No. 26-______

IN THE

Supreme Court of the United States

KAHOOT! AS,

Petitioner,

v.

INTERSTELLAR INC., 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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QUESTIONS PRESENTED

In the America Invents Act (the "AIA"), Congress created a system of inter partes review that enables third parties to request that the U.S. Patent and Trademark Office (the "PTO") reconsider whether previously issued patents should have been granted. Congress provided that inter partes review (or IPR) is available for any patent that had been in existence for at least nine months (which is when the statutory period for challenging a patent through a separate post-grant review (or PGR) proceeding expires) or, in the case where a patent is subject to a post-grant review, after the termination of such review. 35 U.S.C. § 311(c). Congress otherwise imposed no limit for inter partes reviews based on a patent's age.

Recently, however, the PTO has instituted a policy of presuming that when a patent has been in force for an arbitrary period of six years, the patent owner has acquired "settled expectations" in that patent. And the PTO announced that it may, in the exercise of its discretion, refuse to institute inter partes review—and therefore refuse to adjudicate whether an issued patent is valid—based solely on such "settled expectations," without any consideration of the merits of the inter partes review petition.

In this case, the PTO denied Petitioner Kahoot! AS's ("Kahoot!'s") inter partes review petition solely on such discretionary grounds after finding that the challenged patent had been in force for "over six years, creating strong settled expectations." The PTO did so even though the patent had been in force for less than six years at the time the inter partes review petition was filed. Kahoot! sought mandamus on the grounds that the PTO's denial of inter partes review institution based on "settled expectations" derived from a patent's age contravened the applicable statute. The U.S. Court of Appeals for the Federal Circuit, however, denied the mandamus petition, holding that Kahoot!'s statutory challenge was unreviewable.

The questions presented are:

> 1. Whether the PTO lacks statutory authority to deny inter partes review institution based on "settled expectations" premised on a patent's age where Congress prescribed express timing limits for inter partes review based on a patent's *minimum* age (which is tied to the expiration of the statutory period for seeking post-grant review, a separate type of patent validity challenge) but imposed no *maximum* patent age bar.
>
> 2. Whether 35 U.S.C. § 314(d) bars judicial review, even by way of mandamus, of whether the PTO exceeded its statutory authority when denying inter partes review institution on grounds that are contrary to the statute.

PARTIES TO THE PROCEEDINGS

Petitioner Kahoot! AS was the petitioner in the court of appeals.

Respondents Interstellar Inc. and John A. Squires, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, sued in his official capacity, were respondents in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner Kahoot! AS is wholly owned by Kangaroo HoldCo AS. No publicly held company owns 10% or more of Kahoot! AS's stock. Neither Kahoot! AS nor Kangaroo HoldCo AS is publicly traded.

RELATED PROCEEDINGS

In re Kahoot! AS, No. 2026-119 (Fed. Cir. Feb. 25, 2026).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Kahoot! AS respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The Federal Circuit's order denying Kahoot!'s petition for a writ of mandamus is unreported. The order is available at 2026 WL 519635 and is reproduced at Pet. App. 1a–3a. The PTO's order denying director review is reproduced at Pet. App. 4a. The PTO's decision denying institution of inter partes review is available at 2025 WL 2176613 and is reproduced at Pet. App. 5a–7a.

JURISDICTION

The Federal Circuit entered judgment on February 25, 2026. Pet. App. 1a–3a. On May 20, 2026, the Chief Justice extended the time to file a petition for a writ of certiorari to July 25, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The pertinent statutory provisions are 35 U.S.C. §§ 311 and 314. These provisions are reproduced at Pet. App. 15a-16a.

INTRODUCTION

In 2011, Congress created inter partes review in an effort to design an "efficient system for challenging patents that should not have issued." H.R. Rep. No. 112-98 at 39-40 (2011). Congress was concerned that challenging invalid patents in district court litigation was often costly and slow, and that existing administrative reexamination procedures had proved inadequate as an alternative method for reexamining validity of existing patents. Accordingly, in the AIA, Congress replaced the existing reexamination proceedings with a streamlined adjudicative system that balances efficiency of resolving validity challenges with fairness to patent owners through carefully designed procedural safeguards and timing requirements. H.R. Rep. No. 112-98 at 45–46.

The AIA established two different review proceedings: a post-grant review (or PGR) for newly granted patents and inter partes review (or IPR) for existing patents. Post-grant review is confined to an early window: it must be requested within nine months from the patent's issuance. 35 U.S.C. § 321(c). Inter partes review becomes available after that window: An inter partes review petition may be filed any time after the nine-month period for bringing a post-grant review expires, or in the case where a post-grant review has been initiated, any time after the termination of such post-grant review. 35 U.S.C. § 311(c). Congress expressly emphasized that inter partes review "may be sought . . . *any time* after" post-grant review concludes, or the post-grant review filing window expires. H.R. Rep. No. 112-98 at 75 (emphasis added). To assuage any quiet title and settled expectations concerns of the patent owners, Congress instituted one other timing restriction, namely a bar on seeking inter partes review more than a year after having been served with an infringement complaint. 35 U.S.C. § 315(b). Congress did not, however, enact any age-based cutoff for inter partes review.

