change its strategies should it be required to disclose its members as RPIs," and the court found petitioner's contention to that effect "far too speculative to establish injury in fact." *Id.* at 8a-9a.

b. The court of appeals further agreed with the Director and Unified Patents that 35 U.S.C. 314(d) "bars judicial review of [inter partes review] institution decisions, which includes decisions concerning the RPI requirement under 35 U.S.C. § 312(a)(2)." Pet. App. 6a (citing *ESIP Series 2, LLC* v. *Puzhen Life USA, LLC*, 958 F.3d 1378, 1386 (Fed. Cir.), cert. denied, 141 S. Ct. 557 (2020), and *SIPCO, LLC* v. *Emerson Elec. Co.*, 980 F.3d 865, 869 (Fed. Cir. 2020)); see *id.* at 7a; Gov't C.A. Br. 23-30; Unified Patents C.A. Br. 25-29. The prior Federal Circuit decisions cited by the court below had applied this Court's precedent in holding that claims of

Board non-compliance with Section 312(a)(2) are not cognizable on appeal. See *ESIP*, 958 F.3d at 1386 (Because a "contention that the Board failed to comply with § 312(a)(2) is 'a contention that the agency should have refused to institute an inter partes review,'" Section 314(d) bars appellate review of that argument.) (citing *Thryv*, 590 U.S. at 54); *SIPCO*, 980 F.3d at 869 (explaining *ESIP*'s holding that "§ 314(d) barred judicial review" of "a challenge based on a petitioner's failure to identify all 'real parties in interest'") (citation omitted).

5. The court of appeals denied rehearing en banc without noted dissent. Pet. App. 10a-12a.

ARGUMENT

Petitioner challenges the court of appeals' rulings that petitioner lacks standing to appeal a Board decision in petitioner's own favor (Pet. 14-19), and that 35 U.S.C. 314(d)'s express bar on judicial review precludes petitioner's appeal (Pet. 19-22). The court decided both of those issues correctly, and its decision does not conflict with any decision of this Court or another court of appeals. The USPTO's recent return to its original interpretation of 35 U.S.C. 312(a)(2) has also greatly reduced the practical significance of petitioner's claims, and this case would be a poor vehicle to address them in any event. This Court has denied previous petitions raising similar questions. See *ESIP Series 2, LLC* v. *Puzhen Life USA, LLC*, 141 S. Ct. 557 (2020) (No. 20-228); *RPX Corp.* v. *ChanBond LLC*, 587 U.S. 1062 (2019) (No. 17-1686). The Court should follow the same course here.

1. The court of appeals correctly held that petitioner had not met its burden to establish Article III standing to appeal the Board's decision in favor of petitioner.

a. The "judicial Power" of the United States extends only to Article III "Cases" and "Controversies." U.S.

Const. Art. III, § 2, Cl. 1. The doctrine of Article III standing serves as "an essential and unchanging part of the case-or-controversy requirement," *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992), and a "person[] seeking appellate review" must establish Article III standing in order to pursue the appeal, *Hollingsworth* v. *Perry*, 570 U.S. 693, 705 (2013) (quoting *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 64 (1997)). To invoke a federal court's jurisdiction, a party must establish that it has suffered an "'injury in fact,'" *i.e.*, "an invasion of a legally protected interest"; that there is a "causal connection between the injury and the conduct complained of"; and that it is "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Defenders of Wildlife*, 504 U.S. at 560-561 (citations omitted). "The party invoking federal jurisdiction bears the burden of establishing these elements." *Id.* at 561.

