No. 25-1068

In the
Supreme Court of the United States

CAO LIGHTING, INC.,
Petitioner,
v.
WOLFSPEED, INC., ET AL.,
Respondents.

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

BRIEF OF *AMICI CURIAE* THE ASSOCIATION FOR AMERICAN INNOVATION AND PROFESSORS OF LAW IN SUPPORT OF PETITIONER

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The Association for American Innovation (https://aainnovation.org) ("AAI") is a diverse coalition of innovation ecosystem stakeholders. From authors, inventors, scientists, manufacturers, and engineers to attorneys, intellectual property professionals, policy experts, entrepreneurs, and investors. Our vision is a world in which America is the unquestioned leader in technological innovation, along with its allies and partners. We represent a broad range of technology sectors and are committed to supporting and promoting American technological innovation. Our mission is rooted in a strong belief: innovators must be given preference over implementers. Innovation only happens when the legal and economic systems guarantee innovators are rewarded for their breakthroughs. *Without the breakthrough, there is nothing to build.*

Professor Francisco Tschen is a Visiting Lecturer at Florida International University College of Law. His scholarship focuses on patent law and related questions of administrative and international law. Professor Tschen served at the U.S. Patent & Trademark Office ("USPTO") where he worked as a Primary Patent Examiner and the Office of International Patent Cooperation. He has a strong

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[1] Pursuant to Supreme Court Rule 37.6, counsel for the *amici curiae* certifies that no party or counsel for any party authored this brief in whole or in part and that no person or entity other than the *amici* made a monetary contribution intended to fund the preparation or submission of the brief. Rule 37.2 notice of the intent to file this brief was timely provided by email to counsel of record for Petitioner and for Respondent.

scholarly interest in the legal rules applied by and to the USPTO.

Professor Timothy T. Hsieh is an Associate Law Professor at the Oklahoma City University School of Law. His research and teaching focus on administrative law, legislation and regulation, antitrust and patent law. Professor Hsieh previously practiced patent litigation, served as a judicial law clerk for active federal patent judges, and worked as an Patent Examiner at the U.S. Patent & Trademark Office ("USPTO"). His professional experience and his areas of scholarship give him a strong interest in the sound development of the intersection between patent and administrative law.

Both Professor Tschen and Professor Hsieh submit this brief to underscore the importance of the question presented to the constitutional separation of powers and to the predictable administration of our Nation's patent system.

SUMMARY OF ARGUMENT

CAO Lighting's petition argues that where there is a conflict between the PTAB and an Article III court on an issue of law, or where the PTAB decides a legal question without notice or opportunity to be heard, it is imperative that the Federal Circuit address both the PTAB's ruling on the legal issue and the conflict in a written opinion consistent with *Loper Bright*, the APA, and 35 U.S.C. § 144. We agree and support Petitioner's argument regarding the late breaking claim construction that violated the APA and the failure of the Federal Circuit to provide a required analysis. We write separately to point out additional PTAB deviance in this case that contradicts the APA

with further ramifications for Rule 36 and Section 144. This deviance by the PTAB and the failure by the Federal Circuit to perform its oversight negatively impact the innovation ecosystem that Amici fight to protect.

This case presents a pressing question at the intersection of patent law and administrative law, and Article III separation of powers: whether the Federal Circuit may allow the Patent Trial and Appeals Board ("PTAB") to sustain invalidity on new dispositive grounds for satisfying adopted claim constructions without fair notice, a meaningful opportunity to respond, or meaningful judicial explanation, consistent with this Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)—a decision restoring judicial duty and rejecting agency deference. The District of Delaware had already construed the relevant claim term, and the PTAB purported to adopt that same construction. *See CAO Lighting, Inc. v. GE Lighting, Inc.*, No. 1:20-cv-00681, Mem. Order at 18 (D. Del. May 10, 2022); Final Written Decision at 53*, Wolfspeed, Inc. v. CAO Lighting, Inc.,* IPR2022-00847, Paper 69 (P.T.A.B. Sept. 28, 2023) ("FWD"). But rather than decide the claim on the grounds on which the claims were challenged, the PTAB sustained invalidity on broader grounds than the petition identified with particularity. *Cf.* 35 U.S.C. § 312(a)(3). The PTAB also made dispositive a threshold the district court had already held was a factual question for the jury. *See id.* at 21–22, 50–52; *CAO Lighting*, No. 1:20-cv-00681, Mem. Order at 13–14. The Federal Circuit then affirmed in one word through Rule 36, effectively

