

No. 21-

IN THE
Supreme Court of the United States

APPLE INC.,

Petitioner,

v.

QUALCOMM INCORPORATED,

Respondent.

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

In *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007), this Court held that, under Article III, a patent licensee may challenge the validity of a patent covered by a license agreement even where the licensee pays royalties that eliminate any imminent threat of suit. The Court recognized that royalty payments are coerced when, considering all the circumstances, the licensee makes those payments to avoid the threat of an infringement suit.

In this case, Apple makes payments to respondent Qualcomm Incorporated under a license agreement that covers a portfolio of patents. The U.S. Court of Appeals for the Federal Circuit nevertheless held that Apple lacks Article III standing to challenge the validity of two of those patents in appeals from inter partes reviews—a mechanism that Congress created precisely to facilitate challenges to questionable patents, including through appeal—because the license agreement covers multiple patents, such that invalidation of the two patents-in-suit would not by itself alter Apple’s payment obligations under the license agreement.

The question presented is:

Whether a licensee has Article III standing to challenge the validity of a patent covered by a license agreement that covers multiple patents.

PARTIES TO THE PROCEEDING

Petitioner Apple Inc. was the petitioner in proceedings before the Patent Trial and Appeal Board and the appellant in the court of appeals in Nos. 20-1561 and 20-1642.

Respondent Qualcomm Incorporated was the patent owner in proceedings before the Patent Trial and Appeal Board and the appellee in the court of appeals in Nos. 20-1561 and 20-1642.

CORPORATE DISCLOSURE STATEMENT

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

RELATED PROCEEDINGS

United States Court of Appeals for the Federal Circuit:

A. *Apple Inc. v. Qualcomm Incorporated*, No. 20-1561 (Fed. Cir.) (consolidated with No. 20-1642 for purposes of oral argument; judgment issued April 7, 2021; rehearing denied July 20, 2021)

B. *Apple Inc. v. Qualcomm Incorporated*, No. 20-1642 (Fed. Cir.) (consolidated with No. 20-1561 for purposes of oral argument; judgment issued April 7, 2021; rehearing denied July 20, 2021)

Patent Trial and Appeal Board:

A. *Apple Inc. v. Qualcomm Incorporated*, Case IPR2018-01279 (P.T.A.B.) (final written decision entered Jan. 2, 2020)

B. *Apple Inc. v. Qualcomm Incorporated*, Case IPR2018-01252 (P.T.A.B.) (final written decision entered Jan. 22, 2020)

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PETITION FOR A WRIT OF CERTIORARI

Apple Inc. respectfully petitions for a writ of certiorari to review the judgments of the United States Court of Appeals for the Federal Circuit in these cases. *See* S. Ct. R. 12.4.

INTRODUCTION

In 2007, this Court made clear that, under Article III, a party who takes a license to a patent and makes ongoing payments under the license agreement to avert costly and risky litigation may nonetheless challenge the patent's validity in court and need not breach the license to do so. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007). In this case, however, the court of appeals wrongly held that a party loses Article III

standing to challenge a patent if it enters into a license agreement to settle litigation, merely because the agreement covers multiple patents in addition to the ones being challenged and the licensee's payment obligations would not change based on the invalidity of the specific patents-in-suit. That holding presents an exceptionally important question warranting this Court's review.

In 2017, respondent Qualcomm Incorporated ("Qualcomm") brought multiple suits against Apple for allegedly infringing several patents, including the two at issue here. While those suits were pending, Apple challenged many of those patents in inter partes reviews ("IPRs")—a mechanism that Congress created to allow parties to challenge patents before the Patent Trial and Appeal Board ("Board") with a right of appeal to the U.S. Court of Appeals for the Federal Circuit. The parties ultimately settled Qualcomm's infringement suits in 2019, while agreeing that Apple's IPRs would continue through any appeal. Apple and Qualcomm also entered into a license agreement under which Apple would make ongoing payments for a portfolio of patents, including the patents-in-suit, in exchange for Qualcomm's promise not to sue Apple while the agreement was in force. The license agreement is temporary and will expire years before the two patents-in-suit do, because Qualcomm refused Apple's proposal of a license extending for the life of the patents.

After the Board issued decisions in Apple's IPRs finding the patents' challenged claims not unpatentable, Apple appealed, but the Federal Circuit dismissed the appeals for lack of Article III standing. The Federal Circuit acknowledged that, under *MedImmune*, a licensee's payment of royalties under protest to avoid the

threat of an infringement suit does not eliminate standing. But the court distinguished this case because Apple pays royalties for “tens of thousands” of patents in the Qualcomm portfolio and the invalidity of the patents-in-suit would not affect Apple’s payment obligations under the license agreement. App. 7a-8a.

That decision conflicts with this Court’s precedent by allowing patent owners to negotiate themselves out of Article III jurisdiction by licensing patents in bulk, rather than one-by-one—an obvious end-run around *MedImmune* that has no doctrinal basis. Indeed, there is unquestionably a threat of infringement litigation sufficient to support standing because Qualcomm has *already* asserted the patents against Apple and has not disclaimed its intention to do so again once the license agreement terminates. Meanwhile, under the Federal Circuit’s approach, a challenger like Apple who settles a suit would lose the right to appeal an unfavorable IPR decision, and—due to statutory estoppel—might not be able to reassert invalidity in the event the patent owner sues again after the license agreement expires. Thus, under the Federal Circuit’s approach, the only certain way for a licensee to challenge patent validity in comparable situations is to repudiate the portfolio license agreement altogether and face the serious consequences of a likely infringement suit—a result that this Court expressly rejected in *MedImmune*.

Judge Newman agreed that Apple has standing in these circumstances, dissenting from a recently issued follow-on decision involving the same parties. *See Apple Inc. v. Qualcomm Inc.*, Nos. 20-1683, 20-1763, 20-1764, 20-1827, 2021 WL 5227094 (Fed. Cir. Nov. 10, 2021) (“*Apple II*”) (Newman, J., dissenting). As Judge Newman explained, Apple’s “concern is with the patents here on appeal, not a portfolio of patents for

which no infringement charge has been made,” and in that situation “extensive precedent” shows that “a patent licensee has standing to challenge validity of the patents to which it is licensed, including challenge in federal court on appeal from [IPR] decisions.” *Id.* at *7 (Newman, J., dissenting). The court of appeals nevertheless deemed the decision below binding and again rejected Apple’s standing.

