No. 26-170

IN THE

Supreme Court of the United States

FEDERAL EXPRESS CORPORATION,

Petitioner,

v.

QUALCOMM INCORPORATED, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION FOR RESPONDENT QUALCOMM INCORPORATED

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QUESTION PRESENTED

Whether 35 U.S.C. § 314(d) bars appellate review of Federal Express Corporation's challenge to the Patent Trial and Appeal Board's ("Board's") real party in interest determination under 35 U.S.C. § 312(a)(2), which was made pursuant to a policy the Board no longer follows.

PARTIES TO THE PROCEEDING

Petitioner is Federal Express Corporation, which was the appellant below.

Respondents are Qualcomm Incorporated, which was the appellee below, and John A. Squires, in his capacity as Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office, who was intervenor below in support of appellee.

RULE 29.6 STATEMENT

Qualcomm Incorporated (NASD: QCOM) has no parent company and no publicly held company owns 10% or more of its stock.

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BRIEF IN OPPOSITION

Under 35 U.S.C. § 314(d), a determination by the Patent Office on whether to institute an inter partes review ("IPR") of an issued patent "shall be final and nonappealable." In *Cuozzo Speed Technologies, LLC* v. *Lee,* 579 U.S. 261, 270-71, 275-76 (2016), this Court held (1) that "where a patent holder grounds its [IPR] claim in a statute closely related to [the] decision to institute inter partes review, § 314(d) bars judicial review," and (2) that 35 U.S.C. § 312(a)(3), which specifies one formal requirement for an IPR petition—that it "identif[y]" its grounds with particularity—is such a related statute. Accordingly, the Court held that § 314(d) barred all review of a claim that the Board misapplied § 312(a)(3). *Id*. at 275-76; *see also Thryv, Inc.* v. *Click-to-Call Techs., LP*, 590 U.S. 45, 53 (2020) ("§ 314(d) bars review at least of matters 'closely tied to the application and interpretation of statutes related to' the institution decision.") (citation omitted).

In this case, the Federal Circuit faithfully applied those precedents to hold that § 314(d) likewise bars review of petitioner Federal Express Corporation's ("FedEx's") claim that the Board misapplied § 312(a)(2), which immediately precedes the provision at issue in *Cuozzo* and specifies the additional formal requirement that an IPR petition "identify[]" all real parties in interest ("RPIs"). Pet. App. 11a-13a. Nothing about that case-specific application of this Court's holdings warrants review. Not only was the Federal Circuit's conclusion clearly correct but there is also no likelihood that this dispute will arise in the foreseeable future. Since issuing its decision in this case, the PTO has changed its policy regarding RPI challenges so as to preclude future cases such as this one. *See* Pet. 3-4, 9; Pet. App. 8a n.5.

Given these circumstances, it is not surprising that the Court recently denied another petition raising the same question FedEx now raises. *See Dolby Lab'ys Licensing Corp.* v. *Unified Pats., LLC*, No. 25-1011, 2026 WL 1780083 (U.S. June 22, 2026) (denying certiorari); *Dolby* Pet. at i (filed Feb. 20, 2026) (seeking review, *inter alia*, as to "[w]hether § 314(d) bars judicial review of a final decision regarding real parties in interest"); *see also ESIP Series 2, LLC* v. *Puzhen Life USA, LLC*, 592 U.S. 1003 (2020) (denying earlier petition raising issue). The Court should do the same here.

STATEMENT OF THE CASE

A. Applying A Since-Rescinded Policy, The Board Rejects FedEx's RPI Argument In Granting Institution.

Respondent Qualcomm filed this IPR in 2022, challenging all claims of U.S. Patent No. 8,766,797, which is held by FedEx and involves systems and methods for accessing shipment information. FedEx opposed institution on the principal ground that Qualcomm's petition had allegedly failed to identify a company called Roambee as an RPI. *See* Fed. Cir. Appx. 303-315; Pet. App. 5a. FedEx, however, already knew about Roambee since it had a pending infringement suit against Roambee on the '797 patent. Pet. App. 5a.

