

No. 25-308

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IN THE  
**Supreme Court of the United States**

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LYNK LABS, INC.,  
*Petitioner,*

v.

SAMSUNG ELECTRONICS CO., LTD. *et al.*,  
*Respondents.*

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Federal Circuit**

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**BRIEF OF CONGRESSMAN LAMAR SMITH,  
HON. DAVID J. KAPPOS, PHILLIP S. JOHNSON,  
AND HON. PAUL R. MICHEL AS  
AMICI CURIAE IN SUPPORT OF PETITIONER**

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici Curiae* were each involved in the drafting, creation, negotiation, or debate over the Leahy-Smith America Invents Act. They include a co-sponsor of the Act, the then-serving Director of the U.S. Patent and Trademark Office, and a former Federal Circuit judge who testified in connection with the legislation. Each believes that the decision below departs from the intended and deliberately narrow scope of *inter partes* reviews, which were limited in the statutory text to patents and printed publications—both terms with established meanings. The decision below departs from both the text of the statute and decades of precedent defining the term “printed publication,” instead relying on policy concerns that have misconstrued Congress’s intent.

*Amicus Curiae* U.S. Representative Lamar Smith served as Chairman of the Committee on the Judiciary of the U.S. House of Representatives during the pendency of H.R. 1249, 112th Congress, enacted as the Leahy-Smith America Invents Act. He was lead sponsor of the bill and managed consideration of the bill in the House through the debate on the House floor.

*Amicus Curiae* Honorable David J. Kappos is a former Director of the U.S. Patent and Trademark Office (hereafter “Patent Office”). He served in that role from 2009 to 2013, which included during the

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<sup>1</sup> Per Supreme Court Rule 37.6, counsel listed on the cover represents 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 *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.

negotiations surrounding and leading up to the passage of the Leahy-Smith America Invents Act and its subsequent implementation.

*Amicus Curiae* Philip S. Johnson was recognized in the Congressional Record as a member of the Minority Whip Jon Kyl's "Kitchen Cabinet" for the America Invents Act. He also served as IPO's representative on the ABA-AIPLA-IPO committee of six experts ("COSE") formed at the Director's request to propose regulations to the Patent Office for implementing the PGR-IPR post-grant proceedings created by the Leahy-Smith America Invents Act.

*Amicus Curiae* Honorable Paul R. Michel (ret.) is a former Circuit Judge of the U.S. Court of Appeals for the Federal Circuit. He served from 1988 until 2010, retiring as Chief Judge. He has since remained active in patent-policy activities, working to advance U.S. patent laws and policy that achieve the proper balance between incentivizing innovation and enabling free-market competition.

### **SUMMARY OF ARGUMENT**

In passing the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) ("AIA"), Congress made the affirmative choice that its new administrative patent review proceedings would evaluate patent validity differently from U.S. district courts. The AIA established two agency-based proceedings: post-grant review ("PGR") and *inter partes* review ("IPR"). PGRs can consider essentially any ground of patent invalidity but may be brought only within nine months of a patent's issuance. An IPR, in contrast, may be brought at any time after the first nine months of patent issuance, but, in exchange for that life-of-the-

patent window, Congress limited the legal grounds and prior art for IPR.

The central issue in the instant petition asks what prior art Congress decided could be used in an IPR. That answer is provided by statute. Section 311(b) of Title 35 expressly defines the scope of prior art appropriate in an IPR. It limits the scope to challenges based on “section 102 or 103 and only on the basis of prior art consisting of patents or printed publications.” 35 U.S.C. § 311(b). Where, as here, Congress used an off-the-shelf term with a long-established meaning in decades of judicial precedent—“printed publication”—it invoked that well-settled meaning.

The decision below, however, has redlined a third category into the statute: patent applications. According to the Federal Circuit, a textualist reading of the statute “would place an *artificial constraint* on the types of prior art that may be asserted in an IPR versus that which may be asserted in a district court,” and the court saw “no reason why Congress would have created such a distinction.” Pet. App. 20a n.10 (emphasis added).