The question presented has broad impact. The Federal Circuit has exclusive jurisdiction over patent appeals, and portfolio licensing is a common practice. The decision below would thus undermine important public interests in encouraging challenges to questionable patents, particularly by licensees. The Federal Circuit’s restrictive approach to standing also undermines the public policy of ensuring that settlement of litigation does not unfairly deprive patent challengers of the ability to demonstrate patent invalidity.

The Court should grant certiorari and reverse the judgments of the Federal Circuit.

OPINIONS BELOW

The Federal Circuit’s consolidated opinion resolving Nos. 20-1561 and 20-1642 (App. 1a-11a) is reported at 992 F.3d 1378. The court’s orders denying rehearing in No. 20-1561 (App. 81a-82a) and in No. 20-1642 (App. 83a-84a) are unreported. The Patent Trial and Appeal Board’s final written decision regarding U.S. Patent 7,844,037 (App. 53a-79a) is available at 2020 Pat. App. LEXIS 9167, and the Board’s final written decision regarding U.S. Patent No. 8,683,362 (App. 13a-52a) is available at 2020 WL 373197.

JURISDICTION

The Federal Circuit entered judgments on April 7, 2021. App. 85a; App. 87a. Apple’s timely petitions for rehearing were denied on July 20, 2021. On September 9, 2021, the Chief Justice granted Apple’s application to extend the time within which to file a petition for a writ of certiorari to and including November 17, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III of the U.S. Constitution and the relevant statutory provisions, 35 U.S.C. §§ 141, 315(e), 319, are reproduced in the appendix to this petition.

STATEMENT

A. The Patents And Qualcomm’s Infringement Suit

Apple makes mobile electronic devices such as iPhones. Qualcomm produces chips that go into some Apple devices and, as relevant here, owns U.S. Patent No. 7,844,037 (the “’037 patent”) and U.S. Patent No. 8,683,362 (the “’362 patent”). Those patents involve aspects of cellular phone communication that were well-known in the prior art.

The ’037 patent. A mobile phone user sometimes wishes to respond to a call with a text message, rather than answering the call. Representative claim 1 of the ’037 patent claims a technique for providing automated assistance to such users by enabling “message replies.” 20-1561 A32 (1:64-65); *see also* 20-1561 A36 (9:63-10:15)

(claim 1).¹ The patent states that, upon receiving a call, a “computing device” (such as a smartphone), 20-1561 A33 (4:60-63), may present “reply options” to the user, such as “answering the call, declining the call,” or “mes-sag[ing]” the caller instead of answering, 20-1561 A35 (7:38-41). The user provides “user input” as to how to “handle” the call. 20-1561 A36 (10:6-11). If, for exam-ple, the user instructs the phone to respond with a text message, the phone may perform a series of acts to compose a message—i.e., “opening a new message,” “addressing the message,” “including a message con-tent” or “body for the message,” and sending the mes-sage response. 20-1561 A34 (5:6-11). According to the patent, “some or all of the steps of sending the message response [] may be performed automatically.” 20-1561 A34 (5:16-17).

The ’362 patent. The ’362 patent claims a computer system that facilitates the display and use of multiple applications at the same time on a small screen, such as on a cell phone. Specifically, the patent discloses using different “modes” between which a user can toggle to interact with multiple applications. 20-1642 A64 (2:51-59). In some embodiments of the purported invention, the ’362 patent also describes using gestures to move different “cards,” which are areas of the screen repre-senting a particular activity or application. 20-1642 A65 (3:14-19); *see also* 20-1642 A64-65 (2:60-3:48). A user can “dismiss activities” or close a card by, for example, “clicking on a control within the card,” “dragging the card upward off screen,” “or performing a flicking ac-tion in an upward direction.” 20-1642 A69 (12:12-17);

¹ “20-1561 A” and “20-1642 A” refer to the appendices filed in the corresponding Federal Circuit dockets. Patents are cited in parentheticals as “[column]:[line].”

20-1642 A814-815; *see also* 20-1642 A75-76 (24:31-25:7) (claim 1, which is representative of the other relevant '362 patent claims).

In 2017, Qualcomm brought six district court and International Trade Commission actions accusing Apple of infringing various patents.² In one such suit, Qualcomm alleged that Apple's mobile devices infringed the '037 and '362 patents. *See Qualcomm Inc. v. Apple Inc.*, No. 17-cv-02403, ECF No. 1 (S.D. Cal. Nov. 29, 2017) ("*Qualcomm*"). Qualcomm sought a declaration of infringement, damages no less than a reasonable royalty, a permanent injunction against infringement, attorney's fees, and costs. *Id.* at 35-36. Apple counterclaimed that the '037 and '362 patents are invalid as anticipated or obvious and that Apple did not infringe them. *See id.*, ECF No. 51, at 36-39, 48-50.

While that suit was ongoing, Apple petitioned for IPRs challenging certain claims of the '037 and '362 patents as invalid.³ IPR is an administrative process that allows any person other than the patent owner to chal-

² *See Qualcomm Inc. v. Apple Inc.*, No. 17-cv-02403 (S.D. Cal. Nov. 29, 2017); No. 17-cv-02402 (S.D. Cal. Nov. 29, 2017); No. 17-cv-02398 (S.D. Cal. Nov. 29, 2019); No. 17-cv-01375 (S.D. Cal. July 6, 2017); *In re Certain Mobile Elec. Devices and Radio Frequency Components Thereof*, Investigation No. 337-TA-1093 (Nov. 30, 2017) (Int'l Trade Comm'n); *In re Certain Mobile Elec. Devices and Radio Frequency Components Thereof*, Investigation No. 337-ITC-1065 (July 7, 2017) (Int'l Trade Comm'n); *see also* First Amended Complaint ¶¶102-125, 137-142, *Apple Inc. v. Qualcomm Inc.*, No. 17-cv-00108 (S.D. Cal. June 20, 2017), ECF No. 83.

