No. 24-524

In the Supreme Court of the United States

LIGHTING DEFENSE GROUP,

Petitioner,

v.

SNAPRAYS, DBA SNAPPOWER,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the U.S. Court of Appeals for the Federal Circuit correctly hold, in express reliance on this Court's opinion in *Walden v. Fiore*, 571 U.S. 277 (2014), that Utah may exercise specific personal jurisdiction where the defendant utilized an extra-judicial patent enforcement mechanism that it knew would result (unless the plaintiff took certain actions) in the automatic termination of the plaintiff's e-commerce listings and corresponding business activities in Utah, in an attempt by defendant to halt or modify the plaintiff's business activities in Utah, and/or to force the plaintiff to license or purchase patent rights from the defendant in order to continue the plaintiff's business activities in Utah?

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Petitioner's lists of the parties to the proceeding and directly related proceedings are complete and correct.

RULE 29.6 STATEMENT

Respondent does not have a parent corporation and no publicly held company owns 10% or more of respondent's stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

INTRODUCTION

Lighting Defense Group's (LDG) petition does not present an issue worthy of this Court's review. The petition insists that the Federal Circuit failed to apply this Court's decision in *Walden v. Fiore*, 571 U.S. 277 (2014), and simultaneously deepened a "substantial" split over the "meaning and continued viability" of this Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984). Both of LDG's arguments are based on fundamental mischaracterizations of the factual record and this Court's precedents. Most significantly, the petition entirely ignores the undisputed record, which shows that LDG intentionally invoked an extra-judicial enforcement mechanism as a means of forcing Respondent SnapRays dba SnapPower (SnapPower) to negotiate with LDG before SnapPower could continue its business activities in Utah. And LDG did so fully understanding and intending that its actions would result (if SnapPower did not immediately file suit or pay a fee and consent to the extra-judicial patent infringement forum) in the *automatic* termination of SnapPower's e-commerce listings in Utah. The Federal Circuit's decision that personal jurisdiction over LDG in Utah was proper comports with this Court's personal jurisdiction precedents and with the decisions of its sister circuits.

LDG first accuses the Federal Circuit of exercising specific personal jurisdiction over a party that "has no contacts with the plaintiff or the forum whatsoever," Pet. i, thus contravening this Court's decision in *Walden*. But LDG's argument rests on a false premise, because, as discussed at length by the Federal Circuit, LDG in fact had sufficient contacts with SnapPower

and the forum. The Federal Circuit, applying *Walden*, correctly recognized that mere effects on a forum state are insufficient to subject a defendant to personal jurisdiction in that forum, and that the plaintiff cannot be the only link between the defendant and the forum. Pet. App. 10a–11a (citing *Walden*, 571 U.S. at 285, 287). Applying that rule, the Federal Circuit held that LDG's intentional action to invoke a procedure that would automatically curtail SnapPower's sales, marketing, and the stream of commerce in Utah "'form[ed] the necessary connection with the forum State that is the basis for its jurisdiction over him.'" *Id.* 10a (quoting *Walden*, 571 U.S. at 285). This unremarkable holding is consistent with this Court's familiar edict that a defendant who expressly aims his conduct at a forum can reasonably anticipate being haled into court there. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

LDG next attempts to manufacture a split among the circuits with respect to "*Calder*'s meaning and continuing viability." Pet. 20. LDG overlooks that this case does not implicate any "lingering tension" over this question. Nor does LDG acknowledge that there is no split among the circuits and/or state supreme courts. Ultimately, LDG's asserted circuit split rests on a mischaracterization of the Federal Circuit's decision and a similarly distorted reading of lower courts' caselaw. There is no split. The petition should be denied.

STATEMENT OF THE CASE

1. SnapPower is a Utah company with its principal place of business in Utah. Pet. App. 2a. SnapPower designs, markets, and sells electrical outlet covers

with integrated night lights, safety lights, motion sensor lights, and USB charging technology. *Id.* These activities take place in Utah. *Id.* SnapPower sells its products on Amazon.com. *Id.*

LDG is a Delaware limited liability company with its principal place of business in Arizona. *Id.* LDG owns U.S. Patent No. 8,668,347, which relates to a cover for an electrical receptacle including a faceplate and a transmission tab configured to connect to the receptacle electronically. *Id.*

LDG believed that SnapPower was infringing on its '347 patent. *Id.* 3a. Rather than bring suit against SnapPower in Utah—the sole permissible venue for a patent infringement suit under the patent venue statute, 28 U.S.C. § 1400(b)—LDG instead invoked an extra-judicial patent enforcement mechanism known as the Amazon Patent Evaluation Express (APEX). Pet. App. 3a. Amazon offers the APEX procedure "[t]o efficiently resolve claims that third-party product listings infringe utility patents." *Id.* 2a (internal quotation marks omitted). To initiate a patent infringement evaluation under APEX (where invalidity and unenforceability defenses are not permitted), a patent owner submits an APEX Agreement to Amazon identifying one claim of a patent and up to 20 allegedly infringing listings. *Id.* Amazon then sends notice of the infringement allegations to the sellers associated with the accused listings. *Id.* 2a–3a. Sellers have only three options to avoid automatic removal of their accused listings: (1) opt into the APEX program and proceed with the third-party evaluation of the claimed infringement; (2) resolve the claim directly with the patent owner, such as by paying to license or purchase the patent; or (3) file a lawsuit for declaratory

judgment of noninfringement. *Id.* 3a. If the seller takes no action, the identified listings are *automatically removed* from Amazon.com after three weeks. *Id.*; *cf.* Pet. 5 (incorrectly suggesting that Amazon retains discretion not to remove the allegedly infringing listings).

