

No. 25-308

In the Supreme Court of the United States

LYNK LABS, INC.,

Petitioner,

v.

SAMSUNG ELECTRONICS CO., LTD. AND
JOHN A. SQUIRES, UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE,

Respondents.

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

**BRIEF IN OPPOSITION OF RESPONDENT
SAMSUNG ELECTRONICS CO., LTD.**

NAVEEN MODI
Counsel of Record

IGOR V. TIMOFEYEV
DANIEL ZEILBERGER
DAVID M. VALENTE
PAUL HASTINGS LLP
2050 M Street, N.W.
Washington, D.C. 20036
(202) 551-1700
naveenmodi@paulhastings.com

*Counsel for Respondent
Samsung Electronics Co., Ltd.*

QUESTION PRESENTED

Under the version of 35 U.S.C. § 102(e) in effect prior to the enactment of the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284 (2011), a published patent application qualified as prior art as of the date it was “filed in the United States.” 35 U.S.C. § 102(e)(1) (2006). The question presented is:

Does the express timing rule of 35 U.S.C. § 102(e)(1) (2006), as it existed prior to passage of the AIA, apply in *inter partes* review proceedings addressing patents with pre-AIA priority dates?

PARTIES TO THE PROCEEDING

Petitioner Lynk Labs, Inc. was the patent owner in the proceedings before the Patent Trial and Appeal Board and the appellant in the Federal Circuit.

Respondent Samsung Electronics Co., Ltd. was the petitioner in the proceedings before the Patent Trial and Appeal Board and the appellee in the Federal Circuit.

Respondent John A. Squires, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, was automatically substituted as a party for Respondent Coke Morgan Stewart, Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office, who was an intervenor in the Federal Circuit. Sup. Ct. R. 35.3. Acting Director Stewart succeeded Derrick Brent, Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office, who succeeded Katherine K. Vidal, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, as intervenors in the Federal Circuit.

CORPORATE DISCLOSURE STATEMENT

Respondent Samsung Electronics Co., Ltd. is a publicly traded company with no parent corporation. No publicly held corporation owns 10% or more of Samsung Electronics' stock.

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INTRODUCTION

When it created the *inter partes* review system in the Leahy-Smith America Invents Act (“AIA”), Congress provided that a petitioner could challenge a patent on the basis of prior art consisting of “patents or printed publications.” 35 U.S.C. § 311(b). Under a pre-existing provision, a published patent application—a specific type of printed publication—qualified as prior art as of the date it was filed with the U.S. Patent and Trademark Office (“PTO”). 35 U.S.C. § 102(e)(1) (2006). In the decision below, the Federal Circuit correctly determined that a published patent application asserted as a printed publication in an *inter partes* review of a pre-AIA patent constitutes prior art as of its filing date.

That straightforward application of the pre-AIA version of § 102(e)(1) in the context of *inter partes* review does not warrant further consideration. Lynk concedes that published patent applications qualify as printed publications for purposes of § 311(b), and it identifies nothing in the text of § 311(b), § 102(e), or any other statutory provision that would justify giving such publications a different priority date in the context of *inter partes* review than they carry in district court proceedings (or in the initial patent-application process). Rather, as the Federal Circuit recognized below, “the plain language of §§ 311(b) and 102(e)(1)” makes clear that published patent applications should be given the same priority date in *inter partes* review proceedings that they would have in any other context. Pet. App. 10a-11a. The Federal Circuit’s textual analysis of the applicable statutory scheme is further supported by accepted canons of statutory construction.

Lacking any support in the statutory text, Lynk instead relies on judicial statements about *other* types of printed publications, such as books or articles, which are treated as prior art only as of their publication dates. But those materials are treated as prior art as of their publication date because of express timing provisions in the pre-AIA version of 35 U.S.C. § 102(a)-(b)—not because the term “printed publication” has some “baked-in temporal requirement.” Pet. App. 18a. Precedents about those other types of printed publications accordingly provide no basis for disregarding the specific timing rule that Congress adopted for published patent applications in pre-AIA § 102(e)(1).

The centrality of pre-AIA statutory provisions in this case also makes review particularly inappropriate. Because the patent at issue here traces back to an application submitted in 2004, the Federal Circuit was required to apply the prior-art provisions in effect before the AIA’s passage. Congress made multiple modifications to those provisions when it enacted the AIA. It is those modified provisions that apply to proceedings involving patents with priority dates after the AIA became effective in 2013. Even if the question presented otherwise warranted review, it would not make sense for this Court to take up that question in a case involving versions of the applicable statutory provisions that Congress modified more than a decade ago.

The petition for a writ of certiorari should be denied.

STATEMENT OF THE CASE

A. Legal Background

1. Congress's Establishment of Rules Regarding Novelty and Prior Art

As this Court has long recognized, the Patent Clause of the Constitution “is both a grant of power and a limitation.” *Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 5 (1966). While it empowers Congress to authorize the issuance of patents, it also prevents “the issuance of patents whose effects are to remove existent knowledge from the public domain, or to restrict free access to materials already available.” *Id.* at 6.

One core requirement for patent eligibility has always been a demonstration of novelty. Over the years, Congress adopted various mechanisms for assessing whether a claimed invention truly “add[s] to the sum of useful knowledge” in a manner warranting the reward of patent exclusivity. *Id.* As relevant here, those statutes specifically addressed how to assess novelty in light of “prior art” materials that at the time of the patent application either (i) were already in the public domain; or (ii) had been submitted to the PTO and were set for publication in due course.

The Patent Act of 1836 represented the first time Congress established a clear framework for examining patent applications before issuing a patent—“a positive and clear cut plan for determining patent rights.” William I. Wyman, *The Patent Act of 1836*, 1 J. Pat. Off. Soc'y 203, 208 (1918-19). As part of the law, Congress provided that a patent application may not be granted if the claimed invention “had been patented or

described in any printed publication” prior to the invention date. Act of July 4, 1836, ch. 357, § 7, 5 Stat. 117, 119-20.