But the AIA evinces that very intent. While post-grant review is broad in scope, *inter partes* review was designed to address a much narrower scope of invalidity than PGR or even district court, providing for “a[n] expeditious and less costly alternative to litigation.” Introduction of Patent Reform Act, 153 Cong. Rec. E774 (Apr. 18, 2007); *see also Qualcomm Inc. v. Apple Inc.*, 24 F.4th 1367, 1376 (Fed. Cir. 2022) (explaining that, with IPRs, “Congress sought to create a streamlined administrative proceeding that avoided some of the more challenging types of prior art identified in 35 U.S.C. § 102” and that such restrictions

provided “a cheaper and less time-consuming alternative to challenge patent validity on certain issues”).

The Federal Circuit’s expansion of the circumscribed scope of IPRs in section 311(b) threatens to collapse the careful balance and legislative compromises that were unambiguously codified in the AIA that affirmatively limited the scope of IPRs to a narrower set of art than is available in the time-limited PGRs and even more expansive and more resource-intensive district-court trials. To rein in such a departure from the statutory language and the statute’s purpose, this Court should grant certiorari.

### **ARGUMENT**

When creating new administrative proceedings in the AIA, Congress opted to allow a petitioner in an *inter partes* review to raise grounds “that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications.” 35 U.S.C. § 311(b). Congress used off-the-shelf terms with well-established meanings in precedent to afford IPRs a narrower scope, particularly as compared to PGRs and district court litigation.

In the decision below, the Federal Circuit advanced policy reasons why Congress would not have wanted to constrain the prior art relevant to IPRs as compared to that available in district court proceedings. But the court did not fully appreciate the textual and structural limitations created by Congress: IPRs were designed to be narrower than PGRs and district court proceedings. That circumscribed scope is mandated by the legislative compromise reflected in the AIA’s final text.

## **I. The Text of the AIA Limits the Scope of Prior Art Relevant to *Inter Partes* Review Petitions.**

Congress created two distinct administrative proceedings under the AIA—IPRs and PGRs. The statutory text governing IPRs limits those proceedings to prior art that is a patent or a printed publication. There is no independent, third category of prior art recited in the statute.

### **A. IPRs and PGRs Under the AIA.**

In 2011, the America Invents Act created two distinct post-grant proceedings. The first is the wide-ranging PGR. 35 U.S.C. §§ 321–329. In a PGR, a petitioner can challenge a patent “on any ground that could be raised under paragraph (2) or (3) of section 282(b) (relating to invalidity of the patent or any claim).” *Id.* § 321. This broad category includes most bases for invalidating a patent claim, including patent eligibility under section 101, enablement and written description under section 112, and all forms of potential prior art identified in section 102.

Importantly, these all-issue, broad validity challenges under PGR are limited in time. Only during the first nine months after a patent’s issuance may a petitioner request cancellation of a patent claim by PGR. *Id.* § 321. In other words, Congress authorized sweeping validity challenges at the Patent Office but *only* for a short window of less than a year after the patent first issued.

The second type of proceeding is IPR. *Id.* §§ 311–319. IPRs are *not* limited to the first nine months after a patent’s issuance. To counterbalance the much longer window for challenge, Congress sharply limited IPR scope in § 311(b) to validity

challenges based on “section 102 or 103 and only on the basis of prior art consisting of patents or printed publications.” *Id.* § 311(b).

The sharp distinctions between the two proceedings are reflected in plain differences in the relevant statutory provisions and are the result of Congress’s careful deliberation. *See generally* Philip Johnson, *A Look Back at the Legislative Origin of IPRs*, IPWatchdog (Sept. 20, 2017), <https://ipwatchdog.com/2017/09/20/look-back-legislative-origin-iprs/> [<https://perma.cc/ET2B-9EJN>]. This “hybrid ‘two-window’ compromise was reached allowing for initial all-issue challenges (later named PGR), followed by life-of-the-patent limited-issue IPR[s].” *Id.* For this reason, a PGR is the all-issues, limited-time challenge, whereas an IPR is the limited issues, life-of-the-patent challenge. *Id.*

### **B. IPRs Include Patents and Printed Publications Only.**

The IPR statute is unambiguous: IPRs are limited to section 102 and 103 challenges and “*only* on the basis of prior art consisting of patents or printed publications.” 35 U.S.C. § 311(b) (emphasis added).<sup>2</sup> Neither of the two specific categories of prior art offers any special caveat for patent applications that do not

