UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS AMERICA, INC.
SAMSUNG ELECTRONICS CO., LTD.,
Petitioners

v.

KONINKLIJKE KPN N.V.
Patent Owner

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Case IPR2025-00502
U.S. Patent 9,667,669

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PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION

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2001 to 2100	**RESERVED FOR PRELIMINARY RESPONSE**
2101	KPN's Original Petition and Request for Disclosure in *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, No. 25-0237 (71st Dist. Ct. Harrison Cty. Tex., March 3, 2025).
2102	2016 Settlement, License and Non-Assertion Agreement between Koninklijke KPN N.V. and Samsung Electronics Co., Ltd. ("Financial Conditions" Redacted)
2103	Ericsson's Nov. 16, 2021 Invalidity Contentions in *Koninklijke KPN N.V. v. Telefonaktiebolaget LM Ericsson et al.*, No. 2:21-CV-00113-JRG
2104	Signed Jury Verdict Form (Dkt. 245) in *Koninklijke KPN N.V. v. Telefonaktiebolaget LM Ericsson et al.*, No. 2:21-CV-00113-JRG (Aug. 26, 2022)
2105	Amended Final Judgment (Dkt. 325) in *Koninklijke KPN N.V. v. Telefonaktiebolaget LM Ericsson et al.*, No. 2:21-CV-00113-JRG (Aug. 9, 2023)
2106	KPN's Original Petition and Request for Disclosure in *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, No. 22-0762 (71st Dist. Ct. Harrison Cty. Tex., Sept. 28, 2022) (redacted)
2107	Signed Jury Verdict Form in *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, No. 22-0762 (71st Dist. Ct. Harrison Cty. Tex., Feb. 23, 2024) (redacted)
2108	Final Judgment, *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, No. 22-0762 (71st Dist. Ct. Harrison Cty. Tex., May 2, 2024) (redacted)
2109	Samsung's Complaint for Declaratory Judgment of Non-Infringement (Dkt. 2) in *Samsung Electronics Co., Ltd. v. Koninklijke KPN N.V.*, No. 24-cv-01433-CFC (Dec. 31, 2024) (redacted)

Exhibit No.	Description
2110	Samsung's Complaint for Declaratory Judgment of Non-Infringement in *Samsung Electronics Co., Ltd. v. Koninklijke KPN N.V.* (Dkt. 2) (redacted), No. 25-cv-00001-CFC (January 1, 2025) (redacted)
2111	Opening Brief in Support of Motion to Dismiss First Amended Complaint (Dkt. 30) in *Samsung Electronics Co., Ltd. v. Koninklijke KPN N.V.*, No. 24-cv-01433-CFC (Apr. 7, 2025) (redacted)
2112	Opening Brief in Support of Motion to Dismiss First Amended Complaint (Dkt. 31) in *Samsung Electronics Co., Ltd. v. Koninklijke KPN N.V.*, No. 25-cv-00001-CFC (Apr. 7, 2025) (redacted)
2113	Amended Complaint (Dkt. 26) in *Koninklijke KPN N.V. v. Telefonaktiebolaget LM Ericsson et al.*, No. 2:22-CV-00282-JRG (Nov. 15, 2022) (redacted)
2114	Order of Dismissal (Dkt. 236) in *Koninklijke KPN N.V. v. Telefonaktiebolaget LM Ericsson et al.*, No. 2:22-CV-00282-JRG (Jan. 17, 2024)
2115	Docket Navigator Search Results for All IPR or PGR Petitions Filed Between Jan. 1, 2025 and April 17, 2025
2116	Docket Navigator Search Results for IPR or PGR Petitions Filed by Samsung Between Jan. 1, 2025 and April 17, 2025
2117	Emails between counsel dated April 29, 2022 to April 28, 2022 regarding agreement to dismiss claims and counterclaims of the '669 Patent in *Koninklijke KPN N.V. v. Telefonaktiebolaget LM Ericsson et al.*, Case No. 2:21-CV-113

I. SUMMARY OF ARGUMENT

Pursuant to Acting Director Stewart's March 26, 2025 Memorandum titled "Interim Processes for PTAB Workload Management" ("Workload Memo"), Patent Owner Koninklijke KPN N.V. ("KPN") respectfully requests that the Director exercise discretion and deny institution of *inter partes* review.

The Workload Memo states that—in addition to the discretionary considerations set forth in existing Board precedent (e.g., *Fintiv*) and the Consolidated Trial Practice Guide (Nov. 2019)—the Director will take into account "all relevant considerations," including but not limited to the strength of the unpatentability challenge, the extent of the petitioner's reliance on expert testimony, settled expectations of the parties, compelling economic interests, and the ability of the PTAB to comply with its statutory deadlines. Workload Memo, 2-3. Given the unique circumstances presented here, discretionary denial is warranted based on these and other considerations.

First, unlike virtually all other IPR and PGR proceedings, there are no pending infringement claims against Samsung Electronics America, Inc. or Samsung Electronics Co., Ltd (collectively, "Samsung"). To the contrary, KPN has moved to dismiss Samsung's declaratory judgment lawsuit on the basis that no actual case or controversy exists because KPN has never threatened to sue Samsung for infringement of the '669 Patent. Given "the current workload needs of the PTAB"

and consideration of "the ability of the PTAB to comply with … its statutory deadlines for AJA proceedings" (*id.*), institution should be discretionarily denied so that the Board may prioritize proceedings involving patents that have either been asserted or clearly alleged to be infringed. Indeed, post grant proceedings can only serve as a "true alternative" to district court proceedings when a legitimate basis for litigation exists. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 19 (PTAB Dec. 1, 2020) (precedential).

Second, there are "legitimate questions about whether the petition is reasonably designed to advance the beneficial aims of the AIA or this Office." *See OpenSky Industries, LLC. v. VLSI Technology LLC*, IPR-2021-01064, Paper 102 at 36 (PTAB Oct. 4, 2022) (precedential). The evidence suggests that Samsung did not file its numerous IPR petitions because of a legitimate infringement concern. Instead, Samsung filed its petitions and declaratory judgment actions in pure retaliation because KPN was awarded **$342M** (plus accruing interest) in breach of contract damages by a Texas state court for Samsung's breach of a 2016 settlement agreement ("2016 Settlement Agreement"), which Samsung has repeatedly tried to pressure KPN to abandon. In fact, Samsung's IPR petitions are the subject of a second Texas state court lawsuit by KPN alleging that Samsung's filing of the petitions violates the 2016 Settlement Agreement. Ex. 2101 ¶¶ 28-68.