The Patent Act of 1952 retained the requirement that “the invention be novel,” *Bilski v. Kappos*, 561 U.S. 593, 602 (2010), and provided specific timing rules for assessing novelty against printed publications, *see Pet. App. 11a*. Thus, § 102(a) barred patentability if the claimed invention was “described in a printed publication . . . before the invention thereof by the applicant for patent.” 35 U.S.C. § 102(a) (1952). And § 102(b) did the same if the claimed invention was “described in a printed publication . . . more than one year prior to the date of the application for patent.” *Id.* § 102(b).

Congress further refined the treatment of prior art in 1999, when it enacted the American Inventors Protection Act (“AIPA”), Pub. L. No. 106-113, app. I, tit. IV, 113 Stat. 1501, 1501A-552 (1999). The AIPA provided for the first time for publication of patent applications, requiring (subject to certain exceptions) that applications be published “after the expiration of a period of 18 months from the earliest filing date.” *Id.* sec. 4502(a), § 122(b)(1)(A), 113 Stat. 1501A-561; *see also Pet. App. 13a*. In a section titled “Prior Art Effect of Published Applications,” Congress also specified that a patent application would be treated as prior art if it was “filed . . . before the invention by the applicant for patent.” AIPA, sec. 4505, § 102(e)(1), 113 Stat. 1501A-565; *see also Pet. App. 13a*.

In 2004, when Lynk applied for the patent at issue, the Patent Act contained three separate provisions concerning the prior-art effect of printed publications.

See Pet. 6 n.1 (acknowledging February 24, 2004 priority date). Under the then-effective versions of § 102(a) and (b), which traced back to the 1952 Patent Act, a patent application would be denied if “the invention was . . . described in a printed publication in this or a foreign country . . . before the invention thereof by the applicant for patent” or “described in a printed publication in this or a foreign country . . . more than one year prior to the date of the application for patent in the United States.” 35 U.S.C. § 102(a), (b) (2006). And under the then-effective version of § 102(e), tracing back to the AIPA, a patent application would also be denied if “the invention was described in . . . an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent.” 35 U.S.C. § 102(e) (2006).

Congress subsequently revised § 102(a), 102(b), and 102(e) in 2011 as part of the AIA, including by renumbering § 102(e) to § 102(d). *See AIA, Pub. L. No. 112-29, sec. 3(n), 125 Stat. 293.* Those amendments, however, do not apply to patents or patent applications filed prior to the AIA’s March 16, 2013 effective date. *See id.; see also Pet. App. 37a n.13.* The parties agree therefore that the current versions of § 102(a), 102(b), and 102(d) are not at issue in this case. *See Pet. 6 n.1.*

2. Congress’s Establishment of Administrative Mechanisms for Review of Previously Issued Patents

In addition to refining the treatment of prior art, Congress has also modified over time the administrative mechanisms by which the PTO may reassess whether a particular patent should have issued.

In 1980, Congress created a system for *ex parte* reexamination of issued patents. The new law provided that “[a]ny person at any time may file a request for reexamination by the [PTO] of any claim of a patent on the basis of any prior art cited under the provisions of section 301 of this title.” An Act to Amend the Patent and Trademark Laws, Pub. L. No. 96-517, § 302, 94 Stat. 3015, 3015 (1980); *see also* Pet. App. 11a-12a. Section 301, in turn, referred to “prior art consisting of patents or printed publications.” Pub. L. No. 96-517, § 301, 94 Stat. 3015; *see also* Pet. App. 12a. Following submission of the request for reexamination, the PTO would determine whether “consideration of [those] other patents or printed publications” gave rise to “a substantial new question of patentability [of] any claim of the patent.” Pub. L. No. 96-517, § 303(a), 94 Stat. 3015. If so, the PTO would then conduct a reexamination “according to the procedures established for initial examination.” *Id.* § 305, 94 Stat. 3016.

In 1999, Congress created a new *inter partes* reexamination system. Like the *ex parte* reexaminations, the *inter partes* reexaminations provided for challenges “on the basis of any prior art cited under the provisions of section 301”—that is, prior art consisting of “patents and printed publications.” AIPA, § 4604(a), 113 Stat. 1501A-567; *see also* Pet. App. 12a. And like the *ex parte* reexaminations, *inter partes* reexaminations also required the PTO to determine whether the cited prior art gave rise to “a substantial new question of patentability,” in which case the PTO would reexamine the patent “according to the procedures established for initial examination” while allowing for participation by the third party that requested the reexamination. AIPA, § 4604(a), 113 Stat. 1501A-568-1501A-569.

In enacting the AIA in 2011, Congress replaced *inter partes* reexaminations with a system of *inter partes* review. AIA, Pub. L. No. 112-29, sec. 6(a), § 311, 125 Stat. 299. As with the *ex parte* and *inter partes* reexaminations, Congress specified that *inter partes* review may be instituted on the basis of “prior art consisting of patents or printed publications.” *Id.* § 311(b), 125 Stat. 299. Unlike the AIA’s substantive amendments to § 102, the new *inter partes* review provisions apply to patents and patent applications predating passage of the AIA. *Id.* § 6(c)(2)(A), 125 Stat. 304.

B. Procedural Background

1. Lynk’s Patent

This case concerns Lynk’s U.S. Patent No. 10,687,400 (“the ’400 patent”), which generally relates to light-emitting diodes (“LEDs”) and LED drivers, and more specifically to alternating current-driven LEDs and LED circuits. Pet. App. 2a. The patent specification states that LED-based lighting may be used for general lighting, specialty lighting, signs, and decorations (such as Christmas tree lighting). *Id.* The claims of the ’400 patent recite lighting systems with various LED circuit configurations. Pet. App. 2a-3a.

