

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS AMERICA, INC.,

SAMSUNG ELECTRONICS CO., LTD.,

Petitioners,

v.

KONINKLIJKE KPN N.V.,

Patent Owner.

Case No. IPR2025-00503

U.S. Patent No. 8,660,560

**PETITIONERS' RESPONSE TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL OF INSTITUTION**

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EXHIBIT LIST

Ex.	Description
1001	U.S. Patent No. 8,660,560 (“560 patent”)
1002	Prosecution History for 8,660,560
1003	Declaration of Dr. Kevin Almeroth
1004	<i>Curriculum Vitae</i> of Dr. Kevin Almeroth
1005	U.S. Pat. App. Pub. No. 2009/0191862 (“Amirijoo”) (prior art under at least §102(a))
1006	3GPP Technical Report 32.816 v1.0.0 (“TR-32.816”) (prior art under at least §102(b))
1007	U.S. Pat. App. Pub. No. 2009/0176490 (“Kazmi”) (prior art under at least §102(a))
1008	U.S. Pat. App. Pub. No. 2010/0124934 (“Mach”) (prior art under at least §102(e))
1009	WO 2009/075620 A1 (“Engstrom”)
1010	<i>Ericsson Inc. v. Koninklijke KPN N.V.</i> , IPR2023-00582, Paper 1 (Petition)
1011	<i>Koninklijke KPN N.V. v. Telefonaktiebolaget LM Ericsson et al.</i> , No. 2:22-cv-00282-JRG, Dkt. 176 (E.D. Tex.) (Oct. 14, 2023), Claim Construction Order
1012	<i>Ericsson Inc. v. Koninklijke KPN N.V.</i> , IPR2023-00582, Paper 10 (Institution Decision)
1013	<i>Ericsson Inc. v. Koninklijke KPN N.V.</i> , IPR2023-00582, Exhibit 1012, Declaration of Craig Bishop
1014	KPN’s Infringement Contentions for U.S. Patent No. 8,660,560 in Case No. 2:22-cv-282

1015	Ericsson, “Discussion on Automatic Neighbour Relation Lists for LTE,” TSG-SA5 Meeting #53 (May 2007)
1016	U.S. Pat. App. Pub. No. 2009/0270079 (“Han”) (prior art under at least §102(e))
1017-1099	Reserved
1100	Excerpts from the trial transcript from <i>Koninklijke KPN N.V. v. Samsung Electronics Co., Ltd.</i> , No. 25-0237 (71 st Dist. Ct. Harrison Cty. Tex.)
1101	Settlement, License and Non-Assertion Agreement between Koninklijke KPN N.V. and Samsung Electronics Co., Ltd. (redacted)
1102	Email from Keonraad Wuyts dated December 15, 2021 and attachment
1103	Email from Keonraad Wuyts dated September 28, 2022 and attachment
1104	Plaintiffs’ Answering Brief in Opposition to Defendant’s Motion to Dismiss for Lack of Personal and Subject-Matter Jurisdiction, filed in <i>Samsung Electronics Co., Ltd. et al. v. Koninklijke KPN N.V.</i> , No. 25-cv-0001-CFC (D. Del. Apr. 21, 2025)
1105	Judicial Caseload Profile for U.S. District Court in the District of Delaware
1106	Plaintiff’s Original Petition and Request for Disclosure, <i>Koninklijke KPN N.V. v. Samsung Electronics Co., Ltd.</i> , 25-0237 (71 st Dist. Ct. Harrison Cty. Tex. Mar. 3, 2025)
1107	Samsung’s Motion for Judgment Notwithstanding the Verdict and, In the Alternative, New Trial or Remittitur, <i>Koninklijke KPN N.V. v. Samsung Electronics Co., Ltd.</i> , 22-0762 (71 st Dist. Ct. Harrison Cty. Tex. June 3, 2024)