³ Apple's IPR petitions challenged claims 1-14 and 16-25 of the '037 patent and claims 1-6 and 8-20 of the '362 patent. App. 2a. The Board "did not institute on claims 19-25 of the '037 patent because Qualcomm statutorily disclaimed them." App. 3a n.1. The rest are at issue in these appeals.

lunge the validity of a patent for obviousness or lack of novelty. *See Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2136 (2016). The United States Patent and Trademark Office may institute an IPR if it finds “a reasonable likelihood that the petitioner would prevail with respect to” at least one of the challenged claims. 35 U.S.C. § 314(a); *see Cuozzo*, 136 S. Ct. at 2137. Once an IPR is instituted (and not dismissed), the Board must “issue a final written decision with respect to the patentability of any patent claim challenged by the petitioner.” 35 U.S.C. § 318(a); *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359-1360 (2018). The statute provides that, after a final written decision, an IPR petitioner is estopped from challenging the same patent claims in a subsequent IPR, in court, or before the International Trade Commission “on any ground that the petitioner raised or reasonably could have raised during that” IPR. 35 U.S.C. § 315(e).

The district court stayed Qualcomm’s suit, *see Qualcomm*, ECF No. 177, at 6, and the Board instituted IPRs, including the IPRs challenging the ’037 and ’362 patents, finding a reasonable likelihood that Apple’s challenges would succeed, *see id.*, ECF Nos. 180, 181, 182; App. 2a-3a.

Qualcomm’s suit was ultimately dismissed with prejudice when, in April 2019, the parties entered into a global settlement of all litigation between them. *See* App. 5a-6a; *Qualcomm*, ECF No. 184. As explained below, the settlement did not resolve Apple’s IPRs challenging the ’037 and ’362 patents.

B. The Parties’ License Agreement

As part of the settlement, the parties executed a six-year license agreement with a possible two-year ex-

tension. App. 5a-6a. Sometimes called a “license” or a “covenant not to sue,” *TransCore, LP v. Electronic Transaction Consultants Corp.*, 563 F.3d 1271, 1276 (Fed. Cir. 2009), a license agreement is in essence “a promise by the licensor not to sue the licensee,” *Macom Tech. Sols. Holdings, Inc. v. Infineon Techs. AG*, 881 F.3d 1323, 1329 (Fed. Cir. 2018); *see also United States v. Studiengesellschaft Kohle, m.b.H.*, 670 F.2d 1122, 1127 (D.C. Cir. 1981) (“A license is an agreement by the patentee, usually for a consideration, not to sue the licensee of the patent for infringement of the patent.”). In exchange, the licensee typically makes payments to the licensor, often called royalties. *See Kimble v. Marvel Entm’t, LLC*, 576 U.S. 446, 451 (2015) (patent owner may “sell or license [its exclusive rights] for royalty payments”).

The license agreement in this case is, in effect, a temporary and conditional covenant not to sue. The agreement covers a portfolio of “tens of thousands” of patents, including the ’037 and ’362 patents, and requires Apple to make ongoing payments. App. 7a. In exchange, Qualcomm promised not to sue Apple for infringement of the covered patents during the term of the license agreement, so long as Apple makes the required payments. App. 5a-6a.

Apple had proposed an irrevocable license or other permanent rights to the ’037 and ’362 patents, with a covenant by Qualcomm not to sue Apple for the life of the licensed patents. *See* App. 10a; 20-1642 A2931. Such an agreement would have settled Apple’s IPRs in addition to Qualcomm’s infringement suits and the International Trade Commission cases. But Qualcomm refused. *See* App. 10a. As a consequence, the parties agreed that Apple’s IPRs challenging the ’037 and ’362 patents would continue through final resolution, includ-

ing appeal, despite the settlement and the license agreement. *See* 20-1642 A2931. The license agreement will expire in 2025 (or 2027 if extended)—years before the '037 and '362 patents expire. *See* App. 6a.

C. Federal Circuit Proceedings

In January 2020, the Board issued final written decisions in Apple's IPRs finding all challenged claims of the '037 and '362 patents not unpatentable. App. 53a-79a; App. 13a-52a. Apple timely appealed. *See* 28 U.S.C. § 1295(a)(4).

The patent statute provides that a party to an IPR “who is dissatisfied with” the Board’s final written decision “may appeal” that decision to the Federal Circuit. 35 U.S.C. § 141(c); *see also id.* § 319 (“Any party to the inter partes review shall have the right to be a party to the appeal.”). Despite that statutory right to appeal the Board’s final written decision, the Federal Circuit has held that the IPR petitioner must independently demonstrate Article III standing to pursue such an appeal. *Phigenix, Inc. v. Immunogen, Inc.*, 845 F.3d 1168, 1171-1172, 1175 (Fed. Cir. 2017). Under Federal Circuit precedent, an IPR petitioner may establish the necessary injury in fact if “it is engaged or will likely engage ‘in an[] activity that would give rise to a possible infringement suit,’” *JTEKT Corp. v. GKN Auto. Ltd.*, 898 F.3d 1217, 1220 (Fed. Cir. 2018), or “has contractual rights that are affected by a determination of patent validity,” *id.* (citing *MedImmune*, 549 U.S. at 137), such as under a patent license.

Apple argued that it has standing to pursue its appeals because Qualcomm has already sued Apple for allegedly infringing the '037 and '362 patents, and under *MedImmune* the settlement and the license agree-

ment—under which Apple makes ongoing payments to avoid the threat of an infringement suit and the consequences it could impose—supported Article III jurisdiction. 20-1642 C.A. Reply Br. 20-25. Apple explained that the threat of Qualcomm’s infringement suit remains because Qualcomm refused Apple’s proposal of a license for the life of the patents or other permanent rights to the two patents, and because Qualcomm has enforced its patents against Apple after other agreements expired. *Id.* 23-24 & n.6. Apple also relied on the risk that, if Apple could not appeal now, Apple would potentially be statutorily estopped under Section 315 from ever again challenging the validity of the ’037 and ’362 patents on any ground that it raised or reasonably could have raised in the IPRs at issue here—even though Qualcomm is likely to sue Apple again for infringement. *Id.* at 24-25.⁴

