No. _____

In the Supreme Court of the United States

TESLA, INC.,

Petitioner,

v.

GRANITE VEHICLE VENTURES LLC, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress created *inter partes* review ("IPR") to give the public an efficient way to challenge patents that should never have issued. Congress specified the criteria governing whether the U.S. Patent and Trademark Office ("PTO") institutes review.

Here, the PTO refused to institute review for a reason found nowhere in any statute: the expected time to trial in separate district court litigation. The Federal Circuit held that judicial review is unavailable to decide whether the agency exceeded its authority by devising extra-statutory limits on IPR.

The question presented is:

Whether courts have power to review a PTO decision denying *inter partes* review on grounds that are contrary to statute, like an extra-statutory restriction based on time to trial in separate litigation.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Tesla, Inc. was the petitioner below. Petitioner trades under the ticker symbol TSLA on the NASDAQ exchange.

Respondents Granite Vehicle Ventures LLC and John A. Squires, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, were respondents below.

RULE 29.6 STATEMENT

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

RELATED PROCEEDINGS

In re Tesla, Inc., No. 2026-116 (Fed. Cir. Feb. 27, 2026).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Tesla, Inc. respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-3a) is available at 2026 WL 555080. The opinions of the Patent and Trademark Office denying Tesla's petitions for *inter partes* review (App. 4a-7a, 8a-10a) are not reported.

JURISDICTION

The Federal Circuit entered judgment on February 27, 2026. On May 26, 2026, the Chief Justice granted petitioner's application to extend the time to file a petition for a writ of certiorari until July 27, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTE INVOLVED

Section 314 of Title 35 of the U.S. Code provides in relevant part:

> (d) NO APPEAL.—The determination by the Director whether to institute an inter partes review under this section shall be final and nonappealable.

INTRODUCTION

The Federal Circuit has left the PTO free to exceed its statutory limits, with no judicial review. That extraordinary result is wrong, harms the Nation's patent system, and urgently warrants this Court's review.

IPR is a way of challenging bad patents. Congress designed a detailed scheme governing when IPR is available. The PTO has now devised its own constraints on IPR's availability, found nowhere in any statute. The PTO denies IPR petitions, for example, based on the time to trial in separate litigation involving the patent—a criterion Congress never mentioned.

According to the Federal Circuit, no court may even *ask* whether PTO-invented grounds for denying IPR are within the agency's statutory authority. The matter is beyond judicial review. The PTO can ignore or rewrite Congress's scheme without consequence. The PTO can impose any IPR constraint it wishes—it could deny all IPR petitions filed on Tuesdays—and courts must look the other way.

That is wrong. The Federal Circuit's unreviewability holding rests on 35 U.S.C. §314(d), which bars appeal of "[t]he determination by the [PTO] Director whether to institute an inter partes review." But this Court has repeatedly held that "§314(d) does not 'enable the agency to act outside its statutory limits.'" *SAS Inst., Inc.* v. *Iancu*, 584 U.S. 357, 371 (2018) (quoting *Cuozzo Speed Techs., LLC* v. *Lee*, 579 U.S. 261, 275 (2016)). Yet that is just the type of challenge the Federal Circuit foreclosed here. The Federal Circuit has also mistakenly invoked 5 U.S.C.

§701(a)(2), which bars review of matters committed to agency discretion. That does not bar review of what discretion the agency has in the first place. Moreover, the PTO's discretion here is not nearly as broad as the Federal Circuit has assumed. Congress specified the criteria for IPR institution and conferred agency discretion in specific areas; the statute never authorizes the PTO to supplant Congress's scheme with its own.

Arming the PTO with extraordinary, unreviewable power has had severe consequences—especially in the last two years. The PTO has reshaped IPR, imposing one new extra-statutory limit after another. Stakeholders must now expect IPR to be upended afresh at the whim of every new PTO Director. In 2025, the agency embarked on its most sweeping rewrite of IPR limits yet, and the effects have been unprecedented. IPR institution rates have collapsed in half, and IPR petition filings are down 85%. The agency is gutting the IPR scheme Congress built. This Court's review is needed now more than ever.

This petition joins two already-pending petitions in presenting the question whether the PTO is subject to judicial review when it denies *inter partes* review on grounds that are contrary to statute. See *Google LLC* v. *VirtaMove, Corp.*, No. 25-1230 (filed Apr. 27, 2026, response requested June 12, 2026); *Intel Corp.* v. *Squires*, No. 26-73 (filed July 13, 2026).[1] Together, these cases present the reviewability question in every relevant

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[1] Another related petition appears to be forthcoming but was not yet docketed as of the filing of this petition. See *Kahoot! AS* v. *Interstellar Inc.*, No. 25A1279 (application granted extending time to file until July 25, 2026).

procedural posture—and in the context of the two most consequential IPR limits the PTO has devised. This case is an ideal companion to those cases for resolving this exceptionally important, urgent issue.

STATEMENT OF THE CASE

A. Legal Background

1. In 2011, Congress established IPR "to weed out bad patent claims efficiently." *Thryv, Inc.* v. *Click-To-Call Techs., LP*, 590 U.S. 45, 54 (2020); see Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, 125 Stat. 284. IPR "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). This process is meant to be a "cost effective alternative[] to litigation" over patent validity. H.R. Rep. No. 112–98, pt. 1, at 40, 48 (2011).

Congress set out a detailed scheme governing IPR and charged the PTO with administering it. See 35 U.S.C. §§311-319. Any patent challenger can file "a petition to institute an inter partes review of the patent." §311(a). The PTO "shall determine whether to institute an inter partes review." §314(b). If IPR is instituted, the PTO proceeds to "a final written decision with respect to the patentability of any patent claim challenged" and cancels any invalid claims. §318(a), (b).

Congress specified the criteria for whether to institute IPR. Section 314(a) sets the core merits threshold: the Director "may not authorize an inter partes review to be instituted unless" there is "a reasonable likelihood that the petitioner would prevail" on at least one challenged claim. §314(a). Beyond that threshold, Congress added a set of reticulated limits. Some are firm bars, like a requirement that the petition be filed no earlier than "9 months after the grant of a patent." §311(c)(1). Others give the PTO discretionary authority, like a provision specifying that "the Director may take into account whether, and reject the petition . . . because, the same or substantially the same prior art or arguments previously were presented to the Office." §325(d).

