

No. 25-308

IN THE
Supreme Court of the United States

LYNK LABS, INC.,

Petitioner,

v.

SAMSUNG ELECTRONICS CO., LTD. ET AL.,

Respondents.

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

**BRIEF OF VLSI TECHNOLOGY LLC
AND MOTION OFFENSE, LLC AS
AMICI CURIAE IN SUPPORT OF PETITIONER**

Philip Warrick
IRELL & MANELLA LLP
750 17th Street NW
Suite 850
Washington, DC 20006

Kenneth Weatherwax
Counsel of Record
LOWENSTEIN &
WEATHERWAX LLP
1016 Pico Boulevard
Santa Monica, CA 90405
(310) 307-4500
weatherwax@
lowensteinweatherwax.com

Counsel for Amicus Curiae

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INTEREST OF *AMICI CURIAE*¹

Amici curiae own patents on novel inventions that significantly improve technology used around the world. Their patents disclose new ways to reduce power usage in computers, and to make data sharing more rapid and efficient. These inventions improve technologies that help improve people’s lives worldwide, just as the patent system encourages.

Amici, and many other patent owners seeking beneficial inventions, are affected by the question presented in the petition in this case: whether abandoned patent applications, that were secret at the time of their patented inventions, constitute “prior art consisting of patents or printed publications” under 35 U.S.C. § 311(b), and can therefore be used to challenge their patents in Inter Partes Review (“IPR”) proceedings. Many patent owners, including an *amicus*, have obtained substantial jury verdicts for use of their valuable inventions. But they have received adverse decisions from the Patent Trial and Appeal Board (“PTAB”)—an administrative tribunal within the U.S. Patent and Trademark Office (“Patent Office”)—finding their patented inventions “obvious” in reliance upon patent applications that never issued as examined patents and were not public when the patented inventions were made. The Federal Circuit’s

¹ Pursuant to Supreme Court Rule 37.6, counsel listed on the cover states that no counsel for a party in this case authored this brief in whole or in part, nor did any such counsel or party or anyone other than the *amici* make a monetary contribution intended to fund the preparation or submission of the brief. The parties received timely notice through their counsel of record of *amici*’s intention to file this brief as provided by Rule 37.2.

erroneous decision below, which ratified this improper agency rewrite of the Patent Act, will affect *amici*'s pending appeals and similar cases across the country.

Amici file this brief to highlight the systemic stakes and the need for this Court to restore “the limits up to which Congress was prepared’ to go when adopting” these new, controversial IPR proceedings. *New Prime Inc. v. Oliveira*, 586 U.S. 105, 120 (2019).

SUMMARY OF ARGUMENT

The Court should grant the petition to restore the balance that Congress struck when it created new Article I proceedings for challenging issued patents—property rights—outside the Article III jury system.

In the decision below, the Federal Circuit, at the urging of the Patent Office, expanded the category of prior art known for well over a century as “printed publications,” to encompass abandoned patent applications not public at the time of the challenged patent’s invention. That interpretation contradicts § 311(b)’s plain text, the longstanding historical understanding of “printed publication,” every prior court decision to have considered the meaning of “printed publication,” the meaning of “printed publication” that the Patent Office and Federal Circuit have actually applied in innumerable IPRs and other cases, and the constitutional and statutory limits on the Patent Office’s Article I authority. As this Court has explained, judges may not “freely invest old statutory terms with new meanings.” *New Prime*, 586 U.S. at 113; see *Helsinn Healthcare S.A. v.*

Teva Pharms. USA, Inc., 586 U.S. 123, 131–32 (2019). Yet the Federal Circuit felt free to do so here.

This error’s consequences are sweeping. It invites IPR challenges based on materials Congress’s express language excluded, placing even affirmed jury verdicts at risk. It expands the universe of prior art documents in IPR by millions—hundreds of thousands of abandoned applications are published every year. Patent owners including *amici* face adverse IPR determinations grounded on later-published abandoned patent applications, with their appeals on that question now controlled by the decision below. Unless corrected, this error will extend to every future IPR, and further encroach on the domain of Article III adjudication beyond the express limit set by Congress.

The question is nationally significant, recurring, and fundamental to the proper scope of administrative review. Because the Federal Circuit’s decision rewrites Congress’s express limits on IPR scope, this Court should grant the petition.