In this case, the court of appeals correctly determined that petitioner, as the prevailing party before the Board, had "failed to meet its burden" to establish Article III standing to appeal the Board's final written decision upholding petitioner's patent. Pet. App. 4a. With respect to the validity of its patent, petitioner clearly has no "injury to redress," since petitioner prevailed on that issue before the Board and Unified Patents "chose not to appeal." *Hollingsworth*, 570 U.S. at 705; see *Mathias* v. *WorldCom Techs., Inc.*, 535 U.S. 682, 684 (2002) (per curiam) ("As a general rule, a party may not appeal from a favorable judgment simply to obtain review of findings it deems erroneous."). Nor can petitioner establish injury in fact based on the assertion that 35 U.S.C. 312(a)(2) confers an "informational right to know the identities of all RPIs." Pet. App. 5a. "[T]here is no free-

standing right to that information" under the AIA, *id.* at 6a, and the court below correctly found that petitioner's alleged injuries "are too speculative to establish Article III standing" on the facts of this case, *id.* at 7a; see C.A. App. 5046 (similar finding by the Board that petitioner's allegations are "speculative"). "An 'asserted informational injury that causes no adverse effects cannot satisfy Article III.'" *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 442 (2021) (quoting *Trichell* v. *Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020)).

b. Petitioner's contrary arguments are unsound. Petitioner relies primarily (Pet. 15-17) on this Court's decisions recognizing informational rights under the Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (52 U.S.C. 30101 *et seq.*), *FEC* v. *Akins*, 524 U.S. 11 (1998); and the Federal Advisory Committee Act, Pub. L. No. 92-463, 86 Stat. 770 (5 U.S.C. App.), *Public Citizen* v. *United States Dep't of Justice*, 491 U.S. 440 (1989). But "*Akins* and *Public Citizen* do not control" in a case, like this one, that "does not involve" a "public-disclosure or sunshine law[] that entitle[s] all members of the public to certain information." *TransUnion*, 594 U.S. at 441. "The AIA's purpose" is not to facilitate public access to information, but instead "'to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.'" *Thryv, Inc* v. *Click-To-Call Techs., LP*, 590 U.S. 45, 54 (2020) (citation omitted). Petitioner therefore misses the mark in criticizing (Pet. 14) the court of appeals' quotation of that statement of the AIA's purpose from *Thryv* (Pet. App. 6a). Petitioner's challenge, not the decision below, "conflicts with the approach[] taken by this Court." Pet. 14.

Nor can petitioner overcome the court of appeals' further determination that petitioner's "purported injuries are too speculative to establish Article III standing." Pet. App. 7a. That determination independently defeats petitioner's standing. See *TransUnion*, 594 U.S. at 438 (explaining that a party cannot "factually establish a sufficient risk of future harm to support Article III standing" where that risk is "too speculative"). Petitioner suggests that the decision below might "hinder[] [petitioner's] ability to inform its future commercial and legal conduct," including "'hypothetical future litigation'" and "future patent licensing discussions." Pet. 8, 10, 16 (quoting Pet. App. 8a). But the court of appeals found that petitioner had "provide[d] no evidence" to substantiate those alleged risks of future harm. Pet. App. 7a. The court explained in particular that petitioner had not "claim[ed] that any of the Alleged RPIs is engaged in, or intends to engage in, activity that may trigger an infringement suit." *Id.* at 8a. Nor did petitioner assert that "any of the Alleged RPIs are subject to license agreements with [petitioner], much less provide evidence the Alleged RPIs are breaching license agreements." *Ibid.* The court of appeals' assessment of that evidence accords with the rulings of the Board, which determined "[o]n this record" that "there is no allegation or evidence * * * that [Unified Patents] purposefully omitted any of the Alleged RPIs to gain some advantage," *id.* at 17a-18a, and that petitioner's contrary allegation is "speculative," C.A. App. 5046. Petitioner identifies no evidence that the court and Board overlooked in making those factbound determinations.

Petitioner also speculates (Pet. 18) that it "simply *will not know*" if a future risk materializes because petitioner "itself remains unaware of the names of the nine entities

it has asked the Board to identify as real parties in interest." But as the court below observed, petitioner's "counsel know[s] the identities of the Alleged RPIs." Pet. App. 7a-8a; see Pet. 3 n.1. Nor does petitioner explain why, in a future case, determining whether the opposing party is one of those entities would require burdensome "third party discovery" (Pet. 19) rather than simply asking the opposing party, see C.A. Oral Arg. at 22:30-25:27, https://www.cafc.uscourts.gov/oral-arguments/23-2110_05052025.mp3 (discussing the availability of interrogatories and other mechanisms). Regardless, any uncertainty about such hypothetical proceedings underscores the speculative nature of petitioner's asserted risks of future harm.