In May 2022, LDG submitted an APEX Agreement alleging that certain SnapPower products sold on Amazon.com infringed the '347 patent. Pet. App. 3a. LDG did so knowing that SnapPower's business was in Utah.[1] *Id.* 6a. And it did so intending to curtail SnapPower's activities in Utah and/or pressure SnapPower into purchasing or licensing the '347 patent from LDG. *Id.*; *see also* CAFed No. 2023-1184 (Dkt. 20) (hereinafter CAFed JA) at 16 (¶ 9), 20 (¶ 20).

Amazon notified SnapPower of the APEX Agreement and the options available to SnapPower. Pet. App. 3a; CAFed JA 66–67 (APEX Notice). SnapPower and LDG exchanged emails regarding the notice and conferred telephonically, but no agreement was reached. Pet. App. 3a.

2. SnapPower filed an action for declaratory judgment of noninfringement in the U.S. District Court for the District of Utah. *Id.* LDG moved to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). *Id.* The district court granted LDG's motion, concluding that LDG lacked

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[1] The district court's statement, unaccompanied by citation, that "LDG did not know that SnapPower is located in Utah," Pet. App. 18, was erroneous, as the Federal Circuit apparently recognized. *See* CAFed JA 226 (Tr. 33:18–23); Pet. App. 6a (concluding that "LDG purposefully directed its activities at SnapPower in Utah"); *see also* CAFed No. 2023-1184, Dkt. 16, at 8 n.2 (arguing, in SnapPower's opening brief, that the district court's statement was "inaccurate").

sufficient contacts with Utah for the court to exercise specific personal jurisdiction. *Id.*; *see id.* 14a–27a.

The U.S. Court of Appeals for the Federal Circuit reversed.[2] *Id.* 13a. The court applied the three-factor test it uses to determine whether specific personal jurisdiction comports with due process. That test requires the court to consider "(1) whether the defendant 'purposefully directed' its activities at residents of the forum; (2) whether the claim 'arises out of or relates to' the defendant's activities with the forum; and (3) whether assertion of personal jurisdiction is 'reasonable and fair.'" *Id.* 5a (internal quotation marks omitted).

The Federal Circuit concluded that "LDG purposefully directed its activities at SnapPower in Utah, intending effects which would be felt in Utah," and therefore concluded that the first element of the court's test for specific personal jurisdiction was satisfied. *Id.* 6a. More specifically, the court recognized that "LDG intentionally submitted the APEX Agreement to Amazon," which "identified SnapPower listings as allegedly infringing." *Id.* LDG "knew," based on APEX's terms, that "Amazon would notify SnapPower of the APEX Agreement and inform SnapPower of the options available to it under APEX." *Id.* If SnapPower took no action, "its listings would be removed, which would necessarily affect sales and activities in Utah." *Id.* Thus, SnapPower "sufficiently alleged LDG undertook intentional actions that were expressly aimed at the forum state, and foresaw (or

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[2] The law of the Federal Circuit, rather than the Tenth Circuit, governs personal jurisdiction in patent cases. *See Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d 1012, 1016 (Fed. Cir. 2009); *see also* Pet. App. 21a.

knew) the effects of its action would be felt in the forum state." *Id.* (internal quotation marks omitted).

The Federal Circuit explained that its decision was consistent with this Court's holding in *Walden*, 571 U.S. 277, and its earlier decision in *Calder*, 465 U.S. 783. *Id.* 10a–11a. The court also recognized that its conclusion was consistent with those of its sister circuits that have addressed the personal jurisdiction implications of extra-judicial enforcement of intellectual property rights, including *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063 (10th Cir. 2008), and *Bancroft & Masters, Inc. v. Augusta National Inc.*, 223 F.3d 1082 (9th Cir. 2000), *overruled in part on other grounds by Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1207 (9th Cir. 2006). Pet. App. 6a–8a.

