

No. 25-308

In the Supreme Court of the United States

LYNK LABS, INC., PETITIONER

v.

SAMSUNG ELECTRONICS CO., LTD., ET AL.

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

**BRIEF FOR THE FEDERAL RESPONDENT
IN OPPOSITION**

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QUESTION PRESENTED

An inter partes review of an issued patent may be requested “only on the basis of prior art consisting of patents or printed publications.” 35 U.S.C. 311(b). The question presented is as follows:

Whether a patent application that was filed before the priority date of the patent that is the subject of an inter partes review, but that was published after the priority date, may be considered as prior art for purposes of the inter partes review.

(I)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-31a) is published at 125 F.4th 1120.

JURISDICTION

The judgment of the court of appeals was entered on January 14, 2025. A petition for rehearing was denied on April 15, 2025 (Pet. App. 100a-101a). On July 7, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including September 12, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

(1)

STATEMENT

1. The Patent Act of 1952, 35 U.S.C. 1 *et seq.*, tasks the U.S. Patent and Trademark Office (USPTO) with examining applications for patents, and further directs the USPTO to issue a patent if the statutory criteria are satisfied. 35 U.S.C. 131. Federal law has long authorized the USPTO to reconsider the patentability of inventions claimed in previously issued patents. See *Cuozzo Speed Technologies, LLC v. Lee*, 579 U.S. 261, 266-267 (2016). Over the past several decades, Congress has established and modified several administrative mechanisms by which the agency may revisit existing patents. *Ibid.*; see, *e.g.*, H.R. Rep. No. 98, 112th Cong., 1st Sess. 45-46 (2011) (recounting history of these review mechanisms).

This case arises out of what is now the principal administrative mechanism for such review: inter partes review (IPR). IPR “allows a third party to ask the [USPTO] to reexamine the claims in an already-issued patent and to cancel any claim that the agency finds to be unpatentable in light of prior art.” *Cuozzo*, 579 U.S. at 265; see 35 U.S.C. 311. But as with the statutory precursors to IPR, Congress has limited the grounds on which an IPR may be based. See *Oil States Energy Services, LLC v. Greene’s Energy Group, LLC*, 584 U.S. 325, 330-331 (2018). A request for IPR may be asserted “only on a ground that could be raised under section 102 or 103 [of Title 35] and only on the basis of prior art consisting of patents or printed publications.” 35 U.S.C. 311(b).

For most of this country’s history, patent applications were not published. In 1999, however, Congress directed that most patent applications will ultimately be published. That 1999 law provided that, subject to

certain exceptions, each patent application will be published 18 months after it is first filed. Domestic Publication of Foreign Filed Patent Applications Act of 1999, Pub. L. No. 106-113, App. I, Tit. IV, Subtit. E, 113 Stat. 1501A-561. And in a provision of the same statute titled “Prior Art Effect of Published Applications,” Congress directed that a published patent application will be deemed to be prior art if it was “filed * * * before the invention by the applicant for patent.” § 4505, 113 Stat. 1501A-565 (capitalization altered). That provision extended to patent applications the rule that has historically applied to patents themselves, under which a patent may be treated as prior art as of the date the application for the patent was filed before the (later) date of when the patent was issued. See *Hazeltine Research, Inc. v. Brenner*, 382 U.S. 252, 254-256 (1965).