Specific provisions also govern the interaction between IPR and district court litigation involving the same patent. See §315. Even more specifically, Congress addressed when an IPR petition would be timely in relation to infringement litigation against the petitioner: the petition must be filed within one year after the petitioner is served with the complaint. §315(b).

2. Nearly a decade after Congress established IPR, the PTO devised a new ground for denying IPR institution: proximity to trial in separate litigation involving the patent. The agency created that limit on IPR without notice-and-comment rulemaking; it simply announced the limit in unilateral decisions and memoranda. *NHK Spring Co.* v. *Intri-Plex Techs., Inc.*, IPR2018-00752, 2018 WL 4373643, at *7 (P.T.A.B. Sept. 12, 2018) (designated precedential May 7, 2019); *Apple Inc.* v. *Fintiv, Inc.*, IPR2020-00019, 2020 WL 2126495, at *2 (P.T.A.B. Mar. 20, 2020) (designated precedential May 5, 2020); see also, *e.g.*, Memorandum from Katherine K. Vidal to Members of the Patent Trial and Appeal Board, *Interim Procedure for Discretionary*

Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation (June 21, 2022)[2] ("Vidal Memo").

This agency-devised constraint (the "*Fintiv* rule") has transformed IPR practice. The PTO has denied hundreds of IPR petitions on that ground. See Matthew Johnson, *Discretionary Decision Statistics Update*, PTAB Litigation Blog (Nov. 4, 2025) (218 denials over 5-month period in 2025 alone).[3]

And the PTO has grafted various other criteria onto the time-to-trial rule. The PTO has fashioned a set of factors to govern its bottom-line decision whether to use an "earlier trial date[] as a basis for denial." *Fintiv*, 2020 WL 2126495, at *2. The PTO also allows IPR petitioners to avoid denial on time-to-trial grounds if they surrender certain arguments in district court litigation (a "*Sotera* stipulation"). See *Sotera Wireless, Inc.* v. *Masimo Corp.*, IPR2020-01019, 2020 WL 7049373, at *7 (P.T.A.B. Dec. 1, 2020) (designated precedential as to Section II.A, Dec. 17, 2020). More recently, the PTO has pushed IPR petitioners to give up invalidity defenses in Article III courts even when those defenses cannot be raised in IPR, such as those based on system art. *Motorola Sols., Inc.* v. *Stellar, LLC*, IPR2024-01205, -01206, -01207, -01208, Paper 19, at 3-4 (U.S.P.T.O. Mar. 28, 2025); *SAP Am., Inc.* v. *Cyandia, Inc.*, IPR2024-01495, Paper 13, at 8-9 (U.S.P.T.O. Apr. 7, 2025).

The PTO has also devised other new grounds for denying institution—many introduced in the last two

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[2] https://perma.cc/M4AV-X8YP.

[3] https://perma.cc/7DVQ-AXVM.

years. It now denies institution, for example, when the patent is old enough to have engendered "[s]ettled expectations." Memorandum from Coke Morgan Stewart to All PTAB Judges, *Interim Processes for PTAB Workload Management* (Mar. 26, 2025)[4] ("Stewart Memo"); *Dabico Airport Sols. Inc.* v. *AXA Power ApS*, IPR2025-00408, Paper 21, at 2 (U.S.P.T.O. June 18, 2025) (designated informative Jan. 9, 2026). The PTO also now sometimes denies institution because the patent claim has been challenged before (even if by a different party, on different grounds). *E.g.*, *Webgroup Czech Republic, A.S.* v. *DISH Techs. LLC*, IPR2025-00467, Paper 14, at 2-3 (U.S.P.T.O. July 16, 2025); *Intel Corp.* v. *Advanced Cluster Sys., Inc.*, IPR2025-00794, Paper 13, at 2-3 (U.S.P.T.O. Aug. 14, 2025). And the PTO sometimes denies institution because the petitioner pursued different claim construction arguments in litigation (even when the litigation argument was statutorily unavailable in IPR). *Tesla, Inc.* v. *Intellectual Ventures II LLC*, IPR2025-00340, Paper 18, at 2-4 (U.S.P.T.O. Nov. 5, 2025) (designated informative, Nov. 5, 2025).

Although the agency has repeatedly begun the rulemaking process, none of those PTO-created IPR institution criteria are set forth in any notice-and-comment rule. See, *e.g.*, 88 Fed. Reg. 24,503, 24,513-517 (Apr. 21, 2023) (advanced notice of proposed rulemaking including the time-to-trial criterion); 89 Fed. Reg. 28,693 (Apr. 19, 2024) (notice of proposed rulemaking); 90 Fed. Reg. 48,342 (Oct. 17, 2025) (withdrawing that proposed rulemaking); 90 Fed. Reg. 48,335, 48,341 (Oct. 17, 2025)

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[4] https://perma.cc/J353-H33U.

(another notice of proposed rulemaking including the time-to-trial criterion).

These agency-devised limits on IPR, none with any basis in any statute, have had dramatic effect. Since introducing a new spate of limits in 2025, the institution rate has "plummeted." Eileen McDermott, *USPTO Stats Show IPR Institution Rate Has Plummeted by 43%*, IP Watchdog (Apr. 8, 2026);[5] see also Patent Trial and Appeal Board, PTAB Trial Statistics 7 (May 2026)[6] ("May 2026 PTAB Statistics").

B. Proceedings Below

1. After respondent Granite Vehicle Ventures LLC sued petitioner Tesla, Inc. for patent infringement, Tesla petitioned for IPR of the asserted patents. See App. 1a. Tesla filed its IPR petitions within months after being "served with [the] complaint"—and thus well within the one-year statutory deadline. 35 U.S.C. §315(b); see Compl., *Granite Vehicle Ventures LLC* v. *Tesla, Inc.*, No. 2:24-cv-01007, Dkt. No. 1 (E.D. Tex. Dec. 6, 2024); Pet., *Tesla, Inc.* v. *Granite Vehicle Ventures LLC*, No. IPR2025-00943, Paper 1 (P.T.A.B. May 5, 2025); Pet., *Tesla, Inc.* v. *Granite Vehicle Ventures LLC*, No. IPR2025-00944, Paper 1 (P.T.A.B. May 2, 2025); Pet., *Tesla, Inc.* v. *Granite Vehicle Ventures LLC*, No. IPR2025-01034, Paper 1 (P.T.A.B. May 28, 2025); Pet., *Tesla, Inc.* v. *Granite Vehicle Ventures LLC*, No. IPR2025-01035, Paper 1 (P.T.A.B. May 28, 2025).