abdicating its Article III responsibility to provide reasoned judicial review. This Court should grant certiorari to ensure *Loper Bright* restores meaningful judicial oversight rather than permitting agencies to expand invalidity grounds while courts remain silent.

ARGUMENT

I. The PTAB Violated the Administrative Procedure Act by Sustaining Invalidity by Markedly Deviating from the Petition's Grounds Identified with Particularity

The Administrative Procedure Act ("APA") places adjudication on a simple premise: an agency may not decide a case on a dispositive ground the parties were never fairly given a chance to meet. *See* 5 U.S.C. §§ 554, 556, and 706(2)(D); *Qualcomm Inc. v. Intel Corp.*, 6 F.4th 1256, 1261–64 (Fed. Cir. 2021); *Dell Inc. v. Acceleron, LLC*, 818 F.3d 1293, 1301–02 (Fed. Cir. 2016). As this Court explained in *SAS*, the statute "envisions that a petitioner will seek an inter partes review of a particular kind—one guided by a petition describing 'each claim challenged' and 'the grounds on which the challenge to each claim is based.'" *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364, 138 S. Ct. 1348, 1355 (2018) (quoting 35 U.S.C. § 312(a)(3)). Yet the Patent Trial and Appeal Board ("PTAB") disregarded that rule in two related ways. First, the PTAB sustained invalidity of a claim on broader grounds than the ground on which the petition had identified "with particularity." 35 U.S.C. § 312(a)(3). S*ee* Petition for Inter Partes Review at 53–54, *Wolfspeed, Inc. v. CAO Lighting, Inc.*, IPR2022-00847 (P.T.A.B. May 31, 2022) ("Pet").

Second, the PTAB also made dispositive a factual threshold on the meaning of "non-negligible," even though the District Court had already held that whether that threshold was "non-negligible" was a factual question for the jury and petitioner's own counsel told the PTAB at the hearing that the issue was "not important to determine that here." Transcript of Oral Hearing at 41:9–41:23, *Wolfspeed, Inc. v. CAO Lighting, Inc.*, IPR2022-00847 (P.T.A.B. July 18, 2023) (Paper 65) ("Tr.")

I.A The PTAB Sustained Invalidity on a Broader Theory than the Petition Set Out for Element [21pre, a]

The PTAB cannot advance a theory it finds more persuasive that markedly deviates from what petitioner relied upon. See *M & K Holdings, Inc. v. Samsung Elecs. Co.*, 985 F.3d 1376, 1385 (Fed. Cir. 2021). In *SAS*, this Court explained that inter partes review is "guided by a petition" and that "it's the petitioner, not the Director, who gets to define the contours of the proceeding." *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364–65, 138 S. Ct. 1348, 1355–56 (2018). That principle has been applied by the Federal Circuit under the APA, and found to have violated the APA where under the mantle of their agency power, the PTAB "craft[s] its own theory of unpatentability," or relies on portions of the prior art different from those presented in the petition and essential to its obviousness finding. See *Arthrex, Inc. v. Smith & Nephew, Inc.*, 935 F.3d 1319, 1328 (Fed. Cir. 2019) (discussing violations of APA by the PTAB in *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364 (Fed. Cir. 2016) and *In re NuVasive, Inc.*, 841 F.3d 966, 967 (Fed. Cir. 2016)).

