

Nos. 2020-1394, -1396, -1397, -1398

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*United States Court of Appeals  
for the Federal Circuit*

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APPLE INC., VISA INC., VISA U.S.A., INC.,  
*Appellants,*

v.

UNIVERSAL SECURE REGISTRY LLC,  
*Appellee.*

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**Appeals from the United States Patent and Trademark Office, Patent Trial  
and Appeal Board in Nos. CBM2018-00024 and CBM2018-00025**

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**UNIVERSAL SECURE REGISTRY LLC'S CORRECTED RESPONSE TO  
APPELLANTS' PETITION FOR REHEARING *EN BANC***

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**CERTIFICATE OF INTEREST**

Counsel for Appellee Universal Secure Registry LLC (“USR”) in Appeal Nos. 2020-1394, 2020-1396, 2020-1397, and 2020-1398 certifies the following:

**1. Represented Entities.** Full names of all entities represented by undersigned counsel in this case:

Universal Secure Registry LLC

**2. Real Party in Interest.** Full names of all real parties in interest for the entities:

None

**3. Parent Corporations and Stockholders.** Full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities:

KW Strategic Enterprises, LLC

**4. Legal Representatives.** List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities:

Quinn Emanuel Urquhart & Sullivan, LLP: Jim Glass, Nima Hefazi, Jordan Kaericher, Razmig Messerian, Rachael McCracken

**5. Related Cases.** The case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court’s decision in the pending appeal:

None

**6. Organizational Victims and Bankruptcy Cases.** 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):

Not Applicable

Dated: July 14, 2020

/s/ Christopher A. Mathews  
Christopher A. Mathews

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## INTRODUCTION

There is no basis for revisiting the well-supported decision of a three-judge panel of this Circuit to dismiss Appellants’ appeal, which sought to appeal the Patent Office’s institution decision, contrary to the statutory bar to such appeals Congress established in 35 U.S.C. §324(e). The dismissal was consistent with the plain language of the applicable statute, the decisions of six panels of this Court that have examined the issue, and two Supreme Court decisions interpreting the related *inter partes* review (“IPR”) statute with identical language. *See Thryv, Inc. v. Click-to-Call Technologies, LP*, 140 S. Ct. 1367, 1377 (2020); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2140 (2016). Further confirming the soundness of the panel’s decision, the Supreme Court recently issued a third memorandum opinion vacating a judgment of the Federal Circuit and remanding a case involving the exact same statute at-issue here for further consideration in light of *Thryv. Emerson Electric Co. v. Sipco*, --- S.Ct. --, 2020 WL 3146672 (June 15, 2020). The facts here do not warrant *en banc* review.

In fact, in the underlying briefing, Appellants recognized that this Court, on multiple occasions, has rejected the precise arguments Appellants now make, “acknowledg[ing] that panel precedent have held to the contrary” (Dkt. 21 at 7 n.3), and admitting “a panel of this Court rejected [Appellants’] understanding of the statute” in *BioDelivery Sciences Int’l, Inc. v. Aquestive Therapeutics, Inc.*, 935 F.3d

1362, 1366 (Fed. Cir. 2019). (Dkt. 21 at 5 n.1). Indeed, Appellants’ original opposition attempted to distinguish the contrary authority by relying on an *en banc* decision by this Court (*Wi-Fi One LLC v. Broadcom Corp.*) that was abrogated by the Supreme Court in *Thryv*, after the present appeal was dismissed. The record is now worse for Appellants than it was during the original appeal briefing. However, in their Petition, Appellants make no such disclosure and instead now suggest the panel acted contrary to law in issuing a “highly troubling” decision (Dkt. 28 at 15) that was contrary to statute and a Supreme Court decision. This is not the case. The panel’s dismissal of Appellants’ appeal of the Patent Office’s termination of institution of CBM review was entirely consistent with the applicable statute, Supreme Court precedent, and operative decisions of this Court.

