

No. 25-308

IN THE
Supreme Court of the United States

LYNK LABS, INC.,
Petitioner,

v.

SAMSUNG ELECTRONICS CO., LTD., ET AL.,
Respondents.

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

REPLY FOR PETITIONER

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REPLY FOR PETITIONER

The decision below spurns a century of settled judicial construction in pursuit of perceived statutory purpose. The America Invents Act permits patents to be challenged in inter partes review (IPR) “only on the basis of *prior art* consisting of patents or *printed publications*.” 35 U.S.C. § 311(b) (emphasis added). That limit was not written on a blank slate. Courts had long defined prior-art “printed publications” with dictionary-like specificity: “The statutory phrase ‘printed publication’ has been interpreted to mean that *before the critical date* the reference must have been sufficiently *accessible to the public*.” *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1568 (Fed. Cir. 1988) (emphasis added); Pet.6-7, 18-19 (collecting authorities dating from 1890).

That settled construction resolves the question presented. Where there is “settled pre-AIA precedent on the meaning of” a statutory term, “we presume that when Congress reenacted the same language in the AIA, it adopted the earlier judicial construction of that phrase.” *Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc.*, 586 U.S. 123, 131 (2019). Prior-art “printed publications” in §311(b) means the same thing courts had always construed that phrase to mean: references that were publicly accessible *before* the challenged patent’s critical date. Patent applications that were not publicly accessible until *after* the critical date—like the abandoned Martin application here—do not qualify.

The Federal Circuit held the opposite, believing that allowing later-published patent applications in IPRs would serve unwritten congressional “purpose.” The U.S. Patent and Trademark Office (PTO) and Samsung try to defend that result. But they have no answer to the century of authority defining prior-art “printed publications.” Their briefs never cite the myriad pre-AIA precedents construing that phrase to require public accessibility before the critical date. They never cite *Helsinn*, which makes clear Congress adopted that settled judicial construction when it reenacted the same language in §311(b).

Instead, they invoke supposed *agency* practice. But agency interpretations receive no deference. The asserted agency practice is unexplained and contradictory. And there is no evidence Congress was aware of it. Statutory text, in light of the explicit, long-settled *judicial* construction of prior-art “printed publications,” must control.

So the PTO and Samsung urge the question presented is unimportant. The PTO observes that the question presented implicates “the 18-month window between the filing and publication of another patent application that is

invoked as prior art.” Gov’t.Br.16. But 18 months is an eternity for fast-moving technologies, and the petition identified dozens of affected cases already. A recent survey of relevant PTO decisions found that *half* relied on patent applications published after the critical date. And numerous amici—including a named sponsor of the AIA and the PTO Director who shepherded its enactment and implementation—confirm the issue’s importance.

Samsung alone suggests the issue is limited to the pre-AIA statutory scheme. But the relevant statutory text—§311(b)’s limitation of IPRs to “prior art consisting of patents or printed publications”—appears *in the AIA itself*. And as the Solicitor General correctly explains, “[f]or purposes of the question presented,” “there are no material differences between the pre- and post-AIA versions of Section 102.” Gov’t.Br.3 n.1.

The question presented is foundational to the IPR system: When limiting IPRs “only” to “prior art * * * patents or printed publications,” did Congress adopt the settled construction of prior-art “printed publications,” or did it *sub silentio* depart from that established meaning? This case cleanly presents that question. Review is warranted.

I. THE QUESTION PRESENTED WARRANTS REVIEW

A. The Decision Below Defies Statutory Text, Structure, and History

The Federal Circuit held a patent application that became public only *after* the critical date qualifies as a “prior art * * * printed publicatio[n],” §311(b), as of its filing date—before publication. That ruling contravenes the statute’s text, structure, and a century of history.

1. Section 311(b)’s text is clear. It states that patents can be challenged in IPR “only on a ground that could be raised under section 102 or 103” of the Patent Act, “and

only on the basis of prior art consisting of patents or printed publications.” The first phrase limits challengers to arguing non-novelty (§ 102) and obviousness (§ 103). The second limits challengers to two specific categories of “prior art”: “patents” and “printed publications.”