Despite precedent squarely on point, the PTAB did exactly that here by purporting to adopt the same claim construction as the District Court and relying on portions of the prior art different than those presented to invalidate under an obviousness standard. Notably, under section 312(a)(3), the petition challenged Element [21pre, a], particularly as "Krames discloses this" because it teaches "[a] power output of over 170 mW … at a drive current of 1.5 A dc." Pet. 53–54. Patent Owner answered that ground as presented. The PTAB then sustained invalidity on a broader rationale, concluding that Patent Owner had not persuasively disputed that the Krames chip was capable of meeting the limitation at amperages lower than the 1.5A on which the petition relied upon. Judge Range raised the "procedural concern" observing that "a person of skill would know to go lower. Like how do I know from the petition that that's what you meant?" Tr. 15:24–16:4. Krames was capable if it would "run it [at] lower" amperages (i.e. lower than 1.5A). *Id.* at 21:1-21:5 This was a different dispositive theory for satisfying claim 21 than the one the petition itself identified with particularity for Element [21pre, a].

I.B The Hearing Confirms that the PTAB and the Parties Understood the 170mW/1.5A as the Operative Petition Ground.

The hearing confirms that the petition's challenge focused on the 170mW/1.5A ground that Patent Owner was reasonably called upon to meet. Judge Range identified a procedural concern and asked how the Board could know from the petition that petitioner meant a broader lower current ground rather than the petition's specific 170mW/1.5A

ground. Tr. 15:24–16:4. Judge Kaiser likewise observed that, in Patent Owner's position, he probably would have instructed the expert to analyze 1.5A "because that's what the petition talks about," and asked why the petition had focused on that datapoint rather than the supposedly more "realistic" lower-current operation. *Id.* at 18:25–19:19. Petitioner responded that citing 170mW/1.5A had simply been the "expedient" way to address the limitation. *Id.* at 19:5–19:16.

That exchange confirms both that the Board recognized the notice problem and that petitioner was defending, at oral argument, a broader ground than the petition had clearly set out for Element [21pre, a]. But the point of inter partes review is that the petition—not later oral clarification—defines the grounds of the case. See *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364–65, 138 S. Ct. 1348, 1355–56 (2018); *M&K Holdings, Inc. v. Samsung Elecs. Co.*, 985 F.3d 1376, 1385–86 (Fed. Cir. 2021). The PTAB nonetheless used that broader "capable of" rationale to sustain invalidity. Patent Owner was entitled to answer the grounds the petition actually identified with particularity—not every possible way petitioner might later say the limitation could be satisfied. The PTAB nonetheless used that broader "capable of" rationale to sustain invalidity. A reactive exchange at hearing cannot cure the petition's failure to identify with particularity the broader ground the Board ultimately adopted. Under the APA, Patent Owner was entitled to fair notice in the petition itself, not after-the-fact clarification at oral argument.

I.C The PTAB also Violated the APA by Converting a Factual Inquiry into a Threshold Without Fair Notice

The PTAB committed the same kind of procedural error on the patent's claim 8 reflective layers issue. In parallel litigation, the District Court had rejected Defendants' effort to impose a rigid quantitative construction of the reflective layers, holding only that the reflective layers must reflect more than a negligible amount of light, and expressly concluded that whether any accused product or prior art reflects a non-negligible amount of light is "a question of fact for the jury." *CAO Lighting, Inc. v. GE Lighting, Inc.*, No. 1:20-cv-00681, Mem. Order at 13–14 (D. Del. May 10, 2022). The PTAB purported to adopt essentially that same construction, but then displaced the district court's law-fact line by making dispositive a one-percent threshold (for what counts as the non-negligible amount of light) that neither party had litigated as the governing threshold.