In contravention of this statutory design, the PTO now treats a patent's age as a permissible reason to deny inter partes review institution. But the AIA does not authorize the PTO to impose an age-based limit as a condition of inter partes review eligibility. Congress supplied only one age-based threshold: an inter partes review petition may not be filed until nine months elapse from the grant of the patent (which is predicated on, and specifically tied to, the conclusion of the statutory period for seeking a post-grant review). And Congress set forth only one other temporal limit, barring inter partes review petitions filed one year after service of an infringement complaint.

The Federal Circuit declined to review Kahoot!'s statutory challenge. The court of appeals believed that the PTO's institution decision is discretionary and foreclosed from review by 35 U.S.C. § 314(d), which makes institution determinations "final and nonappealable." Pet. App. 2a.

But congressional grant of discretion does not authorize the PTO to rely on an arbitrary patent age limit that is wholly absent from the statutory timing framework. And this Court has recognized that Section 314(d) does not foreclose judicial review where the PTO's action exceeds its statutory authority. *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 371–372 (2018) (citing *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 275 (2016)). Accordingly, Section 314(d) cannot foreclose judicial review of whether the PTO may refuse to institute inter partes review based on a criterion that is not only absent from the statute but contravenes the statutory design.

The questions presented are of undeniable importance. Invoking the "settled expectations" policy, the PTO has drastically increased institution denials where the challenged patent has been issued more than six years prior to the filing of the inter partes review petition (and in the present case, even when the patent was issued less than six years before such filing). The resulting plummeting number of inter partes reviews (over 40%), *see infra* at 6, frustrates congressional intent of providing an efficient alternative procedure for challenging patents of questionable validity. The issue is widespread and often-recurring. In fact, another petition presenting the same statutory authority and reviewability questions is currently pending before this Court in *Google LLC v. VirtaMove Corp.*, No. 25-1230.

This Court's review is imperative to vindicate congressional design and to ensure that the PTO abides by the statutory restrictions on its authority. The petition for a writ of certiorari should be granted. Alternatively, the petition should be held pending this Court's consideration of the petition in *Google LLC v. VirtaMove Corp.*, No. 25-1230.

STATEMENT OF THE CASE

A. Statutory and Regulatory Background.

1. Congress created inter partes review as an administrative process for reconsidering previously issued patents. Congress was concerned that challenging patent validity in district court proceedings was both costly and slow, and sought to provide an "efficient system for challenging patents that should not have issued." H.R. Rep. No. 112-98, at 39-40.

Congress provided that inter partes review may be sought with respect to all patents, nine months after issuance. 35 U.S.C. § 311(c). During the initial nine months of a patent's term, it can be challenged through a separate post-grant review proceeding. 35 U.S.C. § 321(c). If a patent is challenged in post-grant review, inter partes review may be sought once that proceeding concluded, provided the patent is not invalidated. 35 U.S.C. § 311(c). Congress imposed only one other timing restriction: To "minimize burdensome overlap" between inter partes reviews and district court litigation, *Thryv, Inc. v. Click-to-Call Techs., LP*, 590 U.S. 45, 56 (2020), Congress provided that, if a party has been sued for patent infringement, it must seek inter partes review within one year of service of an infringement complaint. 35 U.S.C. § 315(b). Congress did not impose any maximum patent age cutoff for inter partes review.

The PTO may exercise discretion in deciding whether to institute inter partes review. As this Court observed, "the agency's decision to deny a petition is a matter committed to the Patent Office's discretion." *Cuozzo*, 579 U.S. at 273 (citing 5 U.S.C. § 701(a)(2)). Congress also limited judicial review of the PTO's institution decisions to preclude review of "questions that are closely tied to the application and interpretation of statutes related to the Patent Office's decision to initiate inter partes review." *Cuozzo*, 579 U.S. at 275 (citing 35 U.S.C. § 314(d)). Congress did not, however, categorically foreclose judicial review where the PTO has "act[ed] outside its statutory limits." *Cuozzo*, 579 U.S. at 275.

2. In March 2025, the PTO announced a new policy for exercising its discretion when determining whether to institute inter partes review. For the first time, the PTO has identified "settled expectations of the parties, such as the length of time the claims have been in force," as a consideration relevant to, and an independent basis for, discretionary denial. Pet. App. 10a. In applying this policy, the PTO observed that "the longer the patent has been in force, the more settled expectations [become]." *Dabico Airport Solutions Inc. v. AXA Power ApS*, 2025 WL 1710080,

at *1 (U.S.P.T.O. June 18, 2025). The PTO analogized that approach to 35 U.S.C. § 286, which limits recovery of infringement damages to the six years preceding the filing of a patent suit. *Id.* The PTO reaffirmed this policy in October 2025. Pet. App. 12a-14a.