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<sup>2</sup> “Consisting of” is well-understood in the patent context to define a closed list. In other words, a list preceded by the phrase “consisting of” is exhaustive and excludes additional elements. *See, e.g., Azurity Pharms., Inc. v. Alkem Lab’s Ltd.*, 133 F.4th 1359, 1367 (Fed. Cir. 2025) (“The ‘consisting of’ transition is closed. With little exception, it limits the claim’s scope to the recited components.” (citing *Norian Corp. v. Stryker Corp.*, 363 F.3d 1321, 1331 (Fed. Cir. 2004); *AFG Indus., Inc. v. Cardinal IG Co.*, 239 F.3d 1239, 1245 (Fed. Cir. 2001))).

become printed publications. Thus, to fall under section 311(b) and be fair grounds for an IPR petition, a patent application would have to be either (1) a “patent” or (2) become published as a “printed publication.” Whether a reference qualifies for IPR challenge as a “patent” or a “printed publication” determines its priority date. And the terms “patent” and “printed publication” are both off-the-shelf terms with well-established meanings.

For example, consider a patent application that ultimately yields an issued patent. The issued patent falls within section 311(b) prior art as a “patent” because it meets the requirements of being a “patent,” *e.g.*, it is examined, allowed, and ultimately issued by the Patent Office as a U.S. patent. Section 102(e)(2) sets the prior-art date of a patent as the filing date of its underlying patent application. But a patent application itself, whether published or not, is distinct from the patent.

Likewise, a patent application that is ultimately published can fall under section 311(b) as a “printed publication,” subject to the requirements of being a “printed publication.” Decades of precedent readily offer a well-contoured definition of that term:

The statutory phrase “printed publication” has been interpreted to mean that before the critical date the reference must have been sufficiently accessible to the public interested in the art; dissemination and public accessibility are the keys to the legal determination whether a prior art reference was “published.”

*In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989) (quoting *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1568 (Fed. Cir. 1988)); *see also In re*

*Klopfenstein*, 380 F.3d 1345, 1348 (Fed. Cir. 2004) (“The statutory phrase ‘printed publication’ has been interpreted to mean that before the critical date the reference must have been sufficiently accessible to the public interested in the art; dissemination and public accessibility are the keys to the legal determination whether a prior art reference was ‘published.’” (quoting *Cronyn*, 890 F.2d at 1160)); *Jazz Pharms., Inc. v. Amneal Pharms., LLC*, 895 F.3d 1347, 1356 (Fed. Cir. 2018) (“[W]hether a reference is a ‘printed publication’ is a ‘case-by-case inquiry into the facts and circumstances surrounding the reference’s disclosure to members of the public.’” (quoting *Klopfenstein*, 380 F.3d at 1350)); *In re Hall*, 781 F.2d 897, 899 (Fed. Cir. 1986) (“‘[P]ublic accessibility’ has been called the touchstone in determining whether a reference constitutes a ‘printed publication’ bar under 35 U.S.C. § 102(b).”); *In re Bayer*, 568 F.2d 1357, 1361–62 (C.C.P.A. 1978) (explaining that printed publications are prior art only as of the date they reach the public, as the “public is not to be charged with knowledge of a subject until such time as it is available to it” (quoting *In re Tenny*, 254 F.2d 619, 626 (C.C.P.A. 1958))).

Notably, the Federal Circuit has continued to adhere to the *Cronyn* definition of “printed publication” well after the American Inventors Protection Act, Pub. L. No. 106-113, 113 Stat. 1501A-552 (1999) (“AIPA”), which provided for the publication of patent applications. *Klopfenstein* itself quotes *Cronyn*’s definition a few years after the AIPA. *Klopfenstein*, 380 F.3d at 1348. The definition has endured at the Federal Circuit after the passage of the AIA, too. *See, e.g., Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1373 (Fed. Cir. 2021) (quoting *Constant*, 848 F.2d at 1568;

*Voter Verified, Inc. v. Premier Election Sols., Inc.*, 698 F.3d 1374, 1380 (Fed. Cir. 2012).<sup>3</sup>

When Congress used the terms “patents or printed publications” in defining the only permissible “basis of prior art” for IPRs, it built on the well-established meanings of these terms. Based on the “settled pre-AIA precedent on the meaning of” printed publication, this Court “presume[s] that when Congress reenacted the same language in the AIA, it adopted the earlier judicial construction of that phrase.” *Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc.*, 586 U.S. 123, 131 (2019) (explaining that when Congress reenacts a phrase in the AIA, this Court presumes Congress “adopted the earlier judicial construction of that phrase”).

