

No. 25-308

IN THE
Supreme Court of the United States

LYNK LABS, INC.,

Petitioner,

v.

SAMSUNG ELECTRONICS COMPANY, LTD. ET AL.,

Respondents.

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

**AMICI CURIAE BRIEF OF
INTELLECTUAL PROPERTY AND
INNOVATION SCHOLARS IN SUPPORT OF
PETITIONER**

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INTERESTS OF AMICI AND RULE 37.6 DIS- CLOSURE¹

Amici are professors of law, economics, and business at universities throughout the United States who have no personal interest in the outcome of this case but have a vital professional interest in seeing the jurisprudence of the laws of statutory interpretation and intellectual property develop in a way that facilitates their just administration. As explained in this brief, the decision below is a black-and-white departure from textualist adherence to statutory language based on agency and policy preferences, undermining patentees' rights to rely on what statutes say and presenting an ideal vehicle for disapproving such policy-driven statutory interpretation in every area of law. *Amici* scholars submit that their perspective, based on their collective scholarship and legal expertise, will be of assistance to the Court in deciding this matter.²

Ted Sichelman is Judith Keep Professor of Law at the University of San Diego School of Law. His scholarship has been highly cited, and he was named the 11th most cited IP & Cyberlaw Scholar in the U.S. in the Leiter Rankings. His publications include the 16th, 7th, 8th, and 47th most-cited law journal articles published in 2009, 2010, 2011, and 2014,

¹ Counsel on the cover of this brief states that no counsel for any party authored this brief in whole or in part and no such counsel or party or anyone other than *amici* or their counsel made a monetary contribution to fund the preparation or submission of the brief. Sup. Ct. R. 37.6. The parties received timely notice through their counsel of record of the intention to file this brief as provided by Rule 37.2.

² *Amici* each join this brief in the personal capacity and not on behalf of their respective institutions.

respectively, according to HeinOnline as of August 2020. He has participated in many cases in this Court as counsel or amicus, including drafting or co-drafting amicus briefs in *Bilski v. Kappos* (2010), in which the Court's decision largely tracked the brief's recommendations and reasoning. He founded, ran, and designed software for a venture capital-backed software and services company later acquired by a publicly traded company, and is a named inventor on several issued and filed patents and applications for patent.

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Mark F. Schultz is the Goodyear Endowed Chair in Intellectual Property Law and Faculty Director of the IP Policy Institute at the University of Akron School of Law. His research examines how patent and other IP institutions influence innovation and investment, with particular focus on life sciences and emerging technologies. He previously practiced technology and IP law and clerked for Judge Daniel Friedman on the U.S. Court of Appeals for the Federal Circuit, and he has served as an expert advisor to the OECD, WIPO, and policymakers in the United States and abroad.

SUMMARY OF ARGUMENT

Amici file this brief in support of the petitioner to highlight the growing gap—typified, if not epitomized, by the decision below—between this Court's ever-

increasing emphasis on adherence to the words in statutes and lower courts' inclination to depart from them.

This Court's recent jurisprudence leaves no doubt that lower courts and administrative agencies must adhere to the text of statutes when interpreting them. By adopting a clearly textualist approach, this Court has rejected alternatives centered on policy-based reasoning, legislative intent and history, and agency discretion. Despite the Court's clear pronouncements, many lower courts and agencies continue in many cases to follow these rejected alternatives to reach incorrect results.

In this case, the U.S. Patent & Trademark Office (USPTO), acting through the Patent Trial and Appeal Board (PTAB), and the U.S. Court of Appeals for the Federal Circuit engaged in policy-based reasoning and legislative reconstruction to effectively import a new term, "application(s) for patent," into Section 311(b) of the Patent Act, 35 U.S.C. § 311. Specifically, this section states that in USPTO *inter partes* review proceedings, the validity of a patent may be challenged "*only* on the basis of prior art consisting of *patents* or *printed publications*" (emphases added). Nowhere does the term "application(s) for patent" (or "patent application(s)") appear in the provision.