Since the PTO has instituted its policy of considering patent age as an institution criterion, the rate of inter partes review institution has plummeted from 65% to 37%. *See* Eileen McDermott, *USPTO Stats Show IPR Institution Rate Has Plummeted by 43%*, IP Watchdog (Apr. 8, 2026), https://ipwatchdog.com/2026/04/08/uspto-stats-show-ipr-institution-rate-plummeted/.

B. Procedural Background

1. U.S. Patent No. 10,339,825 B2 (the "'825 patent"), which is owned by Respondent Interstellar Inc. ("Interstellar"), issued on July 2, 2019. C.A. App. 1. On June 28, 2024, Interstellar sued Kahoot! in the United States District Court for the Western District of Texas for infringing the '825 patent. *Interstellar Inc. v. Kahoot! EDU, Inc.*, No. 1:24-cv-00727-ADA (W.D. Tex.). On March 7, 2025, less than six years after the '825 patent was issued, Kahoot! filed a petition seeking inter partes review of that patent. C.A. App. 142–214. The district court then stayed the infringement action pending the conclusion of the inter partes review proceeding. *Interstellar Inc. v. Kahoot! EDU, Inc.*, No. 1:24-cv-00727-ADA (W.D. Tex. Mar. 25, 2025).

Interstellar requested that the PTO deny institution of Kahoot!'s petition, asserting settled expectations. Kahoot! opposed, pointing out (among other reasons) Interstellar's own delay (namely, waiting nearly five years after the issuance of the '825 patent) in asserting the patent against Kahoot!. C.A. App. 266–285.

2. On July 31, 2025, the PTO's Acting Director denied institution of Kahoot!'s inter partes review petition. Pet. App. 6a–7a. The PTO acknowledged that "[s]ome factors counsel against discretionary denial," including that "the parallel district court proceeding involving Petitioner and Patent Owner has been stayed." Pet. App. 6a. The PTO nevertheless denied institution, invoking its new settled expectations policy. The PTO stated that "the challenged patent has been in force for over six years [at the time of the denial, but not the filing of the petition], creating strong settled expectations," and therefore instituting inter partes review would not constitute "an appropriate use of Board resources." *Id.* Although the PTO asserted that the denial rested on "a holistic assessment of all of the evidence and arguments," *id.*, it identified no factors other than the "settled expectations" arising from the patent's age and cited no evidence.

3. Kahoot! sought Director Review of the PTO's decision. As part of its request, Kahoot! argued that the PTO's policy of denying institution of inter partes review based on a patent's age conflicted with 35 U.S.C. § 311(c), which contains no maximum patent age restriction. C.A. App. 290–301. The Director denied review. Pet. App. 4a.

4. Kahoot! petitioned the Federal Circuit for a writ of mandamus. Kahoot! requested that the court of appeals direct the PTO to vacate and reconsider its decision denying institution "without relying on 'settled expectations.'" *In re Kahoot! AS*, 2026-119, 2026 WL 519635, at *1 (Fed. Cir. Feb. 25, 2026).

The Federal Circuit denied mandamus. The court acknowledged that the PTO denied institution because Interstellar's patent had been in force for "over six years, creating strong settled expectations." Pet. App. 1a. The Federal Circuit reasoned, however, that Congress had committed institution decisions to the PTO's discretion and had made those determinations "final and nonappealable" under Section 314(d). Pet. App. 2a. The court further observed that, under its precedent, absent a colorable constitutional claim, "mandamus is ordinarily unavailable for review of institution decisions." *Id.* (citing *Mylan Labs. Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021)). The Federal Circuit therefore opined that Kahoot!'s argument that the PTO's "reliance on purported 'settled expectations' exceeds the Director's statutory authority" "'cannot be a basis for granting the petition for mandamus.'" Pet. App. 2a (quoting *Mylan*, 989 F.3d at 1382-83) (additional citation omitted).

The decision below follows a series of Federal Circuit decisions that have similarly rejected judicial review of the PTO's "settled expectations" rule. In those decisions, the Federal Circuit held that mandamus is not available to review a challenge that the PTO acted in contravention of its statutory authority when denying institution because of patent age-based settled expectations. *See In re Cambridge Indus. USA Inc.*, No. 2026-101, 2025 WL 3526129, at *3 (Fed. Cir. Dec. 9, 2025); *In re Sandisk Techs., Inc.*, No. 2025-152, 2025 WL 3526507, at *1 (Fed. Cir. Dec. 9, 2025); *In re Google LLC*, No. 2026-111, 2026 WL 204945, at *1 (Fed. Cir. Jan. 27, 2026); *In re Kangxi Commc'n Techs. (Shanghai) Co., Ltd.*, No. 2026-115, 2026 WL 506927, at *1-2 (Fed. Cir. Feb. 24, 2026); *In* *re Volkswagen Grp. of Am., Inc.*, No. 2026-123, 2026 WL 776550, at *2 n.4 (Fed. Cir. Mar. 19, 2026).