[5] https://perma.cc/5MLQ-E3HL.

[6] https://perma.cc/H68W-L3FW.

Because of the PTO's "*Sotera* stipulation" exception to the time-to-trial rule, Tesla stipulated in court that it would pursue only a limited, specific set of invalidity challenges in litigation if IPR were instituted. Def.'s Notice of Broadened Sotera Plus Stipulation, *Granite Vehicle Ventures LLC* v. *Tesla, Inc.*, No. 2:24-cv-01007, Dkt. No. 88 (E.D. Tex. July 24, 2025). Tesla thus surrendered far more to comply with the PTO's doctrine (at the IPR institution stage) than the statute requires (through estoppel *after* IPR final decision). Compare *id.* (stipulating not to raise "system prior art" grounds that could not have been raised in IPR), with §315(e)(2) (precluding IPR petitioners, after final written decision, from raising in litigation only "any ground that the petitioner raised or reasonably could have raised during that inter partes review").

2. The PTO denied institution. App. 4a-7a, 8a-10a. It purported "to exercise discretion to deny institution . . . based on a holistic assessment" of unspoken criteria. App. 5a-6a. And it articulated a single ground for denial: "it is unlikely that a final written decision in this proceeding will issue before the district court trial occurs." App. 5a-6a; see App. 9a.

That reasoning rested on the PTO's prediction that the district court trial would occur in summer or fall 2026, before the IPR would conclude in December 2026. App. 5a. In reality, however, the district court proceedings have taken much longer. The originally scheduled trial date moved—as often happens. See Andrew T. Dufresne et al., *How Reliable Are Trial Dates Relied on by the PTAB in the Fintiv Analysis?*, 1600 PTAB & Beyond (Oct. 29, 2021) (finding PTO's trial-date predictions were wrong 94% of the time).[7] Now, trial is scheduled for June 2028 (nearly two years after the PTO's prediction, and long after the PTO said the IPR would have concluded). See Case Management and Scheduling Order, *Granite Vehicle Ventures LLC* v. *Tesla, Inc.*, No. 3:26-cv-01457, Dkt. No. 197 (N.D. Cal. June 26, 2026); Mem. Op. and Order, *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) (transferring case to N.D. Cal.).

3. Tesla sought Federal Circuit review by the only available route under circuit precedent: a petition for a writ of mandamus. See *Mylan Lab'ys Ltd.* v. *Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1379, 1381 (Fed. Cir. 2021) (holding that "there is no avenue for direct appeal of decisions denying institution," but "we have jurisdiction to review any petition for a writ of mandamus denying institution of an IPR"); see 28 U.S.C. §1651(a) (All Writs Act).

Tesla "argue[d] that the [PTO] exceeded [its] statutory authority in denying IPR review" by devising an extra-statutory ground for denying IPR: "use of the time-to-trial factor," Tesla contended, was "*ultra vires*." App. 2a & n.1.

The Federal Circuit denied Tesla's petition. App. 1a-3a. Relying on circuit precedent, the court refused to review Tesla's agency-authority claim on the

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[7] https://ptacts.uspto.gov/ptacts/public-informations/petitions/1549571/download-documents?artifactId=-gkf8A2TF7hsdxNi-fHFg76hHBTqxMt3MHqAUjGLGrmBdauZmYmDXAA.

merits. App. 2a-3a & n.1. In particular, the court invoked its *Mylan* line of precedent, under which there is "no reviewability" of statutory challenges to decisions denying institution—review is available only "for colorable constitutional claims." 989 F.3d at 1382; see *id.* at 1382-83 ("Given the limits on our reviewability, Mylan's *ultra vires* argument cannot be a basis for granting the petition for mandamus."); App. 2a-3a. Summarizing this precedent, the Federal Circuit maintained that "Congress committed institution decisions to the Director's discretion" and "protected the exercise of that discretion from review" in 35 U.S.C. §314(d), so judicial review is "ordinarily unavailable" even in mandamus for non-constitutional claims. App. 2a. The Federal Circuit applied that precedent here, denying mandamus because it viewed Tesla's claim as "a non-constitutional challenge" to the PTO's "'discretion to deny institution.'" App. 2a-3a (quoting *Mylan*, 989 F.3d at 1382).[8]

REASONS FOR GRANTING THE PETITION

I. The Federal Circuit's decision wrongly forecloses judicial review.

A. The Federal Circuit has left the PTO free to devise limits on IPR beyond its authority.

The Federal Circuit refuses to review whether the PTO has exceeded its statutory authority by imposing agency-devised limits on IPR. According to the Federal

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[8] Tesla also challenged the *Fintiv* rule for lack of "proper notice-and-comment rulemaking," and the Federal Circuit rejected that challenge as well. App. 3a.

Circuit, "there is no reviewability" of the PTO's grounds for denying IPR institution—"except for colorable constitutional claims." *Mylan Lab'ys Ltd.* v. *Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1379, 1381, 1382 (Fed. Cir. 2021). The PTO's compliance with *statutory* limits is thus immune from judicial review. *Id.*; see App. 2a-3a; *Apple Inc.* v. *Vidal*, 63 F.4th 1, 11, 13-14 (Fed. Cir. 2023) (refusing judicial review of "statutory challenge" to "content" of PTO-devised institution limits in an Administrative Procedure Act ("APA") action).

This Federal Circuit precedent has expanded to cover the waterfront, foreclosing every statutory challenge to PTO institution criteria ever advanced. The Federal Circuit has shut off all available procedural avenues. *St. Jude Med., Cardiology Div., Inc.* v. *Volcano Corp.*, 749 F.3d 1373, 1375 (Fed. Cir. 2014) (direct appeal); *Mylan*, 989 F.3d at 1379 (same); *id.* at 1382 (mandamus); App. 2a-3a (same); *Apple*, 63 F.4th at 11-14 (separate APA suit). And the Federal Circuit has refused review over any statutory limit on PTO authority—from the specific AIA scheme governing IPR to universal APA guardrails. See, *e.g.*, App. 2a & n.1 (denying review over contentions that PTO acted "*ultra vires*" and "exceeded [its] statutory authority"); *Apple*, 63 F.4th at 11 (denying review over contention that PTO rule was "not 'reasonable and reasonably explained'"); *In re Motorola Sols., Inc.*, 159 F.4th 30, 38 (Fed. Cir. 2025) (denying review over unexplained change of position); *id.* (denying review over retroactive application of new rule without statutory authority); *id.* (denying review over failure to account for relevant considerations).