Third, discretion should be exercised because KPN will suffer irreparable

harm if Samsung is found to be in breach in the second Texas state court lawsuit after the Board issues a merits-based decision on institution. Although the merits of the Petition are weak, any decision by the Board addressing the merits would become part of the public domain and could be used by future petitioners to attempt to create new petitions, including by remedying the weaknesses in the Petition. Even a later-issued injunction could not undo the harm this would cause KPN.

Fourth, there are compelling economic interests favoring the exercise of discretion. There is a strong economic interest in holding technology companies to the terms of contractual agreements. There is also a robust economic interest in encouraging innovation by allowing technology companies, such as KPN, to license their novel technologies, which is used to fund further technological developments. Samsung's strategy of arbitrarily targeting valuable patents in KPN's portfolio as retaliation is an improper attempt to undermine that economic interest.

Fifth, the Board has already adjudicated the patentability of Claims 2, 3, 6, and 8 of the '669 Patent in *Ericsson Inc. v. Koninklijke KPN NV*, IPR2022-00557 that Samsung's Petition challenges again or claims that recite similar subject matter. KPN submits that it would not be a good use of the Board's resources to adjudicate the patentability of these claims again. Discretionary denial in view of the prior IPR against the '669 Patent is particularly warranted because Samsung seeks to relitigate issues that the Board already ruled on in the prior IPR. It would be a waste of Board

resources to revisit these issues again.

Sixth, Samsung's patentability challenges are weak. Ground 1 of the Petition relies on both design choice and inherency arguments for Claim 2. This is Samsung's sole challenge to Claim 2, and the Petition relies on the Claim 2 challenge for Claims 3-5, 16-17, and 20. But, contrary to Samsung, there are not a "limited number" of options to generate an alleged session identifier in the Petition's primary reference, Widegren. Pet., 34. And Samsung's arguments that "the session identifier would have to be provided," "[t]his is necessarily true," and "the receiving UE must receive the session identifier," Pet. 37, do not meet the "high standard" for inherency in obviousness. *PAR Pharm., Inc. v. TWI Pharm., Inc.*, 773 F.3d 1186, 1195-96 (Fed. Cir. 2014).

Seventh, the Petition relies extensively on expert testimony and there are, at minimum, reasonable disputes as to whether certain claim elements are satisfied by the alleged prior art. Pursuant to the Workload Memo, this consideration weighs in favor of discretionary denial

Eighth, the expectations of the parties have long been settled. KPN has for decades relied on the licensing of patented technology that it internally develops to grow and support its telecommunications business. The '669 Patent issued over seven years ago, and Samsung has been aware of it for years. As such, the parties fully expected validity of the '669 Patent to remain unquestioned.

Ninth, given the current workload needs of the Board, another important consideration is the overall burden that the particular petitioner at issue places on the PTAB. At the current pace Samsung is filing IPR petitions this year, Samsung will account for **over 15%** of **all** IPRs or PGRs filed in 2025. Fundamental fairness dictates that the exercise of discretion should lean toward denial for petitioners that file an abnormally high number of petitions, which places a significant burden on the Board and increases the likelihood that the meritorious challenges of petitioners that rarely file IPRs will be discretionarily denied.

Finally, the exercise of discretion here would preserve an unusually large amount of Board resources. Although there are six Samsung IPR petitions challenging unrelated and fundamentally different patents, the reasons for discretionary denial herein largely apply the same to each proceeding. Thus, exercising discretion would preserve an extraordinary amount of Board resources that could be dedicated to proceedings involving patents that have been asserted or actually threatened.

II. BACKGROUND

A. KONINKLIJKE KPN NV

KPN is a 150-year-old company that provides telecommunication services to millions of consumers in the Netherlands. Ex. 2101 ¶ 1. KPN has devoted billions of dollars to research and development activities designed to improve its

telecommunication services. *Id.* To help fund these efforts, KPN relies on licensing revenue from its robust intellectual property portfolio that includes approximately 1,750 patents, many of which are declared essential to 3G, 4G, and 5G wireless standards. *Id.*

To support its research efforts, KPN licenses its patents directly, as well as through patent pools, and has provided licenses to many of the world's leading technology companies, including Microsoft, LG, Lenovo, BlackBerry, Nokia, Ericsson, Dell, Oracle, Xiaomi, Acer, HTC, Huawei, Cisco, HP, ZTE, Fujitsu, ASUSTek, TCL, Motorola, Oracle, Panasonic, and Sony. *Id.* ¶ 2. Samsung also has licensed KPN's patents at various points, including in its 2016 Settlement Agreement with KPN, discussed further below.

B. THE 2016 SETTLEMENT AGREEMENT

Around 2015, KPN filed multiple lawsuits against Samsung in the United States, as well as in Germany and China, to attempt to resolve Samsung's willful infringement of several of KPN's patented inventions. *Id.* ¶ 4. Each United States lawsuit was filed before the United States District Court for the Eastern District of Texas, Marshall Division. *See Koninklijke KPN NV v. Samsung Electronics America, Inc.*, 2:14-cv-01165 (E.D. Tex.); *Koninklijke KPN NV v. Samsung Electronics America, Inc.*, 2:15-cv-00948 (E.D. Tex.). In response, Samsung filed IPRs challenging several of the asserted patents. *See Samsung Electronics Co., Ltd.*

v. Koninklijke KPN N.V., IPR2016-00392 (challenging U.S. Patent No. 6,212,662); *Samsung Electronics Co., Ltd. v. Koninklijke KPN N.V.*, IPR2016-00808 (challenging U.S. Patent No. 8,886,772); *Samsung Electronics Co., Ltd. v. Koninklijke KPN N.V.*, IPR2016-01087 (challenging U.S. Patent No. 9,014,667).