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to correct the PTO's imposition of a non-statutory temporal limit on institution of inter partes reviews that finds no support in the governing statute and that frustrates congressional intent behind the statutory regime. The Federal Circuit excused the PTO's arrogation of authority because Congress vested it with discretion in determining when to institute inter partes review. But an agency cannot exercise its discretion in a way that contravenes the applicable statute.

Nor was the Federal Circuit correct to view 35 U.S.C. § 314(d) as categorically foreclosing judicial review of the PTO's decision. As this Court has explained, Section 314(d) does not render a federal court powerless to stop the PTO's disregard of statutory limits on its authority. The Court's review is imperative to vindicate inter partes review as an effective system for challenging patents of dubious validity and federal courts' power to confine the PTO to lawful exercise of its statutory discretion. If the Court grants review of these issues in *Google LLC v. VirtaMove Corp.*, No. 25-1230, which is already pending before the Court, it should either consolidate the two cases for briefing and argument or hold this petition until the resolution of that case.

I. The PTO's Patent-Age Rationale Conflicts with Congress's Timing Framework.

In the AIA, Congress enacted a detailed timing framework for post-issuance administrative review of questionable patents. *First*, Congress instituted a system of post-grant review, which is available during a short, statutorily prescribed, post-issuance period. 35 U.S.C. § 321(c). *Second*, Congress created a system of inter partes review made available after that period (or after the termination of any prior post-grant review). 35 U.S.C. § 311(c). Congress also imposed a one-year bar on inter partes review triggered by service of an infringement complaint, 35 U.S.C. § 315(b), but enacted no patent-age deadline or cutoff for inter partes review.

Section 314(a) grants the PTO discretion over institution, but that discretion must operate within the limits of the statutory scheme. Section 314(a) does not establish that a patent's age may be used to infer an age-based restriction that Congress omitted from the AIA's timing provisions. The PTO may not treat a patent's age, or an arbitrary six-year period, as presumptively creating settled expectations, and then deny institution of inter partes review on that basis, when Congress enacted no such temporal restriction. An agency's exercise of statutorily granted discretion is bound by the limits and purposes of the statute that confers that discretion.

The PTO's invention of a non-statutory temporal limit based on the time elapsed since the patent's issuance as a reason to deny institution contravenes the statutory design. The statute confines post-grant review to the nine-month period following issuance, 35 U.S.C. § 321(c); makes inter partes review available only after that period, § 311(c); and ties the one-year filing bar to service of an infringement complaint, § 315(b), rather than to patent issuance. Congress knew how to impose an issuance-based deadline; indeed, it did precisely that in setting up the post-grant regime.

But Congress provided no comparable issuance-based deadline for inter partes review. *See Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 603 U.S. 799, 812 (2024) (noting that Congress "knew how" to use a different temporal trigger when it wished).[1]

The history of the AIA's enactment confirms that Congress did not intend to impose any patent-age limit for inter partes review. Congress explained that inter partes review "may be sought . . . any time after" post-grant review concludes or, if no post-grant review is instituted, the time for seeking it expires. H.R. Rep. No. 112-98, pt. 1, at 75 (2011). Congress did not identify any upper patent age limit for seeking inter partes review. Because a party may not even know about the existence of a patent—or have any reason to challenge that patent unless sued for infringement—the only filing deadline Congress prescribed is triggered by an attempt to enforce that patent, and not by the date on which it has issued.

The PTO sought to justify its "settled expectations" policy on efficiency grounds. Pet. App. 10a. But as this Court explained, the PTO may not deviate from the statutory design behind the inter partes review scheme for policy reasons. Thus, in *SAS Institute, Inc. v. Iancu*, 584 U.S. 357 (2018), the PTO defended its partial-institution practice on administrative-efficiency grounds. This Court rejected that approach, explaining that the PTO may not "improvise" powers Congress did not grant. *Id.* at 368-72. The same

[1] The AIA separately created estoppel after the PTO's final decision in inter partes review and authorized the PTO to reject petitions presenting the same or substantially the same prior art or arguments. 35 U.S.C. §§ 315(e), 325(d). None of those provisions provides for a patent-age limit on inter partes review.

principle applies here. Administrative discretion operates within the statutory framework; it does not permit the agency to disregard that framework or to "improvise" on it. *Cf. SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 580 U.S. 328, 335 (2017) (an agency may not "jettison Congress' judgment on the timeliness of suit").

