

2023-2110

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**United States Court of Appeals  
for the Federal Circuit**

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DOLBY LABORATORIES LICENSING CORPORATION,  
*Appellant,*

– v. –

UNIFIED PATENTS, LLC,  
*Appellee,*

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

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*On Appeal from the United States Patent and Trademark Office,  
Patent Trial and Appeal Board, Inter Partes Review No. 2021-00275*

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**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF  
FOR *AMICUS CURIAE* ALLIANCE OF U.S.  
STARTUPS & INVENTORS FOR JOBS (“USIJ”) IN  
SUPPORT OF APPELLANT DOLBY LABORATORIES  
LICENSING CORPORATION IN SUPPORT OF  
PETITION FOR REHEARING**

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FORM 9. Certificate of Interest

Form 9 (p. 1)  
March 2023**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT****CERTIFICATE OF INTEREST****Case Number** 23-2110**Short Case Caption** Dolby Laboratories v. Unified Patents, LLC et al**Filing Party/Entity** Alliance of U.S. Startups & Inventors for Jobs ("USIJ")**Instructions:**

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 09/03/2025Signature: *Steven C Carlson*Name: Steven C. Carlson

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March 2023

<b>1. Represented Entities.</b> Fed. Cir. R. 47.4(a)(1).	<b>2. Real Party in Interest.</b> Fed. Cir. R. 47.4(a)(2).	<b>3. Parent Corporations and Stockholders.</b> Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.  <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.  <input checked="" type="checkbox"/> None/Not Applicable
USIJ		



Additional pages attached

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☒ None/Not Applicable☐ Additional pages attached


**5. Related Cases.** Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☐ Yes (file separate notice; see below) ☐ No ☒ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

**6. Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☒ None/Not Applicable☐ Additional pages attached


*Amicus Curiae*, the Alliance of U.S. Startups and Inventors for Jobs (“USIJ”), respectfully moves this Court, for leave to file the accompanying Brief, as *Amicus Curiae*, to bring to the Court’s attention important considerations concerning the injury-in-fact suffered by patent owners when real parties in interest (“RPIs”) are not disclosed in proceedings before the Patent Trial and Appeal Board:

1. USIJ is a coalition of startup companies, inventors, investors, and entrepreneurs whose businesses depend upon stable and reliable patent protection as an essential foundation for making long-term investments of capital and time commitments to high-risk ventures developing new technologies.

2. 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, entrepreneurs and research-intensive startups (“USIJ Cohort”) at an unsustainable disadvantage relative to their larger incumbent rivals, both domestic and foreign, and others that would make wrongful use of their inventions and patents.

3. USIJ’s fundamental mission is to bring attention to the critical role that patents play in our nation’s economic health and to the particular importance of startups and small companies in that regard. A disproportionately large number of strategically critical breakthrough inventions are attributable to such individual inventors and small companies.

4. USIJ files the accompanying brief on behalf of petitioner Dolby Laboratories Licensing Corporation (“Dolby”).

5. USIJ submits this *amicus* brief to emphasize the injury that arises when patent owners, like Dolby, are not provided the congressionally mandated information about the RPIs behind proceedings at the PTAB. USIJ maintains that the panel decision did not properly recognize these harms, and USIJ accordingly seeks to explain those harms in a broader context.

6. Accordingly, USIJ suggests that, when the injury-in-fact is properly understood, the panel decision should be vacated and the court should recognize Dolby’s standing to proceed with its appeal.

7. USIJ has received the consent of Dolby, Unified Patents, and intervenor to file this *amicus* brief.

8. No counsel of a party authored this brief in whole or in part. No party or counsel of a party contributed money that was intended to fund preparing or submitting this brief. No person (other than *amicus curiae*, its members, or its counsel) contributed money intended to fund preparing or submitting the brief.

WHEREFORE, USIJ respectfully requests that the Court grant this Motion and accept for filing the accompanying Brief.