And within the last year, the Federal Circuit removed any doubt that the courthouse doors are closed to such claims, refusing judicial review of more than a dozen challenges to the PTO's authority to refashion the criteria for IPR institution—including in the decision below. App. 1a-3a; *In re Motorola Sols., Inc.*, 159 F.4th 30 (Fed. Cir. 2025); *In re SAP Am., Inc.*, No. 2025-132, 2025 WL 3096788 (Fed. Cir. Nov. 6, 2025); *In re Google LLC*, No. 2025-144, 2025 WL 3096849 (Fed. Cir. Nov. 6, 2025); *In re Cambridge Indus. USA Inc.*, No. 2026-101, 2025 WL 3526129 (Fed. Cir. Dec. 9, 2025); *In re Sandisk Techs., Inc.*, No. 2025-152, 2025 WL 3526507 (Fed. Cir. Dec. 9, 2025); *In re Google LLC*, No. 2026-111, 2026 WL 204945 (Fed. Cir. Jan. 27, 2026); *In re HighLevel, Inc.*, No. 2025-148, 2025 WL 3527144 (Fed. Cir. Dec. 9, 2025); *In re Intel Corp.*, No. 2026-113, 2026 WL 506045 (Fed. Cir. Feb. 24, 2026); *In re Kangxi Commc'n Techs. (Shanghai) Co.*, No. 2026-115, 2026 WL 506927 (Fed. Cir. Feb. 24, 2026); *In re Tessell, Inc.*, No. 2026-117, 2026 WL 505597 (Fed. Cir. Feb. 24, 2026); *In re Kahoot! AS*, No. 2026-119, 2026 WL 519635 (Fed. Cir. Feb. 25, 2026); *In re Volkswagen Grp. of Am., Inc.*, No. 2026-123, 2026 WL 776550 (Fed. Cir. Mar. 19, 2026); see also *In re Maplebear Inc.*, No. 2026-105 (Fed. Cir.) (mandamus petition filed but later voluntarily dismissed).

Thus, as Federal Circuit law stands, the PTO can devise any limit on IPR—no matter how egregiously beyond its authority or arbitrary. The PTO could ignore clear directives from Congress; it could start denying IPR petitions merely because they were filed on Tuesdays. The Federal Circuit would look the other way.

B. The Federal Circuit's approach is contrary to 35 U.S.C. §314(d) and this Court's decisions interpreting it.

The Federal Circuit's approach cannot be squared with the AIA or this Court's precedents. It has freed the PTO from the congressional and judicial constraints that bind other agencies. "Administrative agencies are creatures of statute" that "possess only the authority that Congress has provided." *Nat'l Fed'n of Indep. Bus.* v. *Dep't of Labor*, 595 U.S. 109, 117 (2022) (per curiam). And it is the "traditional" office of the courts to "'fix[] the boundaries of [that] delegated authority.'" *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 395-96 (2024) (citation omitted). So this Court "ordinarily presume[s] that Congress intends the executive to obey its statutory commands and, accordingly, that it expects the courts to grant relief when an executive agency violates such a command." *Bowen* v. *Michigan Acad. of Family Physicians*, 476 U.S. 667, 670 (1986).

While the Federal Circuit reads 35 U.S.C. §314(d) to immunize the PTO from statutory challenge, this Court has held otherwise: "§314(d) does not 'enable the agency to act outside its statutory limits.'" *SAS Inst., Inc.* v. *Iancu*, 584 U.S. 357, 371 (2018) (quoting *Cuozzo Speed Techs., LLC* v. *Lee*, 579 U.S. 261, 275 (2016)).

Rather, §314(d) provides only that "[t]he determination by the Director whether to institute an inter partes review under this section shall be final and nonappealable." §314(d). It thus bars review of the Director's case-specific determination whether institution is warranted ("[t]he determination . . . whether to institute an inter partes review"). *Id.* As this Court has put it: §314(d) applies to "'an ordinary dispute about the application of'" statutory institution criteria. *Thryv, Inc.* v. *Click-To-Call Techs., LP*, 590 U.S. 45, 54 (2020) (quoting *Cuozzo*, 579 U.S. at 271).

Section 314(d) does not extend to the more fundamental question whether the PTO has authority to impose a new limit on institution. That is an overarching question of agency authority, not merely a challenge to the case-specific "determination . . . whether to institute an inter partes review." §314(d). Again, this Court has already drawn this distinction: it has not applied §314(d) to appeals "that present other questions of interpretation that reach, in terms of scope and impact, well beyond 'this section.'" *Cuozzo*, 579 U.S. at 275.

The relief sought here reinforces that §314(d) is inapplicable. As the Federal Circuit recognized, Tesla seeks merely to require the PTO to "reconsider without relying on time-to-trial as a criterion"—not to command the PTO to institute review. App. 2a. Tesla's challenge is thus trained on the PTO's unlawful criterion—not the ultimate "determination . . . whether to institute an inter partes review." §314(d).

By applying §314(d) to bar Tesla's statutory challenge, the Federal Circuit has extended §314(d) far beyond where this Court has ever gone. This Court has twice applied §314(d) to bar review, and both times the challenger merely contested how the agency applied a statutory institution criterion in granting institution. In *Cuozzo*, the challenger argued that the PTO should not have instituted review because the petition was not pleaded sufficiently "with particularity" under §312(a)(3). 579 U.S. at 271-72. In *Thryv*, the challenger argued that in applying §315(b)'s one-year bar, the PTO should have measured the time from a different triggering event. 590 U.S. at 54. In both cases, the Court found the challenges barred by §314(d) because they "raise[] 'an ordinary dispute about the application of' an institution-related statute." *Id.* at 54 (citation omitted); *Cuozzo*, 579 U.S. at 271. Neither case concerned the outer limits of the agency's statutory authority.

The Court has refrained from applying §314(d) to that different kind of dispute. In *Cuozzo*, the Court illustrated the boundary with a hypothetical: if the Board instituted review to cancel a claim for indefiniteness (which would "act outside [the agency's] statutory limits" because §311(b) limits IPR petitions to other grounds of invalidity), that decision "may be properly reviewable." 579 U.S. at 275. The Court then confirmed reviewability of statutory-authority challenges in *SAS*. *SAS* reiterated that "[i]f a party believes the Patent Office has engaged in 'shenanigans' by exceeding its statutory bounds, judicial review remains available." 584 U.S. at 371 (quoting *Cuozzo*, 579 U.S. at 275). Applying that rule, *SAS* held that §314(d) does not bar review of a contention "that the Director exceeded his statutory authority" ("by limiting the review to fewer than all of the claims SAS challenged"). *Id.* And even where §314(d) might otherwise apply, this Court has reserved the question "whether mandamus would be available in an extraordinary case." *Thryv*, 590 U.S. at 54 n.6.

