

No. 24-518

IN THE
Supreme Court of the United States

PARKERVISION, INC.,

Petitioner,

v.

TCL INDUSTRIES HOLDINGS CO., LTD., *et al.*,

Respondents.

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

**AMICUS BRIEF OF ALLIANCE OF U.S.
STARTUPS AND INVENTORS FOR JOBS
("USIJ") IN SUPPORT OF PETITIONER**

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STATEMENT OF INTEREST

USIJ is a coalition of more than 20 startup companies and their affiliated executives, inventors and investors, all of whom depend on stable and reliable patent protection as an essential foundation for their businesses. A list of USIJ members and its advisory board can be seen on its website, www.usij.org.¹ USIJ was formed in 2012 to address concerns that legislation, policies and practices adopted by the U.S. Congress, the federal judiciary and certain federal agencies were and are placing individual inventors and research-intensive startups at an unsustainable disadvantage relative to their larger incumbent rivals, both domestic and foreign, and others that would misappropriate their inventions. Independent inventors, entrepreneurs and smaller companies are responsible for a disproportionately large number of breakthrough innovations.

USIJ's fundamental mission is to assist and educate members of Congress, the federal judiciary and leaders in the Executive branch regarding the critical role that patents and copyrights play in our nation's economic system and the particular importance of startups and small companies to our country's dominance of strategically critical technologies for more than a century.

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than this *amicus curiae* made a monetary contribution to its preparation or submission. All parties were given notice of USIJ's intent to file this brief.

SUMMARY OF ARGUMENT

The Alliance of U.S. Startups and Inventors for Jobs (“USIJ”) submits this brief, as *Amicus Curiae*, in support of Petitioner’s request asking this Court to prohibit the Federal Circuit from continuing to flout its statutory mandate through the frequent and notorious use of one-word rulings on important questions. We join with Petitioner in challenging that court’s practice of summarily affirming rulings of an administrative agency, the Patent Trial & Appeals Board (“PTAB”), citing the court’s overused Rule 36.

It should be readily apparent to almost anyone steeped in Anglo-American legal traditions that a property owner is entitled to know why his or her property right is to be effectively confiscated by a federal agency. Due process demands as much. Common sense and fundamental concepts of justice and equity require an explanation. Most importantly, 35 U.S.C. § 144 expressly compels such an explanation.

This is an issue that only this Court can repair. Despite numerous objections from litigants and others over a period of years, the Federal Circuit has persisted in its excessive use of Rule 36 for nearly a decade.² In

2. *See, e.g.*, “No End in Sight for Rule 36 Racket at Federal Circuit,” (“As of January 28 [2019], the Federal Circuit has issued 44 decisions in 2019. Of those 44 decisions, 24 have been Rule 36 judgments, which are simply one-word judgments stating: “Affirmed.” The article notes that most of the decisions are issued within a few days of the oral argument, suggesting that little or no actual consideration is being given to such rulings. <https://ipwatchdog.com/2019/01/29/no-end-sight-rule-36-racket-cafc/id=105696>. Even if that is not the case, the perception it creates undermines confidence in its legality.

Dickerson v. United States, 530 U.S. 428 (2000), this Court stated unequivocally that it has the authority under the U.S. Constitution to supervise and manage the procedures and rules of the remainder of the federal judiciary:

“This Court has supervisory authority over the federal courts, and we may use that authority to prescribe rules of evidence and procedure that are binding in those tribunals.” *Id.* at 437.

That supervisory authority carries with it the corollary responsibility to ensure that each of the lower courts conducts its affairs in a manner consistent with its statutory mandate. More specifically, since Congress has required the Federal Circuit to provide the parties with an “opinion” when it affirms a ruling from the PTAB, USIJ believes this Court has the obligation to enforce that requirement.

