No. 26-123

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

IN RE VOLKSWAGEN GROUP OF AMERICA, INC.,
Petitioner

On Petition for a Writ of Mandamus to the
United States Patent and Trademark Office, Patent Trial and Appeal Board,
Case No. IPR2025-00925

REPLY IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS

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February 18, 2026

CERTIFICATE OF INTEREST

Case Number 26-123

Short Case Caption In re Volkswagen Group of America, Inc.

Filing Party/Entity Volkswagen Group of America, Inc.

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Name: Elliot C. Cook

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** 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.	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.
☐ None/Not Applicable	☐ None/Not Applicable	☐ None/Not Applicable
Volkswagen Group of America, Inc.	Volkswagen AG	Volkswagen AG
	Audi AG	Volkswagen International America Inc.

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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. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

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INTRODUCTION

Longhorn and the Office struggle to avoid the constitutional question here. They mischaracterize the nature of the Director's institution power, the Petition, and caselaw. They dwell on irrelevant considerations like agency guidelines and fiscal constraints that neither resolve nor justify maintaining the unconstitutional status quo. They suggest, contrary to precedent, that Volkswagen's relief is achievable by other means. And Longhorn's waiver challenge runs headlong into opposite caselaw and the Office's apparent concession to the contrary.

But no one disputes how 35 U.S.C. § 314, as construed, gives the Director unconstrained power to decide whether to adjudicate patent disputes—for any reason or no reason at all. Nowhere do Longhorn and the Office identify an intelligible principle guiding Congress's delegation of that legislative power. Nor is there one. This structural infirmity renders Congress's delegation to the Director unconstitutional. This Court should grant mandamus to address it.

ARGUMENT

I. Volkswagen's Nondelegation Challenge Is Constitutional, Not Statutory

Longhorn mischaracterizes Volkswagen's request as a statutory challenge recast in constitutional terms. Because Volkswagen seeks a narrower construction of 35 U.S.C. § 314, Longhorn argues, its challenge amounts only to an allegation that the Director's institution-related policies exceed his statutory authority. Longhorn Br. 9-10. This confuses Volkswagen's requested relief with the

constitutional violation alleged. "[W]hether a litigant has a 'cause of action' is analytically distinct and prior to the question of what relief, if any, a litigant may be entitled to receive." *Davis v. Passman*, 442 U.S. 228, 239-44 & n.18 (1979); *see also Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 590 U.S. 405, 412 (2020) (defining claims by the "transaction[s]" or "operative facts" from which they arise (citations omitted)).

Volkswagen does not allege that the Director, in purportedly seeking "administrative efficiency," has merely "exceeded" the boundaries of his delegated authority. Longhorn Br. 2, 9-10, 32-33. Rather, Volkswagen contends § 314, as currently interpreted, fails to supply *any boundary* he might have otherwise exceeded. *See FCC v. Consumers' Rsch.*, 606 U.S. 656, 673 (2025). That is a structural constitutional defect reviewable and remediable by this Court. *See In re Palo Alto Networks, Inc.*, 44 F.4th 1369, 1374 (Fed. Cir. 2022); *Mylan Lab'ys Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021). While this infirmity implicates statutory interpretation and application—as constitutional concerns often do, *see Mistretta v. United States*, 488 U.S. 361, 373 n.7 (1989) (collecting cases)—the dispute remains constitutional, *see In re Cambridge Indus. USA Inc.*, No. 2026-101, 2025 WL 3526129, at *2 (Fed. Cir. Dec. 9, 2025).

Longhorn's reliance on *Cambridge* and its companion cases is misplaced. *See* Longhorn Br. 10-11. *Cambridge* held an *ultra vires* claim "regarding the PTO's use

of settled expectations" could not be recast as a separation-of-powers challenge. *Cambridge*, 2025 WL 3526129, at *2 n.1. Neither *Cambridge* nor akin cases suggest, as Longhorn contends, that all separation-of-powers challenges implicating settled expectations (e.g., nondelegation issues) are *ultra vires* attacks. Longhorn Br. 10; *see Cambridge*, 2025 WL 3526129, at *2 n.1; *In re Sandisk Techs., Inc.*, No. 2025-152, 2025 WL 3526507, at *1 (Fed. Cir. Dec. 9, 2025); *In re Google*, No. 2026-111, 2026 WL 204945, at *1 (Fed. Cir. Jan. 27, 2026). *Cambridge* and its progeny are therefore inapposite. Volkswagen challenges the constitutionality of the *absence* of any congressional constraint on the Director's discretion, not whether the Director followed existing constraints.