Date: September 3, 2025

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Counsel for *Amici Curiae* USIJ and IA

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATIONS**

**Case Number:** 23-2110

**Short Case Caption:** Dolby Laboratories v. Unified Patents, LLC, et al.

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- ☒ the filing has been prepared using a proportionally-spaced typeface and includes 402 words.
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Date: 09/03/2025

Signature: /s/ Steven C. Carlson

Name: Steven C. Carlson



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The Alliance of U.S. Startups and Inventors for Jobs (“USIJ”) submits this brief as *amicus curiae* pursuant to Fed. R. App. P. 29(b) and Federal Circuit Rule 40(i) in support of Patent Owner-Appellant, Dolby Laboratories Licensing Corporation (“Dolby”), in appeal from the Final Written Decision (“FWD”) of the Patent Trial & Appeal Board (“PTAB”) in IPR 2021-00275, an Inter Partes Review (“IPR”).

### **INTEREST OF AMICUS CURIAE**

*Amicus curiae* USIJ is a coalition of startup companies, inventors, entrepreneurs and investors whose businesses depend upon stable and reliable patent protection as an essential foundation for making long-term investments of capital and time commitments to high-risk ventures developing new technologies. USIJ’s fundamental mission is to assist and help inform members of Congress, the Federal Judiciary and leaders in the Executive branch regarding the critical role that patents play in our nation’s economic system, and the particular importance of innovative small companies to our country’s economic health and its continued leadership role in the development of strategically critical technologies.<sup>1</sup>

---

<sup>1</sup> No counsel of a party authored this brief in whole or in part. No party or counsel of a party contributed money that was intended to fund preparing or submitting this brief. No person (other than *amicus curiae*, its members, or its counsel) contributed money intended to fund preparing or submitting the brief.

### **Summary of Argument**

USIJ submits that the Panel erred when it held that Dolby has not suffered an injury-in-fact. The Panel applied the wrong legal standard for finding injury from a failure to divulge required information. 35 U.S.C. §312(a)(2); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442-43 (2021). In addition, the Panel assumed that Dolby could identify the real parties-in-interest (“RPIs”) from other sources of information. 138 F.4th 1363, at 1386. This is a wholly unrealistic assumption, because it fails to appreciate the extreme burden, if not impossibility, of unearthing RPI information that is not divulged in the original petition, as mandated in Section 312(a)(2). If Dolby does not have standing in this case, no patent owner would. This is of grave concern to USIJ and its members.

The AIA represents a careful balance between the interests of patent holders and accused infringers. Key to that balance are the twin requirements that (i) a petition for IPR or PGR must disclose all the RPIs behind the petition, and (ii) upon the patent’s surviving a first challenge, those RPIs are then estopped from further challenges in either the PTAB or district court. This “one bite at the apple” rule has been undermined for years by entities like Unified Patents (“UP”), which file challenges anonymously, without divulging the identity of the subscribers that fund (and may direct) the filing of such petitions. USIJ submits that the injury



sustained by Dolby in being deprived of RPI information is more than sufficient to justify standing in this case.

Justice requires at the very least that a patent owner subjected to an IPR proceeding be provided with the identity of the companies responsible for the petition, and the refusal by a petitioner to provide that information is the clearest kind of injury-in-fact. Without such information, the patent owner gets nothing for the funds and effort it has put into defending the challenge except a return to the status quo.

In light of the fundamental and compelling unfairness here, USIJ respectfully requests that the Panel give further thought to its original decision and send the matter back to the PTAB to ascertain which of UP's corporate sponsors were responsible for the IPR petition here. Alternatively, we request that the full Court take the matter *en banc* to resolve it.

## **ARGUMENT**

### **I. The Patent Act States Unambiguously That a Patentee Is Entitled to Know the Identity of All of the Real Parties in Interest Behind a Petition for IPR.**

Congress mandated transparency to create balance between the interests of patent owners and accused infringers. When a patent has been subjected to an IPR proceeding, the patent owner is entitled to all the protections that the AIA provides, including in particular that: 1) all RPIs must be disclosed in the petition (*see* 35

U.S.C. § 312(a)(2)); and 2) the estoppel provisions apply to all RPIs and their privies (*see* 35 U.S.C. § 315(e)(1)). The Panel decision, if allowed to stand, will create a precedent from this Court that injures all patent owners – including USIJ’s members – who might be attacked by anonymous challengers using stand-ins, such as UP. It also will encourage such stand-ins to misrepresent the absence of RPIs whenever they think they may not get caught. If Dolby does not have standing to force disclosure of the RPI(s) behind an anonymous challenge, then no patent owner can have such standing.