In 2016, just weeks before facing a federal jury trial, Samsung agreed to settle KPN's infringement claims for a combination of an upfront payment and a promise of future compensation in the form of patent pool licensing revenue. Ex. 2101 ¶ 5. The parties' respective obligations were detailed in their 2016 Settlement Agreement. Ex. 2102.

After the 2016 Settlement Agreement was executed, Samsung jointly moved to terminate the then-pending IPR proceedings against KPN, and the Board granted those requests. *See Samsung Electronics Co., Ltd. v. Koninklijke KPN N.V.*, IPR2016-00392, Paper 26; *Samsung Electronics Co., Ltd. v. Koninklijke KPN N.V.*, IPR2016-01087, Paper 9.[1]

C. THE 2021 ERICSSON LITIGATION

KPN asserted the KPN U.S. Patent No. 9,667,669 ("the '669 Patent") against Ericsson in March of 2021 along with other patents. *Koninklijke KPN N.V. v.*

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[1] Institution was denied in *Samsung Electronics Co., Ltd. v. Koninklijke KPN N.V.*, IPR2016-00808 before the Settlement Agreement was executed.

Telefonaktiebolaget LM Ericsson, No. 2:21-cv-00113-JRG (E.D. Tex.). Ericsson filed IPR petitions against several of the asserted patents, including the ’669 Patent. *Ericsson Inc. v. Koninklijke KPN NV*, IPR2022-00557 (challenging the ’669 Patent); *Ericsson Inc. v. Koninklijke KPN NV*, IPR2022-00069 (challenging U.S. Patent No. 9,253,637); *Ericsson Inc. v. Koninklijke KPN NV*, IPR2022-00068 (challenging U.S. Patent No. 9,549,426); *Ericsson Inc. v. Koninklijke KPN NV*, IPR2022-00401 (challenging additional claims of U.S. Patent No. 9,549,426); *Ericsson Inc. v. Koninklijke KPN NV*, IPR2022-00079 (challenging U.S. Patent No. RE48089).

Further, in the litigation Ericsson alleged that the asserted claims of the ’669 Patent were invalid based on over twenty references. Ex. 2103, 61-70, 105-107. Ericsson ultimately abandoned its invalidity defenses against the ’669 Patent. The parties agreed to dismiss their claims and counterclaims related to the ’669 Patent before trial (Ex. 2117), and in August of 2022 the jury found Ericsson liable for infringement of the other asserted patents for about $31.5M. Ex. 2104, 7; Ex. 2105.

D. ERICSSON’S IPR AGAINST THE ’669 PATENT

In IPR2022-00557, the Board found that Ericsson had not proven that Claims 2, 3, 6, and 8 of the ’669 Patent are unpatentable. *Ericsson Inc. v. Koninklijke KPN NV*, IPR2022-00557, Paper 34 (PTAB Oct. 4, 2023).[2] Samsung’s Petition challenges

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[2] Ericsson appealed the Board’s judgment in IPR2022-00557 to the U.S. Court of

these same claims. Pet., 2. The Petition also challenges Claims 4, 16, 17, and 20 based on its arguments against Claim 2, and the Petition challenges Claim 5 based on its arguments against Claim 3 (which depends from Claim 2). *Id.* at 39, 41, 48-52, 54.

With respect to Claim 6, the Board in IPR2022-0057 rejected Ericsson's assertion that "there is no difference between a media stream and an RTSP session" and credited the testimony of KPN's expert, Mr. Bates, over the testimony of Ericsson's expert, Mr. Wechselberger:

> As Mr. Bates testified, 'adding a media stream is not the same as adding an RTSP session . . . . because a single RTSP session may be associated with multiple media streams by virtue of their inclusion in the session description (SDP).' Ex. 2009 ¶ 218 (citing Ex. 1008, 22). We are not persuaded by Mr. Wechselberger's responsive testimony that '[t]his a distinction without a difference' (Ex. 1026 ¶ 79), because we agree with Patent Owner it does not appear to be supported by any evidence in the record. PO Sur-reply 8.

Ericsson, IPR2022-00557, Paper 34, at 32. Based on the Board's findings with respect to Claim 6, the Board found that Ericsson did not prove that Claims 2, 3, and 8 are unpatentable. *Id.* at 32-33. Similar to Ericsson equating the prior art's teaching

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Appeals for the Federal Circuit, but later voluntarily dismissed the appeal before briefing. *Ericsson, Inc. v. Koninklijke KPN N.V.*, 24-1240, ECF No. 9, 10 (Fed. Cir.).

of a media stream with an RTSP session (which the Board rejected), Samsung's Petition asserts that "plural media data streams" in the primary reference Widegren teaches "associated sessions" recited in Claims 2-9, 13-18, 20, and 23 (the "Challenged Claims"). *See, e.g.*, Pet., 16, 21, 24, 27 (Claim 1 mapping); *Infra* III.E.

Further, KPN presented evidence of industry praise in IPR2022-00557, which the Board found supported the nonobviousness of Claims 2, 3, 6, and 8. *Ericsson*, IPR2022-00557, Paper 34, at 27-29. In this regard, the Board found that:

- "Petitioner acknowledges, and Patent Owner emphasizes, that Patent Owner submitted a European Telecommunications Standards Institute (ETSI) Telecommunications Internet Converged Services and Protocols for Advanced Networking (TISPAN) Change Request related to the embodiments recited in the '669 Patent";
- "Patent Owner provides a showing that the Change Request 'has nexus to and is reasonably commensurate with' independent claims 1 and 21"; and
- "Separate aspects of the Change Request are reflected in the dependent claims, discussed below, and are more relevant in showing the nonobviousness of those claims."

Id. at 27-29. Samsung's Petition does not address the Board's findings related to ETSI TISPAN's adoption of KPN's Change Request to update an ETSI TISPAN standard. Pet., 12 n.2; *Infra* III.F. Instead, Samsung's Petition relies on another ETSI TISPAN standard as a secondary reference. Pet., 2.

E. THE FIRST BREACH LAWSUIT

In 2021, Samsung breached the 2016 Settlement Agreement by taking a license to a contractually defined "Patent Pool" that triggered certain payment obligations under Article 2.3.1. Ex. 2101 ¶ 7; Ex. 2106 ¶¶ 9-41. Rather than pay KPN as required, Samsung hid the fact that it had entered into a Patent Pool agreement and did not pay KPN a single cent. Ex. 2101 ¶ 7.