This Court's §314(d) precedents thus preserve judicial review of whether the PTO has exceeded statutory bounds. Yet the Federal Circuit has now closed off that review, enabling the PTO to devise extra-statutory institution criteria with no judicial oversight. That departure from this Court's precedents—and the erasure of judicial and congressional limits on agency action—calls for this Court's review.

C. The Federal Circuit's approach cannot be justified by 5 U.S.C. §701(a)(2) and rests on an erroneous view of the PTO's discretion.

The Federal Circuit has also suggested that 5 U.S.C. §701(a)(2) forecloses review of PTO-devised limits on IPR because the institution determination is "committed to agency discretion by law." *Mylan*, 989 F.3d at 1382; see App. 2a (restricting review because "Congress committed institution decisions to the Director's discretion"). That reasoning is doubly mistaken.

1. To begin, §701(a)(2) does not bar review of what discretion the agency has in the first place. That provision withdraws review only "to the extent that" the action is committed to agency discretion. §701(a)(2). Section 701(a)(2) therefore does not disable a court from deciding whether the agency actually possesses the discretion it claims. That antecedent issue is what the Federal Circuit refused to review: whether Congress conferred discretion to invent the IPR institution criterion imposed here.

Applying §701(a)(2) to bar review of statutory limits on agency discretion contravenes this Court's precedents. Section 701(a)(2) "did not set agencies free to disregard legislative direction in the statutory scheme that the agency administers." *Heckler* v. *Chaney*, 470 U.S. 821, 833 (1985). This Court has accordingly "read . . . §701(a)(2) quite narrowly, restricting it to 'those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion.'" *Weyerhaeuser Co.* v. *U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018) (quoting *Lincoln* v. *Vigil*, 508 U. S. 182, 191 (1993)). It therefore does not bar "the sort of claim that federal courts routinely assess when determining whether to set aside an agency decision." *Id.* at 25.

And that is exactly the sort of claim at issue here. Courts retain the "obligation[]" to "police the outer statutory boundaries" of congressional delegations of discretionary authority. *Loper Bright*, 603 U.S. at 404. Courts reviewing agency action are thus "required to decide whether the [agency] acted within the scope of [its] authority." *Citizens to Pres. Overton Park, Inc.* v. *Volpe*, 401 U.S. 402, 415 (1971). The statute defines that scope—and thus supplies the "meaningful standard" for judging whether the agency exceeded its limits. Tesla's claim is that the AIA does not permit the PTO to deny access to IPR based on time to trial, and that is the kind of statutory challenge that courts routinely resolve.

Other courts of appeals—unlike the Federal Circuit—have applied §701(a)(2) exactly this way: reviewing the statutory limits of an agency's discretion even when the ultimate decision is discretionary. See Pet. 23-25, *Google*, No. 25-1230; see, *e.g.*, *Farmworker Justice Fund, Inc.* v. *Brock*, 811 F.2d 613, 622 (D.C. Cir. 1987), vacated on mootness grounds, 817 F.2d 890 (1987); *Ward* v. *Skinner*, 943 F.2d 157, 160 (1st Cir. 1991); *Rodriguez* v. *Mayorkas*, 2024 WL 4023841, at *2 (2d Cir. Sept. 3, 2024).

2. The Federal Circuit's reliance on §701(a)(2) is flawed for an independent reason: it seemingly assumes the erroneous premise that the PTO has freewheeling discretion to deny IPR institution for any reason. See *Apple Inc.* v. *Squires*, 166 F.4th 1349, 1360 (Fed. Cir. 2026) ("[T]he Director has broad and protected discretion not to launch an IPR . . . ."); *Mylan*, 989 F.3d at 1382. That unbounded view of the PTO's power is wrong.

Congress prescribed a reticulated set of IPR institution criteria. The provision governing "Institution of inter partes review" specifies a threshold for institution: IPR "may not" be instituted unless "there is a reasonable likelihood that the petitioner would prevail." 35 U.S.C. §314(a). Other provisions set forth firm limits, such as filing deadlines and estoppel. *E.g.*, 35 U.S.C. §§311(c), 315(b), 315(e). Still others confer specific discretionary power—for example, "the Director may take into account whether, and reject the petition . . . because, the same or substantially the same prior art or arguments previously were presented to the Office." §325(d); see also, *e.g.*, §315(d).

No provision empowers the PTO to supplant that statutory framework with its own by agency fiat. Congress expected that the "reasons why no inter partes review should be instituted" would be "based upon the failure of the petition to meet any requirement *of this chapter*"—that is, the requirements specified *by statute*. 35 U.S.C. §313 (emphasis added). Congress did not craft a detailed institution scheme just so the PTO could act on its own discretionary whim.

Indeed, the specific discretion that Congress conferred in provisions like §325(d) becomes superfluous under the Federal Circuit's view that the PTO has general discretion to deny IPR petitions for any reason. It is implausible that Congress intended to grant the agency unbounded discretion to craft any institution framework it wished, yet forgot to say so—while articulating a system of narrower, calibrated grants of discretion.

The only AIA provision the PTO has invoked for the supposed grant of unbounded discretion is §314(a). See C.A. PTO Director Resp. 20-21. But far from conferring power, that provision is phrased as a constraint: the Director "may not" institute IPR "unless" the petitioner is reasonably likely to prevail on the merits. §314(a). Nor does §314(a) (silently) confer unbounded discretion just because it does not mandate institution when that requirement is met. Section 314(a) lacks mandatory language for a simple reason: even for petitions clearing §314(a)'s merits criterion, other statutory criteria outside §314(a) could still defeat institution. *E.g.*, §§315(b), 315(d), 315(e), 325(d). But it was Congress that chose these additional criteria—and specified which would be discretionary. The PTO has no power to supplant those choices.