This issue is particularly important to USIJ and its community of startups, small companies, entrepreneurs, individual inventors and their investors, because these are the patent owners that most often become the targets of Inter Partes Review (“IPR”) and are the most troubled by the judicial “back of the hand” that Rule 36 reflects. For many in this community, patents are crucial to their ability to attract capital investment and to protect their inventions from being copied by larger companies once a new invention or technological breakthrough is proven to be feasible. Large companies with their established manufacturing and marketing infrastructures enjoy an enormous advantage over smaller ones, making it futile to try and develop new technologies that require long development cycles without reliable patents. Given

the high probability that valuable U.S. patents will be nullified by the PTAB,³ it is not surprising that fewer and fewer entrepreneurs and investors are willing to commit time and capital to the discovery and development of new technologies that are reliant on such patents.⁴ The Federal Circuit’s refusals to describe, for the benefit of the parties, what goes on inside their Rule 36 black box simply worsen that trend.

There can be little question that the Federal Circuit’s frequent use of Rule 36 in lieu of providing an “opinion” is *ultra vires*. 35 U.S.C. § 144 expressly and unambiguously requires that, in reviewing decisions of the USPTO, that court provide an “opinion.” We respectfully submit that where the patent owner has lost an IPR challenge and suffered the “cancellation” of its property right, the

3. See fn. 16, *infra*. From the outset, the “kill rate” has been well over 50% and most times, including the present, it exceeds 70%.

4. In 2020, USIJ commissioned a study of the impact of diminished investor and entrepreneur confidence in the enforceability of their patents. The study shows that the significant decline in the enforceability of issued U.S. patents over the period 2004 to 2017 was accompanied by a corresponding shift in the nature of venture capital investing away from strategically important industry segments, such as semiconductors and biopharmaceuticals, and toward consumer products, social media, and software that do not depend on patents to justify investments. See, “The Importance of an Effective and Reliable Patent System to Investment in Critical Technologies,” by Mark F. Schultz, Goodyear Tire & Rubber Company Endowed Chair in Intellectual Property Law and Director, Intellectual Property and Technology Law Program at the University of Akron. <https://usij.org/usij-releases-report-on-the-importance-of-an-effective-and-reliable-patent-system-to-critical-technologies>.

Federal Circuit should be required, at the very least, 1) to demonstrate that the panel has at least considered the appellant's briefs, and 2) to provide an analysis of why the appellant's arguments did not prevail. This is developed more fully in Section I, below.

An opinion setting forth the basis for rejecting an appeal from a Final Written Decision of PTAB is particularly important in situations—such as the instant case—where PTAB decisions are based on the combination of multiple prior art references to conclude that a claimed invention is obvious under 35 U.S.C. §103. In reality, this is the ultimate conclusion reached in many if not most IPR decisions in which a patent is held invalid. The statutory provision creating IPRs, however, strictly limits the types of evidence the PTAB may consider in that situation, a limitation that the PTAB often ignores.

35 U.S.C. § 311(a) provides expressly that cancellation of a patent in an IPR may occur **only** where it can be based **solely** on prior art found in printed publications.⁵ Contrary to that limitation, the PTAB frequently reaches outside the written record to engage in a hindsight reconstruction of a challenged invention by allowing experts retained and paid by the challenger to assemble information found in multiple prior art references and to buttress them with testimony and the personal experience of persons skilled

5. “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.**” 35 U.S.C. § 311 (emphasis supplied).

in the relevant art to arrive at the claimed invention.⁶ Such an all-inclusive approach for the evidence on which an IPR could be conducted was rejected by Congress when it defined the contents of these proceedings. By contrast with IPRs, the Post Grant Review (“PGR”) procedure, which must be commenced within 9 months of issuance of a patent, allows a PGR petition to challenge validity of a patent claim on virtually any ground that could be raised in a district court.⁷ As developed more fully in Section II below, that distinction was intended to mean exactly what it says. By expressly limiting IPRs to what is discernible only in written publications, Congress wanted to limit the situations in which an IPR could be employed

6. A 2019 USIJ White Paper entitled: “Overreaching for Obviousness in IPRs: Enforcing the ‘Patents or Printed Publication’ Requirement” identifies a number of situations wherein a PTAB panel ignored this limitation and allowed expert testimony to fill in evidence that could not be found in one of the printed publications. <https://usij.org/overreaching-for-obviousness-in-iprs-enforcing-the-patents-or-printed-publication-requirement>.