In fact, when KPN subsequently learned that Samsung's payment obligation had been triggered, it reached out to Samsung to give it an opportunity to remedy its breach. *Id.* ¶ 8. Samsung refused. *Id.* Accordingly, KPN filed suit against Samsung in September of 2022. Ex. 2106. That lawsuit proceeded before the state court in Houston, Texas under Case No. 22-0762 ("First Breach Lawsuit"). *Id.*

On February 23, 2024, after a four-day trial, the jury found that Samsung had breached Article 2.3.1 of the 2016 Settlement Agreement by doing exactly what KPN had alleged: taking a license to a Patent Pool without paying KPN the agreed "KPN share." Ex. 2107, 5. And the jury's verdict demonstrated the magnitude of Samsung's actions. The jury awarded KPN **$287 million** in contractual damages, i.e., the "KPN share," calculated by applying the minimum per unit contractual rate KPN was entitled to receive (per the terms of the relevant Patent Pool agreements) to the billions of Samsung products sold during the relevant timeframe. *Id.* at 6. The court ultimately entered judgment on the verdict, awarding KPN more than **$342**

million plus accruing interest. Ex. 2108, 2-3.

F. SAMSUNG'S POST-VERDICT EFFORTS

Since the verdict, Samsung has embarked on a nationwide campaign to try to force KPN to abandon its judgment by making litigation as expensive and painful as possible.

1. Samsung's "Removal" Attempt

One business day after the verdict was rendered, Samsung removed the state-court breach of contract case to federal court—arguing that it had realized for the first time ***at trial*** that KPN actually was asserting a claim for patent infringement that implicated federal jurisdiction. Ex. 2101 ¶ 12. The federal court swiftly rejected Samsung's ploy, explaining that Samsung had "***no credible*** argument that the breach of contract claim necessarily raises a patent law issue." *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, No. 2:24-CV-0135-JRG-RSP, 2024 WL 2019739, at *3 (E.D. Tex. Apr. 4, 2024), report and recommendation adopted, 2024 WL 2019726 (Apr. 24, 2024) (emphasis added). Consequently, the federal court clearly ruled that KPN's state-court claims did not assert or raise patent infringement.

Samsung similarly then tried to persuade the state court that the verdict should be overturned, including because—according to Samsung—"KPN is attempting to recover royalties *for infringement*." Ex. 2101 ¶ 14 (quoting Mot. for JNOV, at 38, *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, No. 22-0762 (71st Dist. Ct. Harrison

Cty. Tex., June 3, 2024)) (emphasis added). The state court likewise rejected that argument. *Id.* Thus, both a federal and state court have rejected Samsung's attempts to portray KPN as having asserted patent infringement claims against Samsung.

2. Samsung's Declaratory Judgment Lawsuits

Samsung then pivoted to its latest tactic: "to make the litigation as painful as possible." Samsung filed two lawsuits in the United States District Court for the District of Delaware—one on December 31, 2024, and one on January 1, 2025. The former sought a declaratory judgment of non-infringement of 9 different KPN patents, including the '669 Patent. Ex. 2109, 1. The latter sought a declaratory judgment of non-infringement of 8 different KPN patents. Ex. 2110, 1. Samsung did not seek a declaratory judgment of invalidity in either lawsuit. *See generally* Exs. 2109, 2110.

KPN has moved to dismiss both declaratory actions because, *inter alia*, no actual case or controversy exists given that KPN has never threatened to sue Samsung for infringement of any of the identified patents, including the '669 Patent. *See* Ex. 2111, 18-27; Ex. 2112, 16-25. As explained in KPN's motion to dismiss the declaratory judgment lawsuit involving the '669 Patent, each and every one of Samsung's purported bases for the existence of a case or controversy is fundamentally flawed. *See* Ex. 2111, 19-20 (explaining that KPN did not accuse Samsung of patent infringement or seek patent infringement damages at the breach-

of-contract trial); *id.* at 20-23 (explaining that KPN's emails from 2019—***more than five years ago***—and statements from the breach-of-contract trial could not plausibly give rise to a concrete threat of an infringement suit, that KPN never specifically identified any patent-in-suit in any of its communications, and that Samsung's own conduct confirms that it never felt threatened); *id.* at 23-24 (explaining that prior lawsuits filed by KPN against Samsung and unrelated companies involving entirely unrelated patents does not support the existence of a case or controversy); *id.* at 24-26 (explaining that KPN's breach-of-contract damages are irrelevant to whether a case or controversy exists for patent infringement); *id.* at 26 (explaining that the expiration the covenant not to sue in the 2016 Settlement Agreement does not give rise to an imminent threat of an infringement lawsuit).

3. Samsung's IPR Filings

Over the span of a few days beginning January 17, 2025, Samsung also filed six *inter partes* review petitions challenging patents that it has ***never*** been accused of infringing:

- IPR2025-00503 against U.S. Patent No. 8,660,560 ("the '560 Patent");
- IPR2025-00504 against U.S. Patent No. 8,549,151 ("the '151 Patent");
- IPR2025-00512 against U.S. Patent No. 8,881,235 ("the '235 Patent");
- IPR2025-00533 against U.S. Patent No. RE48089 ("the '089 Patent");
- IPR2025-00534 against U.S. Patent No. 9,462,544 ("the '544 Patent"); and
- The present proceeding challenging the '669 Patent.

The ’089 and ’235 Patents were part of the $31.5M jury verdict against Ericsson. Ex. 2104, 2. And the ’560 Patent was asserted against Ericsson in a later suit that settled before trial. Ex. 2113 ¶ 23; Ex. 2114.

Notably, these IPR proceedings have zero bearing on the existing breach judgment against Samsung. However, Samsung is aware that the now-challenged KPN patents are currently licensed to dozens of companies and result in millions of dollars in annual licensing revenue that KPN uses to support its extensive research and development efforts to improve its business and advance telecommunications technology. Samsung is thus also clearly aware that invalidating the challenged patents would inflict significant economic harm to KPN’s telecommunications business.