With respect to the second factor (whether the claim "arises out of or relates to the defendant's activities with the forum"), the Federal Circuit observed that "LDG's action of submitting the APEX Agreement was directed towards SnapPower in Utah and aimed to affect marketing, sales, and other activities in Utah." *Id.* 11a. Accordingly, the court concluded that the "suit arises out of defendant's activities with the forum." *Id.*

Third and finally, the Federal Circuit concluded that the assertion of personal jurisdiction over LDG would be fair and reasonable. *Id.* 12a. The court explained that "[p]arties who participate in APEX by submitting an Agreement will only be subject to specific personal jurisdiction where they have *targeted a forum state* by identifying listings for removal that, if removed, affect the marketing, sales, or other activities in that state." *Id.* (emphasis added). The court

therefore was "unpersuaded" that haling LDG into court in Utah would be unfair, and reversed the district court's conclusion that Utah lacked specific personal jurisdiction over LDG. *Id.* 12a–13a.

REASONS FOR DENYING THE PETITION

I. Petitioner's Question Presented Is Not Implicated Here, and There Is No Split With Respect to the Question This Case Actually Presents.

a. The Petition Attempts to Manufacture a Split by Distorting the Facts of This Case.

LDG's Question Presented rests on a false premise. It asks whether a court has jurisdiction over a defendant where "the defendant has no contacts with the plaintiff or the forum whatsoever." Pet. i. LDG proceeds to assert that the decision below deepened a split of authority over whether the exercise of personal jurisdiction is appropriate "absent defendants' contacts with the forum itself." *Id.* 9; *see also id.* 21 (explaining that courts on one side of the purported split "exercise no jurisdiction absent defendants' contacts with the forum itself").

This case, however, does not implicate any split concerning the exercise of jurisdiction where a defendant lacks contacts with the forum, because LDG undeniably *had* such contacts, as the Federal Circuit correctly recognized. LDG's contention that it "undisputedly has no contacts with Utah whatsoever"

misrepresents the facts of the case. *Id.* 10. The record in this case reflects the following:[3]

- The APEX Agreement targeted Utah-based SnapPower alone. It did not identify any other alleged infringers. CAFed JA 66–67 (APEX Notice).
- When SnapPower contacted LDG in response to the APEX Agreement, LDG's director responded, "We are very familiar with Snap Power and both its litigation and [U.S. International Trade Commission] activity." CAFed JA 16 (¶ 9).[4]
- By initiating the APEX process, LDG sought to disrupt the Utah commerce *vis-à-vis* SnapPower's products, knowing SnapPower would be harmed in Utah. *Id.* (¶ 10).

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[3] Because this case arises on LDG's motion to dismiss, all factual allegations in SnapPower's complaint are taken as true. *See Elecs. For Imaging, Inc. v. Coyle*, 340 F.3d 1344, 1349 (Fed. Cir. 2003) (explaining that on a motion to dismiss for lack of personal jurisdiction, the Federal Circuit may consider "affidavits and other written materials" and "must accept the uncontroverted allegations in the plaintiff's complaint as true and resolve any factual conflicts in the affidavits in the plaintiff's favor").

[4] The "International Trade Commission activity" referred to a determination concerning SnapPower in *In re Certain Powered Cover Plates*, Inv. No. 337-TA-1124, 2019 WL 4635646 (USITC Aug. 12, 2019). That action repeatedly and expressly acknowledges SnapPower's business activities in Utah. *See id.* at *6 ("SnapPower's operational functions, i.e., corporate, human resources and finance functions, research and development . . ., product design and testing, product fulfillment, warehouse, sales, marketing and customer services and the like, are all located in Vineyard, Utah."); *id.* at *52, *54–55 (describing SnapPower's Vineyard, Utah operations).

- By contracting with Amazon and granting Amazon a covenant-not-to-sue under the '347 patent, LDG effectively used Amazon as its agent to target and contact SnapPower in Utah. CAFed JA 201–02 (Tr. 8:21–9:12); *id.* 160 (referencing LDG's "APEX Agreement").
- LDG used Amazon's APEX for the purpose of threatening SnapPower with termination of its listings in Utah. *See* Pet. App. 3a.
- At LDG's behest, Amazon directed SnapPower to resolve LDG's infringement allegations or else Amazon would "remove the listings at the end of this email." *Id.* 66–67.
- After submitting the APEX Agreement, LDG engaged in written correspondence and oral communications with SnapPower in Utah in a bid to induce SnapPower to resolve the infringement dispute by, for example, buying out LDG's rights in the asserted patent. CAFed JA 16 (¶ 9), 20 (¶ 20). LDG requested $1.1 million to lift LDG's threat to SnapPower's Amazon listings. *Id.*; *see id.* 227 (Tr. 34:5–13).
- In the motion to dismiss hearing, LDG did not dispute that it was keenly aware that SnapPower's business operations are located in Utah. *Id.* 226 (Tr. 33:18–23), 241–242 (Tr. 48:20–49:5).

Put simply, LDG's targeted pursuit of SnapPower in Utah through the APEX extra-judicial enforcement process belies the petition's premise that "the defendant has no contacts with the plaintiff or the forum whatsoever." Pet. i.

