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 RESPONDENT UNIFIED PATENTS, LLC IN OPPOSITION

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QUESTIONS PRESENTED

1. Does the basic filing requirement in 35 U.S.C. 312(a)(2) of "identif[ying] all real parties in interest" when filing a petition for *inter partes* review require the Patent Trial and Appeal Board to conduct a full adjudication of whether an IPR petition's identification of real parties in interest is correct, where that inquiry would have no impact on the case before the Board and would instead be a preemptive ruling on a non-party's rights in hypothetical, future litigation; and, if so, whether a patent owner has Article III standing to challenge the lack of such an adjudication where the patent owner cannot articulate any non-speculative harm.

2. Whether 35 U.S.C. 312(a)(2) is closely tied to the question of IPR institution, such that 35 U.S.C. 314(d) bars judicial review of a challenge to an IPR petition's disclosure under Section 312(a)(2).

CORPORATE DISCLOSURE STATEMENT

Under Supreme Court Rule 29.6, Respondent Unified Patents, LLC states that it has parent companies Unified Patents Acquisition, LLC, Unified Patents Holdings, LLC, Unified Patents Management, LLC, and UP HOLDCO INC. Respondent further states that no publicly held company owns 10% or more of Respondent.

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INTRODUCTION

Dolby prevailed in this *inter partes* review—it successfully defended its patent before the Patent Trial and Appeal Board, and it has full ability to assert that patent against potential infringers in the future. Yet Dolby appealed its win to the Federal Circuit, arguing the Board should have *also* provided it with an analysis of what other entities should be considered "real parties in interest"—a determination that would have absolutely no impact on this proceeding, but would purport to adjudicate the rights of non-parties to challenge the patent in the future

(without affording them the chance to be heard). The patent here has never been asserted, and Dolby did not even allege that the relevant entities had a license to the patent (or that Dolby was in licensing discussions with them). There is simply no concrete stake that would justify the extraordinary relief Dolby seeks.

Dolby bases its argument on 35 U.S.C. 312(a)(2)—a basic filing requirement akin to a corporate disclosure statement—which states that an IPR petition "may be considered only if" it "identifies all real parties in interest." Unified Patents, LLC's IPR petition complied with that requirement here: it correctly listed itself as the sole real party in interest for its IPR petition. The Board appropriately instituted the IPR, then handed Dolby a win on the merits. That should have been the end of this case.

But instead, Dolby now urges this Court to address questions that present no split in authority, have no real significance, and are unlikely to come up again in the future. According to Dolby, the Federal Circuit's decision in this case conflicts with this Court's precedent on multiple issues, conflicts with other circuit courts' decisions on informational standing, and denies patent owners the estoppel benefits of an IPR victory. None of this is correct.

The Federal Circuit correctly held that Dolby had not identified any non-speculative harm to establish Article III standing. Given the lack of any concrete harm, that was the correct result under this Court's precedent—and any other circuit would have concluded the same. The court also held that Section 312(a)(2) does not create some freestanding informational right to what Dolby seeks here. There is no split for this Court to address.

As to estoppel, nothing about the result here impacts Dolby's ability to assert estoppel against any entity in future cases. Dolby may prefer to have a preemptive ruling on the rights of other entities *now*, but it is not entitled to

one. Like every other litigant, Dolby must wait to raise estoppel in a later proceeding where it would actually have effect (if such a proceeding ever arises), as courts routinely require in other preclusion contexts.

The issues presented here lack any broader significance that would warrant the Court's intervention. This is especially so given recent changes to the Board's practice on this very issue—changes that ameliorate the Petition's complaints by requiring the Board to address real-party-in-interest disputes before instituting IPR. With that change, this issue is unlikely to come up again. Moreover, this case is a poor vehicle to address the questions presented. Not only did Dolby fail to develop an informational standing argument until its reply brief below, the Petition's injury-in-fact analysis embeds an implicit challenge to the Board's separate, discretionary confidentiality rulings, which implicates a distinct merits-based question.

Finally, this case presents an independent hurdle that Dolby cannot overcome: in addition to holding that Dolby lacked Article III standing to appeal, the Federal Circuit also held that the Section 312(a)(2) issue is unreviewable based on Section 314(d)'s bar on judicial review of issues "closely tied" to the question of institution. See *Cuozzo Speed Techs., LLC* v. *Lee*, 579 U.S. 261, 275-276 (2016) (holding Section 312(a)(3) issues unreviewable). The Petition makes no attempt to explain why that separate question is important or recurring enough to warrant review by this Court—perhaps because it is not. And there is no hint of a split on this question: a majority of the Federal Circuit's active judges have joined opinions confirming Section 312(a)(2) arguments are unreviewable. A run-of-the-mill application of existing reviewability precedent resolves this case completely. For this Court to even reach the standing issue, this Court would need to also address

the second question presented—and resolve it in a way that is contrary to every lower court decision on this issue.

The petition for a writ of certiorari should therefore be denied.