1108	“Samsung faces dubious suit every 5 days from US patent trolls,” <i>The Korea Economic Daily</i> , March 18, 2024
1109	Brief of Professor Jorge L. Contreras as Amicus Curiae in Support of Appellant Samsung Electronics Co., Ltd., <i>Samsung Electronics Co., Ltd. v. Koninklijke KPN N.V.</i> , No. 06-24-00059-CV (6th Court of Appeals Texarkana, TX)
1110	“Samsung Takes Top Spot in U.S. Patents for Third Year Running while TSMC Rises into Second Place; After Four-Year Falloff, Grants Increase Nearly 4%,” IFI Claims, Jan. 8, 2025
1111	ETSI IPR Information Statement and Licensing Declarations ISLD-201606-002, ISLD-201606-003, and ISLD-202110-034
1112	Sisvel LTE Patent Brochure, Exhibit PX-208 in <i>Koninklijke KPN N.V. v. Samsung Electronics Co., Ltd.</i> , 22-0762 (71 st Dist. Ct. Harrison Cty. Tex. June 3, 2024)
1113	Sisvel 3G Patent Brochure, Exhibit PX-207 in <i>Koninklijke KPN N.V. v. Samsung Electronics Co., Ltd.</i> , 22-0762 (71 st Dist. Ct. Harrison Cty. Tex. June 3, 2024)

I. INTRODUCTION

Patent Owner’s (“KPN” or “PO”) Request for Discretionary Denial (Paper 6, “Request”) should be rejected. Despite the Director’s focus on early trial dates of parallel proceedings in her decisions so far, KPN has not made any argument related to *Fintiv* or, indeed, any other pre-existing precedent. KPN instead seeks denial based on a *lack* of patent infringement lawsuit. Yet KPN has repeatedly stated—including in open court—that Petitioners (“Samsung”) are “using” the ’560 patent, which KPN claims is essential to, *inter alia*, the 3G, 4G, and 5G standards. KPN chose to make those allegations. Samsung promptly and properly sought *inter partes* review in response, seeking an alternative forum to federal court for the efficient adjudication of invalidity, just as Congress intended in passing the AIA. The Request makes every possible attempt to stop the review of patents, including the ’560 patent, that are at the heart of a longstanding dispute between the parties worth hundreds of millions of dollars, including going so far as to baselessly impugn Samsung’s integrity. However, this is exactly the type of crystalized dispute that the Board should adjudicate. Samsung is mindful of the Director’s and the Board’s valuable time and limited resources and does not seek review lightly. However, Samsung should not be subject to claims that it is using patented technology without the ability to seek review of a patent it believes invalid.

KPN’s central argument is that Samsung’s Petition should not be reviewed by the Board because Samsung is not the subject of a patent infringement suit—or a threat of one that would trigger Article III standing—by KPN. But, KPN’s argument directly contradicts a key Congressional mandate of the AIA: that **any person** except the patent owner may file an IPR petition. 35 U.S.C. § 311(a) (“**[A] person who is not the owner of a patent** may file with the Office a petition to institute an inter partes review of the patent”).¹ There is **no** requirement that a petitioner must be subject to a lawsuit. And, while KPN’s threats do rise to the level sufficient to trigger Article III standing, there is **no** requirement that Samsung show such standing to seek *inter partes* review. This is clear from the statutory text as well as the Supreme Court’s instruction that petitioners “need not have a concrete stake in the outcome; indeed, they may lack constitutional standing.” *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 279 (2016).

Moreover, this is just the type of case that the Director has acknowledged as a proper use of IPR proceedings, even when there is not a parallel infringement action concerning the patent. In *OpenSky Industries, LLC v. VLSI Technology LLC*, IPR2021-01064, Paper 102 at 36 (Oct. 4, 2022) (precedential), the Director noted the propriety of filing a petition when there are “circumstances in which a petitioner has not yet been sued, ***but believes it may be, or otherwise wants to make sure it***

¹ All emphases in this brief are supplied unless otherwise noted.

has the freedom to operate.” *Id.* That is exactly the case here given KPN’s repeated statements that Samsung is using the ’560 patent—Samsung both reasonably believes it may be the subject of an infringement suit and has a clear interest in practicing the 3G, 4G, and 5G standards used in hundreds of millions of its products. Ex. 1100, 1 (“Samsung ... *continue[s] to use KPN’s property* without paying what it promised to pay.”); *id.*, 6 (“[KPN’s patents] are standard and essential. They’re operating 3G and 4G. Samsung is making 3G and 4G phones. They *have to be using those patents.*”); Exs. 1102, 1103, 1111-13; *see also Koninklijke KPN N.V. v. Samsung Elecs. Co.*, 2:24-cv-0135-JRG-RSP, 2024 WL 2019739, at *3 (E.D. Tex. Apr. 4, 2024) (“KPN actually raised ... Samsung’s use of KPN’s patents in demonstrating Samsung’s unjust enrichment.”). The validity of the ’560 patent impacts not only Samsung but the public’s interest in ensuring that critical wireless standards are covered by only patents that are valid. Samsung respectfully submits that this Petition is worth the Board’s time.