The PTAB established its one-percent threshold through a hearing exchange that did not provide the notice the APA requires. As the Federal Circuit explained in *Qualcomm Inc. v. Intel Corp.*, 6 F.4th 1256, 1264 (Fed. Cir. 2021) a "single question-answer exchange" and an "offhand comment" do not provide adequate notice that the Board is about to make a proposition dispositive. Yet that is effectively what happened here. This one-percent threshold did not appear in the parties' claim-construction briefing as the rule that would decide the case. Instead, the transcript reflects one substantive question from Judge Range to petitioner's counsel, followed by a brief citation follow-up, after which counsel

immediately told the Board that "it's not important to determine that here." Tr. 41:9–41:23. The Board did not announce a proposed one percent threshold, request supplemental briefing, or ask Patent Owner any question on whether "non-negligible" should be reduced to a fixed numerical floor. The PTAB nonetheless later held that "as little as one percent light reflectance is 'non-negligible' in this context." FWD 21–22. That threshold was never fairly presented through the adversarial process. Thus, the PTAB failed to follow *Qualcomm's* notice rule and in doing so, violated the APA.

II. Rule 36 Affirmance Was Inadequate and Not Conducive to Meaningful Review given the Conflict with the District Court and APA Violations Regarding the Bounds of PTAB's Power

Rule 36 affirmance was inadequate here because it left unexplained how the Federal Circuit resolved the dispositive issues presented on appeal. This was not a routine appeal turning only on whether the PTAB had enough evidence in the aggregate to support invalidity. The appeal instead presented two antecedent questions of law and process: whether the PTAB could sustain invalidity on a broader theory than the petition had identified for Element [21pre, a], and whether the PTAB could convert a factual inquiry about "non-negligible" reflectance into a dispositive one-percent threshold. Yet the Federal Circuit affirmed in one word.

In that posture, the affirmance under Rule 36 was not conducive to meaningful APA review. When the PTAB makes dispositive a legal or quasi-legal theory that differs from the way an Article III court

treated the same claim issue, an unexplained affirmance leaves no way to know whether the Federal Circuit independently agreed with the agency's reasoning, regarded any procedural defect as harmless, or affirmed on some narrower ground. The problem, then, is not simply brevity. It is the absence of the explanation needed to determine whether the PTAB acted within the petition-defined contours of the proceeding and within the procedural limits the APA imposes.

II.A The Rule 36 Judgment Leaves Unexplained whether the Federal Circuit Approved the PTAB's Broadened Grounds for Claim 21, its One-Percent Threshold, or Some Other Rationale

Claim construction is a question of law. *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 325 (2015). And the Federal Circuit has recognized that neither it nor a district court is bound by the PTAB's claim constructions. *DDR Holdings, LLC v. Priceline.com LLC*, 122 F.4th 911, 918 (Fed. Cir. 2024). While Rule 36 permits the court to "dispense with issuance with issuing an opinion would have no precedential value," *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1556 (Fed. Cir. 1997), that is not the case here. Summary affirmances should "prevent lower courts from coming to opposite conclusion on the precise issues presented and necessarily decided by those actions." *Mandel v. Bradley*, 432 U.S. 173, 176, 97 S.Ct. 2238, 53 L.Ed.2d 199 (1977). See *Phil-Insul Corp. v. Airlite Plastics Co.*, 854 F.3d 1344, 1355 (Fed. Cir. 2017)

But the Rule 36 judgment leaves unexplained whether the Federal Circuit independently agreed

with the PTAB's broadened grounds under Element [21pre, a], whether it independently approved the PTAB's one-percent threshold for "non-negligible" reflectance, whether it thought either APA defect was harmless, or whether it affirmed on some other rationale altogether. That silence matters because these were the steps that determined invalidity. A Rule 36 judgment "simply confirms that the trial court entered the correct judgment" and "does not endorse or reject any specific part" of the tribunal's reasoning. *Rates Tech., Inc. v. Mediatrix Telecom, Inc.*, 688 F.3d 742, 750 (Fed. Cir. 2012); *see also Phil-Insul Corp. v. Airlite Plastics Co.*, 854 F.3d 1344, 1355–57 (Fed. Cir. 2017). If the Federal Circuit believed PTAB had provided enough notice under the APA, or that the PTAB was entitled to move from the petition's specific 170mW/1.5A ground to broader grounds, or that the PTAB could convert a factual inquiry about non-negligibility into a dispositive one-percent threshold, the Rule 36 affirmance does not say so. Nor does it reveal whether the court instead affirmed on some narrower basis.