Based on Qualcomm's good-faith belief that it was not required to do so—a belief the Board later found reasonable, *see infra at* 5—its petition did not list Roambee as an RPI. But on the same page of the petition, Qualcomm expressly listed the *FedEx v.*

Roambee litigation as a related case. Pet. App. 5a. Accordingly, even if Roambee were to be considered an RPI, Qualcomm's petition did "identify" Roambee. Moreover, as the Board later noted, Qualcomm "indicated a willingness to file updated mandatory notices in the instant proceedings if [the Board] determine[d] Roambee is a real party in interest." Pet. App. 20a.

When the petition was filed, Qualcomm was an investor in Roambee and had contemplated purchasing the company in the future. Pet. App. 31a-32a. Qualcomm therefore filed the IPR to protect its own potential interests because Qualcomm might otherwise have become time-barred if the purchase transaction had gone through and Roambee became an RPI as a result. *Cf.* 35 U.S.C. § 315(a)(1) (IPR must be filed within one year after petitioner or RPI sued for infringement); *Power Integrations, Inc.* v. *Semiconductor Component Indus.*, 926 F.3d 1306, 1318 (Fed. Cir. 2019) (holding IPR time-barred when party "was an RPI at the time the IPR was instituted, even though it was not an RPI at the time the petition was filed"). But the transaction never occurred, Qualcomm remained only an investor in Roambee, and Qualcomm and Roambee remained independent corporations.

When this case was before the Board, the Board followed a commonsense policy, which has since been rescinded, that an RPI challenge would not prevent institution if it could have no effect on the IPR. *See* Pet. App. 5a, 25a. For example, the Board would decide whether or not a particular party was an RPI if that fact were relevant to whether the petition was time-barred under § 315(a)(1) or the petitioner was estopped under § 315(e)(1). *Id.* at 25a-26a. But under the Board's policy at the time, if RPI designations were made without bad faith, gamesmanship or prejudice to the patent owner, the petitioner would be entitled to amend its petition and retain its filing date even if those designations might later be found lacking. *Id*. at 5a, 26a. Thus, when an RPI designation was not relevant to timeliness or estoppel and was made in good faith and without prejudice, the Board did not need to independently verify that designation under the Board's "complex" and highly fact dependent RPI test, *id*. at 40a, since that determination could not affect the outcome of the IPR in any way.[1]

On October 11, 2022, the Board granted institution on all 33 claims of the challenged patent. *See* Fed. Cir. Appx. 391-427. In its order, the Board elected to "not deny institution on the ground that Petitioner has allegedly failed to identify all real parties-in-interest." *Id*. at 407. FedEx's petition for certiorari nowhere references this order, likely because the order belies FedEx's statement to this Court that "FedEx is not challenging whether the Board's institution decision is correct." Pet. 13. Most of the institution order was devoted to FedEx's RPI challenge.

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[1] While this case was before the Federal Circuit, the PTO rescinded that policy as to future cases, requiring all RPI issues to be resolved before institution regardless of whether they would affect the IPR. *See* Memorandum to All PTAB Judges at 1 (Oct. 28, 2025) (https://tinyurl.com/ydbujxdj) ("§ 312(a) must be satisfied before the Director can institute trial"); Fed. Cir. Dkt. 100 at 1 (Oct. 28, 2025) (under new policy the Director will "resolve disputes concerning real parties in interest (RPIs) before considering a petition, even when the issue will not affect the statute's estoppel or time-bar provisions"); Pet. 3-4 (under new policy, PTO "should resolve RPI questions in the future").

Applying its then-extant policy, the Board recognized there was no dispute that Qualcomm's petition was timely filed, whether or not the Board might view Roambee as an RPI, because the petition was filed before Roambee's one-year deadline. *See* Fed. Cir. Appx. 397. Nor was estoppel at issue since there was no prior final written decision on the claims at issue. *See* Pet. App. 27a-28a; 35 U.S.C. § 315(e)(1). Accordingly, the Board did not need to independently verify Qualcomm's RPI listing unless the bad faith exception to amendment applied. Considering all evidence before it, the Board held that the exception did not apply. The Board found that the evidence "does not show that Qualcomm's real-party-in-interest determination was objectively unreasonable in light of the relationship between Qualcomm and Roambee" and the Board "[did] not discern bad faith on the part of [Qualcomm]." Fed. Cir. Appx. 406. The Board therefore granted institution, while reserving the ability to revisit the issue if further evidence indicated otherwise. *Id*. at 406-07, 426.