The remainder of KPN’s arguments rely largely on baseless allegations that Samsung had a nefarious intent in filing the Petition. But, Samsung’s Petition presents strong invalidity grounds and KPN has not alleged that the merits of Samsung’s petition lack good faith—indeed, the strength of Samsung’s Petition is reinforced by KPN’s disclaimer of *all* claims of the ’560 patent except claim 7. Moreover, KPN’s accusation that Samsung filed the Petition as “retaliation” for

KPN's 2024 state court judgment against Samsung (which is on appeal) is meritless. Samsung is filing the Petition now for two reasons: *first*, it was only *during* the state court trial that KPN made its statements that Samsung *uses* the '560 patent and should pay royalties as a result, and, *second*, Samsung was contractually prohibited from filing the petition until December 31, 2024 (*i.e.*, well after the state court judgment in April 2024). The timing is the result of these straightforward reasons, not the nefarious intention narrative KPN tries to spin up.

Lastly, KPN attempts to paint Samsung as abusing the IPR process by filing many petitions. Not so. KPN omits that Samsung is the *number one target* of patent infringement suits, especially by non-practicing entities, in the United States. And Samsung files petitions *only* when there is good reason to. By KPN's own admission, all of the 67 IPRs Samsung filed between January 1 and April 17 this year had parallel suits where Samsung was the target of infringement allegations, save for the six filed against KPN. KPN's statistics only demonstrate how selective Samsung is in filing petitions only when there is good reason to, *e.g.*, when it is the target of an infringement suit or accused of infringement and Samsung believes the patent to be invalid. This is one of those select cases.

For these reasons, the Director should decline to exercise her discretion to deny.

II. LEGAL STANDARD

Petitions for *inter partes* review can be brought by “a person who is not the owner of a patent.” 35 U.S.C. § 311(a). Various courts and the Board have recognized the breadth of this mandate, and that it imposes no standing requirement. Thus, a unanimous Supreme Court noted that petitioners “need not have a concrete stake in the outcome; indeed, they may lack constitutional standing.” *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 279 (2016). Thus, “anyone may file a petition challenging the patentability of an issued patent claim at almost any time.” *Id.* at 287-288 (Alito, J. concurring).

The Federal Circuit has also described this provision as a “broad statutory mandate.” *Husky Injection Molding v. Athena Automation Ltd.*, 838 F.3d 1236, 1241 (Fed. Cir. 2016). Moreover, in discussing the pre-AIA version of 35 U.S.C. § 311, which used similar language for *inter partes* reexamination proceedings, the Federal Circuit stated the provision “allow[s] **any** third party to request reexamination” because “Article III standing is not necessarily a requirement to appear before an administrative agency” *Consumer Watchdog v. Alumni Research Foundation*, 753 F.3d 1258, 1261-62 (Fed. Cir. 2014).

The Board itself has also recognized the breadth of Section 311. In the precedential decision *Athena Automation Ltd. v. Husky Molding Sys. Ltd.*, IPR2013-00290, Paper 18 at 12-13 (Oct. 25, 2013) (precedential), the Board noted that the

provision “presents a clear expression of Congress’s *broad grant* of the ability to challenge the patentability of patents through *inter partes* review.” *Id.* Thus, the Board declined to allow Patent Owner to argue that Petitioner lacked standing because of assignor estoppel, as it cannot “provide[] an exception to the *statutory mandate* that any person who is not the owner of a patent may file a petition for an *inter partes* review.” *Id.*

III. BACKGROUND

KPN’s summary of the parties’ disputes omits critical facts, including that Samsung brought its declaratory judgment action and this IPR petition in response to KPN’s *repeated* assertions that the ’560 patent is essential to wireless standards that are used by Samsung’s products (such as 4G (LTE) and 3G), including arguing in open court that Samsung “use[s]” KPN’s standards-essential patents and should pay hundreds of millions of dollars in royalties as a result.