II. Congress Delegated Legislative Power When It Gave the Director Decision-Making Authority over Whether to Institute IPR

Respondents claim the Director's unfettered discretion under § 314 "implicates *non-legislative* powers of the sort traditionally left to the Executive Branch." Director Br. 13-21 (emphasis added); *see* Longhorn Br. 32-33 (calling exercise of discretion "administration"). That framing mischaracterizes the nature of institution decisions. A decision to institute is not an exercise of enforcement discretion. It is a determination whether the Office will adjudicate a patent dispute initiated and paid for by the petitioner. Institution decisions thus necessarily implicate legislative powers: they dictate whether private parties can access a

particular mode of challenging the validity of patents—a public franchise issued pursuant to Congress's patent power.

A. Discretionary Denial Implicates Congress's Patent Power

The Constitution gives Congress the power "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const. art. I, § 8, cl. 8. This clause "reflects a balance between the need to encourage innovation and the avoidance of monopolies which stifle competition without any concomitant advance in the 'Progress of Science and useful Arts.'" *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 146 (1989). Within constitutional limits, Congress may "implement the stated purpose of the Framers by selecting the policy which in its judgment best effectuates the constitutional aim." *Graham v. John Deere Co.*, 383 U.S. 1, 6 (1966).

"[I]nter partes review involves the same interests as the determination to grant a patent in the first instance." *Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC*, 584 U.S. 325, 337 (2018) (citing *United States ex rel. Benardin v. Duell*, 172 U.S. 576, 586 (1899)). Congress has delegated its constitutional patent power by allowing the Director to make policy on when the Office will take "a second look at an earlier administrative grant of a patent" and when it will disregard evidence that a patent never should have issued. *See Cuozzo Speed Techs., LLC v. Lee*,

579 U.S. 261, 279-80 (2016). It is Congress's duty to select the policy that "best effectuates the constitutional aim" of the patent power, not the Director's. *See Graham*, 383 U.S. at 6. Under the Director's interpretation, Congress has given the Director no policy to apply.

B. A Decision to Institute IPR Is a Decision to Adjudicate, Not a Decision to Bring an Enforcement Action

Nothing supports the Director's attempts to analogize IPR institution decisions to discretionary questions of whether and how to enforce laws. Director Br. 15-17. Adjudicating a dispute raised and paid for by private parties on patent validity is unlike an agency's decision to bring legal action for violating the law.

When an agency chooses "to pursue legal actions against defendants who violate the law," *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021), it balances various factors. These factors assess, for example, "whether the agency is likely to succeed if it acts" and "whether the particular enforcement action requested best fits the agency's overall policies." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Congress lacks the constitutional authority to pass a law requiring "the Executive Branch to prosecute certain offenses or offenders," as doing so "would interfere with the President's Article II prosecutorial discretion." *In re Aiken Cnty.*, 725 F.3d 255, 266 n.11 (D.C. Cir. 2013); *see also Trump v. United States*, 603 U.S. 593, 620 (2024) (discussing the Executive Branch's "'exclusive authority and absolute discretion' to decide which crimes to investigate and prosecute" (citation omitted)); *Chaney*,

470 U.S. at 831 (discussing "an agency's absolute discretion" to decide "not to prosecute or enforce" via civil or criminal means).

