

IN THE SUPREME COURT OF THE UNITED STATES

No. 24A_____

LYNK LABS, INC.,

Applicant,

v.

SAMSUNG ELECTRONICS CO., LTD.; COKE MORGAN STEWART, ACTING UNDER
SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND ACTING
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME
IN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and
Circuit Justice for the Federal Circuit:

Pursuant to 28 U.S.C. §2101(c) and this Court's Rule 13.5, Applicant Lynk Labs, Inc. respectfully requests a 60-day extension of time, to and including September 12, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this matter. The court of appeals entered its judgment on January 14, 2025, and denied Lynk Labs' timely rehearing petition on April 15, 2025. The petition for a writ of certiorari is currently due July 14, 2025. See this Court's Rule 13.3. Under this Court's Rule 13.5, this application is being filed at least 10 days before that deadline.

This Court has jurisdiction under 28 U.S.C. § 1254(1). A copy of the court of appeals' opinion is attached as Exhibit A, and a copy of the order denying rehearing is attached as Exhibit B.

There is good cause for the extension. Undersigned counsel was retained by Lynk Labs for this matter on June 30, 2025, two weeks before the petition's current deadline. In addition, counsel has been heavily engaged with the press of other matters and requires additional time to prepare the petition.

1. This case arises from an inter partes review ("IPR") proceeding involving Lynk Labs' U.S. Patent No. 10,687,400 ("the '400 patent"). Ex. A at 2. The '400 patent is directed to LED-based lighting systems with potential uses ranging from general lighting to string lights for Christmas trees. *Id.* at 2-3. The patent has a priority date of February 25, 2004. *Id.* at 4 & n.1. In this case, respondent Samsung Electronics Co. filed an IPR petition challenging claims 7-13 and 17 of the '400 patent. *Id.* at 3-4.¹

Lynk Labs argued that Samsung's challenge was not authorized by statute. Under the America Invents Act ("AIA"), patent claims may be challenged "in an inter partes review" "*only* on the basis of prior art consisting of *patents* or *printed publications*." 35 U.S.C. § 311(b) (emphasis added). Samsung's petition challenged

¹ Samsung also challenged claims 14-16 and 18-20. Ex. A at 3. Lynk Labs statutorily disclaimed claims 14 and 18-20, and did not appeal the disposition of claims 15-16. *Id.* at 3-4 & n.3; see 35 U.S.C. § 253.

each claim at issue based on an abandoned patent application known as “Martin” (U.S. Patent Application Publication No. 2004/0206970). Martin undisputedly never issued as a “patent.”

Nor, Lynk Labs argued, was Martin a prior-art “printed publication.” Both before and after the AIA’s enactment, “[t]he statutory phrase ‘printed publication’ ha[d] been interpreted to mean that *before the critical date* [e.g., before the challenged patent’s priority date] the reference must have been sufficiently *accessible to the public* interested in the art.” *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1568 (Fed. Cir. 1988) (emphasis added) (citing *In re Hall*, 781 F.2d 897, 899 (Fed. Cir. 1986); *In re Wyer*, 655 F.2d 221, 226-227 (C.C.P.A. 1981)); see also *Voter Verified, Inc. v. Premier Election Sols., Inc.*, 698 F.3d 1374, 1380 (Fed. Cir. 2012) (“When considering whether a given reference qualifies as a prior art ‘printed publication,’ the key inquiry is whether the reference was made ‘sufficiently accessible to the public interested in the art’ before the critical date.”); *Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1373 (Fed. Cir. 2021) (similar). Martin concededly was not a prior-art “printed publication” under that construction: It was not published or otherwise publicly accessible until October 21, 2004, months *after* the ’400 patent’s February 25, 2004 critical date. Ex. A at 4.² Because Martin was

² When assessing whether a reference is a prior-art printed publication, the “critical date” is the date before which the reference must have been a printed publication (*i.e.*, publicly accessible). See, *e.g.*, *Valve*, 8 F.4th at 1373; Ex. A at 7. That may be, for example, the date of “the invention” under pre-AIA 35 U.S.C. § 102(a), or “the

neither a prior-art “patent” nor a prior-art “printed publication,” Lynk Labs maintained, it could not properly be the basis for this IPR under 35 U.S.C. § 311(b).

The Patent Trial and Appeal Board rejected that argument and issued a final written decision declaring claims 7-13 and 17 unpatentable. Ex. A at 4. For every claim, the Board based its decision on the abandoned Martin application. *Ibid.*

2. The Federal Circuit affirmed. The court acknowledged that IPRs may be pursued “‘only on the basis of prior art consisting of patents or printed publications.’” Ex. A at 6 (quoting 35 U.S.C. § 311(b)). The court acknowledged that Martin never issued as a “patent.” *Id.* at 4. The court acknowledged that its precedents had construed “[t]he statutory phrase “printed publication” * * * to mean that before the critical date the reference must have been sufficiently accessible to the public interested in the art.’” *Id.* at 18 n.9 (quoting *Constant*, 848 F.2d at 1568). And the court acknowledged that the Martin application did not satisfy that construction, because it was not publicly accessible until *after* the ’400 patent’s critical date. *Id.* at 7.

effective filing date of the claimed invention” under current § 102(a)(1). See *Mahurkar v. C.R. Bard, Inc.*, 79 F.3d 1572, 1576-1577 (Fed. Cir. 1996); *Valve*, 8 F.4th at 1373. While pre-AIA § 102(a) governs here, the critical date would be the same under either version of the statute: The ’400 patent claims priority to a provisional application filed on February 25, 2004, and Lynk Labs has not asserted an earlier invention date. See Ex. A at 4 n.1, 7 & n.6; cf. *Mahurkar*, 79 F.3d at 1577 (explaining that, absent “evidence of an earlier date of invention,” the “invention date [is] the filing date of [the] patent”).