Lynk filed the provisional patent application that resulted in the ’400 patent on February 25, 2004. Pet. 11. That date is the ’400 patent’s priority date. Pet. App. 4a & n.1.

2. *Inter Partes* Review Proceedings

In 2021, Lynk sued Samsung alleging infringement of the ’400 patent. Samsung sought *inter partes* review of claims 7-20 of the ’400 patent, challenging them as unpatentable for obviousness under 35 U.S.C.

§ 103. Pet. App. 3a. Lynk then disclaimed claims 14 and 18-20. Pet. 12 n.4; Pet. App. 3a.¹

Among the prior art that Samsung invoked in support of its claim of obviousness was U.S. Patent Application Publication No. 2004/0206970, known as “Martin.” Pet. App. 3a. Martin was filed on April 16, 2003, and published on October 21, 2004. Pet. App. 4a. Martin was later abandoned and never matured into a patent. Pet. App. 4a. Lynk argued that Martin could not be asserted as prior art in *inter partes* review as a “printed publication” under § 311 because it was not published until after the ’400 patent’s priority date. Pet. App. 4a.

The Board rejected Lynk’s argument, agreeing with Samsung that pre-AIA § 102(e)(1) governed the determination of the effective priority date of a patent application asserted as a printed publication in *inter partes* review. Pet. App. 42a. The Board noted that its decision aligned both with the Federal Circuit’s case law and with the Board’s own past decisions. Pet. App. 41a-43a. The Board then found all the challenged claims to be unpatentable as obvious based on a combination of Martin and other references. Pet. App. 4a, 43a-97a.

¹ On June 30, 2025, Samsung also requested *ex parte* reexamination of claims 1-6 and 21-26, and the PTO initiated the reexamination on September 29, 2025. *See Ex Parte Reexamination No. 90/015,361.* The reexamination remains pending.

3. The Federal Circuit's Decision

Lynk appealed the Board's decision to the Federal Circuit. Pet. App. 4a.² Lynk argued that Martin could not be asserted as prior art in *inter partes* review under § 311 because, although Martin was filed before the '400 patent's priority date, it was published (and therefore became publicly accessible) only afterwards. Pet. App. 5a. Lynk also argued that the Board erred in construing two claimed terms of the '400 patent and that, under proper claim construction, claims 7-13 would not be obvious. Pet. App. 5a.

The Federal Circuit rejected all of Lynk's arguments. As to Lynk's statutory challenge, the Federal Circuit first noted that there was no dispute that, as a published patent application, Martin was a "printed publication" within the meaning of § 311. Pet. App. 6a.

The Federal Circuit then addressed Lynk's argument that, to be asserted as a *prior art* printed publication under § 311, Martin had to be publicly accessible before the priority date of the '400 patent. The court noted that Lynk's argument was based on cases analyzing public accessibility of books, articles, and similar publications. Pet. App. 6a-7a. For those materials, the Federal Circuit observed, the prior art status is governed by § 102(a)-(b): "Section 102(a) bars patentability if the claimed invention was 'described in a printed publication . . . before the invention thereof by the applicant for patent,' whereas § 102(b) does so if the claimed invention was 'described in a printed publication . . . more than one year prior to the date of

² Lynk did not appeal the Board's unpatentability finding as to claims 15-16, which did not rely on Martin. *See* Pet. 12 n.4; Pet. App. 4a n.3.

the application for patent in the United States.” Pet. App. 7a (quoting 35 U.S.C. § 102(a)-(b)) (emphasis omitted).

The Federal Circuit determined that the prior art status of patent applications was governed by a different statutory provision. Specifically, the court explained that “Congress created—in § 102(e)(1)—a special rule for *published patent applications*.” Pet. App. 8a. Under pre-AIA § 102(e)(1), it observed, “a U.S.-filed patent application ‘published under [§] 122(b)’ serves as prior art to a claimed invention if the application was ‘filed . . . before the [claimed] invention.’” Pet. App. 8a (quoting 35 U.S.C. § 102(e)(1) (2006)). This plain statutory command applied “even if a patent application was *published* after a claimed invention.” Pet. App. 8a. Thus, the court of appeals concluded, “[u]nder § 102(e)(1), published patent applications, like Martin, are deemed prior art as of their filing date.” Pet. App. 9a.

The Federal Circuit observed that the rule prescribed by pre-AIA § 102(e)(1) corresponded to the rule set forth in pre-AIA § 102(e)(2) for when a patent can be deemed prior art. Under that “neighboring, similarly worded provision . . . , ‘a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent’ serves as prior art to the claimed invention.” Pet. App. 9a. Thus, as the court of appeals observed, “due to § 102(e)(2), an IPR challenge under § 311(b) can include as a ‘prior art . . . patent[]’ a patent that did not *become* a patent until after the challenged patent’s priority date.” Pet. App. 9a (citations omitted). The court noted that Lynk “has no satisfactory explanation as to why patent applications that are later published (and

thus become printed publications) should have a prior-art status different from patent applications that later become patents.” Pet. App. 9a.

The Federal Circuit also rejected Lynk’s argument that the terms “printed publication” and “application for patent published under [35 U.S.C. §] 122(b)” “must mean completely distinct things, such that the former cannot include the latter.” Pet. App. 9a-10a (citation omitted). The court of appeals found it “plain enough that an ‘application for patent, published under [§] 122(b)’ is just a specific type of ‘printed publication.’” Pet. App. 10a. Nor could the Federal Circuit find anything in the statute to show that, “in the context of § 311(b), ‘printed publications’ *excludes* from its scope published patent applications and the specific prior-art rule of § 102(e)(1).” Pet. App. 10a.

Thus, the court of appeals concluded,

by virtue of § 102(e)(1), a published patent application—this *specific* type of “printed publication”—is deemed prior art as of its filing date. Therefore, the plain language of §§ 311(b) and 102(e)(1) permits IPR challenges based upon published patent applications, and such published patent applications can be deemed prior art in IPRs as of their filing date.