In 2016, Samsung and KPN entered into a settlement agreement where KPN agreed not to sue Samsung for infringement of the ’560 patent until December 31, 2024. Ex. 1101, 8 (Article 2.3). The agreement also prohibited Samsung from filing IPRs challenging certain patents, which included the ’560 patent, until that date. *Id.*, 12 (Article 4.1). Despite its covenant not to sue, since 2019, KPN repeatedly identified the ’560 patent as “relevant for [Samsung’s] business,” including that it is allegedly essential to industry standards used by Samsung’s products. Ex. 1102,

1103. KPN represented to Samsung that it solely owns the '560 patent and that, because it is essential to 5G, 4G (LTE), and 3G standards, Samsung's products complying with those standards must practice the patent. *Id.* KPN has also publicly declared that the claimed subject matter of the '560 patent is essential to the 3G, 4G, and 5G standards. Ex. 1111.

In 2024, during the parties' state court dispute, KPN's counsel, witness, and expert represented to the jury that Samsung's 3G-, 4G-, and 5G-compliant smartphones practice KPN's patents found in a certain patent pool administered by a company called Sisvel—the "MCP Pool"—because those patents are allegedly essential to 3G and 4G standards. Ex. 1100, 5; Ex. 1111. The '560 patent belongs to the MCP Pool. Exs. 1112, 1113. The jury found Samsung liable for \$287 million in damages. KPN's expert based that damages figure—as well as another damages amount, \$609 million, for a claim that Samsung was unjustly enriched as a result of its alleged use of KPN's patents—on a calculation of accrued royalty payments from 2010 to 2024 derived from Samsung's worldwide sales of 3G-, 4G-, and 5G-compliant smartphones multiplied by a per-unit royalty rate. Ex. 1100, 6 (“[KPN’s patents] are standard and essential. They’re operating 3G and 4G. Samsung is making 3G and 4G phones. They *have to be using those patents.*”); *id.*, 1 (“Samsung ... continue[s] to use KPN’s property without paying what it promised to pay.”); *see also Koninklijke KPN N.V. v. Samsung Elecs. Co.*, 2:24-cv-0135-JRG-RSP, 2024

WL 2019739, at *3 (E.D. Tex. Apr. 4, 2024)) (“KPN actually raised ... Samsung’s use of KPN’s patents in demonstrating Samsung’s unjust enrichment.”).

In other words, KPN’s claims at trial were based on its allegation that Samsung practiced the ’560 patent and that therefore KPN was entitled to a royalty.²

IV. DISCRETIONARY DENIAL IS NOT WARRANTED

Samsung addresses below each of KPN’s purported bases for the exercise of discretionary denial *in seriatim*. None have merit.

A. A Petitioner Need Not Be Subject to a Patent Infringement Suit to Seek IPR Review

1. There Is No Requirement that a Petitioner Must Be Sued to Bring an IPR Challenge

When Congress passed the America Invents Act (“AIA”) establishing *inter partes* review proceedings, it made clear that *any* “person who is not the owner of a patent” may file a petition. 35 U.S.C. § 311(a). KPN now seeks to graft into the discretionary denial calculus a standing factor—one that is *stricter* than Article III standing—that undermines both Congressional intent and legal precedent, forcing the Director to make factually-intensive evaluations of the jurisdiction of an entirely

² KPN’s Background also insinuates that Samsung’s actions were retaliatory and abusive. Samsung addresses these accusations below.

different forum of a different branch of government. The Director should decline KPN's invitation.

The AIA is quite clear in its breadth: *anyone* except the patent owner may file an IPR petition. As the Supreme Court itself recognized, IPR petitioners “need not have a concrete stake in the outcome; indeed, they may lack constitutional standing.” *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 279 (2016); *see also id.* at 287-288 (“Under inter partes review, anyone may file a petition challenging the patentability of an issued patent claim at almost any time.”) (Alito, J. concurring). The statutory text is, on its face, a “broad statutory mandate.” *Husky Injection Molding v. Athena Automation Ltd.*, 838 F.3d 1236, 1241 (Fed. Cir. 2016); *cf. Consumer Watchdog v. Alumni Research Foundation*, 753 F.3d 1258, 1261-62 (Fed. Cir. 2014) (finding pre-AIA 35 U.S.C. § 311 with respect to pre-AIA *inter partes* reexaminations “allow[s] any third party to request reexamination” because “Article III standing is not necessarily a requirement to appear before an administrative agency”).