3. Without support in the statute itself, the Federal Circuit has tried to read this Court's decisions as establishing broad discretion for the PTO. See *Mylan*, 989 F.3d at 1382 (suggesting that because "the Supreme Court has explained[] [that] 'the [Patent Office]'s decision

to deny a petition is a matter committed to the Patent Office's discretion,'" the PTO "is free" to deny institution for its own reasons (quoting *Cuozzo*, 579 U.S. at 273); see also *Squires*, 166 F.4th at 1353 (also citing *United States* v. *Arthrex, Inc.*, 594 U.S. 1, 8-9 (2021)). Yet this Court has never considered—let alone decided—what discretion the PTO has to invent new IPR criteria. This confusion over the meaning of this Court's decisions reinforces the need for review.

This Court has described the institution "decision" as committed to the PTO's "discretion," but the *scope* of that discretion was not at issue in those cases. *Cuozzo*, 579 U.S. at 273; *Oil States Energy Servs., LLC* v. *Greene's Energy Grp., LLC*, 584 U.S. 325, 343 n.5 (2018); *Arthrex*, 594 U.S. at 8-9. Those cases decided separate questions. *Cuozzo*, 579 U.S. at 271-83 (whether §314(d) barred review of "Cuozzo's claim that Garmin's petition was not pleaded 'with particularity'" and whether a PTO regulation imposing a standard of construction was valid); *Oil States*, 584 U.S. at 329 (whether IPR violates Article III or the Seventh Amendment); *Arthrex*, 594 U.S. at 11-27 (whether provisions regarding Administrative Patent Judges violated the Appointments Clause). The Court's statements regarding discretion reflect that the AIA gives the PTO discretion in *applying statutory* institution criteria. *E.g.*, §§315(d), 325(d). But the Court had no occasion to decide what discretion the PTO has to *invent new* criteria.

This Court has often warned against reading "general language" in its opinions to resolve issues "not then before the Court." *Illinois* v. *Lidster*, 540 U.S. 419, 424 (2004); *e.g.*, *Olivier* v. *City of Brandon*, 607 U.S. 552, 565 (2026);

Turkiye Halk Bankasi A.S. v. *United States*, 598 U.S. 264, 278 (2023); *Brown* v. *Davenport*, 596 U.S. 118, 141 (2022). A question of this magnitude—whether the agency may unilaterally revise a statutory scheme without judicial oversight—warrants this Court's plenary consideration. It should not be settled by unexamined inference from passing statements on matters not at issue. And with the Federal Circuit repeatedly declining judicial review, only this Court can supply the reasoned analysis the question has never received.

II. The question presented is exceptionally important, and the need for review has grown even more urgent in recent years.

1. The reviewability of the PTO's IPR restrictions is exceptionally important. The stakes here are fundamental: whether any court may hold the agency accountable when it exceeds the limits Congress set. The Federal Circuit has placed the PTO's IPR restrictions beyond judicial reach. This gives the agency the extraordinary power to decide for itself how far its own authority extends. The PTO should not wield that power without this Court's review.

These issues also have significant practical consequences for the Nation's patent system and economy. Congress established IPR to address "overpatenting and its diminishment of competition" by "weed[ing] out bad patent claims efficiently." *Thryv*, 590 U.S. at 54. Bad patent claims are a severe economic drain, forcing companies to avoid useful activity for fear of infringing patents that should never have issued—or undertake costly litigation or licensing. 153 Cong. Rec. H10284 (daily ed. Sept. 7,

2007) (statement of Rep. Eshoo) (addressing "baseless claims of infringement . . . sapping billions from economic growth"); 157 Cong. Rec. S1363 (daily ed. Mar. 8, 2011) (statement of Sen. Schumer) (recognizing "substantial burden on U.S. courts and the U.S. economy" from "[l]itigation over invalid patents"). IPR alleviates those burdens, canceling invalid patent claims "more quickly and at less than 10% of the cost of litigation." Br. of Amici Curiae 35 Intellectual Property Law Professors 8 & n.4, *Google*, No. 25-1230. IPR has saved billions of dollars in litigation costs. Josh Landau, *Inter Partes Review: Five Years, Over $2 Billion Saved*, Patent Progress (Sept. 14, 2017).[9] The PTO's unreviewable power to restrict IPR puts all of that at risk.

Given the importance of IPR—and of judicial review of the PTO's administration of IPR—this Court has granted review three times in the last decade to address §314(d)'s scope (in *Cuozzo*, *SAS*, and *Thryv*). Here, the reviewability question is even more fundamental. While *Cuozzo*, *SAS*, and *Thryv* concerned the reviewability of particular PTO rationales, at stake here is the reviewability of an entire class of basic challenges to agency action: whether the PTO's institution criteria are reviewable for compliance with statutory limits.

2. The question presented has recently grown even more important. With the unreviewable power the Federal Circuit has conferred, the PTO has increasingly reshaped IPR—especially since 2025.

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[9] https://perma.cc/7HPG-Z4DF.

The PTO has been inventing—then re-inventing—limits on IPR found nowhere in the AIA. See generally Br. for Unified Patents, LLC as Amicus Curiae 6-12, *Google*, No. 25-1230. The agency unilaterally created the *Fintiv* time-to-trial limit that Tesla challenges here. *Supra* 5-6. It tacked on other limits—like coercing IPR petitioners to stipulate not to raise arguments in district court, even when some of those arguments are unavailable in IPR. *Supra* 6-7. It added exceptions (*e.g.*, *Fintiv* does not apply if the patent challenge is "compelling" on the merits)—only to reverse course later. Compare Vidal Memo 4, with Memorandum from Scott R. Boalick to Members of the Patent Trial and Appeal Board, *Guidance on USPTO's recission of "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation"* at 2-3 (Mar. 24, 2025)[10] ("Boalick Memo").

Since 2025, the agency has escalated from tinkering to overhaul. See generally Br. for Unified Patents, LLC as Amicus Curiae 8-10, *Google*, No. 25-1230. In quick succession, it invented a slew of new extra-statutory restrictions on IPR—including a "settled expectations" limit based on patent age, a limit for patent claims previously challenged elsewhere, and a bar on foreign-government-affiliated petitioners. Memorandum from Coke Morgan Stewart to All PTAB Judges, *Interim Processes for PTAB Workload Management*, at 2 (Mar. 26, 2025)[11] ("Stewart Memo"); *Tianma Microelectronics Co.* v. *LG Display Co.*, IPR2025-01579, Paper 12, at 3-7 (U.S.P.T.O. Mar. 18, 2026) (designated precedential Mar. 18, 2026). In the same timespan,

[10] https://perma.cc/YG4X-TWV6.