Nor may the PTO defend its newly minted rule by asserting that it is merely one flexible consideration among many. The PTO has expressly identified "settled expectations of the parties, such as the length of time the claims have been in force," as a factor in deciding whether to exercise its discretionary denial authority. Pet. App. 10a. While the PTO initially disclaimed any bright-line rule for when expectations become settled, the agency took the position that its approach "aligns" with Section 286's six-year limit on recovery of past infringement damages. *Dabico*, 2025 WL 1710080, at *1. And the PTO has since treated its settled-expectations rule as effectively creating a presumption that inter partes review should not be instituted if the challenged patent has been in existence for over six years.[2] In this case, the PTO denied institution of Kahoot!'s petition after observing that "the challenged patent has been in force for over six years, creating strong settled expectations." Pet. App. 6a. In any event, the PTO's disclaimer of a bright-line rule does not authorize an agency to use patent age as a presumption for denying institution where the governing statute contains no age-based cutoff.

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[2] The PTO arbitrarily ignored the fact that the patent had been in force *less* than six years at the time the inter partes petition was filed.

II. Section 314(d) Does Not Immunize the PTO's Disregard of Its Statutory Authority.

The Federal Circuit, relying on its precedent, held that the PTO's imposition of a patent-age limit for inter partes review was not judicially reviewable. This issue independently merits review by this Court.

Section 314(a)'s grant of discretion does not answer whether the Director acted within the statute. Nor does 5 U.S.C. § 701(a)(2), which excludes review only "to the extent" action is committed to agency discretion. Agencies possess only the authority Congress has conferred. *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 117 (2022) (per curiam).

Even where Congress delegates broad discretion, courts retain responsibility to identify statutory boundaries for the exercise of that discretion. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395, 404 (2024). And the committed-to-discretion exception is read narrowly when statutory text provides the answer. *See Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018); *Heckler v. Chaney*, 470 U.S. 821, 832–833 (1985).

Thus, this Court held that, although an agency's ultimate decision was discretionary, a court nevertheless could review whether the agency complied with the statutory limits governing the decision. *Weyerhaeuser*, 586 U.S. at 23. *Heckler*'s presumption against review of nonenforcement decisions rests on the absence of judicially manageable standards; it does not authorize an agency to disregard standards Congress supplied. *Heckler*, 470 U.S. at 832–833. Here, Sections 311(c), 315(b), and 321(c), read together, provide the framework for when inter partes review may be denied on timeliness grounds.

Section 314(d)'s finality command can be given full effect without rendering federal courts powerless to confine the PTO to lawful exercise of its statutory authority. Section 314(d) forecloses review of the PTO's case-specific weighing of the relevant factors and the agency's ultimate institution decision. But the provision does not authorize the PTO to define the limits of its own power. If the factor the PTO has considered lies outside the statutory framework, the agency has invoked power Congress did not confer and a court can correct that arrogation of authority.

Kahoot!'s petition does not ask courts to reweigh lawful institution considerations; rather, it asks whether the PTO may rely on an age-based limit that the AIA does not provide and that contravenes the statutory framework. This statutory reading preserves both the PTO's discretion and the judiciary's traditional role in identifying statutory limits for agency actions.

This reading of the AIA's grant of discretionary denial authority also comports with this Court's precedents. In *Cuozzo*, this Court held that Section 314(d) bars review of challenges closely tied to the PTO's application and interpretation of statutes governing institution. But the Court declined to "categorically preclude review" in a manner that would "enable the agency to act outside its statutory limits." *Id.* at 275. And in *SAS*, this Court held that the PTO may not "improvise" powers Congress did not grant, even for reasons of administrative efficiency. 584 U.S. at 368–372. While *Cuozzo* and *SAS* reaffirm that the PTO's application of lawful institution rules is unreviewable under Section 314(d), they make clear that this provision does not withhold from judicial review the antecedent question of whether the PTO's exercise of its discretion relied on statutorily permissible factors.

Thryv, Inc. v. Click-to-Call Techs., LP, 590 U.S. 45, 52–55 (2020), similarly does not foreclose review of the PTO's "settled expectations" rule. The challenge in *Thryv* concerned the application of a criterion Congress expressly enacted—the one-year time bar of Section 315(b). By contrast, here the PTO decided to use a patent's age as a cutoff—a limitation found nowhere in the statutory framework—as a ground for denying institution. Thus, *Thryv* simply reaffirms the distinction recognized in *Cuozzo* and *SAS* between the PTO applying statutorily authorized criteria (which is unreviewable) and the agency acting outside statutory bounds.

This Court should grant review and correct the Federal Circuit's erroneously broad reading of Section 314(d)'s bar on judicial review. Reaffirming courts' authority to identify the permissible bounds of the PTO's statutory authority would not invite review of ordinary institution judgments; rather, it would preserve the distinction between legitimate discretion conferred by Congress and an agency's unilateral assertion of extra-statutory authority.