2. This case involves a challenge to U.S. Patent No. 10,687,400 (the ‘400 Patent), which describes “lighting systems with various LED circuit configurations.” Pet. App. 2a-3a. The ‘400 Patent’s “priority date”—i.e., the “earliest effective filing date” of the application that ultimately produced the patent—is February 25, 2004. *Id.* at 4a & n.1.¹

In November 2021, respondent Samsung Electronics Co., Ltd. (Samsung) filed a petition for IPR of the ‘400 Patent, alleging that certain of its claims are

¹ Because the priority date of the ‘400 Patent is in February 2004, this case is governed by the version of 35 U.S.C. 102 that was in effect before Congress enacted the Leahy-Smith America Invents Act (AIA), Pub. L. No. 112-29, 125 Stat. 284. See Pet. App. 7a n.6. The references to Section 102 in this brief therefore are references to that pre-AIA version. See Pet. App. 103a-104a (reproducing pre-AIA text of Section 102). For purposes of the question presented here, however, there are no material differences between the pre- and post-AIA versions of Section 102.

unpatentable under 35 U.S.C. 103. Pet. App. 3a. A claim is unpatentable under Section 103 “if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains.” 35 U.S.C. 103. Samsung argued that, to a person skilled in the art, the ’400 Patent’s claims would have been obvious from the disclosures in an earlier patent application known as “Martin.” Pet. App. 3a. The Martin application was filed on April 16, 2003 (before the ’400 Patent’s priority date) and was published on October 21, 2004 (after the priority date). *Id.* at 3a-4a. The Martin application “was later abandoned and never matured into a patent.” *Id.* at 4a.

3. The USPTO’s Patent Trial and Appeal Board (Board) found the challenged claims of the ’400 Patent to be unpatentable, concluding that the Martin application served as prior art to those claims, and that the claims would have been obvious based on the prior art. Pet. App. 32a-99a. Petitioner appealed, and the USPTO intervened in the Federal Circuit proceedings to defend the Board’s decision.

4. The court of appeals affirmed. Pet. App. 1a-31a. As relevant here, the court held that “a published patent application can be deemed prior art in an IPR as of the application’s filing date.” *Id.* at 2a.

The court of appeals observed that an IPR petitioner may challenge an issued patent “*only on the basis of prior art consisting of patents or printed publications.*” Pet. App. 6a (quoting 35 U.S.C. 311(b)). The court stated that petitioner “agrees that Martin is a ‘printed publication’” within the meaning of Section 311(b).

Ibid.; see *id.* at 8a-9a (“[W]e note that Martin—a published patent application—is a ‘printed publication,’ as both sides agree.”). The court explained that “[t]he touchstone of whether a reference constitutes a printed publication is public accessibility,” and that “there is no dispute that Martin, a published patent application, is publicly accessible.” *Id.* at 6a (footnotes omitted).

The court of appeals then addressed the question whether the Martin application should be deemed prior art with respect to the ’400 Patent. The court agreed with petitioner that a traditional printed publication, such as a book or article, can be treated as prior art only as of the date it first became publicly accessible. Pet. App. 7a; see *id.* at 15a-16a. The court recognized, however, that Congress has created “a special rule for published patent applications,” under which the application’s status as prior art turns on the date when the application was filed. *Id.* at 8a (emphasis omitted). The court explained 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.” *Ibid.*; see *id.* at 9a (explaining that “§ 102(e)(1) treats *this* type of printed publication as prior art as of a time before it became publicly accessible—i.e., as of its filing date”). Applying that interpretation to the circumstances of this case, the court concluded that “Martin—having been filed before the ’400 patent’s priority date—is a prior art printed publication as to the ’400 patent.” *Id.* at 9a.

The court of appeals further explained that statutory structure and history reinforced the court’s straightforward parsing of 35 U.S.C. 102(e)(1)’s text. As for structure, the court observed that under 35 U.S.C. 102(e)(2) (2000), a *granted patent* can be deemed prior art as of

the date the application for that patent was filed—*i.e.*, “that a patent can be deemed a ‘prior art’ patent even before it *became* a patent.” Pet. App. 9a. The court explained that petitioner “ha[d] 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.” *Ibid.* The court also examined the historical development of Section 102, the timing rules that govern the prior-art status of other types of printed publications, and the case law applying those rules. See *id.* at 13a-19a. The court contrasted the language of Section 102(a) and (b) with the language of Section 102(e)(1), and it concluded that “Congress chose to afford published patent applications *a prior-art effect* different from the effect given to printed publications in § 102(a) and (b).” *Id.* at 19a.