STATEMENT

A. Statutory Background

Congress enacted the America Invents Act ("AIA") "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) (quoting H.R. Rep. No. 112–98, pt. 1, p. 40 (2011)). To that end, the AIA provides that a petition for *inter partes* review "may be considered only if" it satisfies the requirements set forth in Section 312(a). 35 U.S.C. 312(a). Those include basic case-initiation requirements common across litigation contexts, such as paying the filing fee, 35 U.S.C. 312(a)(1); identifying all real parties in interest, 35 U.S.C. 312(a)(2); identifying the party's allegations (including each challenged patent claim, the grounds on which each challenge is based, and supporting evidence), 35 U.S.C. 312(a)(3); attaching key documents, *ibid.*; and providing any other information the Patent Office may require, 35 U.S.C. 312(a)(4). Consistent with common litigation practice, the petitioner must provide service copies of these documents to the patent owner. 35 U.S.C. 312(a)(5). The Patent Office, in turn, must make all filed petitions "available to the public" "[a]s soon as practicable." 35 U.S.C. 312(b).

Once a petition is filed, the Patent Office Director determines whether to institute an *inter partes* review proceeding. 35 U.S.C. 314(a). The AIA requires the Director to prescribe regulations governing *inter partes* review, including regulations for making the file publicly available,

establishing discovery procedures, handling confidential information, and setting deadlines. 35 U.S.C. 316(a).

Under Section 315(e), after an *inter partes* review concludes with a final written decision, the petitioner and any "real party in interest or privy of the petitioner" may not assert "any ground that the petitioner raised or reasonably could have raised during that inter partes review" in a later civil action, International Trade Commission proceeding, or Patent Office proceeding. 35 U.S.C. 315(e)(1)-(2).

Pertinent here, this Court has held that the AIA bars judicial review of the Director's "determination * * * whether to institute an inter partes review," as well as decisions "closely related" to that determination. 35 U.S.C. 314(d); *Thryv*, 590 U.S. at 48; *Cuozzo*, 579 U.S. at 275-276.

B. Facts and Procedural History

1. Unified Patents, LLC is a membership organization that "seeks to improve patent quality and deter unsubstantiated or invalid patent assertions in defined technology sectors." https://perma.cc/P6QT-BNBR. Unified provides a variety of services to its members, including analytics, prior art, patentability analysis, various administrative patent reviews, amicus briefs, economic surveys, and standard-essential-patent essentiality studies. *Ibid.* Unified also files international patent challenges, including in Europe, China, and Japan, contesting the validity of foreign patents. https://perma.cc/LL3E-JKBS. As an additional benefit to members, Unified also monitors patent ownership data and secondary-market patent sales. Accordingly, fees paid by Unified's members are used to provide a wide range of services.

Unified has used a variety of mechanisms to challenge patents Unified identifies as likely invalid, including

IPRs, ex parte reexaminations, reissue protests, pre-issuance submissions, and international challenges. The Petition's statement that filing IPRs is Unified's "primary activity" is both out of date (Unified has not filed an IPR in almost three years) and also fails to reflect the broader set of services Unified has long provided its members. See Pet. 6.

2. In December 2020,[1] Unified filed a petition for *inter partes* review challenging three of the eight claims of Dolby's U.S. Patent 10,237,577 (the '577 patent). Unified was the sole real party in interest to its petition, and it identified itself as such. Pet. App. 16a. That good-faith identification satisfied Unified's obligation under Section 312(a)(2). See 37 C.F.R. 42.11(a) (parties "have a duty of candor and good faith" during the proceeding); 37 C.F.R. 11.18(b) (certifications regarding statements made in papers submitted to the Patent Office).

Dolby nonetheless contended in its pre-institution response that nine other entities should be named as real parties in interest (the "Alleged RPIs").[2] None of those entities had been sued for infringement of the '577 patent—indeed, no one has *ever* filed an infringement suit involving this patent. And none of the Alleged RPIs would have been time-barred or estopped from pursuing an IPR challenging this patent. Nonetheless, because Dolby believed those Alleged RPIs should have been identified as real parties in interest, it urged the Board to deny institution of the IPR. *E.g.*, C.A. Non-Confidential App. 117

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[1] The Board's Final Written Decision incorrectly stated that the Board instituted this IPR on June 17, 2017. Pet. App. 14a. The Board instituted the IPR on June 17, 2021. See C.A. Non-Confidential App. 77-78 (Appx74-75) (ECF 52-1).

[2] The Petition states that Dolby presented "extensive evidence" that the Alleged RPIs are real parties in interest. *E.g.*, Pet. 22. Unified likewise presented extensive evidence countering that assertion.