III. The Court Should Either Consider this Petition Alongside that in *Google* or Hold this Petition for *Google*.

This petition presents the same statutory authority and reviewability questions as the petition currently pending before the Court in *Google LLC v. VirtaMove Corp.*, No. 25-1230. The facts of this case, however, further illustrate the breadth and the categorical nature of the PTO's "settled expectations" rule.

Google involves patents that had been in force for more than fourteen years. *In re Google LLC*, 2026 WL 204945, at *1. Here, the ’825 patent issued on July 2, 2019, and Kahoot! filed its inter partes review petition on March 7, 2025—before the patent’s sixth anniversary. C.A. App. 1. Yet the PTO nevertheless denied institution on July 31, 2025—only days after the patent’s sixth anniversary—and ignoring the fact that the patent had been in issuance less than six years at the time the inter partes review petition was filed. Pet. App. 5a. The PTO expressly relied on “the challenged patent ha[ving] been in force for over six years” in concluding that such age “create[ed] strong settled expectations.” Pet. App. 6a. Thus, the decision below demonstrates that “the PTO now holds that expectations become ‘settled’ six years after a patent’s issuance.” Pet. for Certiorari, *Google*, No. 25-1230, at 10 (quoting *Kahoot! AS v. Interstellar Inc.*, 2025 WL 2176613, at *1 (U.S.P.T.O. July 31, 2025)).

The question is squarely presented. The PTO’s decision denying institution expressly identified patent age as creating “strong settled expectations” and stated that those expectations “tip[ped] the balance” in favor of denying institution. Pet. App. 6a. And the PTO identified no other factors weighing in favor of denying institution.

Kahoot!’s petition also squarely presents the question of whether judicial review of the PTO’s “settled expectations” rule is available notwithstanding Section 314(a)’s grant of discretion to the PTO and Section 314(d)’s bar on appellate review of institution decisions. Kahoot! raised its statutory challenge to the PTO’s policy before the Federal Circuit, and the Federal Circuit expressly rejected it, relying on prior circuit precedent. Pet. App. 2a.

Alternatively, if the Court grants certiorari review in *Google* and prefers to address either (or both) of these questions in that case, it should hold this petition pending the resolution of these issues in *Google* and then dispose of the petition as appropriate.

CONCLUSION

The petition for a writ of certiorari should be granted. Alternatively, the petition should be held pending this Court's disposition of *Google LLC v. VirtaMove Corp.*, No. 25-1230, and then disposed of as appropriate.

Respectfully submitted,

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APPENDIX A

NOTE: This order is nonprecedential.

United States Court of Appeals for theFederal Circuit

In Re KAHOOT! AS,
Petitioner

2026-119

On Petition for Writ of Mandamus to the United States Patent and Trademark Office in No. IPR2025-00696.

ON PETITION ANDMOTION

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

PER CURIAM.

ORDER

The Director of the United States Patent and Trade- mark Office denied Kahoot! AS's petition for *inter partes* review ("IPR") of Interstellar Inc.'s patent. In particular, the Director reasoned that the "patent has been in force for over six years, creating strong settled expectations," and Kahoot! had failed to show IPR would be "an appropriate use of [Patent Trial and

Appeal] Board resources under these circumstances." Appx287. Kahoot! now petitions for a writ of mandamus directing the PTO to vacate and reconsider without relying on "settled expectations." Amici move for leave to file briefs in support, and the Director and Interstellar oppose the petition.

The standard for mandamus relief is demanding. Kahoot! must show, among other things, that it has a clear and indisputable right to the relief it seeks. *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004). We cannot say Kahoot! has made that showing here.

Given Congress committed institution decisions to the Director's discretion, even when the statutory preconditions 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 colorable constitutional claims (which are not raised here), 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).

Kahoot! argues that reliance on purported "settled expectations" exceeds the Director's statutory authority. But, on that challenge, its entitlement to relief is anything but clear, as our cases have held these kinds of "*ultra vires* argument[s] cannot be a basis for granting the petition for mandamus." *Id.* at 1382–83; *see also In re Motorola Sols., Inc.*, 159 F.4th 30, 38 (Fed. Cir. 2025); *Apple Inc. v. Vidal*, 63 F.4th 1, 12 (Fed. Cir. 2023) (noting § 314(d)'s bar on review applies to challenges that "focus directly and expressly on institution standards"). Given our limits on review and the demanding standard for relief, we deny the petition.

Accordingly,

IT IS ORDERED THAT:

(1) The amici motions are granted.

(2) The petition is denied.

FOR THE COURT

Jarrett B. Perlow
Clerk of Court

February 25, 2026
Date

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

KAHOOT! AS,
Petitioner,

v.

INTERSTELLAR INC.,
Patent Owner.

IPR2025-00696
Patent 10,339,825 B2

Paper 15

November 5, 2025

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office*.

ORDER

The Office received a request for Director Review of the Decision denying institution in the above-captioned case and an authorized response to the request. *See* Papers 13, 14.

Having reviewed the request and response, it is:
ORDERED that the request for Director Review is denied.