For as long as “printed publications” have been recognized as prior art, whether references are prior-art “printed publications” has hinged on public accessibility *before* the critical date. Pet.6-7, 18-19 (citing, *e.g.*, 1 William C. Robinson, *The Law of Patents for Useful Inventions*, § 325 at 447 (1890); *Jockmus v. Leviton*, 28 F.2d 812, 813 (2d Cir. 1928) (L. Hand, J.)). Courts defined the term with striking precision:

The statutory phrase “printed publication” has been interpreted to mean that *before the critical date* the reference must have been sufficiently *accessible to the public*.

Constant, 848 F.2d at 1568 (emphasis added); *In re Klopstein*, 380 F.3d 1345, 1348 (Fed. Cir. 2004); Pet.19.

When Congress enacted the AIA and limited IPRs to “prior art * * * patents or *printed publications*,” § 311(b) (emphasis added), it employed a term with established meaning. Legislators and citizens reading the “statutory phrase ‘printed publication’” in the AIA would understand it to mean what it had always “been interpreted to mean”: a printed reference “accessible to the public” “*before* the critical date.” *Constant*, 848 F.2d at 1568 (emphasis added). That definition excludes patent applications that were not publicly accessible until *after* the critical date. Under *Helsinn*, that “well-settled judicial interpretation” controls. 586 U.S. at 132.

2. Respondents never cite *Helsinn*. They attempt to brush off the century of authority construing prior-art

“printed publications” (which they never cite). That settled judicial construction, they assert, “came not from any intrinsic understanding of the term” or “judicial gloss on its meaning,” “but from the statutory provisions of 35 U.S.C. § 102(a)-(b).” *Samsung.Br.14*; *Gov’t.Br.11*. But the precedents construe the term prior-art “‘printed publication’” itself. *E.g.*, *Constant*, 848 F.2d at 1568; *Klopfenstein*, 380 F.3d at 1348. And the term’s intrinsic meaning is in accord: It means references that are *prior art by virtue of their publication*—*i.e.*, their prior public accessibility. Respondents nowhere deny that, until the decision below, *no* court had *ever* construed prior-art “printed publications” to encompass references that were *not* publicly accessible before the critical date.

Looking to § 102 yields the same result. Section 311(b)’s citation of § 102 and express reference to prior-art “printed publications” point to the provisions of § 102 that speak to “printed publication[s].” All agree *those* provisions require public accessibility “before” (or “prior to”) the relevant critical date. § 102(a)-(b) (2006); § 102(a)(1) (2018); see *Pet.6 n.1*.

Indeed, § 102 highlights respondents’ interpretive error. Section 102 identifies different categories of prior art that may be asserted in various forums, including “patent[s],” “printed publication[s],” and “application[s] for patent.” § 102(a)-(b), (e)(1)-(2) (2006); § 102(a)(1)-(2), (d) (2018). But § 311(b) limits prior art “in an inter partes review” to “only” two categories: “patents” and “printed publications.” “[D]ifferences in language like this convey differences in meaning.” *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017); see *Russello v. United States*, 464 U.S. 16, 23 (1983). Yet respondents would blue-pencil § 311(b) to include references that are prior art *only*

by dint of being “application[s] for patent”—a category Congress omitted from § 311(b).

Respondents protest that patent applications are just a type of printed publication. Gov’t.Br.8-9; Samsung.Br.16-17. Certainly, patent applications are printed publications once published (and thus publicly accessible). But they are “prior art * * * printed publications,” § 311(b), only if they satisfy the prior-art rules *for printed publications*—*i.e.*, if they were publicly accessible *before* the critical date. Pet.24.

3. The PTO points to the “‘special rule’” in § 102(e)(1) (now § 102(a)(2)) that deems “‘application[s] for patent’” prior art as of their filing dates, even if they are published (and publicly accessible) only *after* the critical date. Gov’t.Br.10-11. The PTO implausibly asserts that Lynk “does not dispute that Section 102(e)(1) applies in the IPR context.” Gov’t.Br.11. Lynk disputes *precisely* that point.