Pet. App. 10a-11a.

The Federal Circuit then considered Lynk’s argument based on “the historical context behind § 311(b),” and concluded that “it only adds further support” for the court’s “plain-language interpretation” of the statute. Pet. App. 11a. The court explained that many of the precedents invoked by Lynk “predate[] when patent applications were published,” and therefore “do

not address published patent applications or the special prior-art rule that Congress prescribed in § 102(e)(1). Instead, they address either *unpublished* patent applications or printed publications such as books, articles, or the like under § 102(a) or (b).” Pet. App. 14a (citations omitted).

The Federal Circuit also disagreed with Lynk’s contention that the case law not only required that printed publications be publicly accessible, but also prescribed *when* those publications must have been publicly accessible in order to constitute prior art. Pet. App. 16a. After carefully “parsing § 102’s text,” the court concluded that “the term ‘printed publication’ does not, itself, carry with it any temporal prior-art-status requirement.” Pet. App. 17a. Rather, “whatever temporal requirement exists is drawn from the other language in § 102(a) or (b),” which is “the most natural reading” of the statute.” Pet. App. 18a.

Thus, the Federal Circuit observed, “case law concerning ‘printed publications’ in the § 102(a) or (b) context . . . did not prevent Congress from setting up a different timing framework for a printed publication in § 102(e)(1).” Pet. App. 19a. And “[b]y its explicit terms,” that provision “bars patentability based on a published patent application if that application was filed before the invention.” Pet. App. 19a.

Having concluded that “the plain language of § 102(e)(1) supports [its] interpretation of § 311(b),” and that “§ 311(b)’s historical context” lends no support to Lynk’s argument, the Federal Circuit briefly noted that its statutory construction was “fully consistent with the ‘congressional purpose in restricting reexamination’—and later, IPRs—to printed documents.” Pet. App. 19a-20a (quoting *Qualcomm Inc. v.*

Apple Inc., 24 F.4th 1367, 1376 (Fed. Cir. 2022)). The court observed that, “as official PTO publications, published patent applications would create even less need for discovery or fact-finding than some other alleged printed publications.” Pet. App. 20a (citations omitted).

The Federal Circuit then turned to the merits of Lynk’s patentability challenge. Pet. App. 21a. The court found no error in the Board’s construction of two disputed terms, Pet. App. 21a-23a, 24a-27a, and rejected Lynk’s challenge to the Board’s factual findings. Pet. App. 23a-24a, 27a-30a. The Federal Circuit therefore affirmed the Board’s conclusion that claims 7-13 and 17 of the ’400 patent are unpatentable. Pet. App. 31a.

The Federal Circuit denied Lynk’s petition for rehearing en banc. Pet. App. 100a-101a. No judge dissented.

REASONS FOR DENYING THE PETITION

The decision below correctly applied the pre-AIA version of § 102(e) in *inter partes* review proceedings concerning Lynk’s pre-AIA patent. Lynk’s criticisms of that decision all fail: Lynk does not dispute that published patent applications can form a proper basis for *inter partes* review, and its contention that such published applications should be given a different priority date in the *inter partes* review context than they carry in all other contexts finds no support in the applicable statutory text or this Court’s precedents. Further review therefore is not warranted, particularly because this case involves versions of the applicable statutory provisions that pre-date Congress’ enactment of the AIA 15 years ago.

I. The Federal Circuit’s Decision Is Correct and Reflects the Most Natural Reading of the Statutory Text.

A. The Federal Circuit Properly Applied Plain-Text Analysis to the Statutory Scheme.

As this Court instructs, the Federal Circuit centered its analysis on the statute’s text. Addressing Lynk’s argument that the term “printed publication” had an implicit temporal requirement as to when it may be considered as prior art, the court explained that these timing limitations came not from any intrinsic understanding of the term “printed publication” (or from a judicial gloss on its meaning), but from the statutory provisions of 35 U.S.C. § 102(a)-(b). Pet. App. 7a-8a. It is these provisions that set specific temporal requirements for when a printed publication such as a book or an article could be considered prior art. Pet. App. 7a; *see also* Pet. App. 16a-17a. By contrast, a different statutory provision—§ 102(e)(1)—prescribed “a special rule for *published patent applications*,” providing that “published patent applications . . . are deemed prior art as of their filing date.” Pet. App. 8a-9a.³

As the Federal Circuit observed, “the term ‘printed publication’ does not, itself, carry with it any temporal prior-art-status requirement”—a fact made “clear when parsing § 102’s text.” Pet. App. 17a. For start-

³ The Federal Circuit turned to the question of legislative intent only *after* it had already rejected Lynk’s construction of § 311(b) based on “the plain language” of the statute and “§ 311(b)’s historical context.” Pet. App. 19a.

ers, Lynk’s argument that the term “printed publication” “has its own temporal requirement” presented an “immediate[]” textual difficulty: “§ 102(a) and (b) have *different* temporal requirements (‘before the invention’ vs. ‘more than one year prior to the date of the [patent] application’).” Pet. App. 17a (emphasis added). Therefore, the court observed, “the term ‘printed publication’ cannot both (1) have its own, specific baked-in temporal requirement *and* (2) mean the same thing throughout § 102.” Pet. App. 17a.

This observation is fatal to Lynk’s argument. If “the term ‘printed publication’ itself does not have its own, baked-in temporal requirement,” but instead draws any temporal limitation from “the other language in § 102(a) or (b),” Pet. App. 18a, there is no sound reason to ignore the temporal rule of § 102(e)(1)—the provision that specially addressed the type of printed publication at issue (a published patent application). Accordingly, the Federal Circuit canvassed the statutory provisions of § 102 prescribing the various timing rules for different categories of prior art, and it applied the provision that specifically spoke to the type of prior art at issue—§ 102(e)(1). *See* Pet. App. 8a-9a.