In a published decision, the Federal Circuit dismissed Apple’s appeals for lack of Article III standing, without addressing the merits of Apple’s validity challenges. In its view, Qualcomm’s prior infringement suit did not establish standing because it was dismissed with prejudice due to the settlement. App. 10a. And although the court acknowledged that, under *MedImmune*, a licensee is “not required to break or terminate the license agreement before seeking a declaratory

⁴ Apple made similar arguments in the 20-1561 appeal. *See* 20-1561 C.A. Reply Br. 24-28. Apple addressed standing in its reply briefs after Qualcomm opposed Apple’s standing. Although the Federal Circuit initially found waiver because Apple did not argue standing in its opening briefs, the court proceeded to address standing, App. 4a-5a, making it appropriate for this Court’s review even if the court of appeals’ finding of waiver had been correct. *See United States v. Williams*, 504 U.S. 36, 41 (1992) (the Court’s “traditional rule” permits “review of an issue not pressed so long as it has been passed upon” by the court below).

judgment of noninfringement,” the court believed that *MedImmune* did not apply because Apple had not raised a “contractual dispute”—i.e., “Apple has not alleged that the validity of the patents at issue will affect its contract rights (i.e., its ongoing royalty obligations)” (App. 7a)—even though this Court had stated that the presence of a contractual claim “probably makes no difference to the ultimate issue of subject-matter jurisdiction,” *MedImmune*, 549 U.S. at 123.

As the Federal Circuit saw it, *MedImmune* involved a dispute over royalties paid for a single asserted patent. App. 7a. By contrast, the license agreement here “involves tens of thousands of patents” and there was no evidence that “the validity of any single patent, including the ’037 patent or ’362 patent, would affect [Apple’s] ongoing payment obligations” or that “certain Apple product sales trigger additional royalty payments.” App. 7a-8a. The Federal Circuit held that this difference—the use of a so-called portfolio license that “involves tens of thousands of patents” rather than a single-patent license such that a licensee’s payment obligations would not change on account of the patent invalidity at issue—was “fatal to establishing standing under the reasoning of *MedImmune*.” *Id.*

The Federal Circuit also dismissed other factors that Apple argued as contributing to its standing to sue. The court stated, for example, that “Qualcomm’s refusal to grant Apple an irrevocable license or other permanent rights in the ’037 patent or ’362 patent and Qualcomm’s history of asserting patents against Apple after certain royalty agreements expired” were “not enough.” App. 10a. Likewise, the court held that the risk of Section 315 estoppel did not provide “an independent basis for standing.” App. 11a. The Federal

Circuit considered these factors in isolation but did not analyze their cumulative effect.

The Federal Circuit denied Apple’s petitions for rehearing en banc. Recently, the Federal Circuit issued a decision similarly disposing of other appeals between Apple and Qualcomm, over the dissent of Judge Newman. *Apple II*, 2021 WL 5227094, at *1-10. Judge Newman explained that “the filing of infringement suits by Qualcomm, and the temporary license taken by Apple, support Apple’s standing to pursue ... appeals, reinforced where, as here ‘Congress has accorded a procedural right to a litigant, such as a right to appeal an administrative decision,’” and the patent statute has an estoppel provision. *Id.* at *8 (Newman, J., dissenting). Accordingly, she concluded that “Apple has standing to appeal these [IPR] decisions to the Federal Circuit, and the Federal Circuit has jurisdiction to receive and decide these appeals,” irrespective of other patents in the licensed portfolio. *Id.* at *10 (Newman, J., dissenting).

REASONS FOR GRANTING THE PETITION

The Federal Circuit’s decision unjustifiably confines *MedImmune*’s critical holding to single-patent licenses, while inexplicably decreeing a different standing rule for portfolio licensing. Patent owners should not be permitted to evade judicial scrutiny of questionable patents simply because the patent owner negotiated for a portfolio license covering multiple patents for which it receives royalty payments en masse. *MedImmune* certainly provides no basis for that distinction: a licensee may well face the same coercion whether the patent at issue is the only one licensed or one among many in a portfolio license, and in neither case should a licensee have to breach the agreement to maintain Ar-

ticle III standing to challenge the validity of patents that are highly likely to be asserted against it in the future. The Federal Circuit’s restrictive view of standing also thwarts important public interests in ensuring that patent monopolies remain within their lawful scope and that parties can freely settle litigation through a portfolio license agreement without fear of losing the ability to challenge the underlying patents’ validity. The Court should grant the petition and reverse the judgments of the Federal Circuit.

I. THE DECISION BELOW CONFLICTS WITH THIS COURT’S ARTICLE III PRECEDENT

Apple unquestionably faces a threat of suit by Qualcomm for allegedly infringing the ’037 and ’362 patents. Qualcomm already filed that very suit, which supports Apple’s injury in fact and standing to challenge the claims’ validity. Moreover, the court of appeals did not deny that, had the parties entered into two individual licenses with separate royalties for the two asserted patents, Apple would have had Article III standing to maintain its appeals under *MedImmune*. The question, accordingly, is whether the fact that Qualcomm negotiated a short-term *portfolio* license agreement—covering not just the two patents at issue but also many others, and which will run out before the patents expire—somehow extinguishes Apple’s standing to challenge the patent claims. This Court’s precedent makes clear that the answer is a resounding “no.”

A. *MedImmune, Cardinal Chemical, And Altvater* Make Clear That Patents Subject To A License Agreement May Be Challenged Regardless Of Any Contractual Dispute Over Payment Obligations

1. In *MedImmune*, this Court held that a patent licensee need not breach or terminate the license agreement in order to seek a declaratory judgment that a licensed patent is invalid. 549 U.S. at 137.⁵ *MedImmune* entered into a license agreement with Genentech, under which *MedImmune* would pay royalties for products that, without the license, would infringe Genentech's patents. *See id.* at 121. *MedImmune* believed that it did not owe royalties for its product Synagis because (among other reasons) Genentech's asserted patent was invalid. *Id.* at 121-122. Nonetheless, *MedImmune* paid royalties "under protest" because it feared that if it failed to do so, Genentech would terminate the license agreement and sue for infringement, which could result in "treble damages and attorney's fees," as well as an injunction against selling Synagis. *Id.* at 122.