ARGUMENT

I. The Question Presented Is Exceptionally Important.

The question presented in this case concerns Congress’s simple, express restriction of the scope of IPR proceedings to “only . . . prior art consisting of patents and printed publications.” 35 U.S.C. § 311(b). This question is potentially dispositive in many cases

currently before the Patent Office and the federal courts, including cases involving high-stakes federal court jury verdicts and final judgments. “Billions of dollars can turn on a Board decision,” *United States v. Arthrex, Inc.*, 594 U.S. 1, 6 (2021) (opinion of Roberts, C.J.), and so it does here.

A. The Federal Circuit Adopted A New, Broad Interpretation Of “Printed Publication” Prior Art That No Previous Court Has Ever Accepted.

As just noted, Congress expressly limited the scope of “prior art” available for use in IPR to “only . . . prior art consisting of patents and printed publications.” 35 U.S.C. § 311(b). Both of these categories of prior art—prior art consisting of “patents,” and prior art consisting of “printed publications”—have existed in settled form, under those names, for well over a century. “The phrase ‘printed publication’ first appeared in the Patent Act of 1836.” John E. Vick, Jr., *Publish and Perish: The Printed Publication As A Bar To Patentability*, 18 AIPLA Q.J. 235, 238 (1990). This Court, the Federal Circuit, and the Federal Circuit’s predecessor Article III courts have consistently interpreted “printed publication,” since this statutory term first appeared, to mean a reference that was accessible to the public—and hence a “publication”—*before* the challenged patent’s priority date. *See, e.g., In re Klopfenstein*, 380 F.3d 1345, 1348 (Fed. Cir. 2004); *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989); 1 William C. Robinson, *The Law of Patents for Useful Inventions* § 325 at 447 (1890). Congress’s “reenactment of terms

that had acquired a well-settled judicial interpretation,” without any indication “that Congress intended to alter the meaning of the reenacted term,” adopted “this settled pre-[existing] precedent on the meaning of” this language. *See Helsinn*, 586 U.S. at 131–32.

Then-Director of the Patent Office Kathi Vidal, intervening in support of the agency in the court of appeals below, defended the IPR decision in this case based on a “broad” new definition of “printed publication” never accepted by any prior decision of any Court. According to the Director’s new redefinition, “[p]rinted publication’ is a broad term that covers any document made publicly accessible[.]” *Lynk Labs Inc. v. Samsung Elecs. Co.*, No. 23-2346, Dkt. 36 (Brief for Intervenor—Director of the USPTO) (May 3, 2024) (“*Lynk Labs* Patent Office Intervenor Br.”), at 26. In support of this statement, the Director cited—nothing. *Id.*

The Director did not deny that no court has ever, until now, given “printed publication” prior art this “broad” newly-invented meaning. *Id.* Nor did the agency deny that “printed publication” has held a very different meaning for prior art for well over a century—and that it is well settled that the “key inquiry,” *Voter Verified, Inc. v. Premier Elections Sols., Inc.*, 698 F.3d 1374, 1380 (Fed. Cir. 2012)—“the touchstone” of prior art status, *In re Bayer*, 568 F.2d 1357, 1359 (CCPA 1978)—is its date of “public accessibility,” *id.* However, the Director insisted below that Congress implicitly *changed* the

longstanding meaning of “printed publication” in 1999, when it amended 35 U.S.C. § 102(e) to include published applications by adding new subsection 102(e)(1). *Lynk Labs* Patent Office Intervenor Br., at 26.

No evidence, not even legislative history, supports the Director’s contention. Neither Congress, nor the statutory language it passed, said that any change was being made to the meaning of this longstanding language found in the Patent Act. Moreover, the Patent Trial and Appeal Board of the Patent Office clearly did not think it had. Since the PTAB’s creation in 2011, in cases where it is disputed whether a reference qualifies as “printed publication” prior art to a challenged patent, the PTAB has answered that question based, not on the “broad” newly-fashioned definition that the Director just invented, but on the date when the reference became accessible to the public. *See, e.g., Next Step Grp., Inc. v. Deckers Outdoor Corp.*, IPR2024-00525, Paper 16, at 10–22 (PTAB Aug. 6, 2024) (denying petition for IPR on the basis that the documents on which petitioner based its IPR challenge were not shown to be publicly accessible before the patented invention).