In a case like this, where the appeal presented antecedent questions about whether the PTAB exceeded the petition-defined contours of the proceeding and whether its procedures satisfied the APA, that unexplained affirmance leaves impermissible uncertainty about whether those precise issues were actually and necessarily resolved.

II.B 35 U.S.C. § 144 Confirms that the Unexplained Affirmance was Inadequate to Perform the Appellate Function Congress Required Here

Section 144 required an opinion here because the appeal implicated both the lawful bounds of the PTAB's power and a conflict with the way an Article III court had already treated the same patent issues. The Patent Act requires a decision capable of "govern[ing] the further proceedings in the case." 35 U.S.C. § 144. A Rule 36 one-word affirmance cannot perform that function when the PTAB has sustained invalidity by moving beyond the petitioner's identified grounds and by adopting a dispositive threshold on an issue the District Court had already treated as factual.

To be sure, if two inconsistent conclusions may reasonably be drawn from the evidentiary record, the PTAB's choice between them is ordinarily sustained on substantial-evidence review. See *Elbit Sys. of Am., LLC v. Thales Visionix, Inc.*, 881 F.3d 1354, 1356 (Fed. Cir. 2018); *Redline Detection, LLC v. Star Envirotech, Inc.*, 811 F.3d 435, 449 (Fed. Cir. 2015). But that principle presupposes that the PTAB was merely choosing between competing factual inferences on properly noticed grounds. It does not answer whether the PTAB was entitled to move beyond the petition's identified ground for Element [21pre, a], or to convert the district court's fact-bound "non-negligible" inquiry into a dispositive one-percent threshold. The District Court had already construed the 40-milliwatt limitation and had already held that the "non-negligible" inquiry was a question of fact for the jury. If the Federal Circuit believed the PTAB

nonetheless had authority to proceed as it did, it needed to say so and explain why.

The Rule 36 affirmance supplied none of the guidance Section 144 required. The judgment gives no indication whether the Federal Circuit thought the district court's earlier determinations still mattered, whether the PTAB was free to move beyond the petition's identified grounds consistent with 35 U.S.C. § 312(a)(3) and the APA, or whether the court believed the PTAB had not really done so at all. For instance, it may be argued that the issues before the PTAB and the District Court were not identical in every respect. But that only underscores why explanation was required. The PTAB purported to adopt the District Court's constructions while using them to sustain invalidity on broader grounds for claim 21 and through a dispositive threshold for claim 8. If those differences in posture or proof justified the PTAB's approach, the Federal Circuit needed to explain why. Rule 36 did not, and Section 144 required more in a case like this.

III. *Loper Bright* Reinforces the Federal Circuit's Duty to Independently Review the PTAB's Dispositive Theories Rather than Allow Them to Control in Silence

Loper Bright reinforces a basic principle directly implicated here: courts must exercise independent judgment on questions of law and may not allow agency reasoning to control without meaningful judicial explanation. 603 U.S. at 391–92, 412. That principle matters here because the PTAB was not merely weighing evidence within settled and properly noticed grounds. Rather, the PTAB first sustained invalidity of claim 21 on broader grounds than the

petition had identified with particularity for Element [21pre, a], and then, on claim 8's reflective-layers issue, converted a factual inquiry the district court had left to the jury into a dispositive one-percent threshold. Those were not merely routine evidentiary judgments. They were decisions about the legal and procedural limits of the PTAB's authority. The Federal Circuit therefore could not permit those grounds to control patentability without explaining whether it independently agreed with them, believed any APA defect was harmless, or affirmed on some narrower basis.