As this Court explained, if *MedImmune* "had taken the final step of refusing to make royalty payments," thereby repudiating the license agreement, no one would have disputed the presence of an Article III case or controversy: Genentech was threatening patent enforcement and demanding royalties, whereas *MedImmune* asserted the patent was invalid and that therefore no royalties were owing. 549 U.S. at 128. And alt-

⁵ The Declaratory Judgment Act requires that the plaintiff satisfy Article III's case-or-controversy requirement. *See MedImmune*, 549 U.S. at 126-127. Thus, this Court explained that the jurisdictional issue in *MedImmune* "can be described in terms of standing." *Id.* at 128 n.8.

though MedImmune's continued royalty payments rendered "what would otherwise be an imminent threat at least remote, if not nonexistent," the Court held that those payments did not remove the controversy "within the meaning of Article III" because it held, contrary to Federal Circuit precedent at the time, that reasonable apprehension of imminent suit was not required. *Id.*; *id.* at 132 & n.11.

This Court explained that, in *Altvater v. Freeman*, 319 U.S. 359 (1943), it had held that "a licensee's failure to cease its payment of royalties did not render nonjusticiable a dispute over the validity of the patent," where "the only other course" was to "risk not only actual but treble damages in infringement suits." *MedImmune*, 549 U.S. at 130-131. The Court determined that the circumstances of MedImmune's continued payments were similarly coercive because MedImmune was paying royalties "for fear of treble damages and an injunction fatal to [its] business." *Id.* at 132 & n.11. It did not matter that MedImmune was "voluntarily" paying royalties in the "loose[]" sense of the word (i.e., if one "ignor[es] the consequences of the [patentee's] threatened action," such as "actual [and] treble damages in infringement suits"). *Id.* at 132, 134 n.12. Given the "serious consequences" of a patent-infringement suit, which Genentech was threatening, the "coercive nature of the exaction preserve[d] the right ... to challenge the legality of the claim." *Id.* at 122, 131 (quoting *Altvater*, 319 U.S. at 365).

The Court also emphasized that, although MedImmune alleged a contractual dispute over the license agreement (e.g., whether royalties were owing in light of patent invalidity), the contractual claim "probably makes no difference to the ultimate issue of subject-matter jurisdiction." 549 U.S. at 123. The "relevant

coercion” supporting jurisdiction was “not compliance with the claimed contractual obligation, but rather the consequences of failure to do so,” meaning the potential infringement suit and its remedies. *Id.* at 130 n.9 & 132. So long as a licensee faces coercion stemming from such consequences, the Court held, the “rule that a plaintiff must ... bet the farm, or (as here) risk treble damages” by forsaking the license agreement before seeking “a declaration of its actively contested legal rights finds no support in Article III.” *Id.* at 134.

2. This case is not meaningfully different from *MedImmune*. There is no reasonable dispute that, had the license agreement not existed or had Apple “taken the final step” of repudiating the agreement, Apple would have standing to pursue its appeals challenging the patents’ validity. Much like the parties in *MedImmune*, Apple and Qualcomm have a concrete controversy—Qualcomm believes its patents are valid and infringed, whereas Apple does not. If anything, Apple’s standing is even stronger than *MedImmune*’s was, because Qualcomm has already sued Apple for allegedly infringing the ’037 and ’362 patents, rather than merely threatening to sue as in *MedImmune*. See 549 U.S. at 121-122 (*MedImmune* interpreted Genentech’s letter “expressing its belief that Synagis was covered by the ... patent and its expectation” of royalty payment as threatening litigation). As this Court elsewhere stated, “[i]f, in addition to th[e] desire [to avoid patent enforcement], a party has actually been charged with infringement of the patent, there is, *necessarily*, a case or controversy adequate to support jurisdiction.” *Cardinal Chem. Co. v. Morton Int’l, Inc.*, 508 U.S. 83, 96 (1993).

Also as in *MedImmune*, the parties’ license agreement (or the broader litigation settlement) does not

eliminate that controversy because Apple makes ongoing payments under coercive circumstances: namely, to avoid Qualcomm’s infringement suits. Indeed, Qualcomm made sure that such a threat would loom despite the settlement and the license agreement, because not only did Qualcomm sue, but it also refused to grant Apple a license through the life of the patents or other permanent rights to the patents, despite Apple’s proposal. *See* 20-1642 A2931. This is not a situation, in other words, where an “unconditional and irrevocable” covenant not to sue removed “any fear” of a legal claim. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 93, 96 (2013).

What is more, Qualcomm has a history of aggressively enforcing its patents. After other agreements expired, Qualcomm filed six complaints against Apple alleging infringement of 22 patents in the United States alone. *See supra* n.2. Any argument that the license agreement eliminated the threat of a future infringement suit by Qualcomm thus blinks reality.

B. The Federal Circuit’s Decision Conflicts With This Court’s Precedent

1. The Federal Circuit reached a contrary decision by attaching dispositive significance to the fact that the license agreement covers multiple patents in addition to the patents-in-suit. That decision contravened this Court’s precedent in multiple respects.

First, even though this Court has held that “the relevant coercion” supporting jurisdiction is “not compliance with the claimed contractual obligations, but rather the consequences of failure to do so” (namely, the risk of treble damages, attorney’s fees, and an injunction), *MedImmune*, 549 U.S. at 130 n.9, the decision below held exactly the opposite. The Federal Circuit

reasoned that *MedImmune* recognized jurisdiction only insofar as the parties “disputed [their] contract rights.” App. 7a. According to the court, the fact that the license agreement covers a portfolio of patents is “fatal” to Apple’s standing because “Apple has not alleged that the validity of the patents at issue will affect its contract rights (i.e., its ongoing royalty obligations).” *Id.*

This Court made clear, however, that Article III jurisdiction in this situation does not turn on, much less require, a contractual dispute. For example, the Court noted in *MedImmune* that whether or not there is a contractual dispute “probably makes no difference to the ultimate issue of subject-matter jurisdiction.” 549 U.S. at 123.⁶ Indeed, had jurisdiction hinged on a contract dispute, the Court presumably would not have needed to discuss the threat of infringement suit and its “serious consequences” at length, *id.* at 122; *see also id.* at 132, because the contractual dispute would likely have supported jurisdiction by itself. *See Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 242 (1937) (jurisdiction existed where “legal rights and obligations arising from the contracts of insurance” were disputed, even though the insured had not sued when the insurance company had refused to recognize his claim); *Lake Carriers’ Ass’n v. MacMullan*, 406 U.S. 498, 507 (1972) (stating “if appellants are now un-

⁶ Certainly, the parties in *MedImmune* disagreed about “the nature of the dispute at issue”—“whether it involves only a free-standing claim of patent invalidity or rather a claim that, both because of patent invalidity and because of noninfringement, no royalties are owing under the license agreement.” 549 U.S. at 123. But the Court addressed that question only because it is “well to be clear about the nature of the case before” it, and determined that *MedImmune* had a contractual claim, in addition to the claim of patent invalidity. *Id.*

der [a legal] obligation, that in and of itself makes their attack on the validity of the law a live controversy, and not an attempt to obtain an advisory opinion”).