Rather than adhering to the text of the provision, the USPTO and Federal Circuit relied on policy and legislative history—the Federal Circuit largely adopting the agency's espoused policy positions, without expressly acknowledging that fact—to interpret the section as encompassing "applications for patent," a separate category of prior art from "patent" or "printed publication." Because the language "application(s) for

patent” or “patent application(s)” appears in numerous other sections of the Patent Act (e.g., Sections 100, 102, 111, 120, 122, 154, 371, 374), including those related to prior art and validity (e.g., Sections 100, 102), *but not* Section 311(b), any textualist approach would immediately yield the conclusion that the term cannot be imported into Section 311(b).

This case is an ideal vehicle for the Court to decisively reaffirm to lower courts and agencies that it will not tolerate policy-driven and similar approaches to statutory interpretation that essentially ignore or distort the plain text of the statute, for at least four reasons. **First**, the statutory provision at issue in this case can be interpreted without resort to the specific facts of this case and does not raise the major questions or other related doctrines. As such, it presents a pure issue of law solely based on the text of the statute. **Second**, it is a black-and-white case in that a textualist approach clearly commands a single result, whereas approaches centered on policy and legislative history do not. **Third**, it involves a lower court, the Federal Circuit, that is central not only to intellectual property law, but also to international trade law (including tariffs), as well as to actions filed directly against the federal government—all areas of great national importance. And it involves *inter partes* review, a relatively recent Congressional innovation that has become a central aspect of high-stakes patent litigation. **Fourth**, the importance and simplicity of the issues in this case will result in an impactful opinion by this Court that will be highly influential and widely cited by lower courts and agencies.

This brief proceeds as follows. Part I summarizes this Court’s recent cases adopting a textualist approach to statutory interpretation, including its

rejection of approaches centered on policy analysis and legislative history. Part II describes concisely how the USPTO and Federal Circuit failed to adhere to a textualist approach. Part III explains how this case is an ideal vehicle for this Court not only to correct the Federal Circuit and USPTO, but also to send an emphatic message to lower courts and agencies.

ARGUMENT

I. The Law Of Statutory Interpretation Increasingly Emphasizes Adherence To Text.

This Court’s recent jurisprudence leaves no doubt that lower courts and administrative agencies must adhere to the text of statutes when interpreting them. Most recently in *Fischer v. United States*, the Court rejected an “expansive interpretation” of a statute that was “untether[ed]” from the text and would thereby “override Congress’s careful delineation of” the “varying” consequences of “disparate types of conduct” throughout its provisions. 603 U.S. 480, 491–95 (2024). Similarly, in *Garland v. Cargill*, the Court held that it was improper to “rewrite” a statute “merely because it draws a line more narrowly than one of its conceivable statutory purposes might suggest” and rejected a statutory interpretation “keyed” to a criterion that “Congress did not write.” 602 U.S. 406, 423, 427–28 (2024).

Also, in *Bittner v. United States*, the Court reaffirmed that “[w]hen Congress includes particular language in one section of a statute but omits it from a neighbor, we normally understand that difference in language to convey a difference in meaning.” Following this principle, the Court rejected an interpretation that increased a penalty for “each account not timely or accurately disclosed,” because “[t]he word ‘account’ d[id] not even appear” in the statute in relation to the “category of cases” before the Court. 598 U.S. 85, 92–94 (2023).

In *Dubin v. United States*, the Court explained that interpretation “should . . . reflect the distinction

between” categories “that Congress sought to distinguish” and so rejected a “sweeping reading” of statute that went “well beyond ordinary understandings of” the statute’s language. 599 U.S. 110, 114, 120, 127–128 (2023) (quotation marks omitted). *See also Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 463 (2022) (declining “to elevate vague invocations of statutory purpose over the words Congress chose”); *Lockhart v. United States*, 577 U.S. 347, 356 (2016) (rejecting statutory interpretation that failed to “preserv[e] some distinction between the categories” Congress enumerated).