The petition explains that the statute’s text, structure, and history show that Congress chose *not* “to incorporate [§ 102(e)(1)’s] special rules” for “patent applications” into IPRs. Pet.26; see Pet.8-9, 20-21, 23-25. For example, Congress first used the phrase “prior art consisting of patents or printed publications” in 1980, when patent applications were not even *recognized* as a category of prior art. Pet.20. Congress reenacted the same “patents or printed publications” limitation when creating inter partes reexamination (IPR’s predecessor) in 1999—even as it recognized “application[s] for patent” as an *additional* category of prior art for *other* proceedings in the same enactment. Pet.20-21, 27. And § 311(b) limits IPRs to “patents” and “printed publications,” *not* “applications for patent.” Pet.25. The petition exhaustively explains why § 102(e)(1)’s “special rule” *for patent applications*, Gov’t.Br.10, does

not extend to IPRs. That the government’s position rests on an imaginary concession is telling.¹

4. Respondents concede their interpretation requires a mix-and-match approach to prior-art printed publications. It deems applications like Martin to be “printed publications” on one theory (public accessibility *now*) and “prior art” on another (they are “application[s] for patent” under §102(e)(1)). Pet.16-17, 23-24, 30-31; Gov’t.Br.8-9, 11-12; Samsung.Br.9-10. Respondents identify no precedent for that bifurcated approach. The Federal Circuit rejected that approach in *Qualcomm Inc. v. Apple Inc.*, 24 F.4th 1367 (Fed. Cir. 2022), refusing to mix-and-match §311(b)’s parallel reference to “prior art * * * patents.” *Qualcomm* held that, although applicant-admitted prior art both appears in a “patent” and is “prior art,” it falls outside §311(b) because it is not prior art *as a patent*. *Id.* at 1372-1375; Pet.30-31 & n.5. On that (correct) logic, later-published patent applications fall outside §311(b) because they are not prior art *as printed publications*. But the decision below held the opposite. Respondents’ chief response is that the Federal Circuit appears unbothered by the discrepancy. Gov’t.Br.14-15; Samsung.Br.28-29. That highlights, rather than resolves, the conflict.

5. Respondents’ position reduces to a contention that—despite Congress’s reenactment of language with a long-settled judicial construction—§102(e)(1)’s recognition of *patent applications* as prior art somehow transmogrified the phrase prior-art “*printed publications*” to include references that lack that term’s touchstone of public accessibility before the critical date. That would be

¹ Contrary to Samsung’s suggestion, Samsung.Br.21-22, courts maintained the settled definition of prior-art “printed publications” after patent applications were recognized as prior art in 1999. See *Klopfenstein*, 380 F.3d at 1348 (2004); p. 12, n.3, *infra*.

an extraordinarily “‘oblique way of attempting to overturn’ that ‘settled body of law.’” *Helsinn*, 586 U.S. at 131. “The addition of” patent applications as a distinct category of prior art “is simply not enough of a change * * * to conclude that Congress intended to alter the meaning of the reenacted term [prior-art ‘printed publications’].” *Ibid.*²

B. Neither Agency Practice Nor Perceived Purpose Can Override Statutory Text

1. While dismissing established *judicial* construction of prior-art “printed publications,” respondents lean heavily on a supposed “settled administrative practice” in reexamination proceedings. Gov’t.Br.13; Samsung.Br.16-21. But “congressional silence” is not “implicit endorsement.” *Brown v. Gardner*, 513 U.S. 115, 121-122 (1994). Agency interpretations are owed no deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). And the asserted practice lacks “‘power to persuade.’” *Id.* at 402.