The contrast with the initial examination of an application, prior to issuance, is relevant as well. Under Sections 2141 and 2143 of the USPTO’s Manual for Patent Examining Procedures (“MPEP”), an examiner is allowed to reach beyond the written publications to reject a claim as obvious. While that practice may be permitted in an initial examination of an application, prior to issuance, it is not allowed in an IPR challenge to an issued patent, but the practice nevertheless is used frequently. *Id.* at pp. 1, 6.

7. See 35 USC §321 (“A petitioner in a post-grant review may request to cancel as unpatentable 1 or more claims of a patent on any ground that could be raised under paragraph (2) or (3) of section 282(b) (relating to invalidity of the patent or any claim).” Section 282(b)(2) and (b)(3) allow a petitioner in a PGR to challenge validity on any ground that could be raised in district court.

to challenge patent validity, a limitation that a Rule 36 one-word affirmance renders entirely obscure.

It is particularly important to USIJ’s constituents—inventors, entrepreneurs and their investors whose businesses depend upon reliable and enforceable patents—that the use of Rule 36 be curtailed in affirming IPRs. Blind affirmations of invalidity decisions by the PTAB merely confirm what is already viewed as an oppressive procedure by many if not most patent owners. The vast majority of IPR proceedings are brought by large companies challenging the patents of smaller ones.⁸ And, as noted *supra*, the percentage of issued patents that are invalidated in this process is staggering. Before a small company can contemplate bringing an enforcement action (or even writing a cease-and-desist letter to a large infringer), it must consider the cost of having to defend—at the very least—petitions filed challenging the asserted patent(s) and often some or all of its nonasserted patents similarly challenged for no purpose other than to raise the stakes for the patent owner.

Soon after the PTAB was created, it became apparent that the process is **heavily** biased in favor of petitioner challenging issued patents. For the challenger, petitioning the USPTO to initiate an IPR is virtually risk-free, whereas for the patent owner, it is enormously risky or even existential. The cost to the patent owner adds to an

8. *See, e.g.*, “Apple, Samsung and Google the Most Frequent Filers of IPR Petitions,” <https://www.iam-media.com/article/apple-samsung-and-google-the-most-frequent-filers-of-ipr-petitions-new-research-shows>. *Accord*, “Serial IPRS: USIJ Rebuttal to IP Law360 Article,” <https://usij.org/serial-iprs-usij-rebuttal-to-ip-law360-article>.

already prohibitive cost of seeking to enforce its patent rights. The cost problem is exacerbated by the intentional filing of multiple challenges against the same patent, either by an accused infringer or its collaborator(s).⁹ The internal USPTO procedures regarding the selection of particular Administrative Patent Judges (“APJs”) for particular panels, the use of the same APJs to institute cases to also decide them, the extremely high rate at which patents are held invalid, the practice of invalidating patents even after an Article III court has affirmed their validity in litigation between the same parties—all of these factors combine to make the PTAB resemble a Star Chamber for property rights. Numerous aspects of the IPR process have proven to be enormously unfair to patent owners. Compounding that, the USPTO process itself is far from transparent as is the Federal Circuit’s black box approach to the use of Rule 36. These points are developed further in Section III.

Notably, Petitioner should be commended for the substantial effort and resources it has expended in seeking certiorari in this case. Petitioner is not asking this Court for a ruling on the merits reversing what the Federal Circuit has concluded—only that it be allowed to know why its highly persuasive arguments on the merits were rejected by the appellate court. Petitioner does call

9. A USIJ White Paper entitled “How ‘One Bite at the Apple’ Became Serial Attacks on High Quality Patents at the PTAB” lays out, *inter alia*, key portions of the legislative history of the AIA showing that Congress tried to limit the IPR process from being used to bully small and highly creative startups. <https://usij.org/2018-serial-attacks>. The paper also describes in some detail the manner in which large technology companies file multiple IPR petitions against the same patent.

attention to the possibility that, in the process of writing of an opinion, the appellate court may arrive at a different outcome, but Petitioner has no assurance that such will occur. (Pet. p.21). Notwithstanding that Petitioner itself may not benefit from this Court's cabining of Rule 36, dozens of future inventors and entrepreneurs, along with all future parties before the Federal Circuit, will be the beneficiaries of severe curtailment of the excessive use of summary affirmances.