By adopting a clearly textualist approach, this Court has rejected alternatives centered on policy-based reasoning, legislative intent, and broad administrative discretion. “The ‘plain purpose’ of legislation . . . is determined in the first instance with reference to the plain language of the statute itself.” *Bd. of Governors of Fed. Rsrv. Sys. v. Dimension Fin. Corp.*, 474 U.S. 361, 373 (1986). Thus, the Court has made clear that statutory interpretation “begins and ends with the text,” and that neither perceived statutory purpose nor arguments rooted in legislative history may supply what Congress did not enact.

After all, “legislative history is not the law.” *Azar v. Allina Health Servs, Inc.*, 587 U.S. 566, 579 (2019) (quotation omitted). The Court has emphasized that fidelity to the text is required even where policy arguments might point in a different direction and that courts must interpret statutes “based on traditional tools of statutory constructions, not individual policy preferences.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 403 (2024). These principles reflect the separation-of-powers concerns at the heart of the Court’s interpretive methodology: where the enacted text

speaks, judicial inquiry is bounded by what Congress actually wrote—not by what courts or agencies believe Congress might have wanted to achieve. A. SCALIA & B. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 57 (2012) (hereinafter SCALIA & GARNER) (“First, the purpose must be derived from the text, not from extrinsic sources such as legislative history.”).

This commitment to textualism necessarily cabins the interpretive discretion of lower courts, like the Federal Circuit here, and agencies, like the USPTO here. When Congress has spoken with specificity, the judiciary and agencies are not permitted to supplement or narrow the enacted text simply because “experience may disclose that” the statute should have been made more comprehensive. *Addison v. Holly Hill Fruit Prods.*, 322 U.S. 607, 617 (1944). Instead, courts must apply statutory language as written, giving effect to the distinctions, exceptions, and limitations that Congress chose. Where the text is clear, that command forecloses any sort of “atextual judicial supplementation.” *Lackey v. Stinnie*, 604 U.S. 192, 205 (2025); see SCALIA & GARNER 11–13 (criticizing the now-defunct reasoning of *Holy Trinity Church v. United States*, 143 U.S. 457 (1892), that the “spirit” of a statute may prevail over its text). And where the text is ambiguous, the inquiry still proceeds through traditional textual tools—context, structure, canons, and the statute as a whole—not through appeals to policy preferences, agency wishes, or assumptions about what Congress might have intended when in fact it “studiously omitted” particular words from a statute. *FTC v. Simplicity Pattern Co.*, 360 U.S. 55, 67 (1959). In short, the modern doctrine does not merely favor text; it assigns the primacy of text as the controlling rule of decision.

II. Properly-Applied Textualism Neatly Resolves This Case.

The Court of Appeals for the Federal Circuit did not adhere to textualist principles in reaching its decision in this case. As noted in Part I, Section 311 of the Patent Act, 35 U.S.C. § 311, solely refers to “patents” and “printed publications” as permissible categories of prior art for *inter partes* review (IPR) actions and does not include the term “applications for patent,” used extensively throughout the Act.

Under § 311, correctly construed, published patent applications may only be considered as prior art in IPR proceedings as “printed publications,” not as a separate category of prior art. The important upshot is that the earliest relevant date of a published patent applications in IPR proceedings is its publication date and not its filing date or other dates prior to publication.

The Federal Circuit’s contrary interpretation reads key phrases in isolation instead of construing the statute as a whole. It also relies on a broad sense of statutory purpose, thereby overriding the details of the express limitations Congress put in place. Applying established textualist principles makes the errors in the Federal Circuit’s interpretation crystal clear.

These errors merit this Court’s attention in part because the statutory question is so cleanly presented. The interpretive dispute is antecedent to all factual disputes, allowing this Court to provide guidance to lower courts and agencies on a pure question of statutory interpretation.