(Appx3586) (ECF 52-1). Alternatively, Dolby asked the Board to require Unified to list those entities as real parties in interest. *Ibid.*

The Board declined to do so, following the Patent Office's then-binding precedent in *SharkNinja Operating LLC* v. *iRobot Corp.*, IPR2020-00734, Paper 11 at 18-20 (Oct. 6, 2020) (de-designated as precedential on Sept. 26, 2025). Pet. App. 16a. Under *SharkNinja*, the Board resolved real-party-in-interest disputes only when they would actually affect the current proceeding by implicating a time bar under 35 U.S.C. 315(b) or estoppel under 35 U.S.C. 315(e). Pet. App. 17a, 2a-3a. It is undisputed that neither issue was implicated here. Pet. App. 18a. Nor was there any evidence that Unified "purposefully omitted any of the Alleged RPIs to gain some advantage." *Ibid.* The Board accordingly followed *SharkNinja* and declined to resolve Dolby's question regarding the status of the Alleged RPIs. *Ibid.* The Board instituted the IPR.

After institution, Dolby continued to press the RPI issue, urging the Board to effectively allow a mini trial on whether nine separate entities might fall within the definition of the term.

On June 15, 2022, the Board issued a final written decision ruling entirely in Dolby's favor on the merits—upholding each challenged claim. Pet. App. 2a, 15a. Unified moved for rehearing on the patentability analysis, which the Board denied. Pet. App. 57a.

3. Despite prevailing, Dolby appealed to the Federal Circuit, challenging the Board's decision not to adjudicate the real-party-in-interest question. To support its Article III standing to appeal, Dolby's opening brief alleged four injuries-in-fact:

(1) deprivation of its right to know the identities of all real parties in interest under 35 U.S.C. 312(a)(2);

(2) deprivation "of the assurance that the Administrative Patent Judges assigned to the proceeding below did not have conflicts of interest";
(3) inability to know what entities might be estopped under 35 U.S.C. 315(e); and
(4) "the risk and ongoing threat of further *inter partes* review challenges by Unified that may not otherwise have been brought."

Dolby C.A. Br. 12-14 (ECF 11).[3] Later, on reply, Dolby invoked this Court's informational standing precedent in support of its new argument that "the Board deprived Dolby of its informational right under § 312(a)(2)." Dolby C.A. Reply 1-5 (ECF 50).

The Federal Circuit dismissed Dolby's appeal for lack of Article III standing. Pet. App. 2a. The court's reasoning was two-fold. First, the court expressly rejected Dolby's argument that 35 U.S.C. 312(a)(2) grants patent owners "an informational right." Pet. App. 5a, 7a.[4] Second, the court held that Dolby had failed to identify harm. Pet. App. 7a-9a.

The court determined that the AIA was not akin to the "public-disclosure or sunshine laws that entitle all members of the public to certain information" and that can confer informational standing under this Court's precedent. Pet. App. 5a (quoting *TransUnion LLC* v. *Ramirez*, 594

[3] Dolby also asserted that it had standing under 35 U.S.C. 319 and thus did not need to demonstrate Article III standing. Dolby C.A. Br. 12. The Federal Circuit rejected that argument, Pet. App. 4a-5a, and Dolby has not raised it before this Court.

[4] The Petition states that "the Federal Circuit, although finding Dolby suffered no injury, did not contend otherwise." Pet. 13. To the extent the Petition suggests that the Federal Circuit did not disagree with Dolby's understanding of Section 312(a)(2), that is incorrect. The court squarely held that "the AIA does not create an informational right." Pet. App. 7a (rejecting Dolby's Section 312(a)(2) argument).

U.S. 413, 441 (2021)). The court noted *Public Citizen* v. *U.S. Department of Justice* involved the Federal Advisory Committee Act (FACA), which required "that advisory committee minutes, records, and reports must be made publicly available." Pet. App. 5a (citing 491 U.S. 440, 449, 446-447 (1989)). Similarly, in *FEC* v. *Akins*, the Federal Election Campaign Act (FECA) "require[d] political committees to disclose detailed reports of donors, contributions, and expenditures"—so the denial of that information constituted an injury in fact. Pet. App. 6a (citing 524 U.S. 11, 14-15, 20 (1998)). Both *Public Citizen* and *Akins* thus involved laws that allowed public access to certain information that the plaintiffs allegedly were denied. *Ibid.*

The Federal Circuit concluded that Dolby's alleged injuries under 35 U.S.C. 312(a)(2) were meaningfully different. *Ibid.* Unlike FACA and FECA, the AIA does not have a public-disclosure purpose, nor did Dolby seek to enforce a public-disclosure right. *Ibid.* Rather, Dolby asserted "a right under 35 U.S.C. § 312(a)(2) to have RPI disputes adjudicated." *Ibid.* The Federal Circuit concluded there was no such right, but that even if that right exists, it "only arises in the context of IPR proceedings; there is no freestanding right to that information." *Ibid.* The court also relied on the AIA's judicial review bar in 35 U.S.C. 314(d), which bars review of IPR institution decisions, "includ[ing] decisions concerning the RPI requirement under 35 U.S.C. § 312(a)(2)." *Ibid.*

The Federal Circuit went a step further. It held that, even assuming such a right existed, Dolby failed to identify any concrete, non-speculative injury arising from the alleged denial of information. Pet. App. 7a-9a. Dolby won on the patentability merits before the Board. And Dolby did not seek to disturb that favorable result based on any alleged conflict by one of the Administrative Patent

Judges—regardless, the administrative judges knew the identities of the Alleged RPIs and could ensure a lack of conflicts. Pet. App. 8a.