In *Altwater*, moreover, the patents at issue were no longer subject to any license agreement by the time the case reached the Court because the lower courts had determined that the prior license agreement had terminated. *See* 319 U.S. at 362, 364. Nonetheless, the Court upheld declaratory judgment jurisdiction, noting a “controversy was raging” over “the validity of the ... patents,” “even apart from the continued existence of the license agreement.” *Id.* at 364. If even the existence of a license agreement is not necessary for a patent validity challenge, surely a contractual claim under the license agreement is not necessary, either.

Second, the Federal Circuit further disregarded this Court’s precedent in holding that there is no standing unless the licensee’s patent invalidity challenge could change its payment obligations. Because the license agreement here “involves tens of thousands of patents,” and there was no “evidence that the validity of any single patent, including the ’037 patent or ’362 patent, would affect [Apple’s] ongoing payment obligations,” the Federal Circuit concluded that “the reasoning of *MedImmune* does not apply.” App. 7a-8a.

That ruling is likewise contrary to this Court’s case law. This Court has never held that jurisdiction depends on how many other barriers there may be to the relief sought. And that makes sense; Apple is not any less injured under Article III because it also has rights to other patents under the license agreement. Nor does the inclusion of other patents in the licensed portfolio mitigate the coercion that supports jurisdiction under *MedImmune*.

To the contrary, this Court has upheld Article III jurisdiction over a dispute that would remove one legal barrier to obtaining ultimate relief, notwithstanding potential independent barriers to that result, as long as there is a “substantial probability” of obtaining the relief with the removal of the barrier at issue. *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 264 (1977) (quoting *Warth v. Seldin*, 422 U.S. 490, 504 (1975)). As Judge Newman noted in the follow-on decision, even the Federal Circuit has elsewhere recognized that “a licensee has standing to challenge validity even though other barriers to commercial activity remain in place.” *Apple II*, 2021 WL 5227094, at *7 (Newman, J., dissenting) (citing *Apotex, Inc. v. Daiichi Sankyo, Inc.*, 781 F.3d 1356, 1364-1365 (Fed. Cir. 2015); *Arkema Inc. v. Honeywell Int’l, Inc.*, 706 F.3d 1351, 1358 (Fed. Cir. 2013)). Thus, nothing prevents Apple from removing one barrier (or one patent) at a time, in order to obtain the ultimate relief of eliminating the threat of Qualcomm’s suit. After all, the Federal Circuit’s invalidation of the ’037 and ’362 patents *would* remove a significant barrier to eliminating Qualcomm’s threat, since that would reduce the magnitude of Apple’s potential liability and the scope of any potential injunction. Indeed, Qualcomm *chose* to assert those patents against Apple among the “tens of thousands” in the portfolio (App. 7a).⁷

⁷ The Federal Circuit below stated nonetheless that “Apple fails to explain why the ’362 patent creates a significant barrier, and we see no evidence that the cancellation of the ’362 patent is *likely* to affect Apple’s ongoing payment obligations.” App. 8a n.4. But the relevant barrier need not concern “Apple’s ongoing payment obligations” for the same reasons that a contract dispute over royalties was not necessary for jurisdiction under *MedImmune*.

To be sure, the contract dispute in *MedImmune* affected royalty payments—i.e., MedImmune alleged that it did not have to pay a royalty for its product if it did not infringe Genentech’s asserted patent or if that patent was invalid. 549 U.S. at 123-124. But that happenstance is not a legal requirement, nor was it essential to this Court’s reasoning. Indeed, there is no constitutional difference between licensing the same group of patents in one portfolio license and doing so through a multitude of single-patent licenses. And it would be highly impractical to require that a licensee show how the patent invalidity “would affect its ongoing payment obligations” to support standing (App. 7a-8a), since patent owners often negotiate or even require a portfolio license involving numerous patents. See *infra* Part II. There is no reason to limit *MedImmune* to the single-patent license context, thereby allowing patent owners to unilaterally defeat Article III jurisdiction by structuring their license agreements at the portfolio level. Yet the decision below provides patent owners a roadmap for shielding invalid patents from judicial scrutiny: bundle them into a portfolio license.

2. Nor is the rest of the Federal Circuit’s decision compatible with this Court’s precedent. In *MedImmune*, this Court reiterated the long-held principle that Article III’s case or controversy requirement requires courts to determine “whether the facts alleged, under *all the circumstances*, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality.” 549 U.S. at 127 (quoting *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941) (emphasis added)). Nonetheless, the Federal Circuit evaluated each of the factors relevant to standing separately and in isolation, rather than considering them together.

In a cursory analysis, the Federal Circuit concluded that each of Apple’s asserted standing factors was by itself insufficient to “provide standing”: (1) “Qualcomm’s previous suit for infringement of the ’037 patent and ’362 patent”; (2) “Qualcomm’s refusal to grant Apple an irrevocable license or other permanent rights in the ’037 patent or ’362 patent and Qualcomm’s history of asserting patents against Apple after certain royalty agreements expired”; and (3) “the likelihood that 35 U.S.C. § 315(e) would estop [Apple] from arguing that the ’037 patent and ’362 patent would have been obvious in future disputes.” App. 10a-11a. With respect to the risk of estoppel, the court even stated that estoppel does not provide “an *independent* basis for standing,” even though, as it recognized earlier, Apple argued that “its injury is *compounded* by” the risk of estoppel. App. 11a (emphases added). That is not a consideration of “all the circumstances” that this Court requires.