The Federal Circuit also observed that “if ‘printed publication’ inherently ha[d] its own temporal requirement,” that would render § 102(a)-(b) “confusing, redundant, or both.” Pet. App. 18a. For instance, if Lynk is correct that “printed publication” means “reference publicly accessible before the invention,” then § 102(a) would provide that a person is not entitled to a patent if “the invention was . . . described in [a reference publicly accessible before the invention] . . . before the invention.” Pet. App. 18a. The Federal Circuit properly

chose to “avoid a reading which renders some words altogether redundant.” *Gustafson v. Alloyd Co.*, 513 U.S. 561, 574 (1995) (citation omitted).

Lynk’s sole response to the Federal Circuit’s textual reading of § 102(e)(1) is that Congress set up “published’ patent applications as a new category of prior art . . . separate from patents and printed publications.” Pet. 20-21. And, the argument goes, by referencing only patents and printed publications in § 311, Congress intended to preclude the use of published patent applications in *inter partes* reviews *unless* they independently satisfied the timing requirements of § 102(a)-(b) for other printed publications. *See* Pet. 21-22.

But, as the Federal Circuit explained, that argument cannot be reconciled with the statutory text. Rather, it was “plain enough that an ‘application for patent, published under [§] 122(b)’ is just a specific type of ‘printed publication.’” Pet. App. 10a. And the mere fact that “§ 102 uses both terms—‘printed publication’ and ‘application for patent, published under [§] 122(b)’—does not overcome this natural reading.” Pet. App. 10a. Indeed, the AIA made this explicit by referencing prior art consisting of “any patent, *published patent application, or other printed publication.*” 35 U.S.C. § 122(e)(1) (emphasis added); *see also infra* at 24 & n.7 (discussing AIA § 122(e)). In sum, there is no indication in the statute that, “in the context of § 311(b), ‘printed publication’ *excludes* from its

scope published patent applications and the specific prior-art rule of § 102(e)(1).” Pet. App. 10a.⁴

B. The Federal Circuit’s Decision Is Supported by Recognized Principles of Statutory Construction.

Settled principles of statutory construction support the Federal Circuit’s interpretation. As the court of appeals observed, “the neighboring, similarly worded provision of § 102(e)(2),” which prescribes when a patent is considered prior art, provides that a patent is considered prior art as of the date of its application even though that application does not mature into an actual patent until a later date. Pet. App. 9a. This Court has expressly endorsed that rule, holding that the relevant priority date for a patent asserted as prior art is the patent’s filing date—not its issuance date. *See Hazeltine Rsch., Inc. v. Brenner*, 382 U.S. 252, 254-55 (1965); *see also Becton, Dickinson & Co. v. Baxter Corp. Englewood*, 998 F.3d 1337, 1345 & n.7 (Fed. Cir. 2021) (a subsequently revoked patent is prior art in an *inter partes* review under pre-AIA § 102(e)(2) as of the filing date of its application). A

⁴ Lynk argues that patent applications are “a controversial form of prior art,” and so Congress may have wished to restrict their use to district court litigation. Pet. 27-28. But when Congress in the AIPA directed that patent applications be published within 18 months of filing, it also amended § 102(e) to make published patent applications a source of art as of their filing date in the same manner as patents. Pet. App. 12a-13a; *see also supra* at 4. If Congress thought there was something “controversial” about using published patent applications as a source of prior art in the *inter partes* reexamination proceedings (also established by the AIPA), Congress would have indicated so when it provided that such reexaminations could be initiated on the basis of “patents or printed publications.”

contrary rule, this Court explained, “would create an area where patents are awarded for unpatentable advances in the art.” *Hazeltine*, 382 U.S. at 256.⁵

“Where, as here, Congress uses similar statutory language and similar statutory structure in two adjoining provisions, it normally intends similar interpretations.” *Nihawan v. Holder*, 557 U.S. 29, 39 (2009) (citing *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005)). No logical reason exists for adopting a different rule for analogous provisions of § 102(e)(1) and (e)(2). As the Federal Circuit observed, Lynk “has no satisfactory explanation as to why patent applications that are later published (and thus become printed publications) should have a prior-art status different from patent applications that later become patents.” Pet. App. 9a.

Lynk’s proposed rule would also lead to “implausible[le]” results that Congress is unlikely to have intended. *Van Buren v. United States*, 593 U.S. 374, 394 (2021). Under Lynk’s construction, the priority date of a published application that is still undergoing examination by the PTO could change midstream during the pendency of an IPR proceeding if the PTO approves the application as a patent. There is no reason Congress would have intended such a “farfetched” result. *Nixon v. Missouri Mun. League*, 541 U.S. 125, 138 (2004).

⁵ In fact, as this Court recognized in *Hazeltine*, the pre-AIA § 102(e)(2) codified this Court’s earlier holding in *Alexander Milburn Co. v. Davis-Bournonville Co.*, 270 U.S. 390 (1926), that an earlier-filed patent could serve as prior art as of its filing date, despite not issuing as a patent until after the filing date of the challenged patent. See 382 U.S. at 254-55.

The Federal Circuit's interpretation is further supported by settled administrative practice, and Congress' awareness of that practice. After Congress amended § 102(e)(1) in 1999 to include published applications among the categories of prior art that may be asserted in reexamination, the PTO amended its rules of practice to provide that “[t]he effective date of a . . . U.S. patent application publication . . . is the earlier of its publication date *or the date that it is effective as a reference under 35 U.S.C. 102(e).*” U.S.P.T.O., *Changes to Implement Eighteen-Month Publication of Patent Applications*, Final Rule, 65 Fed. Reg. 57,024, 57,033 (Sept. 20, 2000) (emphasis added). The PTO also amended its Manual of Patent Examining Procedure to reflect that the scope of prior art available to use in reexamination included § 102(e)(1) published patent applications. *See* U.S.P.T.O., Manual of Patent Examining Procedure § 2258, at 2200-66 (8th ed. 2001); *see also* Pet. 28. And the PTO expressly instructed that “§ 102(e) provisions must be used in examining any application, *or patent under reexamination.*” U.S.P.T.O., 35 USC §§ 102(e) and 374: As Amended by HR 2215 (Technical Correction Act) (Nov. 2, 2002), <https://www.uspto.gov/patents/laws/examination-policy/35-usc-102e-and-374-amended-hr-2215-technical>.