A. The Meaning Of This Statutory Language Does Not Turn On Case-Specific Facts.

The only relevant facts are undisputed—i.e., that the only invalidity grounds in dispute depend on a published patent application (the “Martin” reference) that is not prior art as of its publication date but would be prior art if afforded priority as of its filing date. *Lynk Labs, Inc. v. Samsung Elecs. Co., Ltd.*, 125 F.4th 1120, 1123–24 (Fed. Cir. 2025) (“Relevant here are Samsung’s first six grounds of unpatentability, each of which relied on . . . ‘Martin.’”); *see also id.* at 1124 n.3.

The entire dispute as presented to this Court is simply whether § 311 allows published patent applications to be considered prior art in an *inter partes* review as of their filing date. The Court can therefore correct the Federal Circuit’s error of statutory interpretation and reverse without the need to consider any of the technical and factual disputes characteristic of patent litigation.

B. Using The Tools Of Textual Analysis, Section 311(b) Excludes Still-Pending Patent Applications.

The meaning of § 311(b) is readily resolved through standard textual analysis. Section 311(b) permits the PTAB to rely only on “prior art” that consists of “patents or printed publications” in an IPR and excludes other forms of prior art, even when they would otherwise qualify under other sections of the Patent Act. The familiar tools of construction reveal no basis for the Federal Circuit’s contrary approach.

1. Established Principles Of Textualism Require Reversal.

Several textualist principles point to the same interpretation of § 311(b), and none contradict it. That disputed subsection specifically provides:

A petitioner in an *inter partes* review may request to cancel as unpatentable 1 or more claims of a patent only on a ground 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) (emphasis added). Read as a whole, the plain meaning of the language “prior art consisting of . . . printed publications” embraces references that are ***prior*** art to the patent in dispute ***by virtue*** of having been published in print. The Federal Circuit went awry, first and foremost, by eschewing this holistic reading and construing key phrases in isolation.

It first considered whether the Martin reference was a printed publication and then, separately, whether it was prior art, *Lynk Labs*, 125 F.4th at 1125–26. But this approach is contrary to this Court’s consistent guidance. “[W]e do not . . . construe statutory phrases in isolation; we read statutes as a whole.” *Samantar v. Yousuf*, 560 U.S. 305, 319 (2010) (quoting *United States v. Morton*, 467 U.S. 822, 828 (1984)). As Petitioner argued before the Federal Circuit, a published patent application is always a “printed publication,” but is only “prior art” in an IPR as of its publication date.

The textual conclusion is confirmed by examining the only provision that meaningfully defines “printed

publications”—§ 102, the very section to which § 311(b) expressly refers. There is no dispute that the two sections are *in pari materia*. *Lynk Labs*, 125 F.4th at 1125–32 (relying heavily on § 102 to construe § 311). And “statutes addressing the same subject matter generally should be read ‘as if they were one law.’” *Wachovia Bank v. Schmidt*, 546 U.S. 303, 315–16, (2006) (quoting *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972)).

The Federal Circuit attempted to interpret § 311 in view of § 102 but did so improperly. Specifically, the Federal Circuit held that “under § 102(e)(1), even if a patent application was published after a claimed invention, it may serve as prior art to the invention if the application was filed before the invention.” *Lynk Labs*, 125 F.4th at 1126. Yet, § 102(e)(1) does not mention “patents or printed publication”—it deals exclusively with an “application for patent,” a separate category of prior art absent from § 311(b). 35 U.S.C. § 102(e)(1) (2006 ed.) (“the invention was described in — (1) an *application for patent*, published under section 122(b), by another filed in the United States before the invention by the applicant for patent) (emphasis added).