After analyzing statutory text, structure, and history, the court of appeals concluded with a “final[]” “note” on how the “plain language” of Section 102(e)(1) fit “congressional purpose.” Pet. App. 19a-20a (citation omitted). The court explained that, in identifying the sorts of patentability challenges that may be brought through IPR, Congress had mandated “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.” *Id.* at 20a. The court observed that “[t]he former are the types of references that are normally handled by patent examiners, while the latter often require substantial discovery or factfinding,” and are thus better left to district courts. *Ibid.* (internal quotation marks omitted). The court concluded that, because “[p]ublished patent applications clearly fall into the

former category,” *ibid.*, treating them as available prior art here is “fully consistent with Congress’s purpose in limiting the types of patentability challenges in IPRs,” *id.* at 21a.

Having concluded that the Martin application may be used as the basis of Samsung’s IPR, the court of appeals upheld the Board’s conclusion that the challenged claims of the ’400 Patent were obvious in light of Martin. See Pet. App. 21a-31a. The court subsequently denied rehearing en banc without recorded dissent. *Id.* at 100a-101a.

ARGUMENT

Petitioner contends (Pet. 15-28) that the Martin application, which was filed before the priority date of the ’400 Patent but was not published until after that date, could not be considered as prior art in an IPR of that patent. The court of appeals correctly rejected that contention, and its decision does not warrant this Court’s review. As the court rightly held, petitioner’s argument is foreclosed by the text of Section 102(e)(1) and the special timing rule it establishes. And the question presented is of limited practical importance, since it will arise only in an IPR where the challenged patent’s priority date falls within the window (ordinarily 18 months) between the filing and publication of a patent application that the IPR petitioner invokes as prior art.

1. In deciding this case, the court of appeals understood petitioner to concede that the Martin application is a “printed publication” within the meaning of Section 311(b). See Pet. App. 6a (“[Petitioner] agrees that Martin is a ‘printed publication.’”); see also *id.* at 6a n.4, 8a-9a, 10a. Some language in the petition for a writ of certiorari suggests that petitioner continues to accept that

proposition. See Pet. 24 (“To be sure, patent applications can be prior-art ‘printed publications’ if—as required for any other printed publication—they were publicly available before the critical date.”). Other language in the petition suggests, however, that petitioner disputes this point. See Pet. 27-28 (arguing that “[p]atent applications remain a controversial form of prior art,” and that “Congress permitted this controversial form of prior art, but sensibly required that challenges based on it be brought in an Article III court”); see also, *e.g.*, Pet. 15-16, 26.

As the court of appeals correctly held, the Martin application is a “printed publication” within the meaning of Section 311(b)’s recitation of the materials that may be considered in an IPR. “The touchstone of whether a reference constitutes a printed publication is public accessibility.” Pet. App. 6a (citation omitted); see *id.* at 6a n.5. And by the time Samsung filed its petition for IPR, the Martin application had been publicly accessible for more than 15 years.

Petitioner argues (Pet. 26) that, although the text of Section 311(b) identifies ““patents and printed publications”” as the ““only”” prior-art sources that may be invoked in an IPR, the court of appeals “effectively rewrote § 311(b) to permit IPRs on the basis of prior-art ‘patents,’ ‘printed publications,’ *and* ‘patent applications.’” *Ibid.* That argument reflects an apparent assumption that, if a particular document is an “application for patent,” it cannot be a “printed publication[]” as well. Pet. 33 (citation omitted). As the court of appeals explained, however, the statutory terms “printed publication[]” (in 35 U.S.C. 311) and “application for patent, published under [§] 122(b)” (in 35 U.S.C. 102(e)(1) (2000)) have distinct but overlapping coverage. Pet.