III.A The PTAB was Purporting to Apply the Same Claim Construction Framework as the District Court, Which Required Independent Judicial Review

Because the PTAB was purporting to apply the same claim-construction framework as the District Court, its displacement of the District Court's Interpretation required judicial review. The PTAB was purporting to apply the same *Phillips* framework that governs claim construction in District Court *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005). On the Claim 21 170mW/1.5A ground, the PTAB purported to adopt the same "capable of" construction the District Court had already adopted, but then used that construction to sustain invalidity on a broader ground than the petition had identified for Element [21pre, a], namely, that the Krames chip could satisfy the limitation at currents lower than the 1.5A disclosure petitioner had relied on. FWD 15. On claim 8, likewise, the PTAB purported to adopt the District Court's construction, but then overlaid a dispositive one-percent threshold on an inquiry the

District Court had already treated as factual. FWD 21-22. In both instances, the PTAB claimed fidelity to the governing construction while changing the practical theory by which invalidity was established.

Under *Loper Bright*, the question is not whether the PTAB and the District Court had to agree, but whether the Federal Circuit could let the PTAB's outcome-determinative grounds prevail without explanation. *Loper Bright* says courts must exercise their own judgment on legal questions, including here, whether the PTAB complied with the APA, and whether the PTAB acted within the bounds of its statutory authority to sustain invalidity. Yet here, importantly, the Court remained silent without disclosing whether the agency had remained within the petition-defined and APA-defined limits of its authority.

III.B *Teva* underscores the problem because the Rule 36 Judgment Also Leaves Unexplained What Standard of Review the Federal Circuit Applied to the Issue that Determined Invalidity

Although claim construction is ultimately a question of law, it may rest on "subsidiary factfinding" and "evidentiary underpinnings." *Teva Pharmaceuticals*, 574 U.S. at 325-27 . That is precisely why the Federal Circuit's silence is so problematic here. As to claim 21, the PTAB purported to apply the legal construction already adopted by the District Court, but then broadened the operative grounds of satisfaction beyond the ground identified in the petition. As to claim 8, the PTAB made dispositive a one-percent threshold that effectively resolved, as a threshold matter, an inquiry the

District Court had already treated as factual. Those decisions raised questions not only about the sufficiency of evidence, but also about the standard of review and the lawful scope of the PTAB's authority.

The Rule 36 judgment leaves all of that unexplained. It does not reveal whether the Federal Circuit viewed the PTAB as merely choosing among permissible factual inferences, or instead as adopting new dispositive theories that required independent legal and procedural scrutiny. And it does not reveal whether the court believed the PTAB had remained within the petition's identified grounds, or instead thought any departure was harmless.

That silence is difficult to reconcile with the APA's command that courts decide legal questions for themselves. *See* 5 U.S.C. § 706. If the Federal Circuit thought the PTAB had merely made a factual determination within an accepted construction, it should have said so. If it thought the PTAB had made a legal move by adding a dispositive quantitative threshold, it should have explained why that move was permissible despite the lack of notice and despite the district court's contrary treatment of the same issue. It did neither.

III.C The U.S. Patent and Trademark Office's Own Subsequent Guidance Confirms the Seriousness of the Problem

The Patent Office's own later guidance confirms the seriousness of the problem. On September 2025, the Acting Director instructed that when the Board reaches a finding of fact or conclusion of law different from a prior district-court adjudication, "the Board shall explain" why a different outcome is warranted, and must provide a "more detailed explanation" when

the same or substantially the same evidence or arguments are presented. Memorandum from Coke Morgan Stewart, Acting Dir., U.S. Patent & Trademark Office, to Members of the Patent Trial & Appeal Bd., *PTAB Consideration of Prior Findings of Fact and Conclusions of Law* (Sept. 16, 2025). That directive does not cure the error here. An internal agency memorandum cannot retroactively supply the fair notice and meaningful opportunity to respond that the APA requires, nor can it explain the Rule 36 judgment after the fact. *See* 5 U.S.C. §§ 554, 556, and 706(2)(D); *Qualcomm Inc. v. Intel Corp.*, 6 F.4th 1256, 1261–64 (Fed. Cir. 2021); *Dell Inc. v. Acceleron, LLC*, 818 F.3d 1293, 1301–02 (Fed. Cir. 2016).

