

No.

In the Supreme Court of the United States

TESLA, INC.,

Applicant,

v.

GRANITE VEHICLE VENTURES LLC, ET AL.,

Respondents.

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

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May 18, 2026

RULE 29.6 STATEMENT

Applicant Tesla, Inc. has no parent corporation, and no publicly held company owns 10% or more of its stock.

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Federal Circuit:

Pursuant to this Court's Rule 13.5, applicant Tesla, Inc. respectfully requests a 60-day extension of time, to and including July 27, 2026, to file a petition for a writ of certiorari.

1. The Federal Circuit entered judgment on February 27, 2026. See Ex. A. Absent an extension, a petition for a writ of certiorari would be due on May 28, 2026. This application is being filed at least 10 days in advance of that date.

2. This Court's jurisdiction would be invoked under 28 U.S.C. §1254(1).

3. This case presents important and recurring questions regarding the power of the U.S. Patent and Trademark Office (USPTO) to devise extra-statutory constraints on *inter partes* review (IPR) without judicial review.

IPR is a procedure Congress created that “allows private parties to challenge previously issued patent claims in an adversarial process before the Patent Office.” *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 359 (2018); see Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (AIA). Congress set out the criteria for whether the USPTO should institute IPR in response to a petition. For example, the USPTO “may not authorize an inter partes review to be instituted unless the Director determines” that “there is a reasonable likelihood that the petitioner would prevail.” 35 U.S.C. §314(a). Congress also established other considerations, including a timeframe for filing a petition (see §315(b)) and specific criteria for the USPTO to consider at its discretion (see, *e.g.*, §315(d)).

In this case, the USPTO denied Tesla’s IPR petitions for a reason found nowhere in any statute and under no authority granted by Congress. Tesla was sued for patent infringement by respondent Granite Vehicle Ventures LLC, and Tesla sought to challenge the patents’ validity in IPR. Tesla filed its IPR petitions within the timeframe specified by statute. See §315(b). Yet the USPTO denied the petitions because it deemed the petitions too late: they came too close to the projected (and later vacated) trial date in the infringement litigation. See Ex. A at 1; Order at 6, *Granite Vehicle Ventures LLC v. Tesla, Inc.*, No. 2:24-cv-01007 (E.D. Tex. Dec. 17, 2025) (unsealed public version at Dkt. No. 130-1).

Tesla sought judicial review via a mandamus petition to the Federal Circuit (the only available mechanism under Federal Circuit precedent, see *Mylan Lab’s Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1381-1382 (Fed. Cir. 2021)). Tesla argued, among other things, that the USPTO had acted without authority in considering an unbounded set of extra-statutory, non-substantive factors when deciding institution and imposing a time-to-trial constraint on IPR. See Ex. A. at 2.

The Federal Circuit denied Tesla’s mandamus petition, holding Tesla’s agency-authority claim beyond judicial review. Ex. A at 2-3. Applying circuit precedent that had deemed an “*ultra vires*” claim regarding a denial of IPR institution beyond “the limits on [judicial] reviewability,” *Mylan*, 989 F.3d at 1382-1383, the Federal Circuit declined to “disturb” the USPTO’s use of a time-to-trial criterion to deny institution. Ex. A at 2-3.

This case therefore presents, among other issues, the questions (a) whether the USPTO may violate statutory limits in IPR institution without judicial review, and (b) whether the USPTO may devise extra-statutory constraints on IPR institution. The

Federal Circuit’s resolution of those questions conflicts with decisions of this Court and other courts. See, *e.g.*, *SAS Inst.*, 584 U.S. at 371 (“If a party believes the Patent Office has engaged in “shenanigans” by exceeding its statutory bounds, judicial review remains available” (citation omitted)). And the questions are of crucial importance to the Nation’s patent system. Wielding unreviewable authority under Federal Circuit law, the USPTO has dismantled the IPR scheme Congress designed—destabilizing the patent system and destroying the benefits of the congressional scheme.