App. 10a. In the same way that “a lion is just a specific type of mammal,” 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.’” *Ibid.* In holding that the Martin application was properly before the Board in the IPR, the court of appeals did not “effectively rewr[i]te § 311(b)” (Pet. 26); it simply construed the provision’s language.

Petitioner also argues that, “[f]or more than a century before § 311(b)’s enactment, the statutory phrase ‘printed publication’ had been interpreted to mean that before the critical date for measuring a patent’s validity the reference must have been sufficiently accessible to the public.” Pet. 15-16 (citation, brackets, emphasis, and some internal quotation marks omitted). The court of appeals correctly rejected that argument. Pet. App. 16a-17a. The court acknowledged that, “for something to have been ‘described in a printed publication’ so as to constitute a patentability bar under § 102(a) or (b), the reference must have been publicly accessible before the dates specified in those subsections.” *Id.* at 16a. The court explained, however, that “this ‘when’ issue for prior-art status is dictated by” separate “temporal language” in Section 102(a) and (b)—not by “the meaning of ‘printed publication’ itself, which is otherwise temporally agnostic.” *Id.* at 17a; see *id.* at 16a (highlighting the language in Section 102(a) and (b) that specifies the time at which a particular printed publication “must have been publicly accessible in order to be treated as prior art”). The fact that the Martin application had become publicly accessible by the time Samsung filed its petition for IPR therefore was a sufficient ground for treating that application as a “printed publication.”

2. Petitioner's principal argument is that, even if the Martin application is a "printed publication" within the meaning of Section 311(b), it should not have been treated as a *prior-art* printed publication during the IPR because the application was not published until after the '400 Patent's priority date. See, *e.g.*, Pet. 6, 12; Pet. App. 6a. The court of appeals correctly rejected that argument as inconsistent with the plain text of Section 102(e)(1), which establishes a "special rule," Pet. App. 8a, to determine the prior-art status of a patent application. Section 102(e)(1) precludes issuance of a patent for an invention that "was described in * * * an application for patent, published under [35 U.S.C. §] 122(b), by another *filed in the United States before the invention by the applicant for patent.*" *Ibid.* (quoting 35 U.S.C. 102(e)(1) (2000)) (emphasis added). Thus, "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." *Ibid.*; see *id.* at 14a-15a, 17a-19a.

The court of appeals' textual analysis is correct and straightforward. The Martin application was published under 35 U.S.C. 122(b) on October 21, 2004. Pet App. 4a, 8a n.7. Under Section 102(e)(1), it is deemed prior art as of the date it was "filed"—April 16, 2003. Because the '400 Patent's priority date is February 24, 2004, Martin is considered prior art to the '400 Patent under Section 102(e)(1). And nothing in the text of Section 102(e) limits its applicability in IPR proceedings.

Petitioner argues (Pet. 17) that the Martin application "was published too late to qualify" as a "*prior art* * * * printed publication[]" within the meaning of Section 311(b) because the application "was not publicly accessible, much less a printed publication, until after the

invention's critical date." But while petitioner focuses heavily (Pet. 18-22) on the background timing rule that governs the prior-art status of traditional printed publications, it does not dispute that Section 102(e)(1) applies in the IPR context. And so long as Section 102(e)(1) applies, a published patent application serves as prior art from its filing date.

Giving effect to Section 102(e)(1)'s plain text does not defy "settled precedent and historic meaning." Pet. 18. It is no doubt correct, as petitioner emphasizes (Pet. 18-22), that traditional printed publications (*e.g.*, books or journal articles) historically acquired prior-art status only as of the date they became publicly accessible. But as explained above (see p. 4, *supra*), that was because the language of Section 102(a) and (b) dictated that result. Pet. App. 7a. In enacting Section 102(e)(1), Congress departed from that baseline by creating a special timing rule for published patent applications. *Id.* at 8a. And under that rule, what matters is the filing date. *Id.* at 10a-11a ("[T]he plain language * * * 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."); cf., *e.g.*, *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (holding that, where Congress establishes a specific rule, the specific controls over the general).