Appellants’ current claim is belied by the facts and the law. Appellants are attempting to appeal the Board’s termination vacating institution. The plain language of the America Invents Act (the “AIA”) prohibits appeals of *all* institution decisions. 35 U.S.C. §324(e) (“The determination by the Director whether to institute a post-grant review under this section shall be final and nonappealable.”). The law is clear that such decisions are not appealable. *See, e.g., St. Jude Medical, Cardiology Div., Inc. v. Volcano Corp.*, 749 F.3d 1373, 1375 (Fed. Cir. 2014) (“[T]he Director’s non-institution decision...is not a ‘final written decision’” and the patent statutes “contain no authorization to appeal a non-institution decision to

this court”); *BioDelivery*, 935 F.3d at 1366 ( Board’s “determination *not* to institute review, something the Board has discretion to do even upon a showing that there is a ‘reasonable likelihood of success...’ in the petition, ... is ‘final and nonappealable’”); *GTNX, Inc. v. INTTRA, Inc.*, 789 F.3d 1309, 1312 (Fed. Cir. 2015) (holding even later decision reversing institution is not reviewable because “[t]he statute declares such a decision to be ‘final and nonappealable,’ §324(e), thus reinforcing the absence of appeal jurisdiction in this court”) (internal citations omitted); *Thryv*, 140 S. Ct. at 1377 (“Section 314(d), we explained, ‘preclud[es] review of the Patent Office’s institution decisions’ with sufficient clarity to overcome the strong presumption in favor of judicial review.”) (citations omitted). Therefore, Appellee respectfully requests that Appellants’ request for *en banc* review be denied.

### **BACKGROUND**

In response to Appellee USR filing a lawsuit alleging infringement of four patents, Appellants Apple and Visa filed nineteen petitions against those patents seeking IPR and covered business method (“CBM”) review, including on May 3, 2018, when Apple filed three petitions for CBM review of the ’813 Patent (CBM2018-00024, CBM2018-00025, and CBM2018-00026).<sup>1</sup> On December 20,

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<sup>1</sup> That lawsuit was dismissed by the District Court on June 30, 2020. Following dismissal, Apple filed a declaratory judgment suit on additional patents held by USR.



2018, Appellants Visa Inc. and Visa U.S.A. Inc. filed their own petitions seeking CBM review of the '813 Patent on the same grounds, which were joined with the Apple petitions that are the subject of the present appeals.

The PTAB originally instituted CBM review proceedings in CBM2018-00024 and CBM2018-00025. Dkts. 17-3, 17-4, and 17-5. However, the PTAB later reconsidered its institution decisions based on the entirety of the record and the Federal Circuit's guidance in *IBG LLC v. Trading Technologies International, Inc.*, 757 F.App'x 1004 (Fed. Cir. 2019). Dkt. 17-3 at 10-20; Dkt. 17-4 at 10-20. On November 19 and November 26, 2019, based on its determination that the '813 Patent is directed to a technological invention and so does not qualify as a CBM patent for purposes of the AIA, the Board issued orders that vacated its earlier institution decisions and dismissed the proceedings. Dkt. 17-3 at 20; Dkt. 17-4 at 20.

In its termination orders, the PTAB noted that this Court has held that 35 U.S.C. §318(a):

contemplates that a proceeding can be “dismissed” after it is instituted, and, as our prior cases have held, “administrative agencies possess inherent authority to reconsider their decisions, subject to certain limitations, regardless of whether they possess explicit statutory authority to do so.” *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1353, 1360 (Fed. Cir. 2008).

Dkt. 17-3 at 8; Dkt. 17-4 at 8 (quoting *Medtronic, Inc. v. Robert Bosch Healthcare Sys., Inc.*, 839 F.3d 1382, 1385 (Fed. Cir. 2016)). The PTAB also relied on this

Court's guidance in *GTNX*, where this Court held that “the Board has inherent authority to reconsider its decisions, noting that ‘nothing in the statute or regulations applicable here...clearly deprives the Board of that default authority.’”

*Id.* The PTAB also considered 37 C.F.R. §42.72, which states that “[t]he Board may terminate a trial without rendering a final written decision, where appropriate.”

Dkt. 17-3 at 9, Dkt. 17-4 at 9.

Apple and Visa filed four notices of appeal, seeking review of the Termination Decisions in CBM2018-00024 and CBM2018-00025. USR moved to dismiss the appeals for lack of jurisdiction and the motion to dismiss was fully briefed. *See, e.g.*, Dkt. 17-1, Dkt. 21, and Dkt. 24.