4. The extension of time is needed because of the time required to prepare a comprehensive, useful petition on these important questions, and counsel’s competing obligations in the weeks surrounding the current filing deadline. These other obligations include (but are not limited to): oral argument on May 6 in the Federal Circuit; a brief in opposition due May 26 in this Court; a reply brief due May 29 in the Federal Circuit; an amicus brief due May 29 in this Court; oral argument in two cases on June 2 in the Federal Circuit; a reply brief due before June 9 in this Court; a reply brief due June 10 in the Federal Circuit; a response brief due June 16 in the Federal Circuit; and a reply brief currently due May 27 (extension request to early July forthcoming) in the Federal Circuit.

5. The extension will not prejudice Respondents. Both on the existing schedule and with the requested extension, the case is likely to be distributed during the summer recess.

For the foregoing reasons, Tesla respectfully requests that the time to file a petition for a writ of certiorari be extended by 60 days to and including July 27, 2026.

Respectfully submitted.

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EXHIBIT A

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In Re TESLA, INC.,
Petitioner

2026-116

On Petition for Writ of Mandamus to the United States Patent and Trademark Office in Nos. IPR2025-00943, IPR2025-00944, IPR2025-01034 and IPR2025-01035.

ON PETITION AND MOTION

Before TARANTO, MAYER, and STARK, *Circuit Judges*.

PER CURIAM.

ORDER

In response to Granite Vehicle Ventures LLC filing suit alleging patent infringement, Tesla, Inc. petitioned the United States Patent and Trademark Office (“PTO”) for *inter partes* review (“IPR”) of the asserted patents. The Director of the PTO, through his delegee, the Deputy Director, denied Tesla’s petitions. In particular, the Director reasoned “it is unlikely that a final written decision in [these] proceeding[s] will issue before the district court trial occurs,” and such review would result “in significant duplication of effort, additional expense for the parties, and

a risk of inconsistent decisions.” Appx2, Appx6. Tesla now petitions this court for a writ of mandamus directing the PTO to vacate the non-institution decisions and reconsider without relying on time-to-trial as a criterion. ECF No. 2-1 at 11. Granite and the Director oppose.

Mandamus is a “drastic and extraordinary remedy reserved for really extraordinary causes.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004). A petitioner must ordinarily show, among other things, a clear and indisputable right to relief. *Id.* at 380–81. Given Congress committed institution decisions to the Director’s discretion, even when the statutory pre-conditions are present, *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 366 (2018); *Apple Inc. v. Squires*, ___ F.4th ___, 2026 WL 406495 at *1 (Fed. Cir. Feb. 13, 2026), and protected the exercise of that discretion from review by making such determinations “final and nonappealable,” 35 U.S.C. § 314(d), we have recognized that, in the absence of a colorable constitutional claim, mandamus is ordinarily unavailable for review of institution decisions. *Mylan Lab’ys Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021); *Apple Inc. v. Vidal*, 63 F.4th 1, 12 n.5 (Fed. Cir. 2023).

We see no reason to grant such relief here. Tesla primarily argues that the Director exceeded his statutory authority in denying IPR review.¹ But the Director here merely concluded that instituting IPR would not be an

¹ Tesla casts its *ultra vires* arguments, regarding the Director’s use of the time-to-trial factor, also as a constitutional separation of powers challenge. But the Supreme Court has noted that “claims simply alleging that the President has exceeded his statutory authority are not ‘constitutional’ claims,” *Dalton v. Specter*, 511 U.S. 462, 473–74 (1994), and we agree with the PTO that this challenge presents no colorable constitutional claim.

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efficient use of agency resources given the progress of the civil litigation between the parties at the time. In circumstances like these, we have not exercised mandamus authority to disturb a denial of institution decision and see no basis to do so here either. *See Mylan*, 989 F.3d at 1382 (holding a petitioner has no right to mandamus relief when a non-constitutional challenge is to “the Director’s exercise of his discretion to deny institution”). Nor has Tesla shown any clear and indisputable right to disturb the non-institution decisions based on its contention that the Director failed to conduct proper notice-and-comment rulemaking. *See Apple*, 2026 WL 406495, at *1 (holding that the PTO’s “general statement[s] of policy” are exempted from notice-and-comment rulemaking procedures).

Accordingly,

IT IS ORDERED THAT:

(1) The petition is denied.

(2) The unopposed motions at ECF Nos. 12, 16, 20, and 25 for leave to file amici curiae briefs are granted and the corresponding briefs are accepted for filing.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

February 27, 2026
Date