[11] https://perma.cc/J353-H33U.

the agency also reversed several facets of its *Fintiv* and *Sotera* rules—then added new ones. Boalick Memo 2-3 (reversing course on whether *Sotera* stipulations are dispositive, whether *Fintiv* applies to International Trade Commission proceedings, and the compelling-merits exception to *Fintiv*); *Motorola Sols., Inc.* v. *Stellar, LLC*, IPR2024-01205, -01206, -01207, -01208, Paper 19, at 3-4 (U.S.P.T.O. Mar. 28, 2025) (expanding *Sotera* stipulation to "system prior art" challenges).

The effect on IPR has been dramatic. The IPR petition grant rate has collapsed—from 68% to 38% in the last two years. May 2026 PTAB Statistics 7; see also Dennis Crouch, *An Era of No: The USPTO's New 0% Institution Rate*, Patently-O (Nov. 12, 2025) (reporting that institution rate fell to 0% at one point in fall 2025).[12] In turn, the IPR filing rate has also plummeted to a historic low (down 85% year over year)—indicating that the PTO's restrictions have deterred the public from pursuing IPR. May 2026 PTAB Statistics 5 (petitions per month down from 135 to 20 from May 2025 to May 2026); Unified Patents, *Patent Dispute Report: Q1 2026* (Apr. 14, 2026).[13]

Stakeholders from every quarter have sounded the alarm. With the PTO's new limits on IPR, "[t]he IPR system . . . is functionally suspended." Dennis Crouch, *Inter Partes Review in 2026*, Patently-O (May 24, 2026);[14] see also, *e.g.*, Br. for 35 Intellectual Property Law Professors as Amici Curiae 1-2, *Google*, No. 25-1230 (PTO has acted

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[12] https://perma.cc/FW4H-QVBC.

[13] https://perma.cc/SX8X-P2YF.

[14] https://perma.cc/CJE3-AUST.

to "effectively abolish the IPR process"); Br. for PTAB Bar Association as Amicus Curiae 5, *Google*, No. 25-1230 ("The IPR process that Congress designed is being systematically dismantled through administrative fiat . . . ."); Br. for Association for Accessible Medicines as Amicus Curiae 17, *Google*, No. 25-1230 (PTO has "effectively eliminated IPRs for generics and biosimilars" (capitalization altered)); Br. for Askeladden L.L.C. as Amicus Curiae 3-15, *Google*, No. 25-1230; Br. for Association for Competitive Technology as Amicus Curiae 8-15, *Google*, No. 25-1230; Br. for US*Made et al. as Amici Curiae 4-27, *Google*, No. 25-1230; Br. for Unified Patents, LLC as Amicus Curiae 3-17, *Google*, No. 25-1230.

The question presented is thus more pressing now than ever. The PTO has never before revamped IPR institution criteria so extensively—nor construed its own authority so broadly. And the practical effects have been unprecedented. A flood of challenges has arisen: in the past eight months alone, the Federal Circuit turned away over a dozen cases contesting the PTO's institution criteria. *Supra* 13. Those challenges came from stakeholders across industries: automotive, semiconductor, wireless technology, consumer electronics, e-commerce, and education, to name a few. The PTO has disrupted "a significant portion of the American economy," *W. Virginia* v. *Env't Prot. Agency*, 597 U.S. 697, 722 (2022), yet seeks to avoid judicial review of its actions altogether. Whether this state of affairs can persist should be resolved by this Court.

Immediate intervention is especially warranted because the PTO is shielding its institution criteria from judicial review even more, impeding this Court from taking up the question in the future. The PTO has begun denying institution in one-line summary notices that disclose no rationale at all. Memorandum from John A. Squires to All PTAB Judges, *Director Institution of AIA Trial Proceedings* (Oct. 17, 2025).[15] A party cannot challenge—and a court cannot review—institution criteria it cannot identify. Thus, future chances to decide the reviewability of the PTO's institution criteria may not arise. The time for this Court's review may be now or never.

3. The *Fintiv* time-to-trial rule applied here exemplifies the problems the Federal Circuit's reviewability precedent invites. The PTO unilaterally fabricated this constraint on IPR from whole cloth, closing off the IPR scheme to cases Congress meant it to address.

A time-to-trial limit on IPR appears nowhere in any statute. Congress made a different choice. It specified one timing condition for IPR filed alongside litigation: the petition must be filed within one year after the infringement complaint is served. 35 U.S.C. §315(b). Congress left no room for the agency to impose a second, extra-statutory deadline of its own.

The time-to-trial limit prevents the cancellation of bad patents—the entire point of the congressional scheme. *Thryv*, 590 U.S. at 54. Congress established IPR as an "alternative[] to litigation." H.R. Rep. No. 112–98, pt. 1, at 40, 48 (2011); see 35 U.S.C. §315 (contemplating IPR coexisting with litigation). Yet the time-to-trial rule does the opposite: it closes off IPR and forces parties to litigate instead. Moreover, the rule necessarily operates to shield

[15] https://perma.cc/KX8X-39NZ.

weak patents from review, because it adds a barrier to institution on top of the requirement of a "reasonable likelihood" of establishing invalidity. 35 U.S.C. §314(a). Strong patents are already protected against IPR by that reasonable-likelihood criterion; all the time-to-trial limit adds is to protect weak ones.

The time-to-trial limit also operates arbitrarily. It rests on trial-date projections that are notoriously unreliable. Dufresne, *supra* (finding PTO's trial-date predictions were wrong 94% of the time). This case is a perfect illustration: the PTO denied institution because it predicted that the district court trial would occur before December 2026, but in fact trial is now scheduled for years later. *Supra* 9-10.

This agency-devised limit has had sweeping effect. It has accounted for hundreds of IPR petition denials. Johnson, *supra* (218 denials over 5-month period in 2025 alone); see also Patent Trial and Appeal Board, *Parallel Litigation Study* 12 (June 2022)[16] (by early 2022, *Fintiv* was raised in over 50% of IPR cases). And it has reshaped not just IPR practice but also patent litigation. Parties now must craft litigation strategy around the PTO's time-to-trial rule (and the agency's other constantly changing extra-statutory criteria). See *supra* 5-7, 23-24. And with its *Sotera* stipulation framework (allowing IPR petitioners to escape the time-to-trial limit by stipulating not to raise certain arguments in litigation), the agency now exerts control over what rights parties give up in court. The PTO should not wield such power—contrary to

[16] https://perma.cc/74YK-AS8Y.

statute yet untouchable by any court—without this Court's review.