And the Federal Circuit clearly did not believe that Congress changed the meaning of “printed publication” either. In an unbroken series of decisions from 1999 until now, the court has continued to uninterruptedly insists that the meaning of “printed publication” that applied prior to 1999 still applies. *See, e.g., Samsung Elecs. Co. v. Infobridge Pte. Ltd.*,

929 F.3d 1363, 1369 (Fed. Cir. 2019) (holding that “printed publication” prior art status turned on “touchstone” of public accessibility); *Acceleration Bay, LLC v. Activision Blizzard, Inc.*, 908 F.3d 765, 772–74 (Fed. Cir. 2018) (affirming IPR determination that reference was not “printed publication” because it “was not publicly accessible before the critical date” of the patented invention and “public accessibility” is “the touchstone in determining whether a reference constitutes a ‘printed publication’”); *Voter Verified*, 698 F.3d at 1380 (finding that electronic materials were “printed publication” prior art because they were publicly accessible before patent’s priority date); *In re Lister*, 583 F.3d 1307, 1314, 1311–17 (Fed. Cir. 2009) (manuscript was not “printed publication” because it was not “publicly accessible” before critical date); *Cordis Corp. v. Boston Sci. Corp.*, 561 F.3d 1319, 1333–34 (Fed. Cir. 2009) (document shared with others was not yet “printed publication” because it was kept confidential); *Klopfenstein*, 380 F.3d at 1350 (“[T]hroughout our case law, public accessibility has been the criterion by which a prior art reference will be judged for the purposes of [the] ... ‘printed publication’ inquiry.”); *Koninklijke Philips N.V. v. Zoll Med. Corp.*, 656 F. App’x 504, 529 (Fed. Cir. 2016) (affirming finding that regulatory filing was not “printed publication” because it “was not sufficiently available to the public prior to the priority date”). In short, the Federal Circuit has emphatically continued to maintain that, “[w]hen considering whether a given reference qualifies as a prior art ‘printed publication,’ the *key inquiry* is whether the reference was made ‘sufficiently accessible to the public interested in the

art’ before the critical date [of the patented invention].” *Voter Verified*, 698 F.3d at 1380 (emphasis added).

In this case, for the first time, the Federal Circuit changed its tune—to that played by the Patent Office. At the agency’s urging, the Federal Circuit for the first time invested this old term with a broad new meaning—reasoning for the first time that in 1999 “Congress . . . se[t] up a different timing framework for a printed publication in § 102(e)(1).” *Lynk Labs, Inc. v. Samsung Elecs. Co.*, 125 F.4th 1120, 1131 (Fed. Cir. 2025). The Federal Circuit now insists that when Congress “chose to afford published patent applications a *prior-art effect* different from the effect given to printed publications in § 102(a) and (b),” it changed the “prior-art effect” that the term “printed publication” would someday convey in § 311(b). *Id.* But Congress never said it was doing this. The Federal Circuit infers it from Congress’s silence and amendments pertaining to unrelated statutory terms. *Id.* To be sure, the Federal Circuit contends that it cannot “ignore Congress’s choice.” *Id.* But Congress never said that it made such a “choice,” let alone what it supposedly “chose.” Furthermore, the Federal Circuit does not even attempt to reconcile this conclusion with the decisions above, none of which found that Congress had made such a choice or changed this term’s meaning in any such way.

B. The Federal Circuit’s Decision Will Have A Systemic Impact On Agency Authority To Administratively Override Article III Determinations.

The effect of this broadening of the prior art available in IPR beyond the two categories delineated in § 311(b) is not an abstract or speculative one. Many patent owners now face IPR challenges resting on later-published, abandoned applications that would not qualify as “patents or printed publications” under the settled meaning of those terms in § 311(b). Several of those cases are already on appeal to the Federal Circuit,² and in those appeals this question will be controlled by the fact that, even though some of those proceedings started earlier, the precedential *Lynk Labs* decision was, by sheer happenstance, decided first. Other patent owners, such as the ones in *Samsung Electronics Co. v. Maxell, Ltd.*, IPR2024-00717 (PTAB), and *Kia Corporation v. Emerging Automotive LLC*, IPR2024-01167 (PTAB), face similar such challenges that are still pending before the Board. Just in the past five years, dozens of IPRs have been filed and decided which implicate this statutory

² *E.g.*, *Flip Phone Games, Inc. v. PLR Worldwide Sales Ltd.*, No. 2025-2053 (Fed. Cir.), (appealing IPR2024-00132 and 00171, rejecting patents 9,731,202 and 10,617,958 filed June 26, 2007, based on application published May 1, 2008); *Spero v. Mercedes-Benz USA, LLC*, No. 25-1306 (Fed. Cir.) (appealing IPR2023-01034, rejecting patent 11,208,029 filed July 12, 2002, based on application published July 24, 2003); *Dropbox, Inc. v. Motion Offense, LLC*, IPR2024-00287, Paper 47, at 25 n.10 (Final Written Decision, citing Federal Circuit’s decision below) (PTAB July 1, 2025) *appeal filed*, No. 25-2068 (Fed. Cir.) (discussed below).

question.³ The question presented thus routinely recurs in patent cases, and affects patent owners nationwide, and will continue to do so.