On March 9, 2020, the Director of the PTO submitted a “Notice of Non-Filing of Certified List for Lack of Jurisdiction” in this appeal stating that the PTO would not submit a record for the appeal because, in the Director's view, the termination of institution was not appealable:

In the context of the CBM proceedings involved here, the Patent Act expressly states that a party may appeal a USPTO decision to this Court when that party “is dissatisfied with the final written decision of the Patent Trial and Appeal Board under section 318(a).” *See* 35 U.S.C. §141(c). ***Here, there is no final written decision but only a decision by the Board vacating and terminating CBM proceedings which are non-reviewable by this Court.*** *See BioDelivery Sciences Int'l v. Aquestive Therap[e]utics, Inc.*, 935 F.3d 1362, 1366 (Fed Cir. 2019) (dismissing appeal from decision terminating previously instituted proceedings because a denial of institution is not a final written decision and is non-appealable)....

*See* Dkt. 23 at 1-2 (emphasis added). The PTO Director concluded that “appellants’ notices of appeal do not seek review of a final written decision issued pursuant to 35 U.S.C. §318(a), and thus do not comply with the statute. In light of the lack of statutory grounds to appeal, a certified list will not be forwarded to the Court.” Dkt. 23 at 2.

On April 30, 2020, a three-judge panel of Judges Lourie, Dyk, and Reyna, decided the appeals and found that “Apple is barred from seeking review of the Board’s termination decisions and that dismissal of the appeals is appropriate.” Dkt. 27. The panel correctly concluded that decisions on whether to institute CBM review are not appealable, pursuant to the plain language of 35 U.S.C. §324(e).

Appellants filed a petition seeking *en banc* review of the panel’s decision on May 29, 2020. Dkt. 28. On June 30, 2020, this Court invited a response from Appellee. Dkt. 30.

## ARGUMENT

### **I. The Court Lacks Jurisdiction Because Institution Decisions Are Final and Non-Appealable**

This Court lacks appellate jurisdiction to review the Patent Office’s termination of institution decisions at issue in the CBM2018-00024 and CBM2018-00025 proceedings because the Board (1) did not institute review of Appellants’ CBM petitions, (2) never reached the merits of the patentability of any challenged claim, and (3) never issued a final written decision. While the PTAB panel initially

instituted review, it later reconsidered, and vacated, its original institution decisions, terminating both proceedings without issuing a final written decision addressing the patentability of any of the challenged claims. Thus, the only Board decision remaining is one *denying* institution. In such cases, an appellant does not have standing to seek appellate review.

It is well established that when the PTO refuses to institute a post-grant CBM review of a patent, the losing petitioner has no appeal from that decision. *See* 35 U.S.C. §324(e); *ARRIS Int'l PLC v. ChanBond, LLC*, 773 F. App'x 605, 606 (Fed. Cir. 2018) (the Court's "review authority under 28 U.S.C. §1295(a)(4)(A) does not extend to appeals from decisions not to institute."); *Cuozzo Speed*, 136 S. Ct. at 2140 ("[T]he agency's decision to deny a petition is a matter committed to the Patent Office's discretion."); *St. Jude Medical*, 749 F.3d at 1374-76 (Director's non-institution decision is not a "final written decision" of the Board, and neither the statutory provisions addressing *inter partes* review nor 35 U.S.C. §1295(a)(4)(A) permit the Petitioner to seek review of the Board's non-institution decision).

That the Board initially instituted review is of no moment; the Board's later vacatur of its institution decision is equally unappealable. *BioDelivery*, 935 F.3d at 1366 (petitioner has no right to appeal Board's decision to vacate earlier institution decision and deny institution); *GTNX*, 789 F.3d at 1312 ("Having

reconsidered whether to institute the proceeding here and determined not to do so based on §325(a)(1), the Board simultaneously vacated the institution decisions and required termination of the proceedings. It is strained to describe this as anything but a determination whether to institute proceedings—statutory language that is not limited to an *initial* determination to the exclusion of a determination on reconsideration. The statute declares such a decision to be ‘final and nonappealable,’ §324(e), thus reinforcing the absence of appeal jurisdiction in this court.”) (internal citations omitted) (emphasis in original); *GEA Process Eng’g, Inc. v. Steuben Foods, Inc.*, 618 F. App’x 667, 669 (Fed. Cir. 2015) (finding court lacked jurisdiction over appeal where the Board vacated its earlier institution decision, and made no decision with respect to the patentability of any claim); *Kingston Tech. Co. v. SPEX Techs., Inc.*, 2019 WL 3337893, \*2 (Fed. Cir. July 19, 2019) (where “the Board’s bottom line was to not institute the IPR petition...we must take that determination to be final and conclusive...”); *Saint Regis Mohawk Tribe v. Mylan Pharm. Inc.*, 896 F.3d 1322, 1327 (Fed. Cir. 2018) (“If the Director decides not to institute, for whatever reason, there is no review. In making this decision, the Director has complete discretion to decide not to institute review.”);