Petitioner argues (Pet. 24) that, in applying Section 311(b) to the circumstances of this case, the Martin application "cannot be a printed publication for purposes of half the key clause (discerning the categories of art that may be considered), but a patent application for the other half (for determining whether it is prior or subsequent art)." But as explained above (see pp. 8-9, *supra*),

a published patent application is a *type* of printed publication. By the time of the IPR proceedings in this case, the Martin application was *both* a “printed publication” within the meaning of Section 311(b) *and* “an application for patent, published under section 122(b),” within the meaning of Section 102(e)(1). The Board and the court of appeals did not behave illogically or inconsistently in recognizing those dual attributes and giving each the legal effect that the statutory scheme specifies. To be sure, a patent application that has been filed but not yet published could not be invoked as a ground for instituting an IPR, since the application would not then be a “printed publication.” But under the plain terms of the statute, once the application has been published, it serves as prior art from the time it was “filed.” 35 U.S.C. 102(e)(1) (2000).

As petitioner acknowledges (Pet. 7), Section 102(e)(2) states that a *granted patent* will be treated as prior art as of the date the application for that patent was filed. A granted patent thus “can be deemed a ‘prior art’ patent even before it *became* a patent.” Pet. App. 9a. That longstanding approach reflects the fact that the patent system serves to reward genuine innovation (Pet. 5); a concept that is already described in a previously filed application is necessarily not an innovation. See *Alexander Milburn Co. v. Davis Bournonville Co.*, 270 U.S. 390, 400-401 (1926). In the certiorari petition, as in the court of appeals, petitioner offers 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. Congress crafted Section 102(e)’s twin provisions so that “an application published by the PTO” would be

treated “in the same fashion as a patent published by the PTO.” H.R. Rep. No. 287, 106th Cong., 1st Sess. 56 (1999).

Petitioner seeks to portray the decision below as a radical break from established practice. See Pet. 15-16. But as petitioner does not meaningfully dispute (Pet. 28), the court of appeals’ decision is fully consistent with the manner in which the USPTO has construed and applied Section 102(e)(1) from the time of its enactment. Indeed, since 1999, when Congress mandated publication of patent applications and enacted Section 102(e)(1), the USPTO’s *Manual of Patent Examining Procedure* (MPEP) has stated that published patent applications may serve as prior art in administrative reexaminations, and that such applications are treated as prior art as of their filing date. See, *e.g.*, MPEP § 2258 (8th ed. Aug. 2001). While an agency’s interpretation of statutory language is not “binding” on courts, Pet. 28, the USPTO’s longstanding practice, and Congress’s failure to upset that practice, provide further support for the court of appeals’ decision here. Cf. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394 (2024) (explaining that “interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute’s meaning”).

Petitioner also charges the court of appeals with elevating statutory “purpose” over plain text. Pet. 4, 15, 29-30; see generally Scholars Br., Hsieh Br. But while the court briefly explained why its holding was consistent with “congressional purpose,” Pet. App. 20a, it did so only as a “final[]” “note,” *id.* at 19a, and only after a lengthy analysis of the statute’s text, structure, and history, *id.* at 6a-19a. In any event, the court of appeals’

discussion of congressional purpose was an appropriate complement to the court’s textual analysis.

Petitioner and its amici argue that Congress made IPR available only for a “limited” set of patentability challenges, leaving the rest for district courts. See Pet. 3, 9-11; see also Smith et al. Br. 11-15. Petitioner is correct that the Board in an IPR may consider only a subset of the prior art that a court could consider in resolving a patentability dispute. See 35 U.S.C. 311(b) (providing that a petition for IPR may request cancellation of a patent claim “only on the basis of prior art consisting of patents or printed publications”). But as the court of appeals explained, the evident purpose of that restriction is to distinguish between “printed materials” (which are within the wheelhouse of patent examiners) and other materials (which might involve the sort of fact-finding better handled by district courts). Pet. App. 20a (collecting sources). “Published patent applications clearly fall into the former category.” *Ibid.* The court therefore was correct in concluding that “[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.