FedEx sought rehearing of the institution order, which the Board denied. *Id*. at 772-780. FedEx then further re-urged its RPI argument in a motion to terminate the IPR, which the Board also denied. Pet. App. 17a-42a. Although FedEx had identified additional evidence in that motion, the Board reached the same conclusion as it had in its institution order, finding that Qualcomm "has not engaged in bad faith or gamesmanship and [FedEx] was not prejudiced. Pet. App. 41a. The Board further stated that "[w]e do not find evidence in the complete record now before us showing that Roambee was controlling, or capable of controlling, the proceedings before the Board or should have been named as a real party in interest."

Pet. App. 39a-40a (emphasis removed). Accordingly, the Board had no need to further verify the petition's RPI listing because that potentially complex inquiry could have no impact whatsoever on the IPR. The case then proceeded to trial, after which the Board held unpatentable all 33 challenged claims. Pet. App. 6a.

B. The Federal Circuit Holds That FedEx's RPI Challenge Is Unreviewable Under Section 314(d).

FedEx appealed to the Federal Circuit, but its challenge to the merits of the Board's unpatentability decision was limited to three dependent patent claims as to which FedEx argued that the Board had erroneously failed to consider one of its arguments. Because both parties agreed that the Board had not considered that argument, the Federal Circuit remanded for further consideration of those three claims. Pet. App. 14a-16a.

FedEx also re-urged the same RPI argument it had raised at institution. The Federal Circuit, however agreed with Qualcomm and the Director of the Patent Office ("Director") that § 314(d) barred review of that argument.[2] It held that "FedEx's challenges grounded in § 312(a)(2) fall within § 314(d)'s scope and are thus unreviewable." Pet. App. 11a. Applying this Court's holdings in *Cuozzo* and *Thryv*, the Federal Circuit held that § 314(d) applied because § 312(a)(2)

[2] In the Federal Circuit, the Director intervened in support of Qualcomm on the RPI issue. After the PTO adopted its new policy of considering all RPI issues regardless of their potential to affect IPRs, the Director limited his argument to the § 314(d) issue. Notwithstanding the policy change, the Director consistently maintained that § 314(d) barred review of FedEx's challenge to the Board's decision made under its old policy. Pet. App. 8a & n.5.

"is 'closely tied' to institution" as it "clearly serves as a prerequisite for and is 'integral to' institution." Pet. App. 11a (quoting *Thryv*, 590 U.S. at 53). The court rejected FedEx's argument that the Board's decision not to independently verify the petition's RPI listing nullified the § 314(d) review bar, holding that the argument amounted to a claim that the Board misapplied a statute closely tied to institution, and that § 314(d) therefore barred review. Pet. App. 11a-12a. At bottom, FedEx's argument "ultimately still boils down to a challenge over whether there should have been institution at all," given that "a conclusion that there should not have been institution is precisely what FedEx would likely seek on remand if [the court] were to hear and agree with its § 312(a)(2) arguments." Pet. App. 13a.

FedEx now asks this Court to review that holding. But its petition does not (and cannot) challenge the merits of the Board's unpatentability findings, most of which were never appealed and the remainder of which were remanded by consent. Nor has FedEx sought certiorari from the Federal Circuit's separate decisions resolving FedEx's appeals of the Board's unpatentability determinations on two other FedEx patents that Qualcomm had challenged in separate IPRs. *See Fed. Express Corp.* v. *Qualcomm Inc.*, No. 2024-1235, 2026 WL 1162769 (Fed. Cir. Apr. 29, 2026); *Fed. Express Corp.* v. *Qualcomm Inc.*, No. 2024-1237, 2026 WL 1162773 (Fed. Cir. Apr. 29, 2026). In those cases, the Federal Circuit rejected FedEx's RPI argument pursuant to its holding in this case. But because FedEx has failed to even reference those separate judgments in its petition for certiorari, the Federal Circuit's rulings in those cases are now final.

Cf. Sup. Ct. R. 12.4 (petition seeking review of multiple judgments must "cover[] all the judgments").