That remained the PTO's regular practice. The PTO repeatedly applied the pre-AIA § 102(e)(1) to determine the priority date of patent applications in its *inter partes* reexamination decisions. *See, e.g., Signature Sys., LLC v. AD. Ken Corp.*, Appeal No. 2010-002205, 2010 Pat. App. LEXIS 13215, at *5, *31 (P.T.A.B. Sept. 29, 2010). As the PTO observed, in the context of an appeal from a patent examination, there is no logical rationale to apply a different rule to patent

applications than to patents, given the similarity between the applicable statutory provisions:

Section 102(e)(1) gives prior art effect to U.S. patent application publications . . . as of the earliest U.S. effective filing date. Congress in making a published application prior art as of its filing date adopted for published applications the same prior art status that it previously adopted for patents which are prior art. . . . There is no cogent basis for treating issued patents and published applications differently when it comes to the effective filing date of either.

Ex Parte Michael J. May, Appeal No. 2006-1776, 2007 WL 7751834, at *5 (B.P.A.I. Apr. 30, 2007) (informative).

Lynk does not challenge this longstanding PTO practice, and retorts only that an agency's statutory interpretation no longer enjoys deference. Pet. 28. But the Federal Circuit did not defer to the PTO; the court reached its conclusion based on an independent evaluation of the statutory text and the context of the statute's enactment. *See* Pet. App. 8a-19a. Lynk's argument, moreover, misses the point. "Congress is presumed to be aware of an administrative . . . interpretation of a statute." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). When it enacted the AIA in 2011, Congress expressed no disapproval of the PTO's reliance on pre-AIA § 102(e)(1)'s timing provision when determining the priority date of a patent application asserted as printed-publication prior art in an *inter partes* proceeding.

Indeed, the PTO has continued to apply pre-AIA § 102(e)(1) to patent applications asserted as printed publications in *inter partes* review, ruling that their priority date is based on the date of filing. *See, e.g., Aquestive Therapeutics, Inc. v. Neurelis, Inc.*, No. IPR2019-00451, 2019 WL 3806127, at *3-4 (P.T.A.B. Aug. 13, 2019); *Hutchinson Tech., Inc. v. Nitto Denko Corp.*, No. IPR2017-01421, 2017 WL 4574653, at *3 (P.T.A.B. Oct. 12, 2017); *Butamax Advanced Biofuels LLC v. Gevo, Inc.*, No. IPR2013-00539, 2014 WL 2527800, at *13 & n.3 (P.T.A.B. Mar. 4, 2014). The PTO’s consistent practice has not elicited any congressional protest—a further indication that Congress did not view such practice as inconsistent with the *inter partes* review system’s legislative design.

C. The Federal Circuit’s Decision Is Consistent with Precedent.

Lynk argues that, when Congress used the term “printed publication” in establishing the *inter partes* reexamination regime in 1999 and the *inter partes* review system in 2011, it was incorporating a judicially created requirement that the asserted reference be publicly available prior to the challenged patent’s priority date. Pet. 6-7, 20-22. But, as the Federal Circuit explained, “any temporal prior-art-status requirement” came not from any kind of judicial gloss on the term “printed publication,” but from the specific statutory timing requirements prescribed in § 102(a)-(b). Pet. App. 16a-18a; *supra* at 14-15.

Moreover, Lynk misunderstands the context within which the Federal Circuit has elaborated the public accessibility requirement in its printed-publication case law. As the court of appeals explained, much

of that case law “predates when patent applications were published”—a requirement Congress did not introduce until 1999. Pet. App. 14a (citing AIPA, sec. 4502(a), § 122(b)(1)(A), 113 Stat. at 1501A-561). Thus, “these cases do not address published patent applications or the special prior-art rule that Congress prescribed in § 102(e)(1). Instead, they address either *unpublished* patent applications or printed publications such as books, articles, or the like under § 102(a) or (b).” Pet. App. 14a. Far from “disregard[ing]” its printed-publication precedent, Pet. 22, the Federal Circuit simply recognized the importance of the specific context in which those decisions arose: All of them involved application of the specific timing rules of § 102(a)-(b), while “Congress chose to afford *published* patent applications a prior-art effect different from the effect given to printed publications in § 102(a) and (b).” Pet. App. 19a (emphasis altered).

II. This Court’s Review Is Unwarranted, as the Decision Below Involves a Superseded Statutory Scheme and Will Not Lead to Inconsistent Results.

The Court’s review in this case is unwarranted for additional reasons as well. The Federal Circuit’s decision was rendered under a now-superseded statutory scheme; there is no intra-circuit conflict; and the decision will not cause any confusion or inconsistent results.

A. The Question Presented Arises Under a Superseded Statutory Scheme.

As Lynk acknowledges, this case “is governed by the pre-AIA version” of § 102. Pet. 6 n.1; *see also* Pet. App. 7a n.6. That is because the priority date of

the '400 patent that Lynk claimed predates the AIA's effective date. *See Pet. App. 37a n.13.* The AIA, under which an increasing proportion of *inter partes* reviews are filed, amended various provisions of § 102. Lynk does not dispute that the relevant statutory provisions are different, but claims only that "there are no differences material to the question presented." Pet. 6 n.1; *see also* Pet. 33.