2. Petitioner separately challenges the court of appeals' conclusion that 35 U.S.C. 314(d) independently bars judicial review of petitioner's appeal "even if" petitioner could establish standing. Pet. 19 (quoting Pet. App. 6a) (brackets omitted). The court's holding is correct and follows directly from this Court's precedent interpreting Section 314(d).

a. Section 314(d) provides that "[t]he determination by the Director whether to institute an inter partes review * * * shall be final and nonappealable." 35 U.S.C. 314(d); see pp. 2-3, *supra*. "Section 314(d)'s review bar is not confined to the agency's application of § 314[]"; "[r]ather, it encompasses the entire determination 'whether to institute an inter partes review'" and so "extends to challenges grounded in 'statutes related to' the institution decision." *Thryv*, 590 U.S. at 56-57 (first quoting 35 U.S.C. 314(d), then quoting *Cuozzo Speed Techs., LLC* v. *Lee*, 579 U.S. 261, 275 (2016)).

Accordingly, the Court in *Cuozzo* "held unreviewable the agency's application of § 312(a)(3)," which "require[s]

that the grounds for challenging patent claims must be identified" in the petition to institute inter partes review. *Thryv*, 590 U.S. at 52, 56 (citing *Cuozzo*, 579 U.S. at 270, 275). Similarly in *Thryv*, the Court held unreviewable "[t]he agency's application of § 315(b)'s time limit," which "is closely related to its decision whether to institute inter partes review and is therefore rendered nonappealable by § 314(d)." *Id.* at 48. Although the challenger in *Thryv* sought to "label[]" its argument "as an appeal from the final written decision," the Court concluded that the appeal "is still barred by § 314(d)" because "§ 315(b)'s sole office is to govern institution," so that the challenger's "contention remains, essentially, that the agency should have refused to institute inter partes review." *Id.* at 60. By contrast, in *SAS Institute, Inc.* v. *Iancu*, 584 U.S. 357 (2018), the Court held that Section 314(d) does not bar an appeal alleging noncompliance with Section 318(a)'s requirement that a "final written decision"—which is the only Board decision properly subject to appeal, 35 U.S.C. 319—must resolve the patentability of all challenged claims. *SAS Institute*, 584 U.S. at 371.

In this case, the court of appeals correctly recognized that Section 314(d) "bars judicial review" of petitioner's challenge to the agency's application of Section 312(a)(2). Pet. App. 6a (citing *ESIP Series 2, LLC* v. *Puzhen Life USA, LLC*, 958 F.3d 1378, 1386 (Fed. Cir.), cert. denied, 141 S. Ct. 557 (2020); *SIPCO, LLC* v. *Emerson Elec. Co.*, 980 F.3d 865, 869 (Fed. Cir. 2020)). As the court explained in the precedent cited by the decision below, "[i]n view of *Cuozzo* and [*Thryv*]," there is "no principled reason why preclusion of judicial review under § 314(d) would not extend to a Board decision concerning the 'real parties in interest' requirement of

§ 312(a)(2)." *ESIP*, 958 F.3d at 1386. Just like the challenges based on Sections 312(a)(3) and 315(b) that this Court previously held unreviewable, a "contention that the Board failed to comply with § 312(a)(2) is 'a contention that the agency should have refused to institute an inter partes review,'" which Section 314(d) precludes. *Ibid.* (citing *Thryv*, 590 U.S. at 54); see *Federal Express Corp.* v. *Qualcomm Inc.*, No. 2024-1236, 2026 WL 1153767, at *4 (Fed. Cir. Apr. 29, 2026) (holding that "challenges grounded in § 312(a)(2) fall within § 314(d)'s scope and are thus unreviewable").

b. Petitioner contends (Pet. 19-22) that the ruling below conflicts with this Court's decision in *SAS Institute*. That argument lacks merit. *SAS Institute*'s "reviewability holding is inapplicable" where, as here, an appeal effectively challenges "whether the agency should have instituted review at all." *Thryv*, 590 U.S. at 58; see *Federal Express Corp.*, 2026 WL 1153767, at *5 ("The challenge in *SAS [Institute]* concerned how the Board's review would proceed after institution and not whether the choice to grant institution was correct.").