In contrast, the Director's decision to institute IPR is not a decision to pursue legal action against a transgressor—it is a decision to adjudicate a patent dispute between private parties. *See United States v. Arthrex, Inc.*, 594 U.S. 1, 8 (2021) (referring to PTAB as "executive adjudicatory body"); H.R. Rep. 112-98, pt. 1, at 46-47 (2011) ("The Act converts inter partes reexamination from an examinational to an adjudicative proceeding, and renames the proceeding 'inter partes review.'"). Unlike the discretionary enforcement proceedings discussed in the Director's and Longhorn's cited cases, Congress here created "a party-directed, adversarial process," where the petitioner "gets to define the contours of the proceeding," not the Director. *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364 (2018).

The Director, for example, cannot bring an IPR on his own accord. *Id.* He can decide only "whether to institute . . . pursuant to a petition filed under section 311." 35 U.S.C. § 314(b). Nor can the Director "institute a *different* inter partes review of his own design." *SAS*, 584 U.S. at 365. The Office, for example, cannot "raise, address, and decide" its own legal theories. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1380-81 (Fed. Cir. 2016). Rather than acting as "investigat[or] and prosecut[or]," *Trump*, 603 U.S. at 620, the Office is an "adjudicatory body," *Arthrex*, 594 U.S. at 8. And while the Office can "proceed to a final written decision" *after*

institution if the Board has resolved the merits, 35 U.S.C. § 317(a), no similar statute exists for settlements *before* institution or resolution. The Director's decision under § 314 is thus a decision to adjudicate the dispute according to the petition, not a decision to bring an enforcement action. *See* 35 U.S.C. §§ 314(a), 318(a).

The Director's and Longhorn's cited cases are also distinguishable for other reasons. For proceedings like IPRs, "Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes." *Lincoln v. Vigil*, 508 U.S. 182, 193 (1993). Indeed, Congress has done so for ex parte reexamination. *See* 35 U.S.C. § 304 (requiring the Director to order reexamination upon a substantial new question of patentability). The Director cannot refuse to order reexamination without some statutory basis. *See In re Vivint, Inc.*, 14 F.4th 1342, 1350 (Fed. Cir. 2021) (permitting the Director to reject a request under 35 U.S.C. § 325(d)). As reexamination is "a cousin of inter partes review," *Cuozzo*, 579 U.S. at 279, Congress likewise has the power to set requirements for instituting and denying IPR. Requiring the Director to institute IPR in certain situations does not infringe on the Executive Branch's duty to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3.

Additionally, cases like *Chaney* justify giving agencies enforcement discretion because such discretion lets agencies assess how to best spend their limited resources. *See* 470 U.S. at 831. Congress obviated that concern for IPR,

precluding the Director from considering an IPR petition unless it "is accompanied by payment of the fee established by the Director" as "reasonable, considering the aggregate costs of the review." 35 U.S.C. §§ 311(a), 312(a)(1). Congress expected the Director to set and adjust IPR fees so that a petitioner's fees would give the Office the resources it needed to adjudicate the proceeding. Agency decisions to bring enforcement actions, initiated without private payment, lack this resource.

C. Deciding the Forum for Adjudicating a Patent Dispute Is a Legislative Power

Only Congress has the power to decide who adjudicates matters involving public rights. *Crowell v. Benson*, 285 U.S. 22, 50-51 (1932) ("[T]he mode of determining matters [involving public rights] is completely within congressional control. Congress may reserve to itself the power to decide, may delegate that power to executive officers, or may commit it to judicial tribunals." (quoting *Ex parte Bakelite Corp.*, 279 U.S. 438, 451 (1929))). Delegating this power to an agency constitutes a delegation of legislative power. *Jarkesy v. SEC*, 34 F.4th 446, 461 (5th Cir. 2022). Congress delegated legislative power when it granted the Director the power to decide whether to adjudicate disputes involving patent validity and afford petitioners the benefits of IPR's legal processes.