G. THE SECOND BREACH LAWSUIT

On March 3, 2025, KPN filed a state court lawsuit against Samsung for breaching Article 4.1 of the 2016 Settlement Agreement based on its filing of the six IPRs. Ex. 2101 ¶¶ 28-68.

III. DISCRETIONARY DENIAL IS WARRANTED

It is well-settled that institution of IPR is discretionary. S*ee Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“the PTO is permitted, but never compelled, to institute an IPR proceeding”); *see also* 35 U.S.C. § 314(a) (“[t]he Director may not authorize an inter partes to be instituted unless…”); *Cuozzo*

Speed Techs., LLC v. Lee, 579 U.S. 261, 273 (2016) ("[T]he agency's decision to deny a petition is a matter committed to the Patent Office's discretion."). In determining whether to exercise discretion to deny institution, the Director "consider[s] the effect of any such regulation [under this section] on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under this chapter." 35 U.S.C. § 316(b).

Consistent with this authority, the Workload Memo makes clear that the Director will consider "all relevant considerations" in determining whether discretionary denial is warranted, including but not limited to the strength of the unpatentability challenge, the extent of the petitioner's reliance on expert testimony, settled expectations of the parties, compelling economic interests, and the ability of the PTAB to comply with its statutory deadlines. Workload Memo, 2-3. Discretionary denial is warranted here based on these and other relevant discretionary considerations, particularly given the unique facts presented.

A. The absence of a clear infringement dispute favors exercising discretion.

Inter partes review proceedings are designed to serve as a "true alternative" to district court proceedings. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 19 (PTAB Dec. 1, 2020) (precedential). In virtually all IPR and

PGR petitions filed that is the case—there is a clear case or controversy based on an existing or threatened patent infringement lawsuit. Indeed, of the 431 IPRs and PGRs filed between January 1 and April 17 of this year, nearly **90%** involved a patent asserted by the petitioner in district court litigation. Ex. 2115.[3] Moreover, of the 67 IPRs filed by Samsung during that period ***all*** involved patents that had been asserted against Samsung, *except* for the six IPRs filed against KPN in retaliation and two others. Ex. 2116.[4]

This proceeding—including any instituted trial—cannot serve as a "true alternative" to district court proceedings, as there is no case or controversy involving the '669 Patent. *Sotera Wireless, Inc.*, IPR2020-01019, Paper 12 at 19. Indeed, KPN has not asserted the '669 Patent against Samsung. Nor has KPN even threatened Samsung with an infringement suit. Thus, unlike virtually all other IPRs and PGRs pending before the PTAB, there is a legitimate question as to whether Samsung's

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[3] Counsel for KPN manually reviewed the 431 IPR or PGR filings using Docket Navigator (https://www.docketnavigator.com/) to determine the percentage involving patents that had been asserted against petitioner in litigation.

[4] *Samsung Electronics Co., Ltd. v. Headwater Partners II LLC*, IPR2025-00426 (filed Jan. 8, 2025) and *Samsung Electronics Co., Ltd. v. Ouraring Inc.*, IPR2025-00147 (filed Jan. 23, 2025) do not appear to involve patents asserted against Samsung. However, it is unclear whether Samsung was expressly threatened with an infringement lawsuit based on those patents.

proceedings serve as a true alternative to litigation given the lack of a clear infringement dispute between the parties.

Notably, there appears to be a pattern of Samsung filing a large number of IPRs against patents not even asserted or threatened against it. For example, Samsung very recently had its declaratory judgment action for non-infringement against Oura dismissed because Samsung failed to allege "an actual controversy existed." *See Samsung Electronics Co., Ltd. v. Oura Health OY*, No. 24-cv-03245, 2025 U.S. Dist. LEXIS 57989, 2025 WL 929410 (N.D. Cal. Mar. 27, 2025). Despite this, Samsung chose to burden the PTAB with ten IPR or PGR petitions challenging Oura's patents. *See* PGR2024-00030, -31, -38, -39; IPR2024-00928, -930, -1077, -1078, -1079; IPR2025-00147.

Given "the current workload needs of the PTAB" and consideration of "the ability of the PTAB to comply with … its statutory deadlines for AJA proceedings," institution should be discretionarily denied so that the Board may prioritize IPRs and PGRs that unquestionably serve as a true alternative to district court proceedings—i.e., those proceedings involving patents that have been asserted in district court or have ***clearly*** been alleged to be infringed. As a general matter, whether a ***clear*** case or controversy exists should always be an important consideration in the discretionary denial calculus, but even more so now given the current workload needs of the PTAB. Indeed, assuming institution is discretionarily denied on this

basis, Samsung can simply refile its IPR petition if a clear case or controversy actually comes to fruition, at which point the PTAB may have additional available resources.

B. Legitimate questions about the purpose of the Petition heavily favors exercising discretion.

Board precedent dictates that "legitimate questions about whether the petition is reasonably designed to advance the beneficial aims of the AIA or this Office" should be considered in determining whether discretionary denial is appropriate. *See OpenSky Industries, LLC.*, IPR-2021-01064, Paper 102 at 36. The facts here suggest that the six Samsung petitions filed against KPN are not reasonably designed to advance these aims, but are instead part of an expansive nationwide campaign by Samsung to exert economic pain on KPN in retaliation for KPN's $342M+ breach of contract judgment. Indeed, it was only ***after*** Samsung was found liable for its breach of the 2016 Settlement Agreement that it filed its barrage of IPRs targeting patents that Samsung knows have economic value to KPN's 150-year-old business.

Samsung's counsel in the declaratory judgment lawsuits has been chastised for engaging in this type of behavior before. For example, one court determined that counsel had filed wave after wave of patent challenges as part of a plan "to make the litigation as painful as possible" to try to force the other party to abandon its claims—an approach a court described as a "sharp practice that falls far short of model professional conduct[.]" *Vasudevan Software, Inc. v. MicroStrategy, Inc.,* No. C 11-

06637 RS, 2013 U.S. Dist. LEXIS 197435, 2022 WL 2354916, *4-5, 10-11 (N.D. Cal. Mar. 8, 2013) (noting that counsel had even gone so far as to attack patents of unrelated clients of the patent holder's attorney).