REASONS FOR DENYING THE PETITION

This case meets none of the Court's exacting requirements for certiorari. There is admittedly no conflict among the circuits, and the Federal Circuit merely followed this Court's straightforward precedents in finding that § 314(d) barred review of a non-merits argument that FedEx made in opposing IPR institution and that was rejected by the Board in granting institution. Moreover, FedEx's narrow challenge now has no ongoing effect since the PTO has changed the specific policy of which FedEx complains and there is thus no likelihood that the issue will ever recur in the foreseeable future.

I. THE FEDERAL CIRCUIT CORRECTLY APPLIED THIS COURT'S PRECEDENTS.

Under § 314(d), "[t]he determination by the Director whether to institute an inter partes review * * * shall be final and nonappealable." 35 U.S.C. § 314(d). As this Court has held, § 314(d) "encompasses the entire determination 'whether to institute an inter partes review'" and thus "extends to challenges grounded in 'statutes related to' the institution decision." *Thryv*, 590 U.S. at 56-57 (quoting *Cuozzo*, 579 U.S. at 275). "[W]here a patent holder grounds its claim in a statute closely related to [the] decision to institute inter partes review, § 314(d) bars judicial review." *Cuozzo,* 579 U.S. at 275-76.

Just as in *Thryv*, in this case the Federal Circuit did not need to "venture beyond *Cuozzo's* holding that § 314(d) bars review at least of matters 'closely tied to the application and interpretation of statutes related to' the institution decision." 590 U.S. at 53 (quoting

Cuozzo, 579 U.S. at 275); *see also Thryv*, 590 U.S. at 59 n.8 (characterizing rule as binding holding). It borders on absurd for FedEx to now contend that its § 312(a)(2) RPI argument is not related to the Board's institution decision given that FedEx made that exact argument in opposing institution, the Board rejected the argument in its institution order, and the argument is unrelated to the merits of the Board's final patentability decision. *Cf*. 35 U.S.C. § 318(a).

That conclusion is compelled by *Cuozzo*, which held that § 314(d) barred review of an argument that the Board misapplied the requirement of § 312(a)(3) that petitions "identif[y]" their grounds with particularity because that statute is related to the institution decision. 579 U.S. at 275-76. There is no meaningful distinction between § 312(a)(3), asserted in *Cuozzo*, and § 312(a)(2), its immediately neighboring provision asserted by FedEx here. Both contain strikingly similar formal requirements for petitions: § 312(a)(3) requires that petitions "identif[y]" their grounds with particularity and § 312(a)(2) requires that petitions "identif[y]" all RPIs. *Cuozzo* further dispels FedEx's argument that § 312(a)(2) cannot relate to institution because it "uses the word 'consider,' not 'institute.'" Pet. 18. Section 312(a)(3) uses precisely the same word in precisely the same manner. *See* 35 U.S.C. § 312(a)(3) ("A petition * * * may be considered only if" it "identifies" its grounds with particularity). Yet *Cuozzo* held that § 314(d) barred review because § 312(a)(3) is nevertheless related to institution. That holding squarely applies here.

Nor can FedEx avoid that conclusion by attempting to hide the fact that its RPI argument was raised, considered and rejected at institution, and instead focusing only on its later motion to terminate in which

FedEx re-raised the argument. In *Thryv*, the Court held that an unreviewable decision interpreting the time bar of 35 U.S.C. § 315(b) does not become reviewable merely because the Board reiterated its conclusion in its final decision. As the Court held, "even labeled as an appeal from the final written decision, [an] attempt to overturn the Board's § 315(b) ruling is still barred by § 314(d)." 590 U.S. at 60. *Accord*, *Medtronic, Inc.* v. *Robert Bosch Healthcare Sys., Inc.*, 839 F.3d 1382, 1384-85 (Fed. Cir. 2016) (Board decision to reconsider institution and terminate based on RPI finding was non-reviewable under § 314(d) because "[i]t is difficult to conceive of a case more 'closely related' to a decision to institute proceedings than a reconsideration of that very decision" and "[i]t would be strange to hold that a decision to institute review would not be reviewable but a reconsideration of that decision would be reviewable."). FedEx baldly asserts that it "is not challenging whether the Board's institution decision is correct," Pet. 13, but that is exactly what it is doing. Indeed, as the Federal Circuit held, "a conclusion that there should not have been institution is precisely what FedEx would likely seek on remand if [the court] were to hear and agree with its § 312(a)(2) arguments." Pet. App. 13a.