Following the successful defense of an IPR, the patent owner is entitled to know the identity of the entities that will be estopped from challenging its validity in the future – first, because Section 312(a)(2) unequivocally requires it, and equally important, because it may be impossible to extract the information from a subsequent challenger. The paucity of discovery at the PTAB is well-known and will, in many cases, prevent discovery as to previous petitions, which is the reason Congress required that this information be disclosed at the outset.

Dolby’s Opening Brief succinctly and accurately describes the legal right of patent owners to know the RPIs behind PTAB petitions, and USIJ sees no need to repeat the same points. The Panel decision holds that petitioner’s statutory obligation to disclose RPIs is a requirement of the petition itself, and once institution occurs, Section 314(d) cuts off any appeal from a petitioner’s failure to

do so. *Id.* at 1367. That cannot be the law, since neither the patent owner nor the PTAB can know, at the time of institution, whether the nominal petitioner is actually an RPI or is a stand-in being compensated by others. Left alone, the Panel decision means that any entity acting as a front for an RPI is free to choose whether or not to comply with Section 312(a)(2), and there are no consequences for refusing to do so. Dolby's exposition of the fundamental legal rights to this information is correct – these informational rights should not be extinguished during the conduct of the IPR if the petition is deficient. We also direct the Court's attention to the fundamental difference between the instant case and the *ESIP Series 2* case, cited by the Panel. *Id.* (citing *ESIP Series 2, LLC v. Puzhen Life USA, LLC*, 958 F.3d 1378, 1386 (Fed. Cir. 2020)). As pointed out in Dolby's brief, the PTAB actually resolved the issue of RPIs against the patent owner in that case, whereas here the PTAB erroneously refused even to consider doing so.

## **II. Congress Foresaw the Potential Use of IPRs to Burden Patent Owners.**

The information Dolby seeks, and to which every patent owner subjected to an IPR is entitled, is a cornerstone of Congress' compromise. In striking a balance between the interests of patent owners and accused infringers, Congress foresaw the burdens that PTAB proceedings could impose on patent owners and the potential for abuse. Thus, Congress' deliberations affirmed the commitment to allow challengers only "one bite at the apple." Senate Report 110-259, The Patent

Reform Act of 2007, 110th Congress, to accompany S. 1145, at 22. Recognizing that duplicative petitions are “one of the worst evils” of administrative proceedings, Congress sought to all-but eliminate such proceedings. *Id.* at 228 (Senator Kyl speech) (“It is a rare patent that should be twice subjected to second-window proceedings.”).<sup>2</sup>

The AIA was enacted with a congressional directive to shut down duplicative challenges through a robust estoppel provision. Senate Debate 2-28-2011 (157 Cong. Rec. S936-S953) (comments of Senator Grassley) [at 254] (“It would also include a strengthened estoppel standard to prevent petitioners from raising in a subsequent challenge the same patent issues that were raised or reasonably could have been raised in a prior challenge.”). Congress sought to ensure that a “party that uses inter partes review is estopped from raising in a subsequent PTO proceeding (such as an ex parte reexam or inter partes review) any issue that it raised or reasonably could have raised in the inter partes review.” House Report 112-98 – 112th Congress – To Accompany HR 1249 [at 496].

The “one bite at the apple” rule is codified through the requirement to disclose RPIs, *see* 35 U.S.C. § 312(a)(2), and through the requirement that such

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<sup>2</sup> For a more complete recap of the legislative history of the IPR provision in the America Invents Act, *see* USIJ White Paper entitled “How ‘One Bite at the Apple’ Became Serial Attacks on High Quality Patents at the PTAB,” <https://usij.org/2018-serial-attacks>.

RPIs be estopped from mounting successive challenges, *see* 35 U.S.C. § 315(e)(1). This rule is clear: a petitioner and its RPIs get one shot at a patent. It is this right to preclude subsequent challenges by the same RPIs that hangs in the balance here.

### **III. The Injury-in-Fact is Real**

The Panel stated that Dolby had failed to establish an injury-in-fact because the Panel surmised that Dolby could obtain the information elsewhere. 138 F.4th at 1368 (“Third, Dolby provides no evidence that it will be barred from asserting estoppel against the Alleged RPIs in hypothetical future litigation.”). Notably, this standard exceeds what the Supreme Court has established as the standard for an “informational right.” *E.g., TransUnion*, 594 U.S. at 442-43 (requiring a showing that the “information deficit hindered” the aggrieved party’s interests).