Furthermore, under current Federal Circuit caselaw, prior Article III judgments in patent owners' favor are at risk of being unraveled by later Article I findings. *Cf., e.g., ePlus, Inc. v. Lawson Software, Inc.*, 789 F.3d 1349 (Fed. Cir. 2015); *VirnetX Inc. v. Apple Inc.*, 931 F.3d 1363, 1370-72 (Fed. Cir. 2019). This gives many infringers "the hope that they will fare better with the PTO [than with the federal court] and then be able to unravel the district court judgment against them," *ePlus*, 790 F.3d 1307, 1314 (Fed. Cir. 2015) (Moore, J., dissenting from denial of reh'g *en banc*).

The Federal Circuit's disregard of Congress's express limit on IPR scope threatens to nullify not only *amici's* patents, but also jury verdicts and damages awards that have already been rendered based on some of those patents, as described below.

³ See, e.g., *LG Elecs. Inc. v. Multimedia Techs. Pte. Ltd.*, IPR2024-00354, Paper 34, at 6 (PTAB May 19, 2025) (same); *Hulu, LLC v. DivX, LLC*, IPR2020-00647, Paper 28, at 48 (final written decision) (PTAB Sep. 27, 2021) (dicta), *appeal on other issues*, 84 F.4th 1371 (Fed. Cir. 2023); see also, e.g., IPR2020-00475; IPR2020-01534; IPR2021-01229; IPR2021-01339; IPR2021-01576; IPR2022-00149; IPR2022-00279; IPR2022-00479; IPR2022-00615; IPR2023-00203; IPR2023-00454; IPR2023-00455; IPR2023-00876; IPR2023-00955; IPR2023-00958; IPR2023-00994; IPR2023-01034; IPR2024-00132; IPR2024-00171; IPR2024-00200; IPR2024-00209; IPR2024-00287; IPR2024-00354; IPR2024-00413; and IPR2024-00416 .

C. Many Pending Appeals Demonstrate The Importance Of This Question.

Numerous other currently pending appeals before the Federal Circuit illustrate the importance of this issue. Each of the present *amici* has asserted its U.S. patent rights in federal court. *Amicus* VLSI is one of multiple such patent owners that have already received a favorable jury verdict, as detailed below. Yet each of these patent owners, including *amici*, also faces an administrative unpatentability finding in IPR based on combining other art with an abandoned application that was not public at the time of the patented invention. Such applications are neither prior art as “patents” nor prior art as “printed publications.” By allowing these references to nevertheless be relied on as invalidating art in IPR, the agency improperly expanded Congress’s express limitation on the scope of those proceedings to “only . . . prior art consisting of patents and printed publications.” § 311(b).

Each *amicus* has appealed to the Federal Circuit. Consequently, the *Lynk Labs* decision will control this statutory interpretation question in the appeals that are filed by *amici* and similarly situated parties. Absent correction, the Federal Circuit’s decision forecloses relief for *amici* on this question.

1. VLSI Technology LLC

Amicus curiae VLSI obtained a \$1.5 billion jury verdict for Intel Corporation’s infringement of U.S. Patent No. 7,523,373 (“the ’373 patent”). *VLSI Tech. LLC v. Intel Corp.*, 87 F.4th 1332 (Fed. Cir. 2023). The district court entered judgment against Intel and

rejected Intel’s counterclaim that the ’373 patent was invalid. *See VLSI Tech. LLC v. Intel Corp.*, No. 6:21-CV-057-ADA, Dkt. No. 701 (Final Judgment), at 1–2 (W.D. Tex. May 10, 2022). The PTAB also rejected an IPR petition filed by Intel in 2020 challenging the patentability of the asserted claims of the patent. Although on appeal the amount of damages was later remanded for recalculation, the jury’s finding of infringement was affirmed, and the final judgment rejecting the counterclaim of invalidity was entered long before any final IPR decision on the patent.