Samsung's conduct here is similar. Samsung attempted to remove the breach-of-contract case to federal court, despite the court finding that Samsung had "no credible argument that the breach of contract claim necessarily raises a patent law issue." *Supra* II.E.1. Samsung then offered a similar argument to the state court, which was also rejected. *Id.* When both of those efforts failed, Samsung embarked on its nationwide campaign to exert as much pain as possible on KPN by first filing the two declaratory judgment actions involving 17 different patents—none of which have ever been asserted or even threatened against Samsung. Samsung followed up with its six IPR petitions targeting patents that also have never been asserted (or even threatened to be asserted) against Samsung, but that Samsung knows have significant economic value to KPN.

The Director need not determine whether the purpose behind Samsung's petitions is legitimate—the mere existence of a ***legitimate question*** should weigh in favor of exercising discretion to deny institution. Indeed, in virtually all IPRs and PGRs before the Board, there is no question that the petition is designed to advance the aims of the AIA or the Office. That is not the case here, as there is ample evidence creating doubt about the impetus for Samsung's filings. *OpenSky Industries, LLC.*,

IPR-2021-01064, Paper 102 at 36 (PTAB Oct. 4, 2022) (determining that petitioner "abused the IPR process by filing this IPR in an attempt to extract payment from" patent owner and explaining that, "[a]lthough it is not *per se* improper for a person not charged with infringement to file an IPR petition, the posture of a petitioner, in conjunction with other surrounding circumstances, could raise legitimate questions about whether the petition is reasonably designed to advance the beneficial aims of the AIA or this Office and whether, in addition, the filing amounts to an abuse of process"). Where there is a legitimate risk that an IPR or PGR has been filed for an improper purpose, the Director should err on the side of exercising discretion to ensure that the Office is not being used as a tool for abuse and that the Board's finite resources are being dedicated to proceedings that do not have an aura of impropriety.

C. KPN may suffer irreparable harm if the Board addresses the merits of the Petition.

Discretionary denial is also warranted because KPN would be irreparably harmed if the Board addresses the merits of the Petition and then the state court determines that Samsung has breached Article 4.1. While Samsung's Petition is weak, any determinations of the Board on the merits would be entered into the public domain and would freely available for any future petitioner to rely upon to address weaknesses in Samsung's petitions. For example, even a decision denying institution on the merits would include a detailed, comprehensive Board analysis identifying weaknesses in the Petition and potentially providing the blueprint for future

petitioners to prepare an improved petition. It would be unjust to allow Samsung's improperly filed petitions to be the catalyst for what would in essence be an advisory opinion of the Board providing a blueprint for future validity attacks.

Issuing a merits-based opinion based on such a petition would harm KPN in a way that could not be undone. In short, where there is a legitimate risk that a patent owner may be improperly and irreparably harmed by a merits-based decision of the Board, the PTAB should err on the side of exercising discretion.

D. Compelling economic interests favor exercising discretion.

The Workload Memo specifically identifies compelling economic interests as one of the relevant considerations for discretionary denial. Workload Memo, 2.

Here, there is a compelling economic interest in innovative technology companies, such as KPN, developing new patented technology, which can then be licensed throughout the United States and rest of the world. Indeed, some of the largest telecommunications companies and smartphone manufacturers in the world are licensees of patented technologies that KPN spent decades developing. The licensing revenue from KPN's patented technologies not only funds its telecommunications service business, but also encourages KPN to continue developing new technologies, many of which become part of the wireless standards adopted throughout the world. Samsung's retaliatory targeting of KPN patents, which are not even asserted against Samsung, undermines this compelling economic

interest by discouraging companies like KPN from further innovation.

E. The Board's prior adjudication of the patentability of challenged claims again favors exercising discretion.

The Workload Memo identifies "whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims" as a relevant consideration. Workload Memo, 2. This consideration favors discretionary denial because Samsung's Petition challenges claims that the Board already adjudicated the patentability of in Ericsson's IPR (IPR2002-00557).

In IPR2022-00557, the Board found that Ericsson had not proven that Claims 2, 3, 6, and 8 of the '669 Patent are unpatentable, and Samsung's Petition challenges these same claims again. *Compare Ericsson*, IPR2022-00557, Paper 34, *with* Pet., 2; *supra* II.D. The Petition also challenges Claims 4, 16, 17, and 20 based on its Claim 2 arguments, and the Petition challenges Claim 5 based on its Claim 3 arguments (Claim 3 depends from Claim 2). *Id.* at 39, 41, 48-52, 54. KPN submits that adjudicating the patentability of these claim once again would not constitute a good allocation of the Board's resources.

Discretionary denial of Samsung's Petition in view of the Board's prior adjudication of the patentability of Claims 2, 3, 6, and 8 is particularly warranted because Samsung seeks to relitigate issues that the Board already ruled on in the prior IPR against the '669 Patent. As one example, in IPR2022-00557, the Board rejected Ericsson's fundamental argument that "there is no difference between a

media stream and an RTSP [Real Time Streaming Protocol] session"; but Samsung's Petition now raises the stream/session issue again by arguing that Widegren's teaching of "media data streams" maps to "sessions" recited in the Challenged Claims. *Compare Ericsson*, IPR2022-00557, Paper 34, at 32, *with* Pet., 16 (limitation 1[pre]), 21, 23 (limitation 1[a]), 27 (limitation 1[c]).

The Board considered expert testimony on the stream/session issue in IPR2022-00057 and ruled in favor of the patentability of Claims 2, 3, 6, and 8. *Ericsson*, IPR2022-00557, Paper 34. In IPR2022-00557, the Board credited the testimony of KPN's expert, Mr. Bates, that "a single RTSP session may be associated with multiple media streams by virtue of their inclusion in the session description (SDP)." *Ericsson*, IPR2022-00557, Paper 34, at 32 (citing Ex. 2009 ¶ 218 (citing Ex. 1008, 22)). In support of his opinion, Mr. Bates cited the SDP standard, RFC 4566. *Ericsson*, IPR2022-0057, Ex. 1008.