Consistent with these principles, precedential Director decisions have explained that “to be clear, there is nothing *per se* improper about a petitioner who is not a patent infringement defendant filing an IPR petition.” *OpenSky Industries, LLC v. VLSI Technology LLC*, IPR2021-01064, Paper 102 at 36 (Oct. 4, 2022) (precedential). As an example, the Director stated, “there may be circumstances in

which a petitioner has not yet been sued, but believes it may be, or otherwise wants to make sure it has the freedom to operate.” *Id.* That is exactly the case here: KPN’s statement that Samsung is using the ’560 patent led Samsung to believe it may be sued for patent infringement and, regardless, Samsung should have freedom to operate.

Further, the Board has recognized that 35 U.S.C. § 311(a)’s broad mandate prevents Patent Owners from raising standing arguments that would normally prevent a District Court from considering invalidity. For example, in *Athena Automation Ltd. v. Husky Molding Sys. Ltd.*, IPR2013-00290, Paper 18 at 12-13 (Oct. 25, 2013) (precedential), the Board recognized that Section 311(a) “presents a clear expression of Congress’s **broad grant** of the ability to challenge the patentability of patents through *inter partes* review.” *Id.* Thus, the Board held that assignor estoppel does not “provide[] an exception to the **statutory mandate** that any person who is not the owner of a patent may file a petition for an *inter partes* review.” *Id.*

KPN’s request seeks to undermine this clear Congressional intent as well as judicial and Board precedent by requiring not just Article III standing, but an actual infringement lawsuit or explicit threat of one. Paper 7 (“Request”) at 19 (“[A] **clear** case or controversy based on an existing or threatened patent infringement lawsuit”), *id.* at 20 (“KPN has not asserted the ’560 patent against Samsung. Nor has KPN

even threatened Samsung with an infringement suit.”). Federal Circuit precedent is clear that actual claims of infringement or threat of one are not necessary to establish standing even in an Article III court. *SanDisk Corp. v. STMicroelectronics, Inc.*, 480 F.3d 1372, 1381 (Fed. Cir. 2007) (“Article III jurisdiction may be met where the patentee takes a position that puts the declaratory judgment plaintiff in the position of either pursuing arguably illegal behavior or abandoning that which he claims a right to do.”); *Arris Grp., Inc. v. Brit. Telecomms. PLC*, 639 F.3d 1368, 1378 (Fed. Cir. 2011) (“[D]irect communication between a patentee and a declaratory plaintiff is not necessary to confer standing.”). Undermining this basic and fundamental precept of the AIA is not an appropriate exercise of the Director’s discretion, especially without full notice-and-comment rulemaking under the APA.

Indeed, as KPN recognizes, at least 10% of IPR and PGR petitions filed this year do *not* “involve[] a patent asserted by the petitioner in district court litigation.” Request at 19-20 (citing Ex. 2115). Most of these petitions do not involve any parallel litigation at all, making them have less of a claim to a parallel patent dispute than this proceeding. *See, e.g.*, IPR2025-00861, PGR2025-00040, IPR2025-00685, IPR2025-00601 through -00603. As far as Samsung can tell, in the few cases where the petitioner filed a declaratory judgment action against the patent owner, *all* of these cases involved the patent owner subsequently asserting infringement claims, either as counterclaims or in a separate lawsuit. *See, e.g.*, IPR2025-00774, IPR2025-

00553, IPR2025-00554, IPR2025-00560, IPR2025-00573. Here, KPN has moved to dismiss Samsung’s declaratory judgment actions, postponing its deadline to file an infringement counterclaim.

2. The USPTO Is Not a Proper Forum to Adjudge Article III Standing Disputes

In addition to there being no Article III standing requirement to file an IPR petition, the USPTO is not a proper forum to evaluate whether a petitioner has Article III standing. KPN asks the Director to determine if a completely different forum—a *District Court*—has jurisdiction over an *infringement dispute*, neither of which falls under the purview of the Patent Office. Clearly, District Courts are best positioned to evaluate their own jurisdiction. And the obvious problem with KPN’s request to analyze standing under the Article III standard is that the question of the District Court’s jurisdiction would be before two different tribunals that run the risk of coming to different conclusions. It also prevents the Board from being a “true alternative” to the District Court. Request at 20 (quoting *Sotera*).