The memorandum does underscore petitioner's central point: unexplained agency displacement of previously litigated grounds is untenable. Patent Owners and the Public alike are entitled to know what patent rights mean before those rights are taken away. When the PTAB broadens grounds and imposes dispositive quantitative threshold to sustain invalidity, and the Federal Circuit permits that result to stand without explanation, fair process and judicial review both suffer. *Loper Bright* reaffirmed that courts must exercise their own judgment on questions of law . This Court should grant certiorari to ensure that patent rights are not lost through unexplained agency decisions.

IV. The Federal Circuit's Deference to the PTAB Claim Construction Demonstrates an Improper Extension of Deference Into Article III Adjudication

In *Loper Bright v. Raimondo*, this Court made clear that the Framers envisioned that the final

"interpretation of the laws" would be "the proper and peculiar province of the courts." 603 U.S. at 385 (citations omitted). To ensure the "steady, upright and impartial administration of the laws," the Court further held that the Constitution should allow judges to exercise that judgment rather than allow Executive branch agencies to supply controlling legal meaning by default. *Id.* The Federal Circuit allowed the PTAB to sustain invalidity on broader grounds than the petition identified for claim 21 and to impose a dispositive one-percent threshold on claim 8, even though the District Court had already treated that issue as factual. That is precisely the form of agency-biased deference *Loper Bright* explicitly prohibits.

Specifically, the Federal Circuit's approach in deferring to the PTAB's determination reflects a deeper issue: whether an agency's adjudicatory choices may effectively become controlling law when the court of appeals provides no explanation of its own. That move constitutes undue judicial deference to agency practice and contradicts both the Patent Act, the APA, and this Court's command in *Loper Bright* that courts must independently determine the law.

IV.A Allowing the PTAB's Broader Claim 21 Grounds to Control Revives *Chevron* in Substance

Even if the PTAB is right that Krames could have been operated at lower current while still satisfying claim 21, that does not answer the real question: who decides whether that broader rationale falls within the grounds the petition identified with particularity? If the PTAB may answer that question for itself, and the Federal Circuit may affirm in

silence, then the agency, not the courts, determine the bounds of IPR. See *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). That is the structural error *Loper Bright* rejected. Questions about the scope of agency power, compliance with § 312(a)(3), and the adequacy of notice under the APA are legal questions for courts to decide independently. Courts may not allow executive-branch practices—whether formal policies or entrenched examination customs—to define statutory meaning. *Loper Bright,* 603 U.S. at 385.

If a court permits that kind of shift without explanation, it effectively allows the agency to define the scope of the petition for itself—contrary to what this Court established in *SAS*. That is deference in substance, even if it is not labeled as such. Allowing administrative agency standards to migrate into Article III adjudication permits the PTAB to shape substantive patent law through practice rather than legislation.

IV.B Allowing the PTAB's One-Percent Threshold to Control Repeats the Same Error Through a Different Mechanism

The same problem appears on claim 8's reflective layers issue. The District Court held that whether a layer reflected a "non-negligible" amount of light was a factual question for the jury. The PTAB purported to adopt that same construction, yet then made dispositive its own one-percent threshold. That was not merely routine reasonable factfinding, it displaced the District Court's law-fact line.