Further, as the Federal Circuit explained, a key fact distinguishes this case from others involving an act occurring outside the forum state that caused injury within the state. Here, because invoking the APEX procedure would *automatically* remove SnapPower's Amazon.com listings (assuming SnapPower did nothing), LDG's action in sending the APEX Agreement was tantamount to securing a preliminary injunction against SnapPower's listings. Pet. App. 6a, 8a. This would, as the Federal Circuit recognized, necessarily harm sales and other activities in Utah. *Id.* 8a. LDG's intentional invocation of an extra-judicial enforcement procedure that would automatically restrict SnapPower's business in Utah differentiates LDG's actions from those of a patent owner who sends a cease-and-desist letter to a suspected infringer, which "could be ignored without automatic consequence" to the suspected infringer's business activities. *Id.* By invoking a process that LDG knew would necessarily constrict the Utah stream of commerce, LDG established contacts in Utah sufficient to subject it to personal jurisdiction there. *See Walden*, 571 U.S. at 288 n.7 (citing *Calder*, 465 U.S. at 789).

b. The Federal Circuit's Decision Expressly Aligns With Those of Other Circuits.

With respect to the question this case actually presents—whether a defendant expressly aims at a forum state when the defendant intentionally invokes an extra-judicial enforcement process for the purpose of removing the plaintiff's e-commerce listings and necessarily harming sales and marketing in the forum state—there is no split of authority. Only two other courts—the Ninth and the Tenth Circuits—

have considered similar questions. Both are in agreement with the Federal Circuit. *See* Pet. App. 6a (recognizing that its holding is consistent with those of other circuits).

In *Dudnikov*, the Tenth Circuit considered whether a Colorado court had specific personal jurisdiction over a copyright owner who submitted a notice of claimed infringement to eBay's Verified Rights Owner (VeRO) program. *Dudnikov*, 514 F.3d at 1068. The target of the defendants' notice was a fabric-selling business based in Colorado. *Id.* Under the VeRO program, eBay would "automatically terminate an ongoing auction when it receives a notice of claimed infringement . . . from a VeRO member." *Id.* After eBay received the notice of claimed infringement from the defendant, it automatically terminated the plaintiffs' auction. *Id.*

Writing for a unanimous panel of the Tenth Circuit, then-Judge Gorsuch concluded that although the defendants' notice of claimed infringement was technically directed at eBay, which is located in California, defendants' "express aim in acting was to halt a Colorado-based sale by a Colorado resident, and neither the lack of defendants' physical presence in Colorado nor the fact that they used a California-based entity to effectuate this purpose diminish this fact." *Id.* at 1076. The court emphasized that eBay's VeRO procedures allowed the filer of a notice of claimed infringement "to terminate another party's auction *automatically*," and that the plaintiffs had alleged that defendants intended to halt their auction. *Id.* at 1075 (emphasis added). Thus, jurisdiction over the defendants in Colorado was appropriate. *Id.* at 1077–78.

The Ninth Circuit came to a similar conclusion in *Bancroft*. There, the defendant sent a letter to Network Solutions, Inc. (NSI) (the sole registrar of domain names in the United States at the time) in Virginia, challenging the plaintiff's use of a domain name. Bancroft, 223 F.3d at 1084–85. The letter triggered NSI's dispute resolution policy, under which the plaintiff, which was based in California, would "automatically" lose its domain name unless it filed a declaratory judgment action. *Id.* at 1089; *see id.* at 1085. The Ninth Circuit reasoned that although the defendant sent the letter to Virginia, its action "was expressly aimed at California because it individually targeted [the plaintiff], a California corporation doing business almost exclusively in California," and the defendant knew the harm would be primarily felt in California. *Id.* at 1088.

The Federal Circuit's decision below is consistent with both *Dudnikov* and *Bancroft*. LDG knew that SnapPower was based in Utah. Pet. App. 6a; *see Dudnikov*, 514 F.3d at 1068 (noting that plaintiffs' eBay auction pages clearly listed the location of their merchandise as Colorado); *Bancroft*, 223 F.3d at 1088 (noting that defendant knew the plaintiff was a California corporation doing business in California). Like eBay's VeRO policy in *Dudnikov*, Amazon's APEX automatically blocks listings absent an active challenge. Pet. App. 6a; *see Dudnikov*, 514 F.3d at 1068. LDG understood that its action would, if SnapPower did nothing, automatically result in the removal of SnapPower's listings in Utah. Pet. App. 6a; *see Dudnikov*, 514 F.3d at 1075; *Bancroft*, 223 F.3d at 1089 ("This case arises principally out of [the defendant's] letter to NSI, and that letter did more than warn or

threaten [the plaintiff]. Under NSI procedures, the letter would have operated automatically to prevent [the plaintiff] from using its website had [the plaintiff] not filed suit."). And LDG unquestionably intended that the harms caused by its actions would be felt in Utah. Pet. App. 6a, 8a; *see Dudnikov*, 514 F.3d at 1075 (plaintiffs alleged that defendant intended to halt their Colorado auction); *Bancroft*, 223 F.3d at 1088 (noting that the effects of defendant's letter "were primarily felt, as [defendant] knew they would be, in California").