The PTO relies entirely on its Manual of Patent Examining Procedure (MPEP). Gov’t.Br.13. But the cited section does not purport to analyze the meaning of prior-art “printed publications.” It asserts, without analysis, that reexamination “rejections may be based upon the following portions of 35 U.S.C. 102” and then block-quotes nearly all of § 102—including plainly irrelevant provisions like § 102(g)(1), which concerns “‘interference’” proceedings, not reexamination. MPEP § 2258, at 2200-66 (8th ed. 2001). The PTO overlooks, moreover, that the MPEP elsewhere says a patent application is “prior art” *as “a ‘printed’ publication”* only “as of its patent application

² Nor is the fleeting reference to “other printed publications” in § 122(e)(1) (2018). Samsung.Br.24; see *Helsinn*, 586 U.S. at 131 (rejecting similar argument based on “otherwise” clause).

publication date.” MPEP § 901.02, at 900-2 (emphasis added). Self-contradicted statements that do “not analyze or explain” the interpretive issue merit no weight. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 224 (2016).

Nor is there evidence “Congress was even aware” of the asserted agency practice. *Brown*, 513 U.S. at 121. The case Samsung block-quotes involved *initial* “patent examination,” Samsung.Br.19-20—which is *not* limited to prior-art “patents or printed publications.” Samsung’s other case involved an “issued * * * patent” (Postrel), not a mere application. *Signature Sys., LLC v. AD. Ken Corp.*, 2010 Pat. App. LEXIS 13215, *5, *14-15 (B.P.A.I. 2010). The practice rule Samsung invokes (Br.19), concerns “[a]ffidavit[s] or declaration[s],” including in initial examination. 37 C.F.R. § 1.131 (2001). None analyzes the term prior-art “printed publications.”

Samsung invokes a “presum[ption]” that Congress is “aware of an administrative . . . interpretation of a statute.” Samsung.Br.20. But the PTO did no “interpreting.” And whatever unexplained practices it might have been up to, they cannot override the longstanding, explicit *judicial* construction requiring prior-art “printed publications” to be publicly accessible before the critical date. *That* established practice is what matters.

2. Respondents’ retreat to “purpose” and policy, Gov’t.Br.14; Samsung.Br.18, 29-30, is unavailing.

The PTO insists that, because “patents” asserted in IPRs are considered prior art as of their filing dates, there is no reason “patent applications” should not be, too. Gov’t.Br.12. But § 311(b)’s text is the reason. By referring to “patents” and citing § 102, § 311(b) incorporates § 102’s rule giving “patent[s]” prior-art effect as of their filing dates. 35 U.S.C. § 102(e)(2) (2006); § 102(a)(2) (2018). Sec-

tion 311(b) makes no similar allowance for “patent applications”; it never mentions them. The PTO also says §311(b)’s “evident purpose” is merely to “distinguish” between “‘printed materials’” and “‘other materials.’” Gov’t.Br.14. But the text draws a different distinction: It includes prior-art “patents [and] printed publications” and excludes everything else. Abstracting the text to supposed purpose, then discarding the text itself, is textbook legal error. Pet.26-28.

Samsung says Lynk’s approach imposes “‘an artificial constraint on the types of prior art that may be asserted in an IPR’” compared to “‘district court.’” Samsung.Br.30. That “constraint” comes from the text. It limits IPRs—but not Article III litigation—to “prior art * * * patents or printed publications.” §311(b).

Those choices are not “illogical.” Samsung.Br.30. As a named sponsor of the AIA (Rep. Lamar Smith) and the PTO Director who oversaw the AIA’s enactment and implementation (Hon. David Kappos) explain, §311(b)’s text reflects a legislative “compromise” to make IPRs “more restrictive in scope” than other patent proceedings. Smith.Br.1-4, 6, 11-17. The Federal Circuit’s “departure from the text, history, and purpose of section 311(b),” based on its own policy notions, “threatens to collapse the careful balance and legislative compromise reflected in the AIA’s final text.” Smith.Br.16-17.