Neither Respondent addresses *Jarkesy*'s discussion of Congress's "power to assign disputes to agency adjudication," particularly in matters involving public rights. *Id.* (citing *Atlas Roofing Co. v. Occupational Safety & Health Rev. Comm'n*,

430 U.S. 442, 455 (1977)). Instead, they disagree with *Jarkesy*'s discussion of *INS v. Chadha*, 462 U.S. 919, 952 (1983), argue *Jarkesy* hinged on the right to a jury trial, and claim a denial of institution does not *require* adjudication in another forum. Director Br. 19-24; Longhorn Br. 13-14. These arguments are unavailing. Whether Congress delegated legislative power here does not hinge on *Jarkesy*'s discussion of *Chadha*, as *Jarkesy* cites several cases describing the power to assign adjudication to an agency as legislative. 34 F.4th at 461. And like *Jarkesy*, the Director's decision to institute or deny eligible petitions "decide[s] which [parties] should receive *certain legal processes*" for challenging patent validity. *Id.* at 462-63. The Office's "absolute discretion" over these legal adjudications makes its power legislative. *Id.*

Congress alone has the constitutional power to grant patents and assign matters involving the adjudication of public rights. Giving the Director unfettered discretion to deny institution of IPR—even when a petition meets all requirements for institution—constitutes a delegation of congressional power to the Director.

III. Congress Provided No Intelligible Principle When It Delegated Power

Neither Respondent meaningfully disputes that § 314, as construed, provides no intelligible principle for denying institution. This leaves Volkswagen's intelligibility arguments largely unaddressed. Volkswagen Br. 9-22.

The Office contends § 314 need not have an intelligible principle at all. Director Br. 17-19. Analogizing IPRs to enforcement proceedings, the Director

claims Congress had "no constitutional duty" to provide an intelligible principle for denying institution. *Id.* This argument reduces to the flawed prosecutorial analogy discussed above and fails for the same reasons. *See supra* Section II.B.

Longhorn tries to divine an intelligible principle from statutes governing institution and from Office Guidance. Longhorn Br. 26-33 (citing 35 U.S.C. §§ 314(a), 316(a), 325(d)). But the former does not establish a lower bound for denying institution, and the latter is not a principle from Congress. Neither argument yields an intelligible principle of consequence.

Longhorn quotes §§ 314(a) and 316(a) (*id.* at 27-28), but neither contains an intelligible principle for discretionary denial. First, these statutes govern when the Director may *grant* institution, not discretionarily *deny* it. *See* 35 U.S.C. §§ 314(a) (forbidding institution "unless" certain nondiscretionary conditions apply), 316(a)(2) (stating the Director "shall prescribe regulations" establishing standards for "sufficient grounds to institute"). Neither statute concerns discretionary denial. Volkswagen Br. 16-17, 20. Second, these statutes do not require the Director to "prescribe regulations" for discretionary denial. *Id.* Nor has he done so, as he does not view either statute as limiting his discretion. *Id.* Third, courts have not yet construed these statutes as intelligible limits. *See Mylan*, 989 F.3d at 1382.

That leaves § 325(d). While this statute could supply an intelligible principle for discretionary denial, neither the Office nor any court decision deems § 325(d) a

limit on the Director's discretionary power. *See* Volkswagen Br. 3, 20-25. This cements the constitutional problem. When the Office has "complete discretion" to deny institution, *Saint Regis Mohawk Tribe v. Mylan Pharms. Inc.*, 896 F.3d 1322, 1327 (Fed. Cir. 2018), § 325(d) does no work. Volkswagen Br. 21-25. Neither Respondent argues otherwise. The Director ignores § 325(d) altogether (Director Br. at v), and Longhorn pretends it limits the Office's discretion (Longhorn Br. 28). It does not. Volkswagen Br. 20-21. Neither courts nor the Office have construed the AIA this way, despite rendering § 325(d) superfluous by doing so. *Id.* at 22-25.

Longhorn concludes with extended tangents on current Office procedures. Longhorn Br. 28-33. Only Congress may supply an intelligible principle. *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001) ("*Congress* must 'lay down by legislative act an intelligible principle to which [an agency] is directed to conform.'" (quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928))). An agency cannot "cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute." *Id.*; *see Jarkesy*, 34 F.4th at 460-62 (citing *Mistretta*, 488 U.S. at 372). The Director's internal processes cannot cure constitutional defects when, as here, those strictures may change tomorrow. *See* Volkswagen Br. 13-14.