All three circuits to consider the question presented are in agreement: Jurisdiction is proper under circumstances like these. The Federal Circuit aligned with the Ninth and Tenth Circuits by ruling as it did. This Court should deny LDG's entreaty to decide questions not implicated here.

II. There Is No Confusion or Split Over *Calder*.

a. The Decision Below Did Not Rely on *Calder* and Thus Does Not Implicate Any Split Over How to Apply *Calder*.

LDG makes a second attempt to persuade this Court that certiorari is appropriate to resolve a split, citing a purported division of authority over the "meaning and continued viability of *Calder*." Pet. 9; *see also id.* 20 (asserting that courts are "deep[ly] split over how and when to apply *Calder*"). But LDG's rationale is an uncompelling reason to review *this* case, in which the Federal Circuit relied on this Court's more recent precedent in *Walden*.

In *Calder*, this Court considered whether out-of-state defendants who wrote and edited an allegedly libelous article about a television entertainer who

lived in California were subject to specific personal jurisdiction in California. *Calder*, 465 U.S. at 788–90. The Court recognized that it must assess defendants' contacts by focusing on "'the relationship among the defendant, the forum, and the litigation.'" *Id.* at 788 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). Because the defendants' out-of-state action was expressly aimed at California and the harm—both reputation and emotional—was suffered in California, the Court concluded that the exercise of jurisdiction over petitioners in California was proper. *Id.* at 789–91.

Then, in *Walden*, the Court considered whether a Nevada court could exercise specific personal jurisdiction over a Georgia police officer who questioned and searched the plaintiffs while working as a Drug Enforcement Administration agent at a Georgia airport. *Walden*, 571 U.S. at 279–80. As in *Calder*, the Court recognized that its minimum-contacts inquiry focuses on the relationship among the defendant, the forum, and the litigation, and explained that "the defendant's suit-related conduct must create a substantial connection with the forum State." *Id.* at 284.

The *Walden* Court went on to observe that the defendant's conduct "must form the necessary connection with the forum State that is the basis for its jurisdiction over him," and that the defendant's "relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." *Id.* at 285–86. The Court explained that *Calder* "illustrates the application of these principles." *Id.* at 286. There, the defendants' forum contacts were "ample"; California was "'the focal point both of the story and of the harm suffered.'" *Id.* at 287 (quoting *Calder*, 571 U.S.

at 789); *see id.* at 290 ("*Calder* made clear that mere injury to a forum resident is not a sufficient connection to the forum."). Conversely, because "no part of [the *Walden* defendant's] course of conduct occurred in Nevada," the defendant "formed no jurisdictionally relevant contacts with Nevada." *Id.* at 288–89.

Here, the Federal Circuit relied on *Walden* and its characterization of *Calder*; indeed, the only references to *Calder* in the decision below appear in the court's analysis and application of *Walden*. *See* Pet. App. 10a–11a. The Federal Circuit did not apply or extend *Calder* or its so-called "effects test." *See id.* Accordingly, to the extent the Court is interested in exploring the contours or continuing viability of *Calder*, this case is an ill-suited vehicle in which to do so.

b. This Court's Precedents Have Not Generated "Confusion."

Regardless, there is no split over how to apply this Court's decisions in *Calder* and *Walden*. The premise of LDG's purported "split" is that this Court created "confusion" over "which approach to personal jurisdiction should be followed": the analysis set forth in *Calder* or the one articulated in *Walden*. Pet. 20. But this Court's decisions neither evince nor create any such "confusion." As previously explained, *see supra* at 14–15, *Walden* did not depart from the jurisdictional principles set forth in *Calder*. To the contrary, *Walden* reinforced *Calder*'s rule that specific personal jurisdiction lies where a defendant's "intentional, and allegedly tortious, actions were expressly aimed" at the forum and were "calculated to cause injury to [plaintiff there]." *Calder*, 465 U.S. at 789, 791; *see Walden*, 571 U.S. at 290 (noting that "*Calder* made clear that mere injury to a forum resident is not a

sufficient connection to the forum" and that "[t]he proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way").

Walden did not represent a sea change. *Walden* itself recognized that "[w]ell-established principles of personal jurisdiction are sufficient to decide this case." 571 U.S. at 291. Accordingly, this Court should view skeptically LDG's overtures of "conflict" and "tension" in this Court's caselaw.

c. The Cases LDG Cites Are Not in Conflict With the Decision Below.