Nor did Dolby show any non-speculative threat of future harm. Dolby did not even allege that any of the Alleged RPIs were subject to license agreements with Dolby or were engaging in activity that could trigger an infringement suit. *Ibid.* And it was "undisputed there is no pending or threatened litigation related to the '577 patent such that estoppel issues would be implicated." *Ibid.* In any event, the court noted Dolby would not be precluded from raising estoppel arguments in any future proceeding where that issue may become relevant. *Ibid.* The court also dismissed as pure speculation Dolby's assertion that the requested adjudication would somehow change *Unified's* future behavior. Pet. App. 8a-9a. All in all, the court concluded Dolby's alleged harms were "too speculative to establish Article III standing." Pet. App. 7a. Accordingly, the court dismissed the appeal.

Dolby filed a petition seeking rehearing by the panel or en banc, which the Federal Circuit unanimously denied. Pet. App. 10a-12a.

4. The Board handles real-party-in-interest determinations differently today. In September 2025, the Patent Office Director de-designated *SharkNinja* as precedential, meaning it is "no longer binding on the PTAB." See *PTAB de-designates SharkNinja Operating LLC* v. *iRobot Corp.*, USPTO (Sept. 26, 2025), https://perma.cc/7NP4-5LB4. And in October 2025, the Director issued a Memorandum "restoring the Office's pre-*SharkNinja* practice" and requiring the Board to address real-party-in-interest issues before instituting an IPR. See Memorandum regarding Precedential Designation of *Corning Optical Communications RF, LLC* v. *PPC*

Broadband Inc., IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (except for § II.E.1).

ARGUMENT

A. The Petition Does Not Present an Important Question Warranting This Court's Review

Review should be denied because the questions presented are insignificant and do not arise with any frequency.

1. Tellingly, the Petition makes no attempt to argue that this is a recurring issue. Nor could it, especially given the Patent Office's new guidance that eliminates Dolby's concern altogether. The Board's decision in this case rested on the now-withdrawn precedent in *SharkNinja*, which permitted the Board to decline to resolve real-party-in-interest questions that had no impact on the current proceeding (i.e., because there was no way that the IPR petitioner would be time-barred or estopped, so the proceeding would continue regardless). But *SharkNinja* is gone. The agency's new guidance requires the Board to address real-party-in-interest issues under Section 312(a)(2) before instituting an IPR. That new precedent completely ameliorates the Petition's concern, making it extremely unlikely—if not impossible—that this issue will come up again. Review by this Court would be pointless.

2. The Petition overstates the importance of the first question presented.[5] The primary argument the Petition raises is that a patent owner who successfully defends an IPR proceeding "cannot establish, *in that same proceeding,* the scope of the estoppel benefit they have obtained."

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[5] As addressed *infra*, the Petition provides *no* explanation as to why the second question presented (reviewability under 35 U.S.C. 314(d)) is important or recurring enough to warrant review. See *infra* pp. 21-24.

Pet. 13 (emphasis added). But that should come as no surprise—that is precisely how preclusion and estoppel doctrines work.

Arguments that a party is estopped or precluded from raising a particular challenge are typically addressed in a *subsequent* case, where the allegedly estopped party is present to defend its interests. *E.g.*, *Smith* v. *Bayer Corp.*, 564 U.S. 299, 307 (2011) ("[A] court does not usually 'get to dictate to other courts the preclusion consequences of its own judgment.' Deciding whether and how prior litigation has preclusive effect is usually the bailiwick of the *second* court." (citation omitted)). The same rule applies when the preclusive effect turns on an entity's status in the first litigation: the second-in-time court makes that determination. See, *e.g.*, *Klamath Irrigation Dist.* v. *United States*, 113 Fed. Cl. 688, 694-699 (2013) (assessing whether any plaintiffs in a previous case were assignees of the plaintiffs in the current case, to determine whether the jurisdictional bar in 28 U.S.C. 1500 applied).

And that is exactly how estoppel issues under 35 U.S.C. 315(e) have been handled. The real-party-in-interest question is addressed in the *subsequent* case where estoppel or a time bar would potentially apply. *E.g.*, *Uniloc 2017 LLC* v. *Facebook Inc.*, 989 F.3d 1018, 1028 (Fed. Cir. 2021) (analyzing whether LG was estopped from pursuing an IPR based on an argument that LG was a real party in interest to a prior IPR); *Samsung Elecs. Co.* v. *MemoryWeb, LLC*, IPR2022-00222, Paper 63 (PTAB Dec. 8. 2023) (public version at Ex. 2121) (holding the IPR petitioner was not a real party in interest to Unified's prior IPR proceeding and was, therefore, not estopped from challenging the patent in its own IPR).

Nothing about the Board's decision here would impact Dolby's ability to raise estoppel in future cases where it

may apply. As the Federal Circuit recognized, it is "undisputed there is no collateral estoppel effect of the Board's refusal to adjudicate the RPI dispute that would prevent Dolby from raising the issue in future proceedings, whether before the Board or in district court." Pet. App. 8a. Dolby will thus have every opportunity to gain "the full scope of the estoppel benefit" (Pet. 3) at the appropriate time.