IV. The Director's Concern over Funding Is Irrelevant

Citing nothing, the Director considers Volkswagen's relief "[i]mpractical" because the Office might lose authority to set IPR fees in the future. Director Br. 24. Setting aside the implausible suggestion IPR fees will freeze forever, this concern has no force. Even if this hypothetical lapse occurs—or is correct[1]—it is irrelevant. Funding woes do not eclipse the Constitution.

The Director's ability to set future fees has no bearing on the constitutionality of limitless discretionary denial. Court constructions of § 314 either violate separation of powers or they do not. Fiscal inconvenience and "policy priorities" (*id.* at 24-25) do not obviate constitutional violations. If the Director is concerned about fee-setting sunsets, he should lobby Congress for an extension. It has happened before. *See* SUCCESS Act, Pub. L. No. 115-273, § 4, 132 Stat. 4158, 4159 (2018). Until then, the Director's policy appeals involving hypothetical events are "properly addressed to Congress, not this Court." *SAS*, 584 U.S. at 368; *see also Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 13-14 (2000).

The Director's ensuing parade of policy horribles if this Court adopts Volkswagen's cure to the constitutional defect (Director Br. 26-28) changes nothing.

[1] The Director presumably relies on the fee-setting "SUNSET" term of the AIA. *See* America Invents Act, Pub. L. No. 112-29, § 10(i)(2), 125 Stat. 284, 319 (2011). But these provisions are just a "35 USC 41 note." *Id.* § 10, 125 Stat. at 316. The authority to set IPR fees comes from § 311(a), not § 41. *See* 35 U.S.C. § 311(a). The Director has not explained how a note to § 41 controls fees under § 311(a).

Subsections 315(d) and 325(d), for example, already address the Office's concern over serial attacks on cumulative art. *Id.* And the Office's worry over duplicative efforts in district court (*id.*) ignores the realities of patent litigation. Petitioners file IPRs for myriad reasons. When parties pay an "adjudicatory body" to resolve their disputes, *Arthrex*, 594 U.S. at 8, the Director should leave policymaking to Congress and not invent extrastatutory reasons to second guess these analyses *ex ante*.

V. Volkswagen Has No Alternative Means of Relief

Volkswagen seeks vacatur of the Director's discretionary denial and remand for the Director to consider insitution consistent with nondelegation requirements. Neither reexamination nor district court litigation, which Longhorn and the Director reference, can provide that relief. Longhorn Br. 16; Director Br. 28. They are separate proceedings offering different relief.

Reexamination and district court challenges to patentability could never provide Volkswagen's requested relief because they do not implicate the constitutional issue here. Neither allows the Director to discretionarily deny any patentability challenge, much less IPR. *Cf.* 35 U.S.C. § 304 (requiring reexamination for "substantial new question[s] of patentability" without discretionary denial). Because neither proceeding can address the wrong Volkswagen challenges—unbounded discretionary denial—neither can offer the remedy Volkswagen seeks—constitutional curtailment of that practice. Counterfactuals of reexamination and

district court proceedings do not defeat mandamus. *See Palo Alto*, 44 F.4th at 1378 (Reyna, J., concurring) ("The analysis, therefore, of whether a petition meets the high standard for mandamus begins and ends with a principled focus on the specific relief sought by the petitioner.").

The Director's reliance on *In re Motorola Solutions, Inc.*, is misplaced. That decision found no Due Process violation without reaching the "alternative means" inquiry. 159 F.4th 30, 35-38 (Fed. Cir. 2025) (citation omitted). The Director's nonpatent cases fare no better; none establish that the mere existence of other legal proceedings involving different relief can avoid mandamus. Director Br. 29.