Section 311(b) requires that prior art in IPRs both “could be raised under section 102 or 103 **and** only . . . consist[] of patents or printed publications” 35 U.S.C. § 311(b) (emphasis added). Reading this passage as a whole, prior art under § 102(e)(1), which is limited to “application[s] for patent,” cannot serve as a basis for prior art available in IPRs under § 311(b). Rather, under § 311(b), the only basis for considering an application for patent as prior art is as a “printed publication” under § 102(a) or § 102(b). As is clear from the lengthy discussion in Petitioner’s certiorari petition, printed

publications in these sections can only be used as of the date of publication, not the date of filing or an earlier date. “The touchstone of whether a reference constitutes a printed publication is public accessibility.” *Lynk Labs*, 125 F.4th at 1125 (quoting *Weber, Inc. v. Provisur Techs., Inc.*, 92 F.4th 1059, 1067 (Fed. Cir. 2024)).

Applying established canons of construction reinforces this interpretation. The simplest textual objection to the Federal Circuit’s interpretation is the canon *expressio unius est exclusio alterius*. Section 311(b) lists two categories of prior art and not others, but the Federal Circuit’s reading deprives Congress’s omission of any reference to patent applications from having any effect.

According to the Federal Circuit’s reading, the language “patents or printed publications” functions as if Congress had enacted the much broader phrase “patents, printed publications, and patent applications.” But if Congress had intended IPRs to consider patent application references that are prior art only by virtue of their filing date, it would have been expected to include “prior art . . . consisting of patent applications” in § 311(b)’s enumerated list, just as it did by listing “prior art consisting of patents.” “Congress’ choice of words is presumed to be deliberate’ and deserving of judicial respect.” *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364 (2018) (quoting *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 353 (2013)).

The *expressio unius* “doctrine properly applies . . . when . . . the thing specified . . . can reasonably be thought to be an expression of all that shares in the grant or prohibition involved.” SCALIA & GARNER 107. Here, the phrase “patents or printed publications”

meets that requirement because the statute is an expressly exhaustive list of the prior art that can be considered in an IPR. 35 U.S.C. § 311(b) (“only on the basis”).

Moreover, § 311(b) is not *sui generis*. Rather than invent a new way to categorize prior art, it reproduces certain categories of prior art set down in § 102 and used throughout the Patent Act (“patents” and “printed publications”) and excludes other categories of prior art in § 102 (“applications for patent”). The enumeration of two of the established categories of prior art pointedly implies that omitted categories are excluded. And, as to patent applications specifically, Congress has shown that it knows how to refer to them clearly when it intends to. The language “application(s) for patent” or “patent application(s)” appears numerous times in the Patent Act (e.g., Sections 100, 102, 111, 120, 122, 154, 371, 374)—including those related to prior art and validity (e.g., Sections 100, 102)—but not in Section 311(b).

Particularly telling is 35 U.S.C. § 122(e)(1), another section in which Congress lists types of prior art. In that section, however, Congress listed “patent application” expressly—in addition to “printed publications”: “Any third party may submit for consideration and inclusion in the record of a patent application, any patent, published patent application, or other printed publication of potential relevance to the examination”³ This makes § 311(b) particularly ripe for application of the negative implication canon. “When Congress includes particular language in one section

³ Section 122(e)(1) has no direct application here because it does not relate to IPRs—it governs preissuance submissions by third parties while a patent application is pending.

of a statute but omits it from a neighbor, we normally understand that difference in language to convey a difference in meaning (*expressio unius est exclusio alterius*)." *Bittner*, 598 U.S. at 94. The omission of patent applications from § 311(b) is meaningful and demonstrates that in an IPR the PTAB may not consider patent applications as prior art as of their filing date.

The canon against surplusage demands the same result. That principle "frequently . . . prevents not the total disregard of a provision, but instead an interpretation that renders it pointless." SCALIA & GARNER 176. Indeed, "[t]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *City of Chicago, Illinois v. Fulton*, 592 U.S. 154, 159–60 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)).