3. The Petition briefly attempts to manufacture significance given the fact that the Federal Circuit is the only court to review Board decisions, so there is no opportunity for a split to develop. But that is true of every issue for which the Federal Circuit has exclusive jurisdiction. It says nothing about the significance of the particular issues presented here. And tellingly, there is not even a split *within* the Federal Circuit on this issue—not a single judge dissented from the denial of en banc rehearing.

In sum, this case lacks any broader significance that would warrant this Court's review. The Petition should be denied.

B. The Decision Below Does Not Conflict with Any Decision of Another Court of Appeals or Any Decision of This Court

Dolby alleged a violation of a statute that gives it no right to the relief it seeks—and identified no real-world harm regardless. The Federal Circuit correctly rejected that theory of standing based on this Court's precedent. Any other circuit would have done the same.

A bare statutory violation "does not mean that a plaintiff automatically satisfies the injury-in-fact requirement." *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 341 (2016), *as revised* (May 24, 2016). Concrete and particularized harm is always required. *Id.* at 340-343; *Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

Informational standing is no exception. It applies only to laws that "entitle all members of the public to certain information"—and even then, a plaintiff must identify concrete "'downstream consequences' from failing to receive the required information." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 441-442 (2021) (quoting *Trichell* v. *Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020)); see also *FEC* v. *Akins*, 524 U.S. 11, 24-25 (1998) (analyzing whether "the informational injury at issue here" was "sufficiently concrete and specific"). Applying that precedent, the Federal Circuit correctly concluded that Dolby's allegations fail at every step.

1. Dolby cobbles together several subsections of the AIA and claims they entitle it to an adjudication of whether the Alleged RPIs should have been identified as real parties in interest in Unified's petition. Pet. 15-16; see generally 35 U.S.C. 312 and 35 U.S.C. 316. But those provisions do not create a "public-disclosure" right to the relief Dolby seeks. *TransUnion*, 594 U.S. at 441; Pet. App. 5a.

Public-disclosure laws create a "substantive entitlement" for the public "to receive information." *Trichell*, 964 F.3d at 1004; *TransUnion*, 594 U.S. at 441; see, *e.g.*, *Pub. Citizen* v. *U.S. Dep't of Just.*, 491 U.S. 440, 446-447, 449 (1989) (Federal Advisory Committee Act "stipulates that advisory committee minutes, records, and reports be made available to the public"); *Akins*, 524 U.S. at 14-15 (Federal Election Campaign Act of 1971 has "disclosure requirements" requiring political committees to file reports with donor lists, contributions, expenditures, and disbursements).

The AIA is quite different. Section 312 prescribes what a petition must include to be "considered." 35 U.S.C. 312(a). It also requires the *petitioner* to give the patent owner a copy of certain documents—which Unified has

done. 35 U.S.C. 312(a)(5).[6] But Section 312(a) does not mention or require anyone to disclose anything to the public. The other provisions Dolby cites require public access only to petitions received by the Board, 35 U.S.C. 312(b),[7] and "the file of any proceeding under this chapter," 35 U.S.C. 316(a)(1). Dolby already has access to Unified's petition and the files from this proceeding. In short, Dolby's complaint is simply not about access to information that the Board was required, but failed, to disclose.

What Dolby really wants is for the Board to resolve a disputed factual question that has no bearing on this case—whether nine entities are real parties in interest—and *then* unseal their names.[8] That is an adjudicatory demand, not a disclosure demand. Put another way, disclosing the only information the Board is required to disclose (the petition and the case file), as the Board properly did here, still does not give Dolby the relief it actually seeks. So even on Dolby's erroneous reading of Section 312 that would construe the AIA as a public-disclosure law, Dolby's claim is not one for information—and thus cannot confer informational standing. See *Campaign Legal Ctr.*

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[6] Dolby contends "Congress added § 312(a)(5) to ensure that patent owners receive 'the same identification of any real parties in interest or privies *that is provided to the [Patent] Office*.'" Pet. 5 (emphasis added) (quoting 157 Cong. Rec. S1375 (Mar. 8, 2011) (statement of Sen. Kyl)). But that does not entitle Dolby to anything *more* than what is in the petition itself.

[7] At the Federal Circuit, Dolby cited this provision for the first time in its reply brief, asserting—correctly—that 35 U.S.C. 312(b) requires public disclosure of only "*the petitioner's identification of* its real parties in interest." Dolby C.A. Reply 7 (ECF 50) (emphasis added).

[8] As addressed *infra*, much of the harm Dolby alleges in its Petition is based on the Board's discrete *confidentiality* rulings regarding sealed evidence—an entirely separate merits issue. See *infra* pp. 19-21.