*Medtronic*, 839 F.3d at 1386 (petitioner cannot seek appellate review of Board’s reconsideration and vacatur of its prior institution decision).<sup>2</sup>

The Supreme Court has consistently made clear that institution decisions and decisions “related to institution” are not appealable. Beginning with *Cuozzo Speed*, the Supreme Court has found there is no appellate jurisdiction because of “clear and convincing indications that Congress intended to bar review.” *Cuozzo Speed*, 136 S. Ct. at 2134. There, the Supreme Court held that where an appellant challenges the institution decision or “grounds its claim in a statute closely related to that decision to institute,” that decision is not appealable. *Id.* at 2142.

That finding has been reinforced in two recent decisions. In the first case, the Supreme Court concluded that the challenge raised was “an ordinary dispute about the application of an institution-related statute” and therefore, consistent with *Cuozzo Speed*, found that §314(d), which uses identical language to §324(e),<sup>3</sup> barred appellate review. *Thryv*, 140 S. Ct. at 1377 (vacating judgment and remanding with instructions to dismiss for lack of appellate jurisdiction). There,

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<sup>2</sup> Appellants’ primary support in the original appeal briefing was this Court’s decision in *Wi-Fi One, LLC v. Broadcom Corp.*, 878 F.3d 1364, 1372 (Fed. Cir. 2018), a decision finding time-bar determinations under §315(b) appealable notwithstanding §314(d). This decision was subsequently abrogated by the Supreme Court in *Thryv*.

<sup>3</sup> While Section 324(e), rather than Section 314(d), governs the non-reviewability of decisions to institute CBM review, both sections set an identical standard: “[t]he determination by the Director whether to institute \* \* \* shall be final and nonappealable.” 35 U.S.C. §§314(d), 324(e).

after the Board’s issuance of a final written decision in an IPR proceeding, the Federal Circuit had reversed the Board’s institution decision based on §315(b), finding that the petition was time-barred, and that decisions under §315(b) were reviewable. The Supreme Court vacated that judgment, affirmed that its prior holding in *Cuozzo Speed* was to be read broadly, and found that there was no appellate jurisdiction because §314(d) “overcomes the presumption favoring judicial review” and bars review of matters “closely tied to the application and interpretation of statutes related to” the institution decision. *Id.* at 1374.

Shortly after its decision in *Thryv*, the Supreme Court strongly suggested in *Emerson Electric Co. v. Sipco*, --- S.Ct. --, 2020 WL 3146672 (June 15, 2020) that its decision in *Thryv* barring review of an IPR institution decision applies equally to appeals of CBM institution decisions. In *Emerson Electric*, this Court had vacated a panel’s final written decision, criticizing the panel’s determination that, because the claims were not directed to a technological invention, the patent qualified for CBM review. The petitioner filed a petition for certiorari, seeking consideration of this question: “[w]hether 35 U.S.C. §324(e) permits review on appeal of the Director’s threshold determination, as part of the decision to institute CBM review, that the challenged patent qualifies as a CBM patent.”<sup>4</sup> On June 15,

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<sup>4</sup> See [https://www.supremecourt.gov/DocketPDF/19/19-966/130430/20200130121842829\\_petition%20pdf%20a.pdf](https://www.supremecourt.gov/DocketPDF/19/19-966/130430/20200130121842829_petition%20pdf%20a.pdf).