The Federal Circuit nonetheless ruled that the Martin application was a “prior art * * * printed publication,” and thus a permissible basis for this IPR under § 311(b). Ex. A at 6, 20. The court did so through a two-step, bifurcated analysis that separately examined whether Martin was “prior art” and whether it constituted a “printed publication.” Addressing those in reverse order, the court first considered whether the Martin application was a “printed publication” in some sense. *Id.* at 6. The court concluded that it was, because it *eventually* published and became “publicly accessible”—even though it did not do so until *after* the ’400 patent’s critical date. *Ibid.*

The Federal Circuit then considered whether the Martin application was “prior art” to the ’400 patent. Ex. A at 8-9. The court did not apply the rule that has long governed whether a reference qualifies as a prior-art “printed publication”—*i.e.*, whether the reference was publicly accessible before the challenged patent’s critical date. See 35 U.S.C. § 102(a)-(b) (2006); accord 35 U.S.C. § 102(a)(1)-(2) (2012); see also p. 3 & n.2, *supra*. Instead, the court invoked a *different* priority rule that applies to a *different* category of prior art not mentioned in § 311(b)—“application[s] for patent.” Ex. A. at 8 (citing 35 U.S.C. § 102(e)(1) (2006)). The court did not dispute that § 311(b) is expressly limited to “patents” and “printed publications,” and never mentions “applications for patent.” Nonetheless, the court invoked pre-AIA § 102(e)(1), which deems an “application for patent” to be prior art as of its filing date, rather than the date it became publicly accessible. Because Martin would be

considered a prior-art “application for patent” under pre-AIA §102(e)(1), the Federal Circuit ruled, it should also be considered a prior-art “printed publication” for purposes of §311(b). See *id.* at 10.

The Federal Circuit thus held, in effect, that a reference is a “prior art * * * printed publicatio[n]” that may be the basis for an IPR under §311(b), so long as it (1) was publicly accessible at *any* time, and (2) falls within *any* category of prior art. The Federal Circuit did not dispute that its construction of §311(b) effectively read the phrase “prior art consisting of patents or printed publications” as though it read “prior art considering of patents, printed publications, *or applications for patent*,” even though §311(b) (unlike pre-AIA §102(e)(1)) specifically omits “applications for patent.” That approach, the panel declared, advanced what it perceived to be Congress’s “purpose” in enacting the AIA. Ex. A at 19-20.

Lynk Labs timely sought rehearing. The Federal Circuit denied that petition on April 15, 2025. Ex. B.

3. Lynk Labs now seeks a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the Federal Circuit’s decision, to and including September 12, 2025. An extension is warranted for the following reasons:

Lynk Labs’ counsel of record in this Court, Jeffrey A. Lamken, was retained by petitioner on June 30, 2025, two weeks before the current deadline for the

petition.³ The requested extension will provide sufficient time for counsel to familiarize himself with the record, conduct additional research, and prepare a concise petition of maximum helpfulness to this Court.

Lynk Labs' counsel also has been, and will remain, heavily engaged with the press of other matters before this Court and other courts. Those matters include: oral argument in *Whitesell Corp. v. Husqvarna Outdoor Products, Inc.*, No. 23-10935 (11th Cir.), on April 22, 2025; a petition for a writ of certiorari in *Atrium Medical Corp. v. C.R. Bard, Inc.*, No. 24-1143 (U.S.), filed on May 5, 2025; oral argument in *Colibri Heart Valve LLC v. Medtronic Corevalve, LLC*, No. 23-2153 (Fed. Cir.), on May 5, 2025; a reply brief in *Netlist, Inc. v. Samsung Electronics Co., Ltd.*, Nos. 24-2240, 24-2241 (Fed. Cir.), filed on May 21, 2025; oral argument in *Global Tubing LLC v. Tenaris Coiled Tubes LLC*, Nos. 23-1882, 23-1883 (Fed. Cir.), on June 6, 2025; an opening brief in *Vir2us, Inc. v. Sophos Inc.*, No. 25-1158 (4th Cir.), filed on June 17, 2025; oral argument in *Finesse Wireless LLC v. AT&T Mobility LLC*, No. 24-1039 (Fed. Cir.), on July 10, 2025; a reply brief in *Netlist, Inc. v. Samsung Electronics Co., Ltd.*, No. 24-2304 (Fed. Cir.), due on July 21, 2025; a combined response/reply brief in *UMB Bank, N.A. v. Bristol-Myers Squibb Co.*, Nos. 24-2865, 24-2928 (2d Cir.), due on August 11, 2025; and a combined response/reply brief in

³ Undersigned counsel previously represented a non-party amicus in the court of appeals.

VLSI Technology LLC v. OpenSky Industries, LLC, Nos. 23-2158, 23-2159 (Fed. Cir.), due on September 2, 2025.

In view of those considerations, Lynk Labs respectfully requests an extension of 60 days, to and including September 12, 2025, within which to file a petition for a writ of certiorari.

July 1, 2025

Respectfully submitted.



Jeffrey A. Lamken
Counsel of Record
MOLOLAMKEN LLP
The Watergate, Suite 500
600 New Hampshire Ave., N.W.
Washington, D.C. 20037
(202) 556-2000
jlamken@mololamken.com
Counsel for Applicant