& Democracy 21 v. *FEC*, 952 F.3d 352, 356 (D.C. Cir. 2020) ("a denial of access to information qualifies as an injury in fact" only if the "statute (on the claimant's reading) requires" the public disclosure of the information that the plaintiff seeks (quotation omitted)); see also *TransUnion*, 594 U.S. at 441 (rejecting informational standing because the "plaintiffs did not allege that they failed to receive any required information").

2. Even if the AIA could somehow be considered a public-disclosure law, the Federal Circuit correctly held Dolby had no standing because it identified no non-speculative harm. Pet. App. 7a-9a; see *TransUnion*, 594 U.S. at 442; *Spokeo*, 578 U.S. at 342.

First, Dolby insists the Federal Circuit ignored that the Board's refusal to adjudicate the RPI issue "hinders" Dolby's "estoppel rights" against the Alleged RPIs "in the future." Pet. 10, 18. Not so. The Federal Circuit expressly rejected that argument. It was "undisputed" that "there is no pending or threatened litigation related to the '577 patent such that estoppel issues would be implicated." Pet. App. 8a. It was also "undisputed" that "there is no collateral estoppel effect of the Board's refusal to adjudicate the RPI dispute that would prevent Dolby from raising the issue in future proceedings, whether before the Board or in district court." *Ibid.* As discussed above, Dolby will have a full opportunity to argue for estoppel based on RPI status if a potential estoppel scenario actually arises in the future. Dolby's purported loss of its estoppel rights is a complete fiction—not a concrete harm.

Second, the Federal Circuit correctly rejected Dolby's speculative assertions about potential future licensing agreements or infringement suits. Dolby did "not argue any of the Alleged RPIs are subject to license agreements with Dolby, much less provide evidence the Alleged RPIs are breaching license agreements." Pet. App. 7a. Nor did

"Dolby claim that any of the Alleged RPIs is engaged in, or intends to engage in, activity that may trigger an infringement suit." Pet. App. 8a.[9] Again, without a present dispute or even the prospect of one, Dolby's licensing and infringement theories are pure conjecture.

Accordingly, even if the AIA afforded a right to adjudication of whether the Alleged RPIs are real parties in interest, Dolby has identified no "downstream consequences from failing to receive" that information—meaning this Court's precedent forecloses informational standing on this record. *TransUnion*, 594 U.S. at 442 (quotation omitted); see also *Spokeo*, 578 U.S. at 342.

3. The Petition's effort to manufacture a circuit split on the informational standing issue falls flat. Pet. 17. As an initial matter, the Petition cannot even muster a split among judges within the Federal Circuit—not a single judge dissented from the denial of en banc rehearing here. Pet. App. 10a-12a. And for other circuits, the Federal Circuit's decision aligns exactly with the circuit court cases the Petition cites. *Ibid.*

Like this Court, the Second, Third, and D.C. Circuits limit informational standing to (1) statutes affording the public an entitlement to particular information, and (2) cases where the plaintiff has shown harm caused by the non-disclosure of that information. *Kelly* v. *RealPage Inc.*, 47 F.4th 202, 214 (3d Cir. 2022) (informational standing requires plaintiffs to show "(1) the omission of infor-

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[9] Contrary to Dolby's contention, the court did not reject this alleged harm by saying that "Dolby had not shown that any of the nine entities infringes the '577 patent." Pet. 11. The Federal Circuit instead rightly stated that any future infringement suit was entirely hypothetical because Dolby did not allege that any Alleged RPI is currently engaging in, or may in the future engage in, activity that "may" trigger an infringement suit. Pet. App. 8a.

mation to which they claim entitlement, (2) 'adverse effects' that flow from the omission, and (3) the requisite nexus to the 'concrete interest' Congress intended to protect"); *Campaign Legal Ctr. & Democracy 21*, 952 F.3d at 356 ("The law is settled that a denial of access to information qualifies as an injury in fact where a statute (on the claimants' reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them."); *NRDC, Inc.* v. *EPA*, 961 F.3d 160, 168 (2d Cir. 2020) (same); see also *Trichell*, 964 F.3d at 1004 (rejecting an informational standing claim because the statute created "no substantive entitlement to receive information" and the plaintiffs identified no "consequential harms from the failure to disclose the contested information").[10]

So the Federal Circuit's analysis would look the same under any circuit's precedent, with the same outcome. Dolby nonetheless claims the Federal Circuit got it wrong. That is not a circuit split—it is a losing argument in search of a second chance.

C. This Case Is a Poor Vehicle for Deciding the Questions Presented

In any event, this case is an inadequate vehicle to address the questions presented for multiple reasons.

First, Dolby has reframed its case at the certiorari stage around statutory provisions it cited only *in passing* in its *reply brief* below. See 35 U.S.C. 312(a)(5), (b); 35 U.S.C. 316(a)(1); Dolby C.A. Reply 1, 7 (ECF 50). Dolby

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[10] *Campaign Legal Center* and *NRDC* each issued before *TransUnion*. Thus, to the extent they could be read as requiring only a bare assertion of harm, this Court's subsequent decision in *TransUnion* governs and squarely requires a plaintiff to identify "'downstream consequences' from failing to receive the required information." 594 U.S. at 442 (quoting *Trichell*, 964 F.3d at 1004).

did not cite these provisions in its opening brief below, ECF 11, and the Federal Circuit's decision (appropriately) did not address them. Additional percolation would be warranted—if this issue ever arises again—so that the Federal Circuit has the opportunity to construe these statutory provisions in the first instance, before this Court is asked to do so without the benefit of even a single circuit court decision on point. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (this Court is a "court of review, not of first view").