USIJ is not suggesting that summary affirmances could never be appropriate. Clearly, they sometimes might be so in an appropriate case, but not appeals from the USPTO. Certainly when settled property rights have been abolished by the USPTO, the losing party is entitled to know the reason. Section 144 of the Patent Act is unequivocal on that point.

ARGUMENT

I. The Federal Circuit is Required by Statute to Provide the Parties with an Opinion When it Reviews a Matter Decided by the PTAB.

The brief submitted by Petitioner develops the legislative history of 35 U.S.C. § 144, pointing out the recognition by Congress that in reviewing decisions of the U.S Patent & Trademark Office ("USPTO"), the Federal Circuit is required to provide an "opinion" in addition to a simple statement of its conclusion in the form of a "mandate." To ensure that end, Congress amended Section 144 in 1984, two years after the Federal Circuit was created, to compel that court to provide an "opinion" to accompany its rulings in the same manner as had been

required of the Court of Customs and Patent Appeals, which was subsequently merged with the appellate division of the Court of Claim to form the Federal Circuit.¹⁰ Prior to this amendment, the statute required only that, in reviewing actions of the USPTO, the Federal Circuit “return to the Commissioner a certificate of its proceedings and decision.”¹¹

Surely Congress did not intend, when it created the IPR procedures, that an issued patent with its statutory presumption of validity (Section 282) could be “cancelled” by government bureaucrats with no more than a simple one-word review by the only Article III court ever likely to consider the correctness of such cancellation. Indeed, the contrast between an IPR proceeding, in which an issued patent—a settled property right—can be cancelled by the USPTO, and a refusal by the same agency to issue a patent following initial examination by a patent examiner, is telling. Section 145 of the Patent Act gives the inventor the right to file a complaint in an Article III district court for an order compelling issuance. No such access to an Article III court exists in appeals from the PTAB, except pursuant to Sections 144 and 141. And where the only ruling the patent owner receives from the Federal Circuit is a one-word rubber stamp of the agency’s decision, the subversion of due process becomes readily apparent.

10. See, “Landmark Legislation: Federal Circuit,” published by Federal Judicial Center, <https://www.fjc.gov/history/legislation/landmark-legislation-federal-circuit>, which included the designation of the former Article I judges of the CCPA to become the initial judges of the Federal Circuit and thereby vested with full Article III powers.

11. Notes accompanying the enactment of Pub. L. 98–620. USCODE-2023-title35-partII-chap13-sec144.pdf (1984).

This Court in *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), emphasized the importance of insuring that, in matters of consequence to the parties, an administrative agency was not to be the final authority, and an Article III court may not merely defer blindly to the legal interpretation provided by the executive branch. 144 S.Ct. at 2273 (“courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority”). Although *Loper* is not directly implicated in this case, its foundational principle is very much at issue here. Rubber stamping the USPTO ruling, as Rule 36 does, is utterly at odds with the responsibility of the Federal Circuit, as an Article III court, to provide independent judicial judgment to the decisions of the USPTO that purport to cancel property rights. And, if that were not apparent as a matter of the Administrative Procedures Act, the point is buttressed by 35 U.S.C. §144, which expressly requires it.

II. An Opinion Is Essential Where an IPR Ends in a Finding That Claims Are Obvious.

The methodology currently used by courts for determining what is “obvious” under Section 103 was established in this Court’s decision in *KSR International v. Teleflex, Inc.*, 127 S.Ct. 1727 (2007), expanding the Federal Circuit’s T-S-M test, which sought to limit the natural inclination of courts and others to engage in the hindsight reconstruction of a claimed invention from disparate prior art references by requiring some “teaching, suggestion, or motivation” apparent on the face of the selected references before combining them to find an invention obvious. In ruling that the T-S-M test is overly restrictive of what is sufficient under Section 103, this Court’s *KSR* opinion allows many facts and factors,

other than what is expressly stated in written prior art references:

“Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. . . . As our precedents make clear . . . the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 418.

While the foregoing expansive approach to an invalidity determination may be adequate in a district court, or even in a PGR, it is clearly not allowed in an IPR. Careful attention to the wording of Section 311(b) is important here:

“A petitioner in an inter partes review may request to cancel . . . 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.**” (emphasis supplied).