The interpretation of § 311(b) adopted by the Federal Circuit is just such an interpretation—it so broadens the effect of "printed publications" that the phrase swallows everything included not only under "applications for patent" but even under "patents," rendering the latter utterly superfluous. The Federal Circuit separated out the question of whether a reference qualifies as a printed publication from whether it counts as prior art. It reasoned that § 311(b) allows a reference that counts as a "printed publication" to claim priority under any applicable provision of § 102, not just the provisions in § 102(a) and (b) that pertain to printed-publication prior art. *Lynk Labs*, 125 F.4th at 1130. It therefore wrongly concluded that because published patent applications (1) qualify as printed publications and (2) qualify as prior art as of their filing date under § 102(e)(1), they can be considered as

prior art in an IPR as of that filing date. *Id.* This may have well been the intent of the drafters, but this Court has made amply clear that purpose cannot override the plain language of the statute. *Fischer*, 603 U.S. at 491–95.

If that atomized approach to interpretation were correct, however, then the separate inclusion of “patents” in § 311(b) would have no function. Just like published patent applications, issued patents are also necessarily printed publications.⁴ So if—as the Federal Circuit held—the phrase “printed publications” in § 311(b) allowed published patent applications to serve prior art in an IPR as of their filing date under § 102(e)(1), then it must do the same for patents under § 102(e)(2). Accordingly, the separate, express inclusion of “patents” alongside “printed publications” would add nothing.

The Federal Circuit’s interpretation must therefore be rejected for “render[ing] superfluous” not only “another part of the same statutory scheme” but also another part of the very same clause. *Fulton*, 592 U.S. at 159–60. Only the correct reading gives independent effect both to “patents” and “printed publications.” The superfluity can easily be avoided simply by recognizing that “prior art consisting of patents or printed publications” allows a reference to be considered in an IPR only as of a priority date that it can claim by

⁴ By statute and rule, patents are both printed and made available to the public once issued. 35 U.S.C. § 153 (“[I]ssued” patents “shall be recorded in the Patent and Trademark Office.”); 37 C.F.R. § 1.11(a) (“The specification, drawings, and all papers relating to the file of . . . a patent . . . are open to inspection by the public, and copies may be obtained.”).

virtue of being either a patent or printed publication—not by virtue of being a patent application.

2. The Federal Circuit Deviated From Textualist Principles

The Federal Circuit committed two main errors in interpreting § 311. First, as discussed earlier, it read the term “printed publications” in isolation rather than as part of the phrase “prior art . . . printed publication[s],” as *Lynk Labs* urged. *Lynk Labs*, 125 F.4th at 1125. Second, it relied on a broad Congressional purpose which it drew in significant part from legislative history.

Specifically, the Federal Circuit sought to bolster its atextual reading by relying on a broad sense of the purpose of § 311(b), drawn primarily from legislative history. That court reasoned that the statute’s purpose was “to provide a cheaper and less time-consuming alternative to challenge patent validity on certain issues.” *Lynk Labs*, 125 F.4th at 1132 (quoting *Qualcomm Inc. v. Apple Inc.*, 24 F.4th 1367, 1376 (Fed. Cir. 2022)). From that premise, the court concluded that § 311(b)’s limitation to “patents or printed publications” should be read broadly—such that published patent applications qualify despite being omitted from that list.

But “no legislation pursues its purposes at all costs.” *Pension Ben. Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 646–47 (1990) (quoting *Rodriguez v. United States*, 480 U.S. 522, 525–26 (1987)). And here, it is crystal clear that § 311(b) expressly restricts the types of validity challenges that can be channeled into its accelerated procedures, so nothing can properly be inferred from the Federal Circuit’s assessment of the

statute’s overarching purpose. It would “frustrate[] rather than effectuate[] legislative intent simplistically to assume that whatever furthers the statute’s primary objective must be the law.” *Id.* at 647 (quoting *Rodriguez*, 480 U.S. at 525–26); see SCALIA & GARNER 11–13 (explaining that the “spirit” of a statute may not prevail over its text).