Instead of applying the standard under *Markman*, the PTAB asked whether the agency's preferred view made sense. The two questions are not

the same, and *Loper Bright* emphatically forbids conflating them. Judicial independence is not maintained by relabeling deference as "logic." As this Court warned in *West Virginia v. EPA*, 597 U.S. 697, 723 (2022), courts must hesitate before concluding that Congress means to confer upon agencies "unheralded power" representing a "transformative expansion in [their] regulatory authority." 597 U.S. at 724 (citing *Utility Air Regulatory Group v. E.P.A.*, 573 U.S. 302, 324 (2014)). The Federal Circuit's acceptance of the PTAB's administrative practice—as done here with respect to deferring to PTAB imposed rules of decision—is exactly the kind of unheralded expansion *Loper Bright* sought to prevent.

The Federal Circuit effectively deferred here to the PTAB's adjudicatory practices by allowing the PTAB to reshape IPR practice and scope. In doing so, it allowed the PTAB to expand the practical bounds of IPR. In *Lynk Labs, Inc. v. Samsung Co. Ltd.*, 125 F.4th 1120 (2025), the Federal Circuit framed its analysis as statutory interpretation while allowing executive-branch reasoning to dictate the result. Similarly in this case, the Federal Circuit avoided its independent interpretive responsibility by permitting the PTAB's agency imposed procedural rules to do the work.

This is problematic because the PTAB combines adjudicatory authority with institutional incentives favoring patent invalidation and administrative efficiency. Without meaningful judicial review, those incentives can harden into *de facto* law. *Loper Bright* requires more. It requires courts to independently interpret statutes—even where doing so disrupts administrative practice or long-standing precedent.

The Federal Circuit failed to meet that obligation here. This Court should grant review to reaffirm that legal interpretation, and claim construction is governed by Article III judicial analysis—not by the PTAB administrative practices.

V. The PTAB's IPR Scope Expansion Poses Heightened Separation-of-Powers Risks

The separation-of-powers concern here is acute. The PTAB is an executive tribunal whose administrative judges lack Article III protections. Yet the Board adjudicates questions that go to the core of claim construction and the scope of rights afforded under carefully drafted patent claims. When courts defer to the PTAB adjudications that differ from Article III interpretation, they effectively permit the Executive Branch to define the scope of its own authority. As this Court has cautioned, courts, not agencies, will decide "all relevant questions of law" arising on review of agency action. *Loper Bright*, 603 U.S. at 371. That principle applies with full force to agency adjudications.

VI. This Case Presents an Ideal Vehicle for Clarifying *Loper Bright*'s Application to Agency Adjudications

This Court has not yet issued a decision applying *Loper Bright* to agency adjudications. Lower courts have cited *Loper Bright* sparingly, often without explaining how independent judicial judgment should function in practice. Namely, the Court should provide guidance with respect to where this new *Loper Bright* deference lies on the scale of being less deferential than *Chevron* and more deferential than *Skidmore*. *See Skidmore v. Swift & Co.,* 323 U.S. 134 (1944).

This case presents a clean and consequential opportunity to do so. The Federal Circuit's disposition allowed the PTAB adjudications to control the resolution of IPR scope and claim-construction-related questions without any reasoned explanation of the court's own. But claim construction, and the legal boundaries that govern how claim language may be used to sustain invalidity, remain matters for Article III courts. See *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 383 (1996). The implications for patent law, innovation, and constitutional structure are therefore substantial.

As the Federalist Papers remind us, the judiciary was designed to be "an intermediate body between the people and the legislature" and "to keep the latter within the limits assigned to their authority." The Federalist No. 78 (Alexander Hamilton) (Clinton Rossiter ed., 1961). That same duty applies, with equal or greater force, to executive agencies. Courts serve as the buffer that prevents administrative convenience from becoming administrative law. When courts adopt an agency's actions or interpretations wholesale, they cease to perform that constitutional function. They become, instead, the agency's institutional echo.

CONCLUSION

By permitting the PTAB to sustain invalidity on broader grounds than the petition identified for claim 21, and to impose a dispositive one-percent threshold on claim 8, without meaningful judicial explanation, the Federal Circuit allowed agency reasoning to control where independent judicial judgment was required. The petition for a *writ of certiorari* should be granted. The judgment below should be vacated.

Respectfully submitted,

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