As the Federal Circuit further held, FedEx's reliance on *SAS Institute, Inc.* v. *Iancu*, 584 U.S. 357 (2018), is also unfounded. In that case, the Court held that § 314(d) did not bar a challenge alleging non-compliance with the ***post-institution*** requirement in § 318 that the Board's final written decision must resolve the patentability of all challenged claims rather than just some of them. *Id*. at 371. As the Federal Circuit explained, "the petitioner in *SAS* was not challenging the fact that the agency ***instituted***, but rather the manner of execution * * *." Pet App. 12a. This case is the opposite. FedEx's arguments about the RPI provision of § 312(a)(2)—like the arguments about the particularity and timeliness requirements of § 312(a)(3) and § 315(a) held unreviewable in *Cuozzo* and *Thryv*—have no bearing on the Board's obligation, after trial, to issue a "final written decision with respect to * * * patentability." 35 U.S.C. § 318. Indeed, FedEx's present petition has nothing at all to do with the Board's final decision on patentability, given that FedEx never appealed the majority of the Board's unpatentability findings and the remainder were remanded by consent. Moreover, as the Board held under its prior policy, the RPI argument could have had no effect on the IPR given Qualcomm's right to amend its good-faith listing.

Equally far afield are FedEx's contentions that the Administrative Procedure Act renders its RPI arguments reviewable, Pet. 11, or that reviewability depends on the particular reasons given by the Board for rejecting those arguments, *id.* at 13-16. Where (as here) § 314(d) applies, it overrides ordinary APA review. *See*, *e.g.*, *Cuozzo,* 579 U.S. at 273-275. And the review bar depends on the statutory provision being invoked, not how the Board interpreted it.[3] Section 314(d) bars review of any arguments "'closely tied to the application and interpretation of statutes related to' the institution decision." *Thryv*, 590 U.S.

[3] Regardless, FedEx's wrongly contends that the Board "ignore[d]" FedEx's RPI dispute. Pet. 3, 7, 19. The Board extensively considered the argument and also expressly found that "[w]e do not find evidence in the complete record now before us showing that Roambee * * * should have been named as a real party in interest." Pet. App. 39a-40a.

at 53 (quoting *Cuozzo*, 579 U.S. at 275). Given that § 312(a)(2), as explained above, is such a statute, all of FedEx's arguments about its "application and interpretation" are unreviewable under § 314(d).

If a party could avoid the review bar merely by arguing that the Board exceeded its "statutory limits," Pet. 20, then § 314(d) would effectively be a dead letter because any argument that the Board misapplied or misinterpreted an institution-related statute could be recast as an argument that statutory limits were exceeded. When the Court in *Cuozzo* noted, in dicta, that § 314(d) does not "categorically preclude review" of arguments that agencies exceeded their statutory authority, it was referring to appeals—unlike FedEx's—"that depend on other less closely related statutes" or present questions reaching "well beyond" institution. 579 U.S. at 275. The Court confirmed this fact in *Thryv*, stating that "[w]e reserved judgment in *Cuozzo* * * * on whether § 314(d) would bar appeals reaching well beyond the decision to institute inter partes review." 590 U.S. at 53. *See also Apple Inc.* v. *Vidal*, 63 F.4th 1, 12 n.5 (Fed. Cir. 2023) (*Cuozzo*'s example of acting outside statutory limits did not involve "an aspect of the institution determination").

Nor is it relevant that resolution of an RPI issue could "trigger estoppel effects." Pet. 19. Contrary to FedEx's contention, *id.*, the timeliness determination at issue in *Thryv* could also have similar effects, since estoppel is triggered by a final IPR decision that in turn depends on a predicate timeliness finding. *See* 35 U.S.C. §§ 315(b), (e). Yet *Thryv* held that finding unreviewable. Moreover, even under the Board's prior policy, RPI issues would be decided if, unlike in this case, they related to estoppel, *see* Pet. App. 5a-6a, 25a, and the Board's decision does not prevent FedEx from arguing RPI estoppel should that issue ever arise in its infringement litigation.