The Court also relied on legislative history to infer “a broad division between prior art that may be asserted in these post-grant proceedings and prior art that may not: printed documents versus sale and public use, respectively.” *Lynk Labs*, 125 F.4th at 1132. It concluded that the purpose of this division was to admit only “the types of references that ‘are normally handled by patent examiners,’ while” excluding those that “require substantial discovery or factfinding.” *Id.* (citations omitted).

Legislative history is not the right place to look for “[t]he ‘plain purpose’ of legislation,” which “is determined in the first instance with reference to the plain language of the statute itself.” *Dimension Fin. Corp.*, 474 U.S. at 373; see also SCALIA & GARNER 56 (“[P]urpose must be derived from the text, not from extrinsic sources such as legislative history.”).

Assuming Congress’s purpose was to allow PTAB to consider written materials that do not require extensive discovery or factfinding, that supposed policy does not support the Federal Circuit’s position. Congress plainly did not pursue this purpose to its logical endpoint. If ease of handling were the touchstone, then any prior-art reference documented in writing would be fair game for *inter partes* review—including written proof of prior use or prior sales. Yet no one reads § 311(b) to sweep that broadly, and the Federal

Circuit has already acknowledged that some invalidity grounds based on written evidence lie outside its scope. *See Ingenico Inc. v. IOENGINE, LLC*, 136 F.4th 1354, 1367 (Fed. Cir. 2025).

Accordingly, the mere fact that patent applications are written references that are easy to handle in an IPR says little if anything about how § 311(b) should be interpreted. And this case exemplifies the danger of attempting to “pave over bumpy statutory texts” with “cold logic”—doing so “risk[s] failing to ‘tak[e] . . . account of legislative compromises essential to a law’s passage.”. *New Prime Inc. v. Oliveira*, 586 U.S. 105, 120 (2019) (quoting *Dimension Fin. Corp.*, 474 U.S. at 374).

III. This Case Presents An Important Issue Of Interpretation And This Court’s Guidance Will Be Impactful.

In addition to presenting a clean vehicle for correcting a pure error of interpretation, this case presents an important opportunity to direct lower courts. First, the Federal Circuit has a uniquely nationwide role, so ensuring that it interprets statutes according to settled principles is especially important. The specific statutory question regarding the scope of IPRs is also of nationwide significance because IPRs have become a ubiquitous feature of patent litigation across the nation.

Second, because applying traditional tools of statutory construction makes this case clearcut, it provides an opportunity for the Court to give guidance on issues of interpretation with broad application. This will assist lower courts far beyond the confines of patent law.

A. The Published Circuit Decision Below Will Affect Cases Having National Importance.

The Federal Circuit is unique among federal courts of appeals (save perhaps for the D.C. Circuit) in the nationwide significance of its decisions. Both within patent law and without, it has jurisdiction over appeals from all district courts, limited only by the subject matter of the appeals. 28 U.S.C. § 1295(a)(1) (patent claims); *id.* § 1295(a)(2) (Little Tucker Act claims). It also has jurisdiction over appeals from several specialized tribunals, each of which has effectively nationwide jurisdiction over specialized subject matter, including the Court of Federal Claims, the Court of International Trade, and Patent and Trademark Trial and Appeals Boards (PTAB and TTAB). 28 U.S.C. § 1295(a)(3)–(10).

This nationwide character is central to the mission and purpose of the Federal Circuit. This Court has noted the importance of “the Federal Circuit” in meeting “the ‘special need for nationwide uniformity’ in certain areas of the law.” *United States v. Hohri*, 482 U.S. 64, 71 (1987). But this nationwide character is also a two-edged sword. When the Federal Circuit goes astray in its interpretation of statutes, the effects are felt in every corner of the nation. By the same token, correcting the Federal Circuit in this case is a matter of nationwide significance, including beyond the dispute at issue in this case. Ensuring the Federal Circuit adheres to rigorous textualism is critical for ensuring the sound development of all the specialized fields of law committed to its supervision.