Second, and relatedly, Dolby failed to adequately develop an informational standing argument before the Federal Circuit. Its opening brief below alleged general harms, and did not frame the arguments in terms of informational standing. That left the lower court without a developed argument (or full briefing) to address this issue. For instance, the primary authority the Petition now cites (*Public Citizen*, see Pet. 15) appeared nowhere in Dolby's opening brief below. See generally Dolby C.A. Br. (ECF 11).[11]

Third, the question of injury is not cleanly presented. In discussing purported harms, the Petition conflates the Board's decision not to conduct a mini-trial on a non-party's rights with the Board's separate *confidentiality* rulings. It argues that "[b]ecause of the Federal Circuit's decision, Dolby itself remains unaware of the names of the nine entities it has asked the Board to identify as [RPIs]," and that "Dolby simply *will not know* if a future IPR filed against the '577 patent has been brought by one of the nine entities at issue below." Pet. 18. And the Petition

[11] Arguments not raised in the opening brief are generally deemed forfeited. See *McIntosh* v. *Dep't of Def.*, 53 F.4th 630, 641 (Fed. Cir. 2022).

raises that same complaint about access to sealed evidence, such as documents and deposition testimony. *Ibid.* But Dolby's inability to access that information at the present time is a result of the Board's case-specific *confidentiality rulings*. If the Board had unsealed that information—or unseals it in the future—Dolby *would* have access to it.

Indeed, making confidential information public after a case concludes is the Board's *default* procedure. The Board's Trial Practice Guide explains that "[c]onfidential information that is subject to a protective order *ordinarily* would become public * * * 45 days after final judgment in a trial" unless a motion to expunge that information is granted. See PTAB Trial Practice Guide E.6 (emphasis added), available at https://perma.cc/8X3D-78MJ; see also 37 C.F.R. 42.56. Thus, under the Board's "ordinar[y]" practice, the confidential information in case filings will become public if either (a) Unified chooses not to file a motion to expunge; or (b) Unified files such a motion, and the Board denies it. Motions to expunge are typically filed after all appellate proceedings have concluded, so that process has not yet occurred here. See, *e.g.*, *Halliburton Energy Servs., Inc.* v. *U.S. Well Servs., LLC*, IPR2021-01032, Paper 60 at 2 (PTAB Mar. 23, 2023) (denying motions to expunge as "premature" based on pending appeals and allowing movant to re-file "after the conclusion of proceedings on appeal"). If Dolby is simply seeking the identities of the Alleged RPIs, that issue is more appropriately resolved through the Board's existing confidentiality and expunction procedures.[12]

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[12] The Petition states that the protective order in this case requires sealed information to be destroyed within 60 days of the final disposition of this action, but that misunderstands the protective order.

More fundamentally, Dolby's quarreling about access to confidential information confirms that what Dolby actually seeks is not simply *information*. Access to the identity of the nine Alleged RPIs is just a confidentiality-ruling issue. What Dolby actually wants is something much more—preemptive adjudication of a non-party's rights with respect to hypothetical, future litigation. Trying to force that result by incorrectly characterizing the AIA as a "public disclosure" law is simply a poor fit.

D. The Petition's Request to Address 35 U.S.C. 314(d) Does Not Warrant Review and Instead Confirms that Both Questions Presented Should Be Denied

1. The Federal Circuit's separate holding—that the judicial-review bar in 35 U.S.C. 314(d) prohibits review of real-party-in-interest issues under 35 U.S.C. 312(a)(2)—further underscores why the Court should deny review of both questions presented. Pet. 19-22; Pet. App. 6a-7a. The Petition concedes this was a "separate[]" basis for the Federal Circuit's decision (Pet. 3), and it thus is an independent hurdle Dolby must overcome to justify review of *either* question presented. Even if the first question presented warrants review (it does not), the Court would need to *also* address the second question presented—and decide that question in a way that runs contrary to all circuit court precedent on the issue—to provide any meaningful relief.