After the jury’s verdict, however, still-unknown persons formed a new entity, seemingly for the sole purpose of challenging VLSI’s patents at the PTAB—a forum lacking a standing requirement. *See* 35 U.S.C. § 311(a) (permitting “a person who is not the owner of a patent” to seek IPR); *Return Mail, Inc. v. U.S. Postal Serv.*, 587 U.S. 618 (2019) (construing § 311(a)). The new entity filed an IPR petition challenging the ’373 patent’s asserted claims on the basis of combining other art with Abadeer, an abandoned patent application that was not publicly accessible until after the ’373 patent’s filing date. VLSI argued that the PTAB should not consider Abadeer because it was neither a “patent” nor a prior art “printed publication” under § 311(b). Nevertheless, the PTAB found the challenged claims unpatentable relying upon Abadeer as prior art supposedly available under § 311(b). *Patent Quality Assurance, LLC v. VLSI Tech. LLC*, IPR2021-01229, Paper 129 (PTAB June 13, 2023).

VLSI has appealed, contending that § 311(b) bars use of later-published applications as prior art,

and the parties have filed their briefs. *VLSI Tech. LLC v. Patent Quality Assurance, LLC*, No. 23-2298 (Fed. Cir.). But the Federal Circuit’s decision below in *Lynk Labs*, agreeing with the Patent Office’s contrary view, now controls this question in VLSI’s appeal, leaving VLSI’s affirmed jury verdict at risk of collateral attack by an agency decision on a basis that Congress never authorized.

2. Motion Offense, LLC

The misinterpretation of § 311(b) to permit patent challenges relying on abandoned patent applications that are neither prior art patents nor prior art printed publications to the patented invention also impacts *amicus curiae* Motion Offense, which risks the loss of its patent for the same reason.

Motion Offense sued Dropbox, Inc. (“Dropbox”) for infringement of U.S. Patent No. 11,611,520. That action has been stayed pending IPR proceedings requested by Dropbox. In IPR, Dropbox challenged Motion Offense’s ’520 patent based on a combination including Riepling, an abandoned patent application that was filed on August 16, 2011, published on February 21, 2013, and never issued as an examined patent. *Dropbox, Inc. v. Motion Offense, LLC*, IPR2024-00287 (PTAB). Dropbox admitted that Motion Offense’s patent has a priority date of September 22, 2012, before Riepling was published in 2013. *Id.*, Paper 4 (Petition) at 5.

Motion Offense argued that Riepling never issued as a “patent,” and also is not a prior art “printed publication” because it was not publicly accessible before the ’520 patent’s admitted September 22, 2012

priority date. *Id.* at 5; *id.*, Paper 20 (Patent Owner Response), at 31-36. The Federal Circuit then issued the precedential decision below in *Lynk Labs*. Motion Offense acknowledged this controlling decision, but reserved this question as to Riepling. *Id.*, Paper 36 (Patent Owner Sur-Reply), at 9.

The Board then relied on Riepling to find all claims unpatentable. *Id.*, Paper 47 (final Written Decision) (PTAB July 1, 2025). Motion Offense has filed an appeal, in which briefing has not yet commenced. *Motion Offense, LLC v. Dropbox, Inc.*, No. 25-2068 (Fed. Cir.). Meanwhile, Motion Offense’s infringement action remains stayed in district court.

3. Netlist, Inc.

As another example of an existing Article III verdict threatened by the Federal Circuit’s expansion of the scope of IPR set forth in the plain text of the Patent Act, the same misinterpretation of § 311(b) has placed hundreds of millions of dollars in jury verdicts at risk for Netlist, a publicly traded, California-based innovator in high-performance memory technology. Netlist’s U.S. Patent No. 7,619,912 (the “912 patent”) protects a key memory-module architecture. In 2024, separate juries found that Micron and Samsung willfully infringed the patent, awarding Netlist more than \$500 million in damages. *See Netlist, Inc. v. Micron Tech., Inc.*, No. 2:22-cv-00294, Dkt. No. 135 (Jury Verdict) (E.D. Tex. May 23, 2024); *Netlist, Inc. v. Samsung Elecs. Co.*, No. 2:22-cv-00293, Dkt. No. 847 (Jury Verdict) (E.D. Tex. Nov. 22, 2024). A jury also found that claim 16 was not shown to be invalid, and the Court entered judgment accordingly. *Id.*, Dkt. No. 855 (Final Judgment) (E.D. Tex. Dec. 2, 2024).