The narrow question at issue is also of nationwide significance. *Inter partes* review has become an

extremely consequential feature of patent litigation across the nation. Shortly after “IPRs were created, they . . . rapidly bec[a]me a popular vehicle for challenging the validity of issued patents.” *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1306–07 (Fed. Cir. 2015). Indeed, “popular . . . is an understatement. . . . [T]he number of IPR petitions filed in 2013 to 2015 . . . more than tripled from 514 to 1737.” *Cocona, Inc. v. VF Outdoor, LLC*, No. 16-CV-02703-CMA-MLC, 2018 WL 10910847, at *2 (D. Colo. Mar. 19, 2018). The number of petitions for *inter partes* review “[i]n a typical year” ultimately settled “between 1,000 and 2,000.” *Kroy IP Holdings, LLC v. Groupon, Inc.*, 146 F.4th 1360, 1364 n.5 (Fed. Cir. 2025) (Dyk, J., dissenting). And it remains in that range today. See U.S. Patent & Trademark Office, *Patent Trial and Appeal Board, Trial Statistics* at 5 (Sept. 30, 2025) (1362 IPRs filed in fiscal year 2025)⁵; U.S. Patent & Trademark Office, *Patent Trial and Appeal Board, Trial Statistics* at 5 (Sept. 30, 2024) (1250 IPRs filed in fiscal year 2025).⁶

In sum, IPRs are now a commonplace part of patent litigation, and they have significant impacts both on its ultimate outcome and, increasingly, on the procedural course of litigation. The scope of IPRs is therefore an incredibly important question for patent litigation, and the Federal Circuit’s mistake will distort litigation across the nation if not corrected.

⁵ Available at https://www.uspto.gov/sites/default/files/documents/Trial_StatsFY25_Q4.pdf.

⁶ Available at https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2024__roundup.pdf.

B. The Clarity Of The Error Below Provides An Opportunity For Impactful Guidance.

Finally, this Court’s guidance on basic questions of statutory interpretation will prove valuable far outside the bounds of patent law. This case provides a neat vehicle to showcase rigorous textualist analysis. It presents a pure question of interpretation, without any need for the Court to get bogged down in facts or technical minutiae.

The errors that the Federal Circuit made, reading key phrases in isolation from the rest of the statutory text and relying on legislative history to infer statutory purpose, are clear for the reasons described above. They are, however, also commonplace. SCALIA & GARNER 167 (“Perhaps no interpretive fault is more common than the failure to follow the whole-text canon.”); *id.* at 18 (“[P]urposivism” has recently “been called “the basic judicial approach these days.”). And many inferior courts continue to employ non-textualist approaches to interpretation. *See, e.g.,* Aaron-Andrew P. Bruhl, *Statutory Interpretation and the Rest of the Iceberg: Divergences Between the Lower Federal Courts and the Supreme Court*, 68 Duke L.J. 1, 65 (2018) (summarizing how the Supreme Court and lower courts tend to deploy different interpretive methodologies); Stuart Minor Benjamin & Kristen M. Renberg, *The Paradoxical Impact of Scalia’s Campaign Against Legislative History*, 105 Cornell L. Rev. 1023, 1068, 1082 (2020) (describing inconsistent adoption of textualist principles by lower courts).

This affords the Court an opportunity to provide instruction on statutory interpretation that can guide all lower courts, reducing the kinds of errors to which

judges are most prone. The Court should forestall such errors by instructing courts on what to consider and showing that any doubt about the statute's meaning can be resolved using clear textualist canons, such as the negative implication canon and the presumption against superfluities.

CONCLUSION

To correct a clear error on a question of pure statutory interpretation, the Court should grant the petition.

Respectfully submitted,

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