If Congress had intended to allow the full panoply of evidence that this Court had authorized four years

earlier in *KSR*, Congress would never have included the final phrase emphasized above. Stated differently, that statutory phrase differentiates validity challenges in an IPR context from similar challenges in district court and other proceedings.

The legislative history of the Leahy-Smith America Invents Act (Public Law 112–29; Sept. 16, 2011) demonstrates that this restriction on the scope of IPRs reflects congressional recognition that IPRs created the potential for larger companies to harass much smaller companies and individual inventors. For PGR proceedings provided for in 35 U.S.C. § 321 *et seq.*, review can be based on any evidence that would be admissible in district court, whereas IPRs are to be based only on “patents or printed publications.”

This distinction is reinforced throughout the legislative history of the AIA. Early drafts of the Act provided for two separate post-grant challenges, often phrased as a “first window” and a “second window” proceeding. Senate Report 110-259, “The Patent Reform Act of 2007,” 110th Congress, to accompany S. 1145. The “first window” proceeding (now enacted as PGR proceedings set forth in Section 321 *et seq.*) allows a challenge to validity on any ground that could be raised in litigation. The temporal window for this “all in” proceeding closes nine months after patent issuance, and thus requires challengers to come forth and make known their objections to the issued patent in a timely fashion. Thereafter, Congress envisioned only a more limited form of relief that would be available in the form of a “second window” having a carefully restricted scope. These “second window” proceedings matured

over the course of legislative proceedings into the IPR procedures.¹²

Unfortunately, for patent holders such as the Petitioner in this proceeding, the PTAB often ignores this limitation and uses additional sources of information to conclude that a patent is invalid. As noted in the USIJ White Paper (see fn.6, *supra*), the 2018 Trial Practice Guide (“TPG”) of the U.S. Patent & Trademark Office (“PTO”) attempted to limit this use of retained experts to establish invalidity well beyond what was intended by the statute. The TPG admonishes against excessive use of experts in IPRs to try to fill gaps in the prior art’s disclosures:

“Furthermore, because an inter partes review may only be requested “on the basis of prior art consisting of patents or printed publications, 35 U.S.C. 311(b), expert testimony may explain

12. Senate Report 110-259, at p. 66, states:

“A few words about second window [later called Inter Partes Review]: opening up a second window for administrative challenges to a patent only makes sense if defending a patent in such proceedings is not unduly expensive, and if such proceedings substitute for a phase of district-court litigation. If second-window proceedings are expensive to participate in, a large manufacturer might abuse this system by forcing small holders of important patents into such proceedings and waiting until they run out of money. Defending oneself in these proceedings requires retention of patent lawyers who often charge \$600 an hour, quickly exceeding the means of a brilliant inventor operating out of his garage—or even of a university or small research firm.”

“patents and printed publications,” but is not a substitute for disclosure in a prior art reference itself.”

2018 TPG at 5. Unfortunately, this succinct prescription for limiting the use of expert opinions in instituting IPRs has not taken hold in the ranks of the APJs responsible for implementing Section 311.

The instant case presents a perfect example of the PTAB wandering beyond the statutory limits of its authority. It is apparent from ParkerVision’s Petition that a key element of the claimed invention was a component for sampling and storing energy levels in a wireless communication system, as opposed to sampling voltage that could be found in the prior art. With no supporting evidence from written publications, and based only on arguments made by the challenger, the PTAB decided that Petitioner’s patents were invalid. Given the inherent lack of transparency arising from the use of Rule 36, it is not unreasonable to assume that if the Federal Circuit had given any thought to this decision, they would have overruled the PTAB.

The USIJ White Paper documents a number of instances in which the PTAB failed to observe the limitation in Section 311(a).¹³ Rule 36 affirmances allow the court of appeals to avoid a fuller discussion of this limitation, to the detriment of patent owners and indeed the entire incentive structure intended by having a patent system at all.

13. <https://usij.org/overreaching-for-obviousness-in-iprs-enforcing-the-patents-or-printed-publication-requirement>.