II. THE ISSUE IS IMPORTANT AND RECURRING, AND THIS IS AN IDEAL VEHICLE

IPRs are an extraordinarily popular mechanism for challenging patents. Scholars.Br.21-22. They typically target the most valuable patents, with millions or billions of dollars at stake. Pet.32-33. This Court regularly reviews questions about IPRs’ proper scope. Pet.3. The question here is foundational to that system. Because

Congress strictly limited IPRs to “*prior art* * * * patents or *printed publications*,” it is essential to know *what counts* as a prior-art “printed publication.”

Lynk’s amici—including a named AIA sponsor, the then-incumbent PTO Director, a former Federal Circuit chief judge, industry figures, and scholars—underscore the issue’s importance. Smith.Br.1-2; VLSI.Br.1-3; Alliance.Br.1-4; Hsieh.Br.1-3; Scholars.Br.1-6. The decision below has drawn intense attention—and criticism—including from the leading patent-law commentator. See D. Crouch, *Lynk Labs Resource Guide*, <https://patentlyo.com/patent/2026/02/lynk-resource-guide.html> (Feb. 13, 2026) (collecting commentary). And the case is a prime opportunity to reinforce fundamental principles of textual interpretation. Scholars.Br.3-24; Hsieh.Br.2-26.

A. The PTO’s insistence that the issue has “limited practical importance,” Gov’t.Br.15, is hard to swallow. The PTO concedes it implicates (at least) dozens of pending cases. Pet.32; VLSI.Br.9-15; Gov’t.Br.16-17. And the “USPTO is increasingly leveraging these unpublished-at-the-time references to invalidate patents.” D. Crouch, *The ‘Narrow’ Question That Appears in Half of PTAB Obviousness Decisions*, <https://patentlyo.com/patent/2026/02/question-obviousness-decisions.html> (Feb. 4, 2026). A recent survey of relevant PTO decisions found “*half* relied upon” patent applications published after the critical date. *Ibid.* (emphasis added).

The PTO’s protest that the issue “only” affects “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,” Gov’t.Br.16, “ignores the practical reality of patent prosecution and validity disputes,” Crouch, *‘Narrow’ Question*, *supra*. “[P]atent attorneys know that this 18-month window is often incred-

ibly important—particularly in technology sectors experiencing rapid growth, which are also precisely the areas most likely to generate litigation and IPR challenges.” *Ibid.* In fast-moving fields, 18 months is an eternity.

B. Samsung’s attempt to dismiss this case as involving a “now-superseded [pre-AIA] statutory scheme,” Samsung.Br.22-27, is frivolous. The question presented concerns the proper interpretation of §311(b), which was enacted *in the AIA itself*. 125 Stat. 299. Samsung admits §311(b) applies to *both* pre-AIA patents like Lynk’s *and* patents issued under the AIA. AIA §6(c)(2)(A), 125 Stat. 304; Samsung.Br.7. And while Samsung invokes the AIA’s amendments to §102, the Solicitor General properly refutes that effort: “For purposes of the question presented,” he explains, “there are no material differences between the pre- and post-AIA versions of Section 102.” Gov’t.Br.3 n.1; see Pet.6 n.1, 33-34.³

C. This is an ideal vehicle. The issue was vigorously litigated below, with the government’s participation, and decided in a lengthy opinion. The facts are undisputed. And the issue is outcome-determinative. Pet.34. Tellingly, the Solicitor General—never coy about vehicle concerns—nowhere disputes that, if the question presented merits review, this is an ideal vehicle for resolving it.

³ The Federal Circuit thus has applied the settled definition of prior-art “printed publications” both before and after the AIA: references “‘accessible to the public’” “‘before the critical date.’” *Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1370 n.3, 1373 (Fed. Cir. 2021) (quoting *Constant*, 848 F.2d at 1568). The AIA addressed how the critical date is *determined*, pegging it to a patent’s “effective filing date,” §102(a)(1) (2018), rather than date of “invention,” §102(a) (2006). That is irrelevant to the question presented—especially here, as Lynk’s deemed invention (and critical) date *is* its “effective filing date.” Pet.App.4a n.1; Pet.7 n.2.

CONCLUSION

The petition should be granted.

Respectfully submitted.

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