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

KAHOOT! AS,
Petitioner,

v.

INTERSTELLAR INC.,
Patent Owner.

IPR2025-00696
Patent 10,339,825 B2

Paper 12

July 31, 2025

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

DECISION

Denying Institution of *Inter Partes* Review

Interstellar Inc. ("Patent Owner") filed a request for discretionary denial (Paper 7, "DD Req.") in the above-captioned case, and Kahoot! AS ("Petitioner") filed an opposition (Paper 9, "DD Opp.").

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

Some factors counsel against discretionary denial. For example, the parallel district court proceeding involving Petitioner and Patent Owner has been stayed. DD Opp. 3.

Other factors favor discretionary denial. In particular, the challenged patent has been in force for over six years, creating strong settled expectations, and Petitioner does not provide persuasive reasoning why an *inter partes* review is an appropriate use of Board resources under these circumstances. *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025- 00408, Paper 21 at 2–3 (Director June 18, 2025). Petitioner's argument that Patent Owner does not have settled expectations because Patent Owner did not previously assert the challenged patent against Petitioner does not defeat Patent Owner's settled expectations. DD Opp. 5–8. Accordingly, in the absence of sufficient explanation, Patent Owner's strong settled expectations tip the balance in favor of discretionary denial.

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 Petition is 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 Petition is *denied*, and no trial is instituted.

APPENDIX D

MEMORANDUM

To: All PTAB Judges

From: Coke Morgan Stewart [/s]
Acting Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

Subject: Interim Processes for PTAB Workload Management

Date: March 26, 2025

The Patent Trial and Appeal Board (PTAB) is tasked with several statutory duties under 35 U.S.C.§ 6(b), including deciding *ex parte* appeals from ad- verse examiner decisions by patent applicants and conducting America Invents Act (AIA) trial proceed- ings, such as *inter partes* reviews (IPRs) and post- grant reviews (PGRs). To ensure that the PTAB con- tinues to meet its statutory obligations as to *ex parte* appeals, while continuing to maintain its capacity to conduct AIA proceedings, the Director will exercise her discretion on institution of AIA proceedings under 35 U.S.C. §§ 314(a) and 324(a) as outlined below.

First, decisions on whether to institute an IPR or PGR will be bifurcated between (i) discretionary con- siderations and (ii) merits and other non-discretionary statutory considerations. Under this interim proce- dure, the Director, in consultation with at least three PTAB judges, will determine whether discretionary denial of institution is appropriate. If it is appropriate, the Director will issue a decision denying institution. If it is not appropriate, the Director will issue a decision regarding that determination and refer the petition to a three-member panel of the PTAB assigned according to Standard Operating Procedure (SOP) 1 (Rev. 16). The three-member panel will then handle the case in the normal course including by issuing a decision on institution addressing the merits and other non-discretionary statutory considerations.

Second, to facilitate this bifurcated approach, the USPTO will permit parties to file separate briefing on requests for discretionary denial of institution. The discretionary denial briefing shall proceed as follows:

(1) within two months of the date on which the PTAB enters a Notice of Filing Date Accorded to a petition, a patent owner may file a brief explaining any applicable bases for discretionary denial of institution; and (2) a petitioner may file an opposition brief no later than one month after the patent owner files its brief. Leave to file further briefing may be permitted for good cause. Consistent with 37 C.F.R. § 42.24, discretionary denial briefing will be limited to 14,000 words. A reply brief, if any, will be limited to 5,600 words. The merits brief- ing schedule and the schedule for requesting rehearing or Director Review as to a decision on institution re- main unchanged.

Third, consistent with the discretionary considerations enumerated in existing Board precedent (including *Fintiv, General Plastic,* and *Advanced Bionics* [*]) and the Consolidated Trial Practice Guide (Nov. 2019), the parties are permitted to address all relevant considerations, which may include:

[*] *Apple Inc. v. Fintiv, Inc.,* IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential); *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha,* IPR2016-01357, Paper 19 (Sept. 6, 2027) (precedential as to § II.B.4.i); *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH,* IPR2019-01469, Paper 6 (Feb. 13, 2020) (precedential).

- Whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims;
- Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability;
- The strength of the unpatentability challenge;
- The extent of the petition's reliance on expert testimony;
- Settled expectations of the parties, such as the length of time the claims have been in force;
- Compelling economic, public health, or national security interests; and
- Any other considerations bearing on the Director's discretion.

The Director will also consider the ability of the PTAB to comply with pendency goals for *ex parte* appeals, its statutory deadlines for AIA proceedings, and other workload needs. *See* 35 U.S.C. § 316(b).

These processes aim to improve PTAB efficiency, maintain PTAB capacity to conduct AIA proceedings, reduce pendency in *ex parte* appeals, and promote consistent application of discretionary considerations in the institution of AIA proceedings. The processes described herein will be implemented in IPR and PGR proceedings where the deadline for the patent owner to file a preliminary response has not yet passed. In that situation, if the time for filing discretionary denial briefing as described herein has already elapsed, the patent owner may submit discretionary denial briefing within one month of the date of this memorandum.