The cases LDG cites as establishing a "split" do no such thing. Rather, they underscore in varying fact patterns the undisputed and unremarkable proposition that where a defendant has not "expressly aimed" his conduct at the forum, the forum state lacks specific personal jurisdiction over him. The cases are as follows:

Second Circuit. LDG cites *Waldman v. Palestine Liberation Organization*, 835 F.3d 317 (2d Cir. 2016), for the proposition that the Second Circuit takes a "narrow approach" to personal jurisdiction. Pet. 21, 23. But *Waldman* reiterates this Court's rule that to create jurisdiction, out-of-forum acts must be "expressly aimed" at the forum and cannot be based on a plaintiff's unilateral activity. *Id.* at 337 (citing *Walden*, 571 U.S. at 286). That is the rule the Federal Circuit applied here in concluding that SnapPower "sufficiently alleged LDG 'undertook intentional actions that were expressly aimed at th[e] forum state.'" Pet. App. 6a. There is no conflict.

Third Circuit. The petition frames *Hasson v. FullStory, Inc.*, 114 F.4th 181 (3d Cir. 2024), as "mistakenly" recognizing "two parallel, equally viable paths for exercising personal jurisdiction": the "purposeful availment" test and the *Calder* "effects" test. Pet. 27; *see Hasson*, 114 F.4th at 186. But LDG does not contend that the Third Circuit's application of either conflicts with the Federal Circuit's decision. Nor can it. *Hasson* held that a defendant must "expressly aim[]" its conduct at the forum state for jurisdiction to lie. 114 F.4th at 190. Because the plaintiffs failed to allege, much less present undisputed facts, that the defendant had done so (unlike in the instant case), Pennsylvania lacked jurisdiction. *Id.* *Hasson* creates no conflict.

Fifth Circuit. In *Sangha v. Navig8 ShipManagement Private Ltd.*, 882 F.3d 96 (5th Cir. 2018), the Fifth Circuit likewise underscored *Walden*'s rule that a defendant's "contacts with the state have to be purposeful and not merely fortuitous," and that harm alone to a forum resident does not suffice. *Id.* at 103 (internal quotation marks omitted) (citing *Walden*, 571 U.S. at 286, 290). Accordingly, a single email communication that "happened to affect [the plaintiff] while he was at the Port of Houston" was insufficient to confer specific jurisdiction over the defendant. *Id.* Here, patent infringement allegations against SnapPower through Amazon's APEX proceeding did not merely "happen to affect" SnapPower. It was LDG's specific intention to stop SnapPower's business in Utah through that extra-judicial enforcement process. Pet. App. 6a, 8a. *Sangha*'s rule does not conflict with the Federal Circuit's holding.

Sixth Circuit. In *Parker v. Winwood*, 938 F.3d 833 (6th Cir. 2019), the plaintiffs, who lived in Tennessee, asserted that defendants wrote a song in England that infringed on their copyright. *Id.* at 835. The Sixth Circuit held that the plaintiffs entirely failed to set forth specific facts showing that defendants "affirmatively sought distribution of [the song they wrote] into Tennessee." *Id.* at 841. Instead, the plaintiffs asserted that jurisdiction was proper solely on the basis that the plaintiffs were harmed in Tennessee. *Id.* at 840. The Sixth Circuit correctly recognized that *Walden* foreclosed the plaintiffs' argument. *Id.* This decision does not conflict with the Federal Circuit's decision below.

Seventh Circuit. The Seventh Circuit cases LDG cites reaffirm that "'"express aiming" remains the crucial requirement'" for establishing personal jurisdiction. *In re Sheehan*, 48 F.4th 513, 525 (7th Cir. 2022) (citation omitted); *see Ariel Invs., LLC v. Ariel Cap. Advisors LLC*, 881 F.3d 520, 522 (7th Cir. 2018) (no jurisdiction where defendant "did not 'aim at' either Illinois or [plaintiff] but rather ignored both"). Accordingly, a bankruptcy court in Illinois lacked specific jurisdiction over Irish creditors because "[n]one of the defendants did anything to reach out to the United States and affiliate themselves with the United States or Illinois," and the "only connection between the defendant's suit-related conduct and the United States is [the plaintiff's] residence in Illinois and his unilateral act of filing for Chapter 11 bankruptcy in Illinois." *In re Sheehan*, 48 F.4th at 525. Once again, there is no disagreement with the Federal Circuit's rule here.

Eighth Circuit. In *Brothers & Sisters in Christ, LLC v. Zazzle, Inc.*, 42 F.4th 948 (8th Cir. 2022), the court held that jurisdiction in Missouri was lacking because the defendant (Zazzle.com) did not "specifically target[] Missouri consumers or the Missouri market." *Id.* at 954. Zazzle.com's sale of a single T-shirt with the plaintiffs' trademark "love happens" logo to a Missouri resident was insufficient to establish the requisite contacts between Zazzle.com and Missouri. *Id.* at 953. That is consistent with the Federal Circuit's decision here.

Eleventh Circuit. LDG criticizes the Eleventh Circuit in the same manner it does the Second Circuit, insisting that the court improperly applies two separate tests for assessing whether specific personal jurisdiction is proper. Pet. 28. Once again, however, LDG does not contend that the Eleventh Circuit's decision was wrong in *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339 (11th Cir. 2013), or any other case. And in *Louis Vuitton Malletier*, the Eleventh Circuit concluded that—as the Federal Circuit did here—the defendant had sufficient contacts with the forum state to satisfy due process standards. *Id.* at 1357–58.