When the factors (and their surrounding circumstances) are considered together, they support Apple’s standing. As an initial matter, the court of appeals incorrectly disregarded Qualcomm’s prior suit merely because it was dismissed with prejudice, without considering the broader significance of the suit. As this Court explained in *MedImmune*, a licensee need not have a reasonable apprehension of imminent suit *at all* in order to support jurisdiction. 549 U.S. at 132-134 & n.11. Indeed, in *Cardinal Chemical*, “appellate affirmance of a judgment of noninfringement, eliminating any apprehension of suit, d[id] not moot a declaratory judgment counterclaim of patent invalidity.” *Id.* at 132 n.11 (citing *Cardinal Chem.*, 508 U.S. at 98). The dismissal of Qualcomm’s suit with prejudice is no more consequential than the affirmance of a judgment of noninfringe-

ment because it suggests, at most, that Apple may not have a reasonable apprehension of imminent suit, which is no longer required. Accordingly, the dismissal of Qualcomm’s prior suit, even with prejudice, still “*necessarily*” supports the case-or-controversy requirement by showing that the parties have a live disagreement about the patents’ validity and infringement. *Cardinal Chem.*, 508 U.S. at 96.⁸

In any event, Qualcomm’s prior suit continues to pose a threat to Apple, particularly because Qualcomm refused to grant Apple any permanent rights to the ’037 and ’362 patents and because Qualcomm has frequently and aggressively enforced its patents after other agreements expired. By focusing on these factors in isolation, however, the Federal Circuit gave short shrift to Qualcomm’s suit and dismissed Qualcomm’s past practice as mere “speculation and conjecture about Qualcomm’s proclivity to assert its patent rights generally.” App. 10a. That approach to standing is irreconcilable with *MedImmune* and *Maryland Casualty*.

Likewise, the risk of estoppel reinforces Apple’s injury, even if it would not independently establish standing under Federal Circuit precedent. Section 315(e) provides that an IPR petitioner may not challenge patent claims “on any ground that the petitioner raised or reasonably could have raised during” the earlier IPR. 35 U.S.C. § 315(e)(1)-(2). Apple does not believe Sec-

⁸ As a practical matter, moreover, if Apple ceased its ongoing payments, Qualcomm likely could seek vacatur of the order dismissing its prior infringement suit with prejudice. *See Keeling v. Sheet Metal Workers Int’l Ass’n, Local Union 162*, 937 F.2d 408, 410 (9th Cir. 1991) (“Repudiation of a settlement agreement that terminated litigation pending before a court constitutes an extraordinary circumstance, and it justifies vacating the court’s prior dismissal order” under Federal Rule of Civil Procedure 60(b)(6).).

tion 315(e) estoppel applies where the IPR petitioner had no ability to appeal the Board’s adverse decision. Nonetheless, the Federal Circuit has left this issue open, *see AVX Corp. v. Presidio Components, Inc.*, 923 F.3d 1357, 1363 (Fed. Cir. 2019), and Qualcomm has expressed its intent to assert estoppel against Apple in a future infringement suit, Oral Arg. 20:20-22:36, *Apple Inc. v. Qualcomm Inc.*, Nos. 20-1683, 20-1763, 20-1827 (Fed. Cir. Aug. 2, 2021) (Qualcomm’s counsel stating that, if a future suit were to be brought, “the statute does say that estoppel is mandated”). As a result, although Qualcomm will likely accuse Apple again of infringement, Apple may be prevented from defending on grounds of invalidity that it raised or reasonably could have raised during the IPRs here, including after the license agreement expires. Under the totality-of-the-circumstances analysis that this Court requires, such risk of estoppel strongly supports Apple’s standing to challenge the validity of the patents now. *See Apple II*, 2021 WL 5227094, at *9 (Newman, J., dissenting) (“The estoppel provision of itself provides Apple with standing to appeal the [Board’s] decisions, and provides this court with jurisdiction to receive the appeals.”).

II. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT

A. Because the Federal Circuit has exclusive jurisdiction over appeals from district court patent litigation and appeals from IPRs, 28 U.S.C. § 1295(a)(1), (4), its narrow approach to standing has “special importance to the entire Nation.” *Cardinal Chem.*, 508 U.S. at 89. This case captures that broad importance. Standing to challenge patent validity, particularly by a licensee and especially on appeal from IPRs, is critically important to ensuring that patent monopolies are

properly restrained and that Congress’s statutory provision of appellate review in IPRs is not unduly constrained.

1. Standing allows parties a foot in the door to challenge questionable patents in court. This Court has repeatedly emphasized the strong federal policy of liberally allowing such challenges because “our competitive economy” depends on “keeping open the way for interested persons to challenge the validity of patents which might be shown to be invalid.” *Edward Katzinger Co. v. Chicago Metallic Mfg. Co.*, 329 U.S. 394, 400-401 (1947). After all, society progresses through “full and free competition in the use of ideas which are in reality a part of the public domain.” *Lear, Inc. v. Adkins*, 395 U.S. 653, 670 (1969).

Congress was keenly aware of that public interest in designing the IPR system. As this Court noted, Congress was “concerned about overpatenting and its diminishment of competition” and thus “sought to weed out bad patent claims efficiently” through IPRs. *Thryv, Inc. v. Click-To-Call Techs., LP*, 140 S. Ct. 1367, 1374 (2020); *see also* H.R. Rep. No. 112-98, pt. 1, pp. 39-40 (2011). To that end, Congress provided broadly that a party to an IPR “who is dissatisfied with” the Board’s final written decision “may appeal the Board’s decision” to the Federal Circuit, 35 U.S.C. § 141(c), in contrast to the existing administrative procedure that provided no right to appeal and thus was “a much less favored avenue” than litigation, S. Rep. No. 110-259, at 18-19 (2008). An IPR petitioner’s right to appeal, in other words, achieves the very purposes for which Congress created IPRs—to “protect the public’s ‘paramount interest in seeing that patent monopolies ... are kept within their legitimate scope,’” as well as to “resolve concrete patent-related disputes among parties.”

Cuozzo, 136 S. Ct. at 2144 (quoting *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 806, 816 (1945)).