The Petition provides no explanation as to why review of the Federal Circuit's application of Section 314(d) to the facts here is warranted. The Petition never even argues that this second question on reviewability is somehow

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Pet. 18-19. The provision requiring destruction of confidential information governs "each *party*"—not the Board itself. C.A. Non-Confidential App. 941 (Appx5001, ¶ 11) (ECF 52-1) (emphasis added). Dolby cites nothing that would require the *agency* to destroy that information.

noteworthy, recurring, or important. See Pet. 19-22. Nor does the Petition identify any hint of a split among the Federal Circuit judges as to how existing Section 314(d) precedent applies here. To the contrary, a clear majority of the court's active judges have joined decisions holding that Section 314(d) bars review of compliance with Section 312(a)(2) because Section 312(a)(2) is an institution-focused statute. See *Fed. Express Corp.* v. *Qualcomm Inc.*, — F.4th —, No. 2024-1236, 2026 WL 1153767, at *5 (Fed. Cir. Apr. 29, 2026) (precedential) (Judges Hughes, Cunningham, and Stark); Pet. App. 2a (Chief Judge Moore and Judge Chen)[13]; *ESIP Series 2, LLC* v. *Puzhen Life USA, LLC*, 958 F.3d 1378, 1385-1386 (Fed. Cir. 2020) (Judges Lourie and Reyna); *CyWee Grp. Ltd.* v. *Google LLC*, 847 F. App'x 910, 912-913 (Fed. Cir. 2021) (unpublished) (Judges Prost and Taranto), mandate recalled on other grounds in light of *United States* v. *Arthrex*, 141 S. Ct. 1970 (2021). And when given the opportunity, not a single judge dissented from the denial of en banc rehearing on this reviewability issue (or any issue Dolby raised). See Pet. App. 10a-12a; Dolby C.A. Request for R'hg 10-14 (ECF 96). This case presents—and is entirely resolved by—nothing more than a mundane application of existing Section 314(d) precedent.

2. At most, the Petition accuses the Federal Circuit of failing to cite this Court's decisions in *SAS Institute, Inc.* v. *Iancu*, 584 U.S. 357 (2018), and *Cuozzo Speed Technologies, LLC* v. *Lee*, 579 U.S. 261 (2016). Pet. 20. But the Federal Circuit relied on decisions that expressly cite and apply both *Cuozzo* and this Court's more recent (and more applicable) precedent in *Thryv, Inc* v. *Click-To-Call Technologies, LP*, 590 U.S. 45 (2020). Pet. App. 6a-7a (citing

[13] Judge Clevenger assumed senior status in 2006.

ESIP Series 2, 958 F.3d at 1386, and *SIPCO, LLC* v. *Emerson Elec. Co.*, 980 F.3d 865, 869 (Fed. Cir. 2020)).

Thryv held that Section 314(d) bars judicial review of the Board's time-bar determination under 35 U.S.C. 315(b) because Section 315(b)'s "sole office is to govern institution." 590 U.S. at 60. Thus, a dispute about Section 315(b) is "essentially" just an argument "that the agency should have refused to institute inter partes review." *Ibid.*

Section 312(a)(2) is even more "closely tied" to the question of institution. See *Cuozzo*, 579 U.S. at 275. It is one factor that determines when a petition "may be considered," and it serves no function beyond that. 35 U.S.C. 312(a). Thus, like 35 U.S.C. 315(b), its "sole office is to govern institution." See *Thryv*, 590 U.S. at 60. Indeed, *Cuozzo* addressed Section 312(a)(2)'s immediate neighbor—Section 312(a)(3)—and held that a challenge based on that provision is unreviewable because it is "little more than a challenge to the Patent Office's conclusion" that the petition "warranted review." *Cuozzo*, 579 U.S. at 276. The Petition makes no attempt to explain why these two adjacent provisions, both of which address basic case-initiation requirements, should be treated differently.

Dolby cites *SAS Institute* to argue that compliance with Section 312(a)(2) is reviewable because it governs "the manner in which the agency's review 'proceeds,'" rather than the question of institution. See Pet. 21-22. But the Federal Circuit recently rejected that exact framing of this argument, reiterating that a challenge to whether an IPR petition complies with Section 312(a)(2) "ultimately still boils down to a challenge over whether there should have been institution at all." *Fed. Express Corp.*, 2026 WL 1153767, at *5; cf. *Ethanol Boosting Sys., LLC* v. *Ford Motor Co.*, 162 F.4th 1151, 1159 (Fed. Cir. 2025) ("[I]f the challenge focuse[s] on a statute which has force

only in the institution context, i.e., a prerequisite for institution, then the appellant's challenge *necessarily* target[s] the institution decision.").

Dolby states that, before the Federal Circuit, it did not challenge the Board's decision to institute review. See Pet. 20. But Dolby's attempt to frame Section 312(a)(2) as something beyond an institution-related requirement is belied not only by the statutory text, but also by Dolby's first substantive filing before the Board, where it urged the Board to *deny institution* based on Unified's alleged non-compliance with Section 312(a)(2). *E.g.*, C.A. Non-Confidential App. 117 (Appx3586) (ECF 52-1). Section 312(a)(2) is simply an institution-focused filing requirement that governs "whether the agency should have instituted review at all"—and nothing more. *Thryv*, 590 U.S. at 58 (distinguishing *SAS Institute*).

In short, beyond a conclusory assertion that the Federal Circuit's decision "conflicts with this Court's precedent interpreting § 314(d)," Pet. 19, the Petition cannot identify what that conflict actually is—or why this Court should intervene. Because addressing this reviewability question would be necessary for this Court to provide meaningful relief as to the first question presented, this on its own confirms the Court should deny review of both questions presented.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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