In addition, as the Courts have recognized, evaluating standing is a factually-intensive endeavor. *Mitek Systems v. United Services Automobile Ass’n*, 34 F. 4th 1334, 1340 (Fed. Cir. 2022). Given the impracticalities of pre-institution discovery, the lack of any opportunity for oral argument, and the extremely limited time both Congress (3 months) and the Director herself (1 month) has imposed on the discretionary denial decision to ensure it is timely and efficient, it is unlikely the

Director will be able to make such factually-intensive evaluations on issues that the Board has no previous experience evaluating. Indeed, the District Court in Delaware is unlikely to resolve KPN's motion to dismiss before the Board must decide the issue.

The complexities of the Director evaluating a different forum's jurisdiction is evident in this very case. Here, KPN's Request does not provide a fulsome evaluation of the District Court's jurisdiction. Instead, KPN merely invites the Director to review a *redacted* version of KPN's motion to dismiss filed in the parallel litigation, without any of the accompanying exhibits. Request at 16 (citing Ex. 2111). Moreover, KPN did not provide the Director with Samsung's opposition, or the exhibits cited thereto. *See* Ex. 1104. Thus, KPN would place the Director in an untenable position: based on incomplete briefing and an incomplete record, the Director must evaluate, in one month, the factually-intensive question of whether Samsung's declaratory judgment action is a "case or controversy" under the Constitution. Such questions are simply not worth the expenditure of the Director's limited resources.

And despite KPN's arguments to the contrary, the Board does indeed provide a "true alternative" to the district court proceedings in this case, fulfilling the proceeding's Congressional purpose. Samsung's declaratory judgment action in Delaware federal court concerns only non-infringement, not invalidity. Thus, the

question of the '560 patent's invalidity is, at this moment, solely before the Board. The Board would thus serve as a "true alternative" to Court as it is currently the only forum that would hear Samsung's invalidity challenge. Indeed, by statute, Samsung had two mutually exclusive *alternatives* to challenge the '560 patent: file a declaratory judgment action alleging invalidity *or* file an IPR petition, and Samsung purposefully chose the IPR path. 35 U.S.C. §315(a)(1). And to the extent invalidity counterclaims are ever brought in the litigation, the IPR, if instituted, would be well ahead of the district court proceedings.

KPN's argument that this IPR "cannot serve as a 'true alternative' to district court proceedings," citing *Sotera*, misses the mark. Request at 20 (quoting *Sotera*). The very reason why the Board considered a *Sotera* stipulation as ensuring the IPR is a "true alternative" is because such a stipulation "mitigates any concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions." *Sotera*, IPR2020-01019, Paper 12 at 19; *see also Fintiv*, Paper 11 at 10 ("[M]ore work completed by the parties and court in the parallel proceeding ... would lead to duplicative costs"). But here, by statute, the Board is the *only* forum for which the validity of the '560 patent is at issue.

3. Under *Fintiv*, the Lack of any Advanced Parallel Litigation Militates Against Discretionary Denial

In view of the Director's instruction to parties to consider various factors in the context of "existing Board precedent (including *Fintiv*, *General Plastic*, and

Advanced Bionics)” (Memorandum at 2), the above facts weigh against discretionary denial under *Fintiv*. Indeed, of the four decisions that the Director has so far issued pursuant to the Memorandum, ***all of them*** have focused on *Fintiv* and in particular, the trial date of the parallel litigation. IPR2025-00207, Paper 10; IPR2024-01455, Paper 15; IPR2025-00307, Paper 18; IPR2025-00250, Paper 14. Here, there is no parallel litigation alleging invalidity, and the declaratory judgment action has no scheduled trial date, thus removing this proceeding from *Fintiv*’s ambit. Even if invalidity counterclaims were filed today, that would place trial in approximately ***February 2028*** according to Delaware’s median time-to-trial of 32.3 months. Ex. 1105. In that situation, the *Fintiv* factors would heavily weigh against denial.