Notwithstanding those Article III proceedings, the PTAB—in a proceeding jointly pressed by the same defendants—found the same patent claim unpatentable as obvious based on Ellsberry, an abandoned application that was not published until after the '912 patent's priority date. *See Samsung Elecs. Co. v. Netlist, Inc.*, IPR2022-00615, Paper 96, at 52–53 (PTAB Apr. 17, 2024). Relying on the Patent Office's interpretation of § 311(b), the Board held that Ellsberry qualified as “prior art consisting of . . . [a] printed publicatio[n]” under § 311(b) even though it was not publicly accessible at the time of invention. *Id.* at 34–35. That question, in Netlist's pending appeal of that decision, *Netlist Inc. v. Samsung Elecs. Co.*, No. 24-2304 (Fed. Cir.), is now controlled by *Lynk Labs*.

The Board's ruling not only conflicts with Congress's express limit on IPR scope, but also disregards Netlist's prior victories before the Patent Office and the Federal Circuit, both of which had already upheld the same claim's patentability after a decade of reexamination proceedings. Unless this Court intervenes, Netlist's jury verdicts—and other patent owners' jury verdicts like them—remain at risk of agency annulment under a rewritten IPR statute that Congress never passed.

II. The Court Should Grant Review

Because all patent appeals are routed exclusively to the Federal Circuit, 28 U.S.C. § 1295, no further circuit percolation is possible. The Federal Circuit decision therefore controls not only the parties and *amici*, but also every patent owner facing IPR

challenges based on later-published, abandoned patent applications. Only this Court can restore the limit Congress imposed.

For the reasons set forth in the petition, the Federal Circuit’s decision is incorrect as a matter of both patent law and statutory interpretation. For more than a century, courts have held that a “printed publication” must have been publicly accessible before the invention’s priority date. The decision below overturns that settled rule and the congressional balance it reflects.

This decision expands the universe of prior art documents in IPRs by the millions. The Patent Office has published all but a few of the patent applications it has received since 2000. Lidiya Mishchenko, *Thank You for Not Publishing (Unexamined Patent Applications)*, 47 BYU L.R. 1563, 1565 (2022). For many years, well over 200,000 patent applications that go abandoned have been published annually. Patent Office, *Annual Workload Tables*, Table 1 (2024).⁴ Such applications have been criticized as an exceptionally “low-quality” and “poor prior art,” in part because they are “not examined for quality” and never yield any issued patent claims. Mishchenko, *supra*, at 1589-1590, 1602, 1609 n.219; see Janet Freilich, *Ignoring Information Quality*, 89 FORDHAM L.R. 2113, 2125 (2021).

⁴ Available at <https://www.uspto.gov/about-us/performance-and-planning/uspto-annual-reports> (last visited Oct. 10, 2025).

What is at stake is the property rights of U.S. patent holders. To be sure, this Court has said that the “property rights that a patent owner has in an issued patent” are “subjec[t] . . . to the express provisions of the Patent Act.” *Oil States Energy Servs., LLC v. Greene’s Energy Grp., LLC*, 584 U.S. 325, 338 (2018). But that is precisely the problem. The Federal Circuit’s decision failed to *follow* the express provisions of the Patent Act. Congress expressly listed the types of prior art available in these new proceedings. And it listed only two. 35 U.S.C. § 311(b) (“only . . . prior art consisting of patents or printed publications”). Let us not sugarcoat the situation: the Federal Circuit added a third.

This issue is of exceptional importance. IPRs are a powerful administrative mechanism that this Court has already reviewed in multiple cases. *See, e.g., Arthrex*, 594 U.S. at 23–25 (imposing constitutional limits on “the unreviewable authority wielded by APJs during inter partes review”); *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364 (2018) (overturning Patent Office’s and Federal Circuit’s rewriting of IPR statute where “Congress’ choice of words is presumed to be deliberate and deserving of judicial respect”) (cleaned up); *Oil States*, 584 U.S. at 344. This case presents an equally fundamental question—the proper scope of prior art in those proceedings—and thus warrants this Court’s review.

CONCLUSION

The decision below harms the legal system, and feeds the administrative state, at the expense of clear meaning, textualist interpretation, and separation of powers. It presents a clean choice between plain meaning of longstanding statutory language, and the temptation to depart from such language based on bespoke policy preferences. There is no reason to believe that this systemic damage will be confined to the patent system

The petition should be granted.

Respectfully submitted,

Kenneth Weatherwax

Counsel of Record

LOWENSTEIN & WEATHERWAX LLP

1016 Pico Boulevard

Santa Monica, California 90405

(310) 307-4500

weatherwax@lowensteinweatherwax.com

Philip Warrick

IRELL & MANELLA LLP

750 17th Street NW, Suite 850

Washington, DC 20006

Counsel for Amici Curiae

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