Finally, petitioner contends (Pet. 30-31) that the decision below conflicts with the Federal Circuit’s decision in *Qualcomm Inc. v. Apple Inc.*, 24 F.4th 1367 (2022). But “[i]t is primarily the task of a Court of Appeals to reconcile its internal difficulties.” *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (per curiam). And here, no judge on the courts of appeals expressed a concern that the decision below was inconsistent with *Qualcomm*. Pet. App. 100a-101a.

In *Qualcomm*, the Federal Circuit addressed a different type of prior art, *i.e.*, an admission contained within the challenged patent itself. The court held that the “patents or printed publications that form the basis of a ground for *inter partes* review must themselves be prior art to the challenged patent,” and that “descriptions of the prior art contained in the challenged patent” do not suffice. 24 F.4th at 1374 (internal quotation marks omitted). In this case, the court of appeals did not accord prior-art status to any language contained (or any art referenced) in the ’400 Patent itself. The Federal Circuit’s holding in *Qualcomm* therefore has little bearing on the proper resolution of the question presented here.

3. The limited practical importance of the question presented provides a further reason for this Court to deny review.²

Petitioner contends that the court of appeals’ decision threatens “havoc.” Pet. 29 (capitalization omitted). That claim is baseless. The decision below adopts two clear rules: (a) A published patent application is a type of “printed publication” that may be invoked as a ground for an IPR, and (b) the effective prior-art date for such an application is the date when the application was filed. Neither of those rules is likely to spawn confusion or to be difficult to administer. And because the decision below comports with the USPTO’s longstanding practice (see p. 13, *supra*), petitioner’s failure to

² Contrary to petitioner’s suggestion (Pet. 17), the government’s court of appeals brief did not describe the question presented here as “foundational” in the sense of “important.” Instead, the brief used the term “foundational” to describe the question presented as concerning a threshold issue—*i.e.*, the “effective prior art date” of some reference, whatever its substance. Gov’t C.A. Br. 30.

identify instances of prior confusion severely undermines its contention that “havoc” will now ensue.

Petitioner suggests (Pet. 29-30) that litigants will now be confused about what constitutes a “printed publication.” But treatment of the Martin application as a “printed publication” is consistent both with established agency practice and with the Federal Circuit’s longstanding focus on public accessibility as the key to construing that statutory term. See Pet. App. 8a-9a; pp. 8, 13, *supra*. To the extent that petitioner disputes the application’s status as a “printed publication” (see pp. 7-9, *supra*), it does so primarily on the ground that the statutory scheme contains separate references to “printed publications” and “application[s] for patent[s].” See Pet. 26-27. Besides being meritless (see pp. 8-9, *supra*), that argument has no logical implication for categories of prior art that are *not* separately referenced in the statute. Petitioner also expresses concern that the court of appeals’ decision will produce “uncertainty” (Pet. 30) about the effective prior-art date for other references. But since the decision below was based on the “special rule” that Section 102(e)(1) establishes for published patent applications, Pet. App. 8a, that decision is unlikely to affect the timing analysis for other types of prior art.

Finally, the court of appeals’ resolution of the timing question will affect only a narrow class of cases. As noted, patent applications typically must be published 18 months after they are filed. See 35 U.S.C. 122(b). Accordingly, the court’s effective-date holding will affect the use of IPR only as to patents whose priority date falls within the 18-month window between the filing and publication of another patent application that is invoked as prior art. Although petitioner cites a handful

of cases that may be affected by the decision below, see Pet. 32-33; see also VLSI Br. 11-15, there is no reason to suppose that such cases will be numerous.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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