That, however, is far from clear. The post-AIA version of § 102(a) defines the scope of prior art applicable to patents issued under the AIA. Under post-AIA § 102(a)(2), similar to pre-AIA § 102(e)(1), a person is not entitled to a patent if "the claimed invention was described in a patent issued under section 151, or *in an application for patent published or deemed published under section 122(b)*, in which the patent or application, as the case may be, names another inventor and was *effectively filed before the effective filing date of the claimed invention.*" 35 U.S.C. § 102(a)(2) (emphasis added).

The AIA goes on to make clear that such prior art is "printed publication" prior art. Post-AIA § 102(d) explains how to determine the effective filing date of prior art for purposes of post-AIA § 102(a)(2), including for "Published Applications."⁶ Section 102(d) states that, in "determining whether a patent or application for patent is prior art to a claimed invention under subsection (a)(2)," a patent or application "shall be considered to have been effectively filed" as of the actual filing date (or the earliest date to which it is entitled to claim priority). 35 U.S.C. § 102(d). Thus, as

⁶ In fact, AIA § 102(d)'s title indicates it is directed to when "Patents and *Published Applications*" are "Effective as Prior Art." 35 U.S.C. § 102(d) (emphasis added).

post-AIA § 102(d) indicates, “published applications” are prior art as of their earliest effective filing date.

Moreover, the post-AIA version of § 122(e)—a provision dealing with preissuance submissions by third parties (an alternative path for raising prior art issues to the PTO)—allows third parties to submit to the PTO “any patent, *published patent application, or other printed publication* of potential relevance to the examination of the application” subject to certain timing requirements. 35 U.S.C. § 122(e)(1) (emphasis added). The reference to a “published patent application, *or other printed publication*” demonstrates that a “published patent application” is a type of “printed publication.” And, under post-AIA § 102(d), that type of printed publication is “effective as prior art” as of its earliest effective filing date.⁷

The AIA provisions thus provide further support for using a published patent application’s effective filing date for purposes of determining prior art eligibility in an *inter partes* review. At the very least, the different wording of the relevant pre- and post-AIA statutory provisions would inform the inquiry into whether a published patent application asserted as prior art in an *inter partes* review constitutes such prior art as of its filing date. Should the Court wish to address the question presented, therefore, it may wish

⁷ The AIA’s amendments to § 122(e) also confirm that Congress understood patent applications to be a subset of “printed publications” as that term is used in the AIA, including in § 311(b). *See IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005) (“the normal rule of statutory interpretation [is] that identical words used in different parts of the same statute are presumed to have the same meaning”).

to await a case arising under the post-AIA version of § 102.

B. The Question Presented Is of Diminishing Importance.

That is particularly so given that an ever-increasing proportion of prior art asserted in IPRs are governed by the AIA—and eventually the AIA will govern all prior-art inquiries. The pre-AIA statutory regime applies only to patents claiming effective filing dates before the AIA’s effective date of March 16, 2013. *See* AIA, Pub. L. No. 112-29, § 3(n), 125 Stat. 284, 293 (2011). The number of unexpired patents subject to pre-AIA law is quickly diminishing and will near zero by March 16, 2033, twenty years after the AIA’s effective date (and only seven years from now).⁸

The pre-AIA statute applied to approximately 32% of IPRs filed in 2025.⁹ Similarly, in 2025 the pre-AIA statute applied to approximately 36% of utility patent applications (the most common type of patent applications, which covers claimed product, process, or machine) filed in the prior twenty years (a patent’s

⁸ Some patents filed shortly before the AIA’s effective date may receive patent term extensions and continue to exist for a short time beyond March 16, 2033. *See* 35 U.S.C. § 154(b).

⁹ This percentage was calculated using the PTO’s data available at <https://data.uspto.gov/ptab/trials/proceedings#/search/proceedings> and <https://data.uspto.gov/patent-file-wrapper/search>. It accounts for continuation applications that may have been filed after the AIA’s effective date but claim pre-AIA priority using PTO data published in Christopher Anthony Cotropia et al., *Continuing Patent Applications and Performance of the U.S. Patent and Trademark Office as of Fiscal Year 2018*, Richmond School of Law Intellectual Property Institute Research Paper No. 2019-01 (May 20, 2019).

lifespan). *See* 35 U.S.C. § 154(a)(2) (patent term ends twenty years from earliest effective filing date).¹⁰ This year, that number should drop to around 31%. That downward trend will continue each year, approaching 0% by March 2033. At that time, all pre-AIA patent applications will reach their term limit and expire (aside from some pre-AIA patents that receive patent term extensions and expire shortly after March 2033, *see* 35 U.S.C. § 154(b)). The percentage of IPRs challenging pre-AIA patents will decrease along with the number of pre-AIA applications.

This is because no patent application filed on or after the AIA's March 16, 2013, effective date without a valid priority claim to a pre-AIA application is subject to the pre-AIA regime. Inventors continually file new AIA applications while patents and applications with pre-AIA priority claims expire, shrinking the overall percentage of pre-AIA applications and patents. The simple (and inescapable) fact is that pre-AIA law's applicability declines every day and will become entirely irrelevant in the near future.