The processes described herein are temporary in nature due, in part, to the current workload needs of the PTAB.

APPENDIX E

MEMORANDUM

To: All PTAB Judges

From: John A. Squires [/s]
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office

Subject: Director Institution of AIA Trial
Proceedings

Date: October 17, 2025

To improve efficiency, consistency, and adherence to the statutory requirements for institution of trial, effective October 20, 2025, the Director will determine whether to institute trial for *inter partes* review ("IPR") and post-grant review ("PGR") proceedings. [1] This process will maintain PTAB's capacity to conduct IPR and PGR trials and promote consistent application of considerations for institution of trial proceedings before the PTAB. This approach to institution

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[1] Congress provided that the Director determines whether to institute trials under the America Invents Act. *See* 35 U.S.C. § 314(a) ("The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."); *id.* § 314(b) ("The Director shall determine whether to institute an inter partes review under this chapter pursuant to a petition "); *id.* § 314(c) ("The Director shall notify the petitioner and patent owner, in writing, of the Director's determination under subsection (a), and shall make such notice available to the public as soon as is practicable."); *see also id.* § 324(a), (c), (d) (similar)

flows from the processes outlined in the March 26, 2025 memorandum entitled "Interim Processes for PTAB Workload Management" ("Interim Processes"),[2] under which the Director determines whether or not to deny a petition based on discretionary considera- tions.

Similar to the discretionary considerations process, the Director, in consultation with at least three PTAB judges, will determine whether to institute trials in all IPR and PGR proceedings. Upon review of discretionary considerations, the merits, and non-discretionary considerations, if the Director determines that institution is appropriate on at least one ground for one challenged claim, the Director will issue a summary notice to the parties granting institution. *See* 35 U.S.C.

§§ 314(c), 324(d). Similarly, if the Director determines that institution is not appropriate, whether based on discretionary considerations, the merits, or other non-discretionary considerations, the Director will issue a summary notice denying institution. In proceedings involving novel or important factual or legal issues, the Director may issue a decision on institution addressing those issues. Additionally, where the Director determines detailed treatment of issues raised in a petition is appropriate (e.g., complex claim construction issues, priority analysis, or real party in interest determination), the Director may refer the decision on institution to one or more members of the PTAB. The Office has issued more than 580 decisions under the Interim Processes, providing substantial guidance on how the Director will handle discretionary considerations. Any instituted IPR or PGR proceeding will be referred to a three-member panel of the PTAB to

[2] Available at https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf.

conduct the trial and that panel will be assigned according to PTAB Standard Operating Procedure (SOP) 1 (Rev. 16).[3]

This Memorandum supersedes the Interim Processes to the extent that (1) routine decisions on institution will be limited to summary notices, and (2) merit-based decisions on whether to institute petitions will not be referred to a three-member panel of the PTAB. The process for briefing discretionary considerations, as outlined in the Interim Processes and the Discretionary Decisions webpage,[4] and the process for briefing the merits and non-statutory considerations will remain the same. Further, all petitions referred to the PTAB for consideration of the merits and non-discretionary considerations under the Interim Processes prior to October 20, 2025 will remain with a three-member panel.

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[3] Available at https://www.uspto.gov/sites/default/files/documents/sop1_r16_final.pdf.

[4] Available at https://www.uspto.gov/patents/ptab/interim-director-discretionary-process.

APPENDIX F

Statutory Provision

35 U.S.C. 311: Institution of inter partes review

(a) **In General.**—Subject to the provisions of this chapter, a person who is not the owner of a patent may file with the Office a petition to institute an inter partes review of the patent. The Director shall establish, by regulation, fees to be paid by the person requesting the review, in such amounts as the Director determines to be reasonable, considering the aggregate costs of the review.

(b) **Scope.—**A petitioner in an inter partes review may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications.

(c) **Filing Deadline.—**A petition for inter partes review shall be filed after the later of either—

> (1) the date that is 9 months after the grant of a patent; or
>
> (2) if a post-grant review is instituted under chapter 32, the date of the termination of such post-grant review.

APPENDIX G

Statutory Provision

35 U.S.C. 314: Institution of inter partes review

(a) **Threshold.**—The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

(b) **Timing.**—The Director shall determine whether to institute an inter partes review under this chapter pursuant to a petition filed under section 311 within 3 months after—

> (1) receiving a preliminary response to the petition under section 313; or
>
> (2) if no such preliminary response is filed, the last date on which such response may be filed.

(c) **Notice.**—The Director shall notify the petitioner and patent owner, in writing, of the Director's determination under subsection (a), and shall make such notice available to the public as soon as is practicable. Such notice shall include the date on which the review shall commence.

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