Rather than follow the text and statutory history, the Federal Circuit took a different tact. It expanded section 311(b) to shoehorn into its scope an abandoned patent application that is neither a prior-art patent nor a prior-art printed publication (because it was held confidentially and not publicly accessible before the critical date). *See* 37 C.F.R. § 1.14 (2025) (“Patent applications that have not been published . . . are generally preserved in confidence pursuant to 35 U.S.C. 122(a).”). To reach its result, the Federal Circuit *did*

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<sup>3</sup> Until the decision below, the Federal Circuit had not previously suggested that the AIPA overruled or modified *Constant* or any other case defining printed publications. Nor would that make sense: the AIPA did not purport to redefine “printed publications,” a term with a specific, longstanding meaning, but instead created a new category of prior art by authorizing that “each application for a patent shall be published.” 35 U.S.C. § 122(b)(1)(A). Yet Congress chose not to include this new third category of prior-art documents as available evidence for *inter partes* reexamination (created in the same AIPA of 1999) or, later, in IPR, and instead retained the established, long-defined categories of patents and printed publications.

*not* ask, per the statute’s use of the well-understood phrase “printed publication,” whether the patent application in question was a prior-art printed publication.

The Federal Circuit instead walked the abandoned patent application through the “printed publication” statutory door and then added the patent-application-specific rule by turning to Part II of Title 35 and invoking section 102(e)(1) to declare that the reference was prior art as of the date of its confidential filing in the Patent Office.

This two-step, mix-and-match of statutory terms—first “printed publication” in section 311(b) and then “patent application” in section 102(e)(1)—led the Federal Circuit to deem an abandoned patent application to be an appropriate basis for an IPR, despite that abandoned application not qualifying as a *prior-art* printed publication.

Though the confusion may be driven by a belief that all published patent applications are prior art under section 102, the question here is not what is prior art, but, rather, what prior art is *permitted in an IPR*. Here, section 311(b) specifies that only patents and printed publications are permitted under the AIA’s IPR scheme. Thus, section 102(e)(1) *is not applicable* to section 311(b)’s “printed publications” because section 102(e)(1) applies only to patent applications, and section 311(b) does not include patent applications as its own statutory category of prior art. There is no statutory or purposive basis to consult section 102(e)(1) to determine whether a given reference is a prior-art “printed publication” for purposes of section 311(b).

If Congress had wanted to include a special prior-art rule for patent applications in IPRs, it could have added “published patent applications” (or some

comparable phrase) to the text of section 311(b). It did not. See *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364 (2018) (explaining that Congress knows how to “borrow[] from the statute next door” when it intends to enact a similar framework). And in the opinion below, the Federal Circuit offered no sufficient reason why Congress would have believed it was invoking section 102(e)(1), “a special rule for *published patent applications*,” Pet. App. 8a, when it wrote in section 311(b) the term “printed publication,” a term with decades of history and a well-settled meaning.

The Federal Circuit’s conflation of “printed publications” in section 311(b) with patent applications, which were created by section 122(b)(1)(A), eviscerates Congress’s choice of words in section 311(b), which plainly limits IPR scope to a prior-art “printed publication”—a document that is long-understood only to be prior art as of the date of its availability to the public.