Finally, the purposes of § 314(d) are overwhelmingly furthered by applying its review bar in this case. As the Court held in *Thryv*, the "goal" of the statute is "preventing appeals that would frustrate efficient resolution of patentability" as "Congress entrusted the institution decision to the agency * * * to avoid the significant costs * * * of nullifying a thoroughgoing determination about a patent's validity." 590 U.S. at 58. In *Thryv*, allowing review of timeliness decisions "would tug against that objective, wasting the resources spent resolving patentability and leaving bad patents enforceable." *Id.* at 55. That is because a successful decision could "unwind the agency's merits decision" and "operate to save bad patent claims" when a patent holder does not challenge the merits of patentability knowing "that if the institution decision is reversed, then the agency's work will be undone and the canceled patent claims resurrected." *Id.*

That scenario exists here. FedEx does not—and cannot—challenge the merits of any of the Board's patentability determinations. Instead, it seeks to reverse an institution decision, thereby "wasting the resources spent resolving patentability and leaving [a] bad patent[] enforceable." *Id.*[4] And it seeks to do so even though the Board found that Qualcomm reasonably believed, in good faith, that its RPI listing was proper. The Federal Circuit's decision is thus fully faithful to both the statute Congress enacted and

[4] The opposite dynamic was present in *SAS*, because the Court's decision required the Board to render a more thorough merits decision on patentability. *See* 584 U.S. at 371.

this Court's binding precedents interpreting that statute. This Court's intervention is unwarranted.[5]

II. THERE IS NO LIKELIHOOD THAT THIS NARROW ISSUE WILL RECUR IN THE FORESEEABLE FUTURE.

Certiorari is also unwarranted because the issue about which FedEx complains has no ongoing effect given the rescission of the policy that led to it. FedEx raises the narrow argument that § 314(d) should not apply to the Board's decision in this case because the Board declined to independently verify Qualcomm's RPI listing and, therefore, there allegedly "is no RPI determination for FedEx to challenge." Pet. 13; *see also id*. at 16 ("There is no § 312(a)(2) determination here to review."). In its view, "[n]either *Cuozzo* nor *Thryv* has anything to say about the Office's refusal to resolve an underlying statutory dispute in the first place." *Id*. at 14. That argument is wrong for all the reasons explained above. But regardless, the PTO's rescission of the Board's prior policy precludes FedEx's perceived issue from arising in the future.

[5] The merits of the Board's prior RPI policy are not before the Court and the Federal Circuit properly had no occasion to opine on them. But contrary to the implications in FedEx's petition, the now-rescinded policy was not contrary to law. Regardless of its current RPI policy, the PTO does not decide statutory questions. *See Loper Bright Enters*. v. *Raimondo*, 603 U.S. 369, 412-13 (2024). Section 312(a)(2) imposes a duty on an IPR petitioner, not the Board. *See* 35 U.S.C. § 312(a)(2) ("the petition" must identify RPIs). And as the Board correctly held, because Qualcomm discharged that duty in good faith, any independent verification could have had no effect on the outcome of the IPR. Particularly given the Board's one-year deadline to decide IPRs, 35 U.S.C. § 316(a)(11), Congress's purposes would not be furthered by interpreting the statute to require the Board to unnecessarily decide, in every case when it is raised, a potentially complex factual issue that could have no effect on the IPR.

Under the new policy, the Director will now resolve all RPI disputes at institution regardless of whether they could affect the outcome of an IPR. *See supra* note 1.

Even if there were otherwise a reason to question the Federal Circuit's straightforward application of this Court's precedents, there is no cause for the Court to devote its scarce resources to resolving a question that could have no foreseeable effect on future cases. FedEx weakly argues that although the Board's purported error in this case cannot recur under the new policy, "nothing prevents [the Director] (or another Director) from changing policies tomorrow." Pet. 21. But if and when that ever occurs—and there is no reason now to believe it will—this Court would be able to consider another petition raising the issue, provided Congress does not change the statute in any relevant way. At present, however, the dispute FedEx seeks to resurrect has no effect beyond the confines of this idiosyncratic case.

CONCLUSION

For the foregoing reasons, this Court should deny the petition.

Respectfully submitted,

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