2020, the Supreme Court granted the certiorari petition, vacated the judgment in *Emerson Electric*, and remanded the case back to this Circuit with instructions to further consider the case in light of *Thryv*. *Id.*

In view of the Supreme Court’s guidance in *Thryv* and *Emerson*, it is clear that *no aspect* of the PTO’s institution decisions is appealable. That includes Appellants’ appeal request here, where it seeks review of the PTO’s decision to not institute based on its determination that the ’813 Patent does not qualify for CBM review. Dkt. 17-3 at 20; Dkt. 17-4 at 20.<sup>5</sup>

## **II. The PTO Has the Inherent Power to Reconsider Its Institution Decisions**

The PTO has authority to vacate prior institution decision because “administrative agencies possess inherent authority to reconsider their decisions, subject to certain limitations, regardless of whether they possess explicit statutory authority to do so.” *BioDelivery*, 935 F.3d at 1366. When, as here, the Board reconsiders and vacates its institution decision, and terminates the proceedings, that termination lies squarely within the Board’s discretion not to institute review at all

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<sup>5</sup> If dissatisfied with a final written decision, a party is permitted to appeal. 35 U.S.C. §318(d). Both *Thryv* and *Emerson* involved appeals where the Board had issued a final written decision, presenting, if anything, a stronger case for the availability of appellate review than this case. In the absence of a final written decision, no appeal is permitted. And, as the Supreme Court’s decision in *Thryv* makes clear, no appeal of the Board’s institution decision is ever permitted, making appellate review especially inappropriate here, where the Board both vacated institution and never issued any final written decision on the merits.



and is directly related to institution, so falls within the scope of §324(e)'s "No Appeal" provision. *Id.*; *Medtronic*, 839 F.3d at 1386 (holding "nothing in the statute or regulations applicable here...clearly deprives the Board of [its] default authority" to reconsider and vacate its initial institution decision); *GTNX*, 789 F.3d at 1312 (barring appellate review of a vacation of an earlier institution decision and termination because there was no final written decision on the merits of patentability and noting §324(e) contains "statutory language that is not limited to an *initial* determination to the exclusion of a determination on reconsideration"). This Court has also rejected Appellants' argument (Dkt. 28 at 8) that 37 C.F.R. §42.71(d)(1) only gives the Board 14 days to reconsider institution. *GTNX*, 789 F.3d at 1312 (§42.71(d) does not provide "a clear and indisputable right to have the proceeding continue" and concluding "[w]e see nothing in the statute or regulations applicable here that clearly deprives the Board of that default authority [to reconsider]").

There is also no requirement that, once instituted, the Board must proceed with the review through final written decision, as Appellants suggest. Dkt. 28 at 8. In fact, dismissal without a final written decision is always an option. *See, e.g., BioDelivery*, 935 F.3d at 1366; *Medtronic*, 839 F.3d at 1385; *GTNX*, 789 F.3d at 1312. Indeed, 35 U.S.C. §328(a) provides that proceedings can be "dismissed" after institution without a final written decision, and this Court has recognized the

Board's dismissal of a proceeding after vacating an initial institution decision as "final and nonappealable." See *BioDelivery*, 935 F.3d at 1366; *Medtronic*, 839 F.3d at 1386; *GTNX*, 789 F.3d at 1312.

Appellants also argue the Board's determination here is something other than an institution decision. But CBM post-grant proceedings "shall be regarded as...a post-grant review under chapter 32" (AIA §18(a)(1)), and an express prerequisite for institution of any CBM review is that "[t]he Director may *institute* a transitional proceeding *only for a patent that is a covered business method patent*," explicitly defining the term "covered business method patent" in a way that requires the Board to analyze the challenged patent claims. §18(a)(1)(E) (emphasis added); §18(d)(1). Here, the Board denied institution based on its determination that "the '813 patent does not meet the statutory definition under AIA Section 18(d)(1) and is ineligible for CBM review." Dkt. 17-3 at 20; Dkt. 17-4 at 20. Appellants cannot legitimately argue that the Board's decisions, *expressly* vacating institution and dismissing the proceedings pursuant to §18(a)(1)(E), are anything but "final and nonappealable" *institution decisions* subject to §324(e)'s appellate prohibition.

### **III. The Authority Not to Institute Post-Grant Review Proceedings Under §324(a) Is Committed to the Board's Discretion, Independently Depriving the Court of Jurisdiction.**

Congress stated, in no uncertain terms, that the determination "whether to institute a post-grant review under this section shall be final and nonappealable."