State Court Decisions. LDG also cites several state court decisions as conflicting with the decision below. They do no such thing. Both the Texas Supreme Court and the Alaska Supreme Court recognize that a defendant's mere knowledge that the effects of its actions will be felt by a forum resident is insufficient to confer personal jurisdiction. *See Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 68–69 (Tex. 2016); *Harper v. BioLife Energy Sys., Inc.*, 426 P.3d 1067, 1075 (Alaska 2018). LDG does not explain how these

courts' holdings conflict with the Federal Circuit's, because they do not. Here, LDG did not merely know that the effects of its actions would be felt by a Utah resident: LDG's *goal* was to curtail SnapPower's business in Utah. Pet. App. 6a, 8a.

Finally, LDG incorrectly asserts that the Federal Circuit's decision conflicts with the Utah Supreme Court's decision in *Raser Technologies, Inc. v. Morgan Stanley & Co.*, 449 P.3d 150 (Utah 2019). *See* Pet. 29–30. It does not. In *Raser Technologies*, the plaintiff alleged that the out-of-state defendants engaged in a short-selling stock manipulation scheme on a national exchange that ultimately harmed a company in Utah. 449 P.3d at 153, 163. The Utah Supreme Court recounted this Court's precedents—including its observation that "*Walden* . . . approvingly discusses *Calder*," *id.* at 167—and concluded that the type of attenuated "ripple effects" that the plaintiffs had alleged were insufficient, "without more," to establish Utah's jurisdiction, *id.* at 163, 164. As previously discussed, this case involved far more than mere "ripple effects." It involved LDG's intentional patent enforcement against SnapPower's listings and corresponding business activities in Utah, an effort that would have been successful at blocking Utah commerce if SnapPower had not brought this action.

* * *

Tellingly, *none* of the cases that LDG cites recognizes any purported split between the circuits concerning the "meaning and continued viability of *Calder*." Pet. 9. That silence is unsurprising. As the discussion above demonstrates, lower courts have cited and correctly applied this Court's precedents. Any theoretical tension between them—which, as

discussed above, does not exist—is a reflection of the courts' application of this Court's settled law to specific factual situations.

Finally, this Court has denied a number of petitions raising similar "conflicts." *See, e.g.*, *Groo v. Eddy*, 144 S. Ct. 1062 (2024) (No. 23-774); *Photoplaza, Inc. v. Herbal Brands, Inc.*, 144 S. Ct. 693 (2024) (No. 23-504); *Lewis v. Power Rsch., Inc.*, 142 S. Ct. 1227 (2022) (No. 21-494); *Teck Metals Ltd. v. Confederated Tribes of the Colville Rsrv.*, 139 S. Ct. 2693 (2019) (No. 18-1160); *Waite v. Union Carbide Corp.*, 139 S. Ct. 1384 (2019) (No. 18-998); *Exxon Mobil Corp. v. Healey*, 139 S. Ct. 794 (2019) (No. 18-311); *Aker Biomarine Antarctic AS v. Nam Chuong Huynh*, 139 S. Ct. 64 (2018) (No. 17-1411); *GlaxoSmithKline LLC v. M.M. ex rel. Meyers*, 138 S. Ct. 64 (2017) (No. 16-1171); *Hinrichs v. Gen. Motors of Can., Ltd.*, 137 S. Ct. 2291 (2017) (No. 16-789); *TV Azteca v. Ruiz*, 137 S. Ct. 2290 (2017) (No. 16-481); *MoneyMutual LLC v. Rilley*, 137 S. Ct. 1331 (2017) (No. 16-705); *AEP Energy Servs. v. Heartland Reg'l Med. Ctr.*, 135 S. Ct. 2048 (2015) (No. 14-1). It should deny this one too.

III. The Decision Below Is Correct.

The Court should also deny the petition because the decision below is a faithful application of this Court's precedents, including *Calder* and *Walden*.

The Federal Circuit correctly recognized that LDG's contacts with Utah sufficed to subject it to jurisdiction there. Pet. App. 6a–12a. Throughout its petition, LDG conspicuously overlooks the allegations showing LDG purposefully targeted SnapPower in Utah and leveraged the automatic consequence of the APEX program to improve its bargaining position with SnapPower in Utah. *Supra* at 8–10; *cf.* Pet. 5

(incorrectly suggesting that Amazon.com retained discretion not to remove the relevant listings). Instead, LDG emphasizes the facts that it believes demonstrate that it lacked contacts with Utah, asserting (for example) that it does not conduct business in Utah, own real property in Utah, maintain an office in Utah, sell products in Utah, or have officers or employees in Utah. *See* Pet. 6 (citing Pet. App. 16a–17a).