## **II. Congress Intentionally Constrained *Inter Partes* Review to Have Limited Scope Compared to Post-Grant Reviews and District Court Litigation.**

The Federal Circuit justified its result in this case in part by resorting to policy—opining that a textualist reading of the statute “would place an artificial constraint on the types of prior art that may be asserted in an IPR versus that which may be asserted in district court.” Pet. App. 20a n.10. If policy considerations are in play, they must at a minimum be accurate. But, as *Amici* understand from their involvement in the development and passage of the AIA, it is incorrect that there is “no reason why Congress would have created such a distinction.” *Id.*

The single best reference for identifying the purpose and policy behind the statute is its text, and section 311 limits the scope of IPRs “only on the basis of prior art consisting of patents or printed publications.” 35 U.S.C. § 311(b); *see also* Johnson, *supra* (“The use of the term ‘consisting of’ was widely understood as sharply limiting the evidence that could be considered in support of a petition to the disclosures of the prior art patents and printed publications themselves.”). Printed publications are defined in precedent, and the Federal Circuit did not identify a sufficient reason to believe that Congress ignored the well-developed body of law and instead chose to adopt a different meaning of printed publication without so stating. *Cf. Helsinn*, 586 U.S. at 131 (explaining that when Congress reenacts a phrase in the AIA, this Court presumes Congress “adopted the earlier judicial construction of that phrase”).

As the statutory text aptly reflects, IPRs were always intended to carry limited scope as compared to PGRs and district court proceedings. The Federal Circuit has itself recognized the wide gulf between IPRs and district-court proceedings, noting that IPR hearings are “nothing like [] district court patent trial[s].” *Saint Regis Mohawk Tribe v. Mylan Pharms. Inc.*, 896 F.3d 1322, 1328 (Fed. Cir. 2018).

The statutory language was “carefully written to balance the need to encourage [IPR] use while at the same time preventing the serial harassment of patent holders.” *Hearing on Reforming the Patent Trial and Appeal Board – The PREVAIL Act and Proposals to Promote U.S. Innovation Leadership Before the Subcomm. On Intellectual Property of the S. Comm. on the Judiciary*, 118th Cong. 2 (2023) (statement of Lamar Smith, Former Chairman of the House Committee on the Judiciary, Co-sponsor of the Leahy-

Smith America Invents Act). Part of the compromise authorized patent challenges throughout the life of a patent. But “[k]ey to the compromise were assurances that IPR[]s would not become vehicles to harass patent owners.” Johnson, *supra*. “Effective protections would be built into the legislation that would enable patent owners to rely on their granted patent rights to protect the continuing investments needed to develop and market their inventions.” *Id.* One of those “[e]ffective protections” was to significantly limit the prior art available for an IPR to only “prior art consisting of patents or printed publications.” 35 U.S.C. § 311(b). In creating the streamlined, cost-effective IPR process, Congress had to draw the line somewhere—not all forms of prior art could be part of a truncated proceeding. It chose to use well-understood, off-the-shelf terms in the statute to draw the line at patents and printed publications.<sup>4</sup>

If *any* AIA proceeding was designed to be similar to district court proceedings, it is PGR. PGR petitioners may raise “*any* ground that could be raised under paragraph (2) or (3) of section 282(b) (relating to

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<sup>4</sup> At issue in this case is the prior-art date of an abandoned patent application. Relying heavily on the Manual of Patent Examining Procedure (“MPEP”), the Patent Office has argued that, in the AIA, Congress was blessing previous Patent Office reexamination practice. Brief for Intervenor—Director of the USPTO, *Lynk Labs Inc. v. Samsung Elecs. Co.*, No. 23-2346, at 23 (Fed. Cir. May 3, 2024) (ECF No. 36). But the MPEP appears conflicted and can be read as supporting Petitioner’s position. The MPEP appears to classify an abandoned patent application (like the reference at issue here) as a “printed publication” with a prior-art date “as of its patent application publication date.” MPEP § 901.02 (8th ed. Aug. 2001). *But see id.* (stating that “a patent application publication published under 35 U.S.C. 122(b) is available as prior art under 35 U.S.C. 102(e)”).

invalidity of the patent or any claim).” 35 U.S.C. § 321(b) (emphasis added). These broad, all-issue proceedings allow a petitioner to challenge a newly issued patent on almost every validity ground available using all types of prior art, but the petitioner must file a request for PGR within nine months. *Id.* § 321. Fact-intensive defenses, such as “undocumented prior art” and “public use,” were deemed to be better addressed “immediately upon issuance.” Johnson, *supra*. “Postponing consideration of such issues would necessarily prejudice patent owners as spoliation of evidence is inevitable over time.” *Id.*

Evidence like an abandoned patent application is undoubtedly appropriate in PGR, as the statute defining the scope of PGR does not limit the proceedings to “patents” or “printed publications.” The PGR statute authorizes a broader scope that necessarily includes published patent applications, regardless of when they become publicly available.