The PTO's application of its discretionary denial authority is accelerating that decline. When an IPR petition is filed, the PTO's Director first considers

¹⁰ These statistics were calculated using the PTO's data available at <https://data.uspto.gov/patent-file-wrapper/search>. That data does not show which applications filed after the AIA's effective date include a valid priority claim to a pre-AIA patent and would therefore be subject to pre-AIA law. In 2021, pre-AIA prior-art rules governed only 6% of pending applications. *See* Colleen Chien et al., *The AIA at Ten—How Much Do the Pre-AIA Prior Art Rules Still Matter?*, 35 *Patently-O Patent L.J.* 1, 3 (2021). We have applied that percentage in our calculations, although that likely overstates the current percentage of patent applications governed by the pre-AIA prior-art rules.

whether to exercise his discretion to deny institution of review instead of allowing the petition to proceed on the merits. *See U.S.P.T.O., Interim Director Discretionary Process,* <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>; Coke Morgan Stewart, *Interim Processes for PTAB Workload Management*, <https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTAB-WorkloadMgmt-20250326.pdf> (Mar. 6, 2025). The PTO has a policy of typically denying IPR petitions challenging patents that issued six or more years ago because such review would “disturb the strong settled expectations” that the patent is valid. *Amgen Inc. v. Bristol-Myers Squibb Co.*, No. IPR2025-00601, Paper 9 at 2-3 (P.T.A.B. July 24, 2025) (designated as informative); *see also In re Cambridge Indus. USA Inc.*, No. 2026-202, 2025 WL 3526129, at *2-3 (Fed. Cir. Dec. 9, 2025) (per curiam) (rejecting a mandamus challenge to the policy). The IPR petitions where institution is denied never proceed to the merits phase where the prior art status of an asserted reference would matter. In practice, this means that whether a reference is available as prior art is primarily at issue only for patents issued in the past six years.

There is no reason for the Court to address a question that is of diminishing importance under a superseded statutory scheme. If, as Lynk contends, the issue is “[r]ecurring and [f]undamental,” Pet. 31-32, the Court will have ample opportunity to address it in a future case under the current AIA regime.

C. The Federal Circuit’s Decision Will Not Lead to Inconsistent Results.

Lynk contends that the Federal Circuit’s rule would create havoc and lead to inconsistent results. Pet. 29-31. Those concerns are misplaced.

Lynk argues that the Federal Circuit’s analysis “would mean that *any* form of prior art—including ‘sales and public uses’—could qualify as a prior-art printed publication whenever ‘documentation of those events [is] later published.’” Pet. 29 (citation omitted). That is incorrect. The Federal Circuit recognized that published patent applications are a subset of printed publications as to which Congress has prescribed a specific rule for the determination of the applicable priority date. Pet. App. 8a-10a. But sales and public uses are *not* subsets of printed publications. *See* Pet. App. 20a. While a printed publication might describe the prior sale or public use, the priority date for that printed publication would be the date of its publication, as prescribed by pre-AIA § 102(a)-(b)—not the date of the actual sale or use.

Lynk next seeks to conjure an intra-circuit conflict, contending that the Federal Circuit’s decision below conflicts with *Qualcomm Inc. v. Apple Inc.*, 24 F.4th 1367 (Fed. Cir. 2022). *See* Pet. 30-31. Lynk argued the same to the Federal Circuit when it sought rehearing en banc. *See* C.A. Pet. for Reh’g En Banc 1, 8-10. No judge of the court of appeals was persuaded, and for good reason: There is no conflict. In *Qualcomm*, the Federal Circuit held that “descriptions of the prior art contained in the challenged patent” cannot form the basis for an invalidity challenge in an IPR because such descriptions are contained in the challenged patent itself rather than some other prior-art

“patents or printed publications.” 24 F.4th at 1374-76. That holding merely observes that a challenged patent is not a prior-art patent or printed publication to itself. Here, there is no question that Martin is a printed publication—as Lynk itself concedes. *See* Pet. 14; Pet. App. 6a. And as a printed publication, Martin qualifies as prior art for the ’400 patent based on the specific rules Congress adopted in pre-AIA § 102(e)(1) for the relevant subset of printed publications (namely, published patent applications). Pet. App. 8a-11a, 19a.

In any event, patent owners and patent challengers will not be “wholly adrift.” Pet. 31. They will follow the Federal Circuit’s well-reasoned decision below, which expressly addresses the issue, rather than attempt to divine some contrary rule from *Qualcomm*.¹¹

If anything, it is Lynk’s rule that would create confusion and lead to illogical results. *First*, under Lynk’s reasoning, the prior-art date of a patent application that is still undergoing examination by the PTO could effectively change during the pendency of an *inter partes* review proceeding (and during the period when a party is considering whether to initiate *inter partes* review) if the PTO approves it as a patent. *Supra* at 10-11, 17-18. That patent would then become available as prior art with an earlier priority date—the filing date of the application.

¹¹ Because the decision below and *Qualcomm* are not in conflict, there was no need for the Federal Circuit to “distinguish or reconcile its reasoning with *Qualcomm*.” Pet. 31. In fact, as the Federal Circuit explained, *Qualcomm*’s recognition of the distinction between documentary prior art (which includes published patent applications) and fact-intensive prior art *supported* its conclusion. *See* Pet. App. 20a (discussing *Qualcomm*, 24 F.4th at 1376).

Second, Lynk’s interpretation would lead to a published patent application having different prior-art dates depending on the proceeding in which it is asserted. During initial examination, reissue, and district court litigation, a published patent application would be treated as prior art as of its filing date. But in *inter partes* review proceedings, a published patent application would be prior art only as of its publication date, which is generally 18 months after the filing date. *See* 35 U.S.C. § 122(b)(1)(A). Thus, a published patent application’s utility as prior art would be more limited in *inter partes* review than in district court proceedings. As the Federal Circuit explained, placing “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” would run counter to congressional design of “provid[ing] a cheaper and less time-consuming alternative to challenge patent validity.” Pet. App. 20a & n.10 (internal quotation marks and citation omitted). There is no reason why Congress, which intended the IPR regime as “a streamlined administrative proceeding” for determining patentability, *Qualcomm*, 24 F.4th at 1376, would have created such an illogical system.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

NAVEEN MODI

Counsel of Record

IGOR V. TIMOFEYEV

DANIEL ZEILBERGER

DAVID M. VALENTE

PAUL HASTINGS LLP

2050 M Street, N.W.

Washington, D.C. 20036

(202) 551-1700

naveenmodi@paulhastings.com

Counsel for Respondent

February 2, 2026 *Samsung Electronics Co., Ltd.*