§324(e). The Supreme Court has consistently found that this language is a clear indication that Congress meant to overcome the general presumption in favor of appellate review. *Thryv*, 140 S. Ct. at 1374; *Cuozzo Speed*, 136 S. Ct. at 2134. And, even apart from §324(e), Congress structured the AIA to allow a party to appeal only the Board’s “final written decision” (§329) and to give the Director discretion to decline institution. That is why this Court and the Supreme Court have repeatedly confirmed that “[i]f the Director decides not to institute, for whatever reason, there is no review. In making this decision, the Director has complete discretion to decide not to institute review.” *Saint Regis*, 896 F.3d at 1327; *see also BioDelivery*, 935 F.3d at 1366 (“Congress clearly intended to bar review of institution decisions in at least some circumstances by passing the ‘No Appeal’ provision—§314(d).”); *Cuozzo Speed*, 136 S. Ct. at 2140 (“[T]he agency’s decision to deny a petition is a matter committed to the Patent Office’s discretion.”).

Appellants argue, for the first time in the *en banc* petition, that “the Board’s termination rulings were not institution decisions *by the Director*” and that Board decisions are subject to different review. Dkt. 28 at 6. First, Appellants waived this argument by failing to raise it in the underlying briefing on the motion to dismiss. *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1319 (Fed. Cir. 2006) (“We conclude that this issue has been waived for failure to brief it on appeal. Our law is well established that arguments not raised in the opening brief are waived.”).

Second, even if not waived, this Court and the Supreme Court have routinely applied §324(e), and the identical provision of the IPR statute (§314(d)), to actions of the Board. *See, e.g., BioDelivery*, 935 F.3d at 1366 (finding no right to appeal Board’s decision to vacate earlier institution decision and deny institution); *Thryv*, 140 S. Ct. at 1371 (noting “[t]he Director has delegated institution authority to the Patent Trial and Appeal Board (Board)” and holding appellate review was barred). Here, the initial decisions on institution and the ultimate decisions on institution were made by the same Board panel. *Compare* Dkt. 21 at 29 and 75, to Dkts. 17-3 and 17-4 (all identifying Administrative Patent Judges Scanlon, Braden, and Melvin).

This is not surprising, given that the Director has the authority to delegate decisions to the Board, as Appellants themselves concede. Dkt. 28 at 3 (“exercising the power the statute gives to ‘the Director’ and the Director delegated to the Board, *see* 35 U.S.C. §324, 37 C.F.R. §42.4(a), the Board instituted proceedings on two of the petitions.”). Indeed, Appellants cite no authority for the distinction they attempt to draw. The sole case cited by Appellants for this point confirms that the Director can delegate institution decisions and that ability to delegate does not have to be expressly mentioned in statutes. *See Ethicon Endo-Surgery, Inc. v. Covidien LP*, 812 F.3d 1023, 1033 (Fed. Cir. 2016) (“This is a situation where Congress has mentioned a specific official only to make it clear that this official has a particular power rather than to exclude delegation to other officials. It is not a provision

delegating a specific named function to a specific named official. . . . We conclude that the Director here has the inherent authority to delegate institution decisions to the Board.”) (citations omitted).

### **CONCLUSION**

Because there is no final written decision, this Court lacks jurisdiction. Section 324(e) states that the agency’s institution decision is “final and nonappealable” and the authority not to institute is committed to the Director’s discretion. In *BioDelivery*, *ARRIS International*, *GTNX* and *GEA Process Engineering*, the Court dismissed the appeals after concluding that it lacked jurisdiction to review the Patent Office’s decision to not institute review. Moreover, in the two recent instances where this Circuit has found that it could review the PTO’s institution decisions contained in a final written decision, the Supreme Court has vacated and remanded for reconsideration (and, in *Thryv*, with a directive to dismiss for lack of jurisdiction). Because neither the applicable statutes nor the decisions of this Court or the Supreme Court permit the appellate review of a PTO non-institution decision, this Court should leave the panel’s decision in effect and deny *en banc* review.

Dated: July 14, 2020

Respectfully submitted,

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*Universal Secure Registry LLC*

**CERTIFICATE OF COMPLIANCE**

I certify that the foregoing Universal Secure Registry LLC's Corrected Response to Appellants' Petition for *En Banc* Review contains 3,857 words as measured by the word-processing software used to prepare this brief.

Dated: July 14, 2020

/s/ Christopher A. Mathews

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 14th day of July, 2020, I filed the foregoing Universal Secure Registry LLC's Corrected Response to Appellants' Petition for *En Banc* Review with the Clerk of the United States Court of Appeals for the Federal Circuit via the CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

Dated: July 14, 2020

/s/ Christopher A. Mathews