Undoubtedly, Dolby has established that the information deficit it has suffered, by being deprived of the identity of the Alleged RPIs behind Unified Patents’ petition, has “hindered its interests.”

The panel did not deny that Dolby might have suffered from being deprived of the identity of the RPI’s here, but discounted this loss by suggesting that Dolby can obtain the information in a future proceeding. *Dolby*, 138 F.4th at 1368. USIJ submits that this analysis misses the mark. We invite the Court to consider the following hypothetical scenario: Assume that Unified Patents fails in its initial IPR challenge to a patent, after refusing to identify the RPIs, one of which later

files a second petition challenging the same patent, but now having the benefit of its earlier loss to guide its litigation strategy. This is not an unlikely scenario; indeed, companies pay for subscriptions to UP to preserve that very opportunity. The mere fact that the second IPR can be filed is itself additional injury-in-fact, because under a proper disclosure of RPIs in the first proceeding, the RPI would be estopped from a second filing under 35 U.S.C. § 315(e)(1). Every dollar and every hour spent defending against this second IPR from an RPI of the first petition becomes further injury-in-fact. Moreover, if the second IPR is instituted, it is not likely that there will be an opportunity to conduct discovery within the limited confines of a PTAB proceeding sufficient to establish the estoppel to which the patent owner is entitled. The PTAB is not equipped to allow the sleuthing discovery needed to uncover these wink-and-nod relationships, and third-party discovery is all but nonexistent in the PTAB. Trying to compel the document production and deposition practice needed to hunt down covert relationships is generally not feasible under the limited discovery provisions of the PTAB and within the preciously short time for doing so. Even if it were possible, the cost of such discovery would simply compound the injury-in-fact that flows from the first unlawful IPR. In short, the patent owner would thus be faced with a second existential attack on its rights by the same entity – precisely what Congress tried to avoid in crafting the IPR provisions.

All PTAB challenges create a burden for the patent owner. Such challenges disrupt business operations, create uncertainty as to enforceability of the property right, and often force business dealings to be put on hold, awaiting a Final Written Decision and resolution of issues on appeal. These disruptions cast a long shadow, thwarting partnerships and fundraising and distracting the attention of a company's team.

And filing a subsequent litigation to determine the RPIs would be a costly burden, if not fruitless. The patent owner should not have to guess at which infringers are estopped. Deprived of the information that should have been on the face of the original PTAB petition, the patent owner would then have to launch a new litigation unsure of whether or not the new defendant is estopped. This completely upsets the calculus of patent litigation to the detriment of the patent owner. Moreover, any district court litigation, if it is not stayed pending a second IPR, would likely be exorbitantly costly, and consume untold cycles of the company's focus. None of this effort and expense would be necessary, of course, had the RPI information been originally disclosed, as required under 35 USC § 312(a)(2). Rather than resolving an invalidity challenge with a straightforward Rule 12 motion to establish estoppel, the patent owner would have to run an entirely new, risky, and costly exercise to try to uncover essential information to which it was entitled at the outset.

The Panel decision, if allowed to stand, will only worsen an already difficult and injurious process for patent owners.

#### **IV. Conclusion**

Withdrawal or reversal of the Panel decision is essential to maintain the balance that Congress tried to achieve in allowing IPRs in the first instance. Congress did not intend, nor does any sense of fairness allow, for deep-pocketed infringers to hire bounty hunters to challenge valuable patents without repercussions. Once the PTAB is required to unmask real-parties-in-interest, other potential petitioners will be required to decide whether to challenge validity in court or in an IPR, but not in both as now happens with great regularity. USIJ submits that there should be no free swing at a patent.

Date: September 3, 2025

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Counsel for *Amici Curiae* USIJ and IA





## *Appendix A*

### *USIJ Member Companies*

- Altos
- BioCardia
- Calyxo
- Centripetal
- Direct Flow Medical
- DivX Software
- ExploraMed
- Fogarty Innovation
- Fortem IP
- Headwater Investments
- Lauder Partners, LLC
- Materna Medical
- Netlist
- Pavey Investments
- Puracath Medical
- Rearden Companies - Innovation Incubation
- Revelle Aesthetics
- ShapeTX
- Soraa
- Techquity
- Tune Therapeutics
- Willow

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Signature: /s/ Steven C. Carlson

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