Standing takes on special importance in the licensing context, moreover, because “[l]icensees may often be the only individuals with enough economic incentive to challenge the patentability of an inventor’s discovery.” *Lear*, 395 U.S. at 670. Accordingly, “[i]f they are muzzled, the public may continually be required to pay tribute to would-be monopolists without need or justification.” *Id.* Such an outcome subverts the Court’s “consistent view” that “the holder of a patent should not be insulated from the assertion of defenses and thus allowed to exact royalties for the use of an idea that is not in fact patentable or that is beyond the scope of the patent monopoly granted.” *Blonder-Tongue Labs, Inc. v. University of Ill. Found.*, 402 U.S. 313, 349-350 (1971); *see also FTC v. Actavis, Inc.*, 570 U.S. 136, 151 (2013) (reiterating “the patent-related policy of eliminating unwarranted patent grants”).

2. The decision below unravels those fundamental public interests. It cripples licensees’ ability to challenge questionable patents, including on appeal from IPRs, solely because the patent holder has framed the license agreement as a portfolio license rather than a single-patent license. And it does so by improperly restricting Article III jurisdiction under *MedImmune* and *Altwater*, which only this Court can fix.

The stakes are significant. The Federal Circuit has repeatedly rejected attempts by patent challengers to appeal unfavorable IPR decisions where the challenger is not currently facing an infringement lawsuit. For instance, the Federal Circuit has held that an IPR petitioner’s statutory right to appeal does not, by itself,

confer Article III standing. See *Phigenix*, 845 F.3d at 1175; cf. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) (“the violation of a procedural right granted by statute” can sometimes “constitute an injury in fact”). The Federal Circuit has also held that the risk that a patent challenger might be estopped under § 315(e) from challenging the patent claims in a later infringement action does not, by itself, show an injury in fact. See *Phigenix*, 845 F.3d at 1175-1176. And the Federal Circuit has held that patent challengers who compete with the patent owner in the market may nevertheless lack Article III standing to challenge their competitor’s patent. See *General Elec. Co. v. United Techs. Corp.*, 928 F.3d 1349, 1354 (Fed. Cir. 2019), cert. denied sub nom. *General Elec. Co. v. Raytheon Techs. Corp.*, 140 S. Ct. 2820 (2020); cf. *id.* at 1355 (Hughes, J., concurring) (criticizing “a patent-specific approach to the doctrine of competitor standing that is out of step with Supreme Court precedent”).

The decision below amplifies the effect of that troubling trend. Patent licensing is a common practice—an estimated ten percent of patents are licensed, see Chien, *Software Patents as a Currency, Not Tax, on Innovation*, 31 Berkeley Tech. L.J. 1669, 1688-1689 (2016)—and reportedly generates tens of billions of dollars in annual licensing income for U.S. patent owners, Litan & Singer, *Unlocking Patents: Costs of Failure, Benefits of Success*, Economists Incorporated, at 12-15 (2014). And *MedImmune* “affects nearly every patent license and technology transfer agreement across the country.” Clayton, ‘*MedImmune*’ Ruling, Nat’l L.J., Feb. 19, 2007.

Moreover, patent owners often demand that potential infringers license entire portfolios, rather than on an individual patent basis. For example, in the related

context of cross-licensing negotiations over complex technologies, “parties focus[] on the quantity rather than the quality of patents in a portfolio.” Chien, *From Arms Race to Marketplace: The Complex Patent Ecosystem and Its Implications for the Patent System*, 62 *Hastings L.J.* 297, 308 (2010). The economics of licensing support such practices—i.e., “[t]he high cost of evaluating which patents in a portfolio of thousands might apply to each product, the likelihood of the patents’ validity, the appropriate royalty rate, and the appropriate base from which to calculate the royalty has led patent licenses to be ‘negotiated en masse.’” *Id.* There are also “patent aggregators” who “collect many patents—sometimes tens of thousands”—and “demand royalties to license the portfolio and threaten to sue those that do not pay.” Lemley & Melamed, *Missing the Forest for the Trolls*, 113 *Colum. L. Rev.* 2117, 2126-2127 (2013). “Scale is critical to this model,” and “the quality and value of any given patent” matters little, “because defendants are reluctant to challenge an entire portfolio of patents.” *Id.*

Yet the Federal Circuit’s decision perversely insulates such common (and sometimes abusive) licensing practices from judicial review. Under the court’s reasoning, a patent owner can eliminate a licensee’s standing by refusing to license only the patents-in-suit individually and instead demanding that the counterparty license thousands of patents and pay for them as a whole. Indeed, if Apple had two license agreements that separately covered each of the ’037 and ’362 patents and nothing else, the Federal Circuit would undoubtedly have found standing because that would present materially the same facts as *MedImmune*. It cannot be the law that Qualcomm can negotiate its way out

of Article III jurisdiction simply by throwing tens of thousands of other untested patents into mix.

B. This Court’s review is also needed to restore the public policy of encouraging settlement of litigation without fear of losing the ability to appeal unsettled claims. This Court has repeatedly recognized that settlement of litigation is “generally favored” because it saves everyone’s resources. *St. Louis Mining & Milling Co. v. Montana Mining Co.*, 171 U.S. 650, 656 (1898); *see also Marek v. Chesny*, 473 U.S. 1, 10 (1985) (the Federal Rules of Evidence have a “clear policy of favoring settlement of all lawsuits”); *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 28 (1994) (recognizing the “judicial economies achieved by settlement”). Under the Federal Circuit’s approach, however, an IPR petitioner who enters into a settlement agreement covering the underlying district court suit but not the IPR could easily lose the ability to appeal, even where (as here) the parties agreed that the pending IPRs would continue through any appeal. Unless reversed, the Federal Circuit’s decision will significantly chill future settlements.

Where the parties do settle, the decision below gives the patent owner an unjustified procedural advantage. If the Board invalidates a patent, the patent owner has standing to appeal that decision regardless of the settlement or the license agreement. But if the Board upholds the patent, the Federal Circuit denies the challenger standing to appeal on account of the portfolio license. That asymmetry frustrates “the strong federal policy favoring the full and free use of ideas in the public domain,” *Lear*, 395 U.S. at 673-674, and Congress’s intent to broadly provide for appellate review of IPR decisions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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NOVEMBER 2021