Longhorn also references without explanation "challenges before an Article III court." Longhorn Br. 17. Presumably Longhorn means APA challenges under 5 U.S.C. §§ 701-706. Such challenges likewise cannot defeat mandamus. If they could, this Court could never consider mandamus from any IPR. Precedent shows otherwise. *See, e.g.*, *Mylan*, 989 F.3d at 1380-81 ("To protect our future jurisdiction, we have jurisdiction to review any petition for a writ of mandamus denying institution of an IPR."). The Court's "mandamus jurisdiction is especially important" for IPR denials, *id*., and the Court may consider "colorable constitutional claims" based on noninstitution, *id*. at 1382. Indeed, if the possibility of APA challenge negated mandamus, swaths of nonpatent precedent would be eviscerated. *See, e.g.*, *In re Ctr. for Biological Diversity*, 53 F.4th 665, 671, 673 (D.C. Cir. 2022)

(granting mandamus and finding "mandamus is the only way to compel EPA to perform its clear duties in this case"); *see also* 5 U.S.C. § 706(1) (courts reviewing APA challenges may "compel agency action unlawfully withheld").

Volkswagen's challenge is thus properly before this Court. The Petition does not seek mandamus "as a substitute for the regular appeals process," *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380-81 (2004), but instead after Volkswagen exhausted all nonfutile options in the proceeding below.

VI. Volkswagen Did Not Have to Raise Its Nondelegation Challenge Before the Board to Raise It Here

Longhorn's forfeiture argument fails because Petitioner's nondelegation doctrine challenge raises important structural constitutional issues that would have been futile to raise before the Office.

As was the case in *Arthrex*, "this case implicates the important structural interests and separation of powers concerns protected by the [Constitution]." *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320, 1326 (Fed. Cir. 2019), *vacated on other grounds by United States v. Arthrex, Inc.*, 594 U.S. 1 (2021). As this Court and the Supreme Court did in *Arthrex*, this Court should address those concerns here over Longhorn's forfeiture arguments. *Id.* at 1326-27; *see also Palo Alto*, 44 F.4th at 1374. Longhorn's citation to *Ciena Corp. v. Oyster Optics, LLC*, 958 F.3d 1157, 1160-61 (Fed. Cir. 2020), does not require a different outcome. Longhorn Br. 22. There, the Court refused to consider appellant's challenge to the appointment of

PTAB panel members because appellant had effectively consented to that panel by filing its IPR petition. *Ciena*, 958 F.3d at 1159. There is no such consent or inconsistency here.

Moreover, raising the nondelegation issue before the Office would have been futile. Courts do not require complete exhaustion where the adjudicator is powerless to grant relief. *Carr v. Saul*, 593 U.S. 83, 93 (2021). The Office lacks authority to invalidate or interpret a statute on nondelegation grounds—that is the exclusive province of the courts. This is why the Office has previously declined to address nondelegation challenges. *See Cirrus Logic, Inc. v. Greenthread, LLC*, IPR2024-00016, Paper 76 at 65-66 (P.T.A.B. Apr. 29, 2025). Volkswagen's claim does not depend on agency fact-finding, and it would have gained nothing from earlier presentation to an agency without authority to resolve the issue. Indeed, the Director's brief (which disputes Volkswagen's nondelegation positions but does not argue forfeiture) confirms the futility of raising this issue before the Office.

Finally, Longhorn repeatedly cites this Court's nonprecedential opinion in *In re SAP Am., Inc.*, Nos. 2025-132, -133, 2025 WL 3096788 (Fed. Cir. Nov. 6, 2025), but that opinion does not foreclose review here. While the Court noted SAP's failure to raise its constitutional challenges below, it also rejected them on the merits because they had already been decided in an earlier precedential decision. *Id.* at *2

("[O]ur decision in *In re Motorola Sols., Inc.*, [159 F.4th 30 (Fed. Cir. 2025)], forecloses relief on those issues.").

The Court should therefore consider Volkswagen's nondelegation challenge because it implicates structural constitutional issues that would have been futile if raised before the Office.

CONCLUSION

The Court should grant Volkswagen's Petition, vacate the noninstitution decision, and remand for the Director to determine whether to institute inter partes review in a manner consistent with constitutional separation of powers.

Date: February 18, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This Reply complies with the type-volume limitation of Federal Circuit Rule 21(b) because the body of the Reply contains 3,849 words, excluding the portions exempted by the rules.

2. This Reply complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point font, Times New Roman.

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