III. The Adverse Impact of the PTAB on Innovation in Critical Technologies Is Rendering U.S. Patents Increasingly Irrelevant.

The PTAB procedure was added to the AIA at the urging of a handful of large technology companies and a few others that benefit from weakening the U.S. patent system. Although originally sold to Congress as a way of reducing the time and expense of addressing the validity of what were termed “bad patents,” the IPR procedures were never intended by Congress to become a reflexive response by accused infringers in enforcement actions or even proposals to license. More than 80% of IPR filings are accompanied by a co-pending enforcement action. Nor did Congress foresee that IPR challenges would be severely abused by large technology companies. Unfortunately, however, that is precisely what the practice has wrought.

In an article written in 2017 entitled “A Look Back at the Legislative Origin of IPRs,” Phillip Johnson, former Senior Vice President—Intellectual Property and Strategy for Johnson & Johnson, Inc., discusses in detail the implementation of the IPR process, comparing it to what Congress actually intended.

“The truth is that Congress, the top leadership of the U.S. Patent and Trademark Office (USPTO) and most involved stakeholders at the time envisioned IPR’s quite differently, and undoubtedly would not have authorized them if they knew then what we know today. There are in fact so many differences between these originally-envisioned proceedings and the regime we have today that this article cannot

begin to describe them all. Instead, it will focus on the understandings of involved stakeholders that led to the passage of the America Invents Act (AIA), if for no other reason than to provide a reminder of the vision of what might have been.”

<https://ipwatchdog.com/2017/09/20/look-back-legislative-origin-iprs/id=88075>

A more recent article by Stephen Schriener recaps to history of outcomes at the PTAB over its full history.¹⁴ He points out that the invalidation rate always has been staggeringly high. In 2015, 72% of cases where the USPTO instituted an IPR ended in invalidity rulings. That figure would decline to 55% by 2019, but with the arrival of a new Director during the Biden Administration, began to increase again. For the first two quarters of 2024, 71% of the patents ruled upon had some or all claims invalidate. In 2023, all claims in 68% of the patents reviewed in IPRs were found invalid.¹⁵

14. See IP Watchdog, November 25, 2024. <https://ipwatchdog.com/2024/06/25/recent-statistics-show-ptab-invalidation-rates-continue-climb/id=178226>

15. Some knowledgeable observers have come to refer to the PTAB as a “killing field” or “death squad” for patents, including former chief Judge Randall Rader (ret.). <https://ipwatchdog.com/2024/06/25/recent-statistics-show-ptab-invalidation-rates-continue-climb/id=178226>; and Phillip Johnson, former chief patent counsel for J&J (<https://ipwatchdog.com/2017/09/20/look-back-legislative-origin-iprs/id=88075>)]. Whatever else might be said of the PTAB, it is, to say the least, a most unfriendly forum for patent owners. And the Federal Circuit is the only Article III court that oversees the work of the PTAB.

It is little wonder that many entrepreneurs and their investors are distressed by the excesses of the IPR process. And where these invalidations are followed by a Rule 36 affirmance, neither the litigants nor others have any idea why the appeals were decided as they were. The Federal Circuit affirms far more often than it modifies or reverses the PTAB, and nearly half of those cases are decided under Rule 36, without opinion.¹⁶ This problem is made even worse, because the Federal Circuit has become notorious for nearly always refusing to hear cases *en banc*, especially where important issues are at stake, leaving the parties extremely dissatisfied with the outcome.

16. An article entitled “Special Report: Trends in Federal Circuit PTAB Appeals Through 2023,” by Dan Klodowski at the Finnegan firm analyzes both the affirmance rates and the use of Rule 36 by the Federal Circuit. <https://www.finnegan.com/en/insights/blogs/at-the-ptab-blog/special-report-trends-in-federal-circuit-ptab-appeals-through-2023.html>

CONCLUSION

This Court, pursuant to its supervisory control over the entire federal judiciary, has the obligation to put an end to the Federal Circuit's abusive use of Rule 36 to avoid writing opinions. That court is admittedly busy, but the solution should not be the rubber stamping of decisions made by the PTAB that are deeply flawed and contrary to the court's statutory mandate.

Respectfully submitted,

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