A person of ordinary skill in the art ("POSA") would not consider the "media streams" mentioned in Widegren to be the "sessions" recited in the Challenged Claims. Ex. 1005, [0067], [0063]. KPN submits that it would be a waste of Board resources to litigate this issue, given the Board's prior adjudication of the patentability of Claims 2, 3, 6, and 8. Widegren describes the Session Description Protocol standard (Ex. 1005, [0063], [0070]), the same standard that Mr. Bates cited in support of his testimony that Board credited. *Ericsson*, IPR2022-00557, Paper 34,

at 32.

F. In view of the Board's prior findings, relitigating ETSI TISPAN's praise of the invention of the '669 Patent would be a waste the Board's resources.

In IPR2022-00557, the Board found that KPN's evidence of industry praise supported the nonobviousness of Claims 2, 3, 6, and 8. *Ericsson*, IPR2022-00557, Paper 34, at 27-29; *supra* II.D. The Board found that "Patent Owner provides a showing that the Change Request 'has nexus to and is reasonably commensurate with' independent claims 1 and 21," and "[s]eparate aspects of the Change Request are reflected in the dependent claims, discussed below, and are more relevant in showing the nonobviousness of those claims." *Ericsson*, IPR2022-00557, Paper 34, at 29.

Samsung's Petition and Samsung's proposed technical expert, Dr. Almeroth, discuss Ericsson's IPR (Pet., 6; Ex. 1003 ¶ 54), but simply do not address the Board's findings regarding ETSI TISPAN's adoption of KPN's Change Request to update ETSI TISPAN 182.027. Pet., 12 n.2 ("Petitioners are not aware of any secondary considerations of non-obviousness identified by Patent Owner . . . ."); Ex. 1003, 38 n.2 ("I am not aware of any secondary considerations of non-obviousness identified by Patent Owner"). Samsung's Petition instead relies on another ETSI TISPAN standard, ETSI TS 183 063, as a secondary reference for obviousness. Pet., 2.

The Board has already found:

> Separate aspects of the change request are reflected in the dependent claims, discussed below, and are more relevant in showing the nonobviousness of those claims.

Ericsson, IPR2022-00557, Paper 34, at 29. Samsung has offered no evidence to discount these findings by the Board regarding the challenged claims. To the contrary, Dr. Almeroth stated that "ETSI is a well-known organization that has promulgated well-known communications standards." Ex. 1003 ¶ 68.

G. The weakness of Samsung's validity challenge favors exercising discretion.

Ground 1 of Samsung's Petition relies on both design choice and inherency for Claim 2. This is Samsung's sole challenge to Claim 2, and Samsung's arguments for Claim 2 are the primary substantive arguments in the Petition. The Petition challenges Claims 4, 16-17, and 20 based on its Claim 2 arguments, and the Petition challenges Claim 5 based on its Claim 3 arguments (Claim 3 depends from Claim 2). Such design choice and inherency arguments are inherently weak.

Samsung makes a design choice argument for limitation 2[a]. The Petition cites *Uber Techs., Inc. v. X One, Inc.*, 957 F.3d 1334 (Fed. Cir. 2020) and asserts that there is a "limited number of predictable options" to generate a session identifier in Widegren. Pet. 34-35. But *Uber* involved "two predictable choices," *id.* at 1340, whereas here there are more than two choices and they are not predictable: the user

equipment, multiple different network elements (e.g., Policy Control Function (PCF) and Gateway General Packet Radio Service Node (GGSN) in Widegren), and elements outside of the network. The Petition's annotation of Figures 19 and 26 of Widegren belie that limitation 2[a] would have simply been a design choice for a POSA. Pet. 23, 25-26, 28.[5]

Samsung makes an inherency argument for limitation 2[b]. The Petition asserts that "the session identifier ***would have to*** be provided," "[t]his is ***necessarily true***," and "the receiving UE ***must*** receive the session identifier." Pet. 37 (emphases added). But the Petition only cites unsupported expert testimony for these assertions, which is not enough for inherency. Pet. 37 (citing Ex. 1003 ¶ 108); *PAR Pharm., Inc. v. TWI Pharm., Inc.*, 773 F.3d 1186, 1195-96 (Fed. Cir. 2014) ("high standard" for inherency in an obviousness analysis).

Again, the Board already adjudicated the patentability of Claim 2. *Supra* II.D. KPN submits that it would be a waste of Board resources to litigate Samsung's challenge to Claim 2 and Samsung's challenge to Claims 3-4, 16-17, and 20 based on its Claim 2 challenge, particularly when they involve weak design choice and

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[5] For similar reasons discussed for Claim 2, the Petition's reliance on design choice arguments for Claim 8 is equally problematic. Pet. 45-46 (citing *Uber* and arguing "predictable options").

inherency arguments.

H. The Petition's heavy reliance on expert testimony favors exercising discretion.

"The extent of the petition's reliance on expert testimony" is an enumerated consideration set forth in the Workload Memo. Since the memo issued, the Office has further explained:

> [E]xtensive reliance on expert testimony and/or reasonable disputes between experts on dispositive issues may suggest that the questions are better resolved in an Article III court… As the judges have technical and legal expertise, it is not necessary for an expert to explain every aspect of the prior art. It is most helpful if an expert is providing focused testimony, for example to provide helpful context or to explain terms of art. The failure to provide focused expert testimony may weigh against institution.

FAQs for Interim Processes for PTAB Workload Management, at #21 (published Apr. 25, 2025), https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management (last visited April 28, 2025) (hereafter, "FAQ #21").

This consideration favors discretionary denial because the Petition relies heavily on the unfocused declaration testimony of Samsung's proposed technical expert, Kevin Almeroth, Ph.D (Ex. 1003). Indeed, Dr. Almeroth's declaration consists of 179 paragraphs of testimony spanning more than 90 pages. *See generally* Ex. 1003. The Petition extensively cites to and relies upon his testimony, including

to try and plug holes by arguing that certain features not disclosed on the relied-on references would have been obvious. *See e.g.*, Pet., 34-35 (design choice for limitation 2[a]), 37-38 (inherency for limitation 2[b]), 45-46 (design choice for Claim 8).