Indeed, the question to be answered here is not whether section 102(e)(1) applies in PGR, examination, reexamination, or even in district court. It is simply whether it applies in IPR. Where Congress purposefully narrowed IPRs as compared to PGRs and other patent proceedings, the Federal Circuit cannot negate that choice and expand it. Congress’s structural choice—where PGRs are broad while IPRs are quite narrow—must be respected by the courts. *See SAS*, 584 U.S. at 364 (“From the outset, we see that Congress chose to structure a process in which it’s the petitioner, not the Director, who gets to define the contours of the proceeding. And ‘[j]ust as Congress’ choice of words is presumed to be deliberate’ and deserving of judicial respect, ‘so too are its structural

choices.” (quoting *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 353 (2013))).

No doubt Congress could have created an IPR procedure that includes more prior art than the two categories named in section 311(b). And such an approach may well have advantages beyond those provided for in the current statute. But it is not a court’s responsibility to interpret a statute in order to achieve a preferred policy objective. See *In re Foster*, 343 F.2d 980, 995 (C.C.P.A. 1965) (Smith, J., dissenting) (“Even if there were such a pervasive policy, it is an usurpation of the legislative function for this court to rewrite the statute.”); accord *Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004) (“Our unwillingness to soften the import of Congress’ chosen words even if we believe the words lead to a harsh outcome is longstanding.”); *United States v. Locke*, 471 U.S. 84, 95 (1985) (“[D]eference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill, generally requires us to assume that ‘the legislative purpose is expressed by the ordinary meaning of the words used.’” (quoting *Richards v. United States*, 369 U.S. 1, 9 (1962))). IPRs are necessarily more restrictive in scope than PGRs and district-court proceedings by Congress’s design.

### **III. The Court Should Grant Review.**

The Federal Circuit’s decision is the first step down a major departure from the statutory language governing IPRs. It reasoned that, because the publication at issue in this case—an abandoned patent application—was an “official PTO publication[],” it “would create even less need for discovery or factfinding than some other alleged printed publications.” Pet. App. 20a. That, in the court’s view, justified “[t]reating published patent applications (with the special prior-art rule of

§ 102(e)(1) applied) as available prior art under § 311(b) is thus fully consistent with Congress's purpose in limiting the types of patentability challenges in IPRs." *Id.* at 20a–21a.

The appeals court's decision effectively sanctions a bold departure from the text, history, and purpose of section 311(b) and related statutory provisions. It rewrites section 311(b) to add a third category of prior art because, in the court's view, it saw "no reason why Congress would have created" "an artificial constraint on the types of prior art that may be asserted in an IPR versus that which may be asserted in a district court." Pet. App. 20a n.10. That conclusion overlooks that Congress designed IPRs to be a streamlined, cost-effective alternative to litigation, not a second bite at all issues that can be, should be, and are routinely raised in district court. Moreover, the court's misplaced, purpose-driven, atextual approach would lead to even more identity between IPRs, on the one hand, and expansive PGR and district court proceedings on the other—exactly the opposite of Congress's objective when crafting the AIA and the important two-window hybrid compromise.

Finally, the process the Federal Circuit has endorsed here—walking a reference into section 311(b) under the title of "printed publication" but sidestepping the requirement that a "printed publication" must be prior art as of the date it is publicly available—could have far reaching consequences. The Federal Circuit's expansive statutory interpretation nullifies Congress's purposive decision to exclude non-prior-art "printed publications" from IPR proceedings.

The Court should grant review to maintain Congress's precise statutory scheme as it was intentionally designed.

**CONCLUSION**

One of the centerpiece reforms of the AIA was the creation of *inter partes* review, which Congress intended to provide a quicker, more cost-effective alternative to district-court litigation. The Federal Circuit's desire for identity between the prior art in district-court proceedings and PGRs proceedings as compared to IPRs threatens to collapse the careful balance and legislative compromise reflected in the AIA's final text that affirmatively restricted the scope of IPRs. This Court should grant certiorari and ensure that these proceedings stay true to the statute's text, structure, and purpose, as Congress intended.

The petition should be granted.

Respectfully submitted,

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