These facts may be true. But it does not follow, as LDG asserts, that "LDG has never had any contact with Utah." *Id.* 3. As the Federal Circuit correctly understood, LDG's *very design* in sending the APEX Agreement was to affect markets and product sales in Utah. Pet. App. 6a ("SnapPower therefore sufficiently alleged LDG 'undertook intentional actions that were expressly aimed at th[e] forum state.'"). In other words, LDG's contacts in Utah were not limited to its contacts with SnapPower but extended to the forum itself. *See Walden*, 571 U.S. at 290 (noting that "mere injury to a forum resident is not a sufficient connection to the forum"); *cf.* Pet. 9 (accusing the Federal Circuit of holding that jurisdiction lies even "absent defendants' contacts with the form itself"). The Federal Circuit correctly concluded that LDG's contacts with Utah sufficed to subject it to jurisdiction there.

LDG next contends that the Federal Circuit's decision "avoid[s] *Walden* in favor of *Calder*." Pet. 9. LDG is wrong for the reasons previously described: the Federal Circuit did not "avoid" *Walden*. It both cited and applied *Walden*, including *Walden*'s interpretation of *Calder*. Pet. App. 10a–11a. The Federal Circuit recognized that under *Walden*, the defendant's own conduct—rather than that of a plaintiff or third party—"'must form the necessary connection with the

forum [s]tate.'" *Id.* 10a (quoting *Walden*, 571 U.S. at 285). And it concluded that under the facts of this case, LDG's conduct—specifically, its decision to send the APEX Agreement to Amazon, knowing and intending that SnapPower's listings would be removed and sales and activities in Utah would be harmed if SnapPower took no action—was expressly aimed at Utah. *Id.* The Federal Circuit's analysis fully comports with *Walden*. *See Walden*, 571 U.S. at 290 ("The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way."). In any event, correcting a lower court's purported misapplication of this Court's properly stated rules is not a reason to grant certiorari. *See* Rule 10.

Next, LDG attempts to limit *Calder* to its facts. *See* Pet. 10 ("*Calder* was a unique case turning on the nature of libel."); *id.* (arguing that *Calder*'s holding "uniquely depend[ed] on the libel tort in that case"). Even setting aside the fact that the Federal Circuit's decision expressly relied on *Walden* and only incidentally invoked *Calder*, LDG's insinuation that *Calder* has no application outside the libel context is belied by this Court's own case law. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 412 n.5 (1984) (citing *Calder* in a case unrelated to libel for the proposition that "[r]espondents' lack of residential or other contacts with Texas of itself does not defeat otherwise proper jurisdiction"); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 929 n.5 (2011) (citing *Calder* in a case unrelated to libel for the notion that "a plaintiff's residence in the

forum may strengthen the case for the exercise of specific jurisdiction" (emphasis omitted)).

LDG also suggests that the burden of litigating in Utah is unreasonable or unfair. Aligning with other circuits, the Federal Circuit correctly concluded that exercising personal jurisdiction in this case would be reasonable and fair and would comport with principles of fair play and substantial justice. Pet. App. 12a–13a. This decision *avoided* splitting with other circuits that considered the same question in the context of extra-judicial enforcement of intellectual property rights. In *Dudnikov*, for example, then-Judge Gorsuch explained that personal jurisdiction in the plaintiffs' forum was reasonable and fair because "Defendants did not merely inform plaintiffs of their rights and invite settlement discussions prior to potential litigation, but took affirmative steps with third parties that suspended plaintiffs' ongoing business operations." 514 F.3d at 1082. The decision below applied the same reasoning, explaining that LDG "did more than send a cease and desist letter" and "targeted the forum state by identifying listings for removal." Pet. App. 12a, 13a.

By statute and by decision of this Court, the proper venue for patent infringement claims is only where the alleged infringement occurred (Utah) and where the alleged infringer is incorporated or has an established place of business (Utah). 28 U.S.C. § 1400(b); *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258 (2017). LDG sought to circumvent that venue rule by sending its infringement accusations to SnapPower via Amazon's APEX program, thereby provoking an infringement dispute. But it would be contrary to the interests of justice and the shared

interest of the United States (as set forth in statute and by the Supreme Court) to require SnapPower to travel to Arizona (LDG's place of business) to resolve LDG's patent infringement claim—a claim that, if initiated by LDG, would have to be brought in Utah.

Finally, LDG insists that "[p]ractically" speaking, this Court's precedents counsel "that there is no jurisdiction over a defendant that had 'never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to' the forum." Pet. 16 (quoting *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 370 (2021) (in turn discussing *Walden*)). This statement is yet another mischaracterization of this Court's precedents. It ignores *Calder* and distorts *Walden*'s application of "[this Court's] doctrinal test," which asks whether a defendant has "'purposefully avail[ed himself] of the privilege of conducting activities' in the forum State." *Ford Motor Co.*, 592 U.S. at 371 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). Here, by enforcing its patent through the APEX program against SnapPower's business in Utah, LDG unquestionably did so. LDG cannot avoid personal jurisdiction in Utah by hiding its intentional and express acts aimed at Utah commerce behind an intermediary (APEX).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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