Moreover, at minimum there are "reasonable disputes between experts on dispositive issues." FAQ #21. Indeed, the preliminary response will identify several disputes between experts as to whether certain limitations of claims are obvious based on, the prior art in each ground, including Claims 2 and 8, among others. While KPN submits that the prior art clearly fails to teach these limitations, at minimum there exist reasonable disputes between experts that are "better resolved in an Article III court." *Id.*

Further, Dr. Almeroth's declaration contains much of the same language as the Petition. *Compare* Pet., 16-54 (Ground 1), *with* Ex. 1003 ¶¶ 79-145 (discussing Ground 1); *compare* Pet., 54-59 (Ground 2), *with* Ex. 1003 ¶¶ 146-157 (discussing Ground 2); *compare* Pet., 59-69 (Ground 3), *with* Ex. 1003 ¶¶ 158-178 (discussing Ground 3). However, the Board has been skeptical of petition arguments repeated verbatim by a witness purporting to give expert testimony. *Kinetic Techs., Inc. v. Skyworks Solutions, Inc.*, IPR2014-00529, Paper 8, 14-15 (PTAB Sep. 23, 2014) (denying institution). Such skepticism is warranted in reviewing Samsung's Petition, in light of Dr. Almeroth's extensive repetition of the Petition in his declaration.

Xerox Corp. v. Bytemark, Inc., IPR2022-00624, Paper 9, at 15, 18 (PTAB Aug. 24, 2022) (denying institution). The Board's resources would be better allocated to other petitions more grounded in substance.

I. The long-settled expectations of the parties favor exercising discretion.

"Settled expectations of the parties, such as the length of time the claims have been in force," favor discretionary denial. Workload Memo, 2. The claims of the '669 Patent issued over seven years ago, and Samsung has been aware of it for years. Thus, the expectation of KPN that the claims of the '669 Patent are valid were not only reasonable based on the length of time the claims have been in force, but also based on the length of time that ***Samsung*** waited before challenging its validity[6] and the fact that Ericsson found the claims to be so strong that it abandoned its invalidity defense entirely. As demonstrated by its conduct, Samsung had the same expectation—until it was found liable for $342M+ for breaching the parties 2016 Settlement Agreement.

Moreover, since the issuance of the '669 Patent, KPN has continued to build up its telecommunications business and invest resources into new telecommunications technologies, with the reasonable expectation that the '669

[6] Samsung was aware of the '669 Patent at least as early as 2019 when it received a list of KPN patents and applications. Ex. 2109 ¶¶ 21, 50.

Patent would remain a valuable source of licensing revenue. KPN has a portfolio of more than 325 patent families, and KPN's patented inventions are the product of its extensive research and development efforts. KPN spends between $300M and $500M every year on research and development. Ex. 2106 ¶ 12.

J. Samsung's status as a high-volume petitioner favors exercising discretion.

The Workload Memo states that the "Director will also consider the ability of the PTAB to comply with pendency goals for *ex parte* appeals, its statutory deadlines for AJA proceedings, and other workload needs." Workload Memo, 3.

At the current pace Samsung is filing IPR petitions this year, Samsung will account for **more than 16%** of **all** IPRs or PGRs filed in 2025. Specifically, of the 431 IPR or PGR petitions filed between January 1 and April 17 of this year, Samsung was a petitioner in 67 of those proceedings. Ex. 2115; Ex. 2116. The post grant process is not reserved for the largest companies in the world—it is a process that is supposed to be available to *all* individuals and businesses that have a legitimate need for a true alternative to district court proceedings, which are significantly more expensive and time consuming than post grant proceedings.

Fundamental fairness dictates that the exercise of discretion should lean toward denial for petitioners that file an abnormally high number of petitions, which places a significant burden on the Board and increases the likelihood that the meritorious challenges of petitioners that rarely file IPRs will be discretionarily

denied. Indeed, Samsung's status as a high-volume filer necessarily means that it is draining significant Board resources that would otherwise be available to petitioners that seldom ever file post grant petitions. The adverse effects of this are even more pronounced given the current workload needs of the PTAB, resulting in an even greater fairness deficit.

In view of the above, KPN respectfully submits that a petitioner's status as a high-volume filer should weigh in favor of discretionary denial, at least and until the PTAB workload needs are fully addressed such that the temporary Workload Memo is no longer in place. This will help ensure that petitioners who infrequently file petitions are afforded fair consideration, but also motivate petitioners like Samsung to be more deliberate as to which patents they chose to challenge before the PTAB.

K. Discretionary denial would preserve an unusually large amount of Board resources.

Samsung has filed six IPR petitions challenging unrelated and fundamentally different patents. However, the reasons for discretionary denial herein largely apply with equal force to the five other pending petitions. In other words, discretionarily denying in this instance would not only free up Board resources associated with this proceeding, but also those five other proceedings.

Given the Director's focus "on the ability of the PTAB to comply with pendency goals for *ex parte* appeals, its statutory deadlines for AJA proceedings, and other workload needs," KPN respectfully submits that discretionary denial

should be favored here because it would result in significant Board resources becoming available, including for appeals relating to ordinary patent prosecution and *ex partes* proceedings. Indeed, exercising discretion would also preserve substantial Board resources that could be dedicated to IPR or PGR involving patents that have been asserted or ***actually*** threatened, and which are not the subject of a breach of contract lawsuit.

IV. CONCLUSION

For the reasons above, Patent Owner respectfully requests that the Director exercise discretion and deny institution of *inter partes* review. The fact that there are no pending infringement claims against Samsung as well as the many other considerations justifying discretionary denial discussed above—warrant discretionary denial.

Dated: April 27, 2025

Respectfully submitted,

/James L. Lovsin/
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e)(4), the undersigned certifies that on April 27, 2025, a copy of the foregoing document (Patent Owner's Request for Discretionary Denial, including all Exhibits), was served via electronic mail on the attorneys of record at the indicated e-mail address(es).

/James L. Lovsin/
James L. Lovsin

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this document complies with the type-volume limitations set forth in 37 C.F.R. § 42.24 *et seq.* This document, excluding those portions excluded pursuant to § 42.24(a)(1), contains 7,475 words as calculated by the "Word Count" feature of Microsoft Word for Office 365, the program used in creating it.

/*James L. Lovsin*/
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