III. This case is an ideal companion to *Google* and *Intel*.

1. This case is a clean vehicle. The question is squarely presented and outcome-determinative: the Federal Circuit's sole reason for rejecting Tesla's statutory challenge to the PTO's time-to-trial rule was that the challenge was not reviewable under circuit precedent. App. 2a-3a. And every issue was aired below, from the scope of §314(d) to the extent of the PTO's discretion over institution criteria. See C.A. Pet. 12-18, 20-22.

2. The Court should grant review in this case alongside the other pending petitions raising the same reviewability question, *Google* (No. 25-1230) and *Intel* (No. 26-73).

These three cases raise the question presented in every relevant procedural posture. The only ways a party can seek judicial review of the PTO's criteria for denying institution are (a) directly from IPR proceedings (via mandamus, because the Federal Circuit forbids direct appeal, *Mylan*, 989 F.3d at 1379) or (b) in a separate APA suit. This case and *Google* arise in the first posture; *Intel* arises in the second.

These cases also present the two most significant PTO-devised limits on IPR: the *Fintiv* rule (in this case and *Intel*) and the "settled expectations" rule (in *Google*). Of all the IPR limits the PTO has created over the years, these two stand out as the most consequential, with each driving hundreds of IPR denials. See Johnson, *supra* (*Fintiv*); Br. for US*Made et al. as Amici Curiae 2 n.2, *Google*, No. 25-1230 (citing list of cases at https://perma.cc/87GY-NLXK) (settled expectations).

These cases thus give the Court the opportunity to resolve the reviewability question with the full picture in view—both procedural postures and both of the PTO's most consequential institution criteria. And these cases allow the Court to provide a complete answer to this important question by resolving whether judicial review is available in each procedural avenue.

3. At a minimum, the Court should hold this petition pending the dispositions of *Google* and *Intel*. If the Court grants review and holds in either case that statutory challenges to PTO institution criteria are judicially reviewable, that will undermine the basis for the Federal Circuit's decision in this case. Regardless of the vehicle, the Court should act now to restore judicial enforcement of statutory constraints in this important area.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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JULY 27, 2026

APPENDICES

APPENDICES

APPENDIX A

NOTE: This order is nonprecedential.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

In Re TESLA, INC.,
Petitioner

No. 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

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[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.

merely concluded that instituting IPR would not be an 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

[Court Seal]

February 27, 2026
Date

Jarrett B. Perlow
Clerk of Court

APPENDIX B

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

TESLA, INC.,
Petitioner,

v.

GRANITE VEHICLE VENTURES LLC,
Patent Owner.

IPR2025-00943 (11,597,402 B2)
IPR2025-00944 (11,738,765 B2)

Before COKE MORGAN STEWART,[1] *Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office*.

DECISION
Denying Institution of *Inter Partes* Review

[1] The Director has delegated his discretionary authority to the Deputy Director for this decision. See https://www.uspto.gov/sites/default/files/documents/dsco-delegation.pdf.

Granite Vehicles Ventures LLC ("Patent Owner") filed a request for discretionary denial (Papers 11 (sealed), 12 (redacted), "DD Req.") in the above-captioned cases, and Tesla, Inc. ("Petitioner") filed an opposition (Paper 14, "DD Opp.").[2] With authorization, Patent Owner filed a Reply (Paper 15), and Petitioner filed a Surreply (Paper 16).

After considering the parties' arguments and the record, and in view of all relevant considerations, discretionary denial of institution is appropriate in these proceedings. This determination is based on the totality of the evidence and arguments the parties have presented.

In particular, the projected final written decision due date in the Board proceedings is in December 2026. DD Req. 8. The district court's scheduled trial date is August 3, 2026, and time-to-trial statistics suggest trial would begin in October or November 2026. *Id.* at 6, 16; DD Opp. 15; Reply 3. Additionally, there is insufficient evidence that the district court is likely to stay its proceeding even if the Board were to institute trial. Therefore, it is unlikely that a final written decision in this proceeding will issue before the district court trial occurs, resulting in significant duplication of effort, additional expense for the parties, and a risk of inconsistent decisions. Even though the challenged patents have not been in force for a significant period of time (issued in 2023), this fact alone does not tip the balance against discretionary denial.

[2] Citations are to papers in IPR2025-00943. The parties filed similar papers in IPR2025-00944.

Although certain arguments are highlighted above, the determination to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petitions are denied under 35 U.S.C. § 314(a).

In consideration of the foregoing, it is:

ORDERED that Patent Owner's requests for discretionary denial are *granted*; and

FURTHER ORDERED that the Petitions are *denied*, and no trial is instituted.

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APPENDIX C

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

TESLA, INC.,
Petitioner,

v.

GRANITE VEHICLE VENTURES LLC,
Patent Owner.

IPR2025-01034 (Patent 12,037,004 B2)
IPR2025-01035 (Patent 12,037,004 B2)

Before COKE MORGAN STEWART, *Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office*.

DECISION
Denying Institution of *Inter Partes* Review

Granite Vehicle Ventures LLC ("Patent Owner") filed a request for discretionary denial (Paper 8, "DD Req.") in the above-captioned cases, and Tesla, Inc. ("Petitioner") filed an opposition (Paper 9, "DD Opp.").[1] With authorization, Patent Owner filed a Reply (Paper 11) and Petitioner filed a Sur-reply (Paper 12).

After considering the parties' arguments and the record, and in view of all relevant considerations, discretionary denial of institution is appropriate in these proceedings. This determination is based on the totality of the evidence and arguments the parties have presented.

These cases present essentially the same discretionary considerations as those presented in IPR2025-00943 and IPR2025-00944. *See, e.g.*, *Tesla, Inc. v. Granite Vehicle Ventures LLC*, IPR2025-00943, Paper 17 (Director September 26, 2025) (granting Patent Owner's request for discretionary denial). Accordingly, that analysis is incorporated here. *Id.* at 2–3.

The determination to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petitions are denied under 35 U.S.C. § 314(a).

In consideration of the foregoing, it is:

ORDERED that Patent Owner's request for discretionary denial is *granted*; and

FURTHER ORDERED that the Petitions are *denied*, and no trial is instituted.

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[1] Citations are to papers in IPR2025-01034. The parties filed similar papers in IPR2025-01035.

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