Unlike the challenger in *SAS Institute*, petitioner does not invoke Section 318(a)'s requirements governing the contents of a "final written decision." 35 U.S.C. 318(a). Indeed, neither Section 318(a) nor any other provision requires that the Board's final written decision identify all real parties in interest. Instead, like the challenger in *Cuozzo*, petitioner invokes the requirements of Section 312(a), which governs a "petition filed under section 311," 35 U.S.C. 312(a)—that is, a "petition to institute an inter partes review," 35 U.S.C. 311(a). That Section 312(a) challenge is "closely tied to the application and interpretation of statutes related to the Patent Office's decision to initiate inter partes review." *Cuozzo*,

579 U.S. at 275. And as in *Thryv*, "even labeled as an appeal from the final written decision, [petitioner's] attempt to overturn the Board's § [312(a)(2)] ruling is still barred by § 314(d)," because Section 312(a)(2)'s "sole office is to govern institution." 590 U.S. at 60.

3. Petitioner contends (Pet. 17) that the court of appeals' resolution of the standing issue conflicts with decisions of three other circuits that have recognized standing based on informational injuries. But those decisions merely applied informational-injury doctrine to disclosure requirements under other statutes. See *Campaign Legal Ctr.* v. *FEC*, 952 F.3d 352, 355-356 (D.C. Cir. 2020) (per curiam) (Federal Election Campaign Act); *Natural Res. Def. Council, Inc.* v. *EPA*, 961 F.3d 160, 168-169 (2d Cir. 2020) (Toxic Substances Control Act, Pub. L. No. 94-469, 90 Stat. 2003 (15 U.S.C. 2601 *et seq.*)); *Kelly* v. *RealPage Inc.*, 47 F.4th 202, 211-215 (3d Cir. 2022) (Fair Credit Reporting Act, Pub L. No. 90-321, 84 Stat. 1127 (15 U.S.C. 1681 *et seq.*)). Petitioner does not explain why those statutes should be viewed for these purposes as analogous to the AIA. See pp. 11-12, *supra*. None of the decisions that petitioner invokes suggests that any other court of appeals would conclude that petitioner has standing on the facts of this case.

4. Petitioner's lead argument (Pet. 11-14) is that this Court should grant review of the jurisdictional rulings below in order to allow petitioner to vindicate its merits position that 35 U.S.C. 312(a)(2) requires the Board to identify all real parties in interest, whether or not that issue affects the institution decision. But the USPTO now agrees with that position and has established precedential authority prescribing that approach in future agency proceedings. See pp. 4-5, *supra*. Those developments, which post-date the decision below, have greatly reduced

the practical significance of petitioner's claims. Contra Pet. 13 (asserting "massive impact"). Petitioner's speculation (Pet. 13 n.3) that "future administrations will make different choices" in applying Section 312(a)(2) does not support a grant of certiorari now; at most, it suggests that the Court may await future opportunities to address that potential issue if and when it arises.

5. At all events, this case would be an unsuitable vehicle to address the question presented. Contrary to petitioner's contention (Pet. 22) that the standing issue presents a "pure question of law," the court of appeals' resolution of that issue rested largely on a case-specific assessment that petitioner had failed to provide evidence to substantiate its alleged risks of future harm. See pp. 12-13, *supra*. That factbound conclusion independently justifies dismissal of petitioner's appeal for lack of jurisdiction, even if petitioner could prevail on its separate arguments that the AIA grants an informational right to the identities of real parties in interest and that 35 U.S.C. 314(d) does not bar judicial review. This Court "do[es] not grant * * * certiorari to review evidence and discuss specific facts," *United States* v. *Johnston*, 268 U.S. 220, 227 (1925); see Sup. Ct. R. 10, or to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties, *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882); see *Herb* v. *Pitcairn*, 324 U.S. 117, 126 (1945) ("[O]ur power is to correct wrong judgments, not to revise opinions.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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