B. There Are No “Legitimate Questions” About the Purpose of the Petition

KPN selectively quotes *OpenSky*’s statement that “legitimate questions may exist regarding whether the petitioner filed the petition for an improper purpose or one that does not advance the goals of the AIA,” as militating for discretionary denial because Samsung purportedly has an improper purpose. Request at 22 (quoting *OpenSky*, Paper 102 at 36). With KPN disclaiming all challenged claims except claim 7 in response to Samsung’s Petition, there is no credible argument that Samsung filed this Petition for any improper purpose. Moreover, KPN omits critical portions of its quoted sentence and the rest of the opinion that show there are no legitimate questions about Samsung’s motives here.

First, the full quotation is: “However, where a petitioner has not been sued for infringement, **and is a non-practicing entity**, legitimate questions may exist regarding whether the petitioner filed the petition for an improper purpose or one that does not advance the goals of the AIA or this Office.” *Id.* Samsung is plainly not a non-practicing entity. It employs the 3G, 4G, and 5G standards, which KPN claims the ’560 patent is essential to, in millions of products.

Second, the Director went on to explain situations where there would not be an improper purpose in filing a petition, and this Petition falls squarely in that category. The Director explained that “there may be circumstances in which a petitioner has not yet been sued, but believes it may be, or otherwise wants to make sure it has the freedom to operate” and that there is nothing improper in such petitioners filing a petition. *Id.* at 36. As explained *supra*, that is exactly the case here: KPN’s statement that Samsung is using KPN’s patents led Samsung to believe it may be sued for patent infringement and, regardless, Samsung should have freedom to operate. *OpenSky* does not help KPN’s discretionary denial arguments; it refutes them.

KPN further attempts to portray the fact that this Petition was not filed until “**after** Samsung was found liable for its breach of the 2016 Settlement Agreement”

as showing an improper purpose on Samsung's part.³ Request at 22 (emphasis in original). The timing, however, is due to the fact that (1) it was not until trial in the state court action that KPN made clear it was accusing Samsung of "using" the '560 patent, and (2) the parties' settlement agreement forbade Samsung from challenging the invalidity of the '560 patent until December 31, 2024.⁴ Samsung promptly filed this petition soon after.

KPN also analogizes this case to a 13-year-old case where a federal district court criticized (but declined to sanction) Samsung's current law firm for engaging

³ If anything, it has been KPN who has taken advantage of the patent system. As Professor Contreras explained in his *amicus* brief, KPN's reliance at trial on Samsung's use of KPN's patents, including seeking a per-use royalty for each device sold by Samsung since 2010, allowed KPN to receive "damages reflecting patent infringement without corresponding evidence of validity and infringement" thereby "contraven[ing] overriding federal policy concerning patents, innovation and the public interest." Ex. 1109, 3.

⁴ Indeed, KPN has since filed a lawsuit alleging that the filing of this Petition is a violation of the 2016 agreement, based on the meritless argument that the agreement forbade Samsung from challenging its patents at the Patent Office even upon expiration of the covenant not to sue on such patents. Ex. 1106.

in “sharp practice” “to make the litigation as painful as possible” in a litigation Samsung had *no involvement in whatsoever* and that bears no relation to this case. Request at 22-23 (quoting *Vasudevan*). This is patently unfair to Samsung. Moreover, Samsung’s entirely reasonable response to KPN’s accusations is not comparable to defendant’s conduct in *Vasudevan*, where the Court found it troubling (but ultimately protected by the First Amendment) that defendant verbally threatened to make litigation “painful” and filed an *ex parte* reexamination against an unrelated party represented by plaintiff’s counsel. 2013 WL 12174179 at *3. Samsung took no such action against KPN or its counsel.

Moreover, that the Court in the Eastern District of Texas remanded KPN’s breach of contract and unjust enrichment case back to state court is not indicative of any abusive practice⁵ by Samsung. The district court did not find, as KPN suggests, that KPN’s state court case “did not assert or raise patent infringement.” Request at

⁵ KPN attempts to portray Samsung’s removal as lacking any merit by emphasizing that the Court held there was “*no credible* argument that the breach of contract claim necessarily raises a patent law issue.” Request at 15 (citing *Koninklijke KPN N.V. v. Samsung Elecs. Co.*, 2:24-cv-0135-JRG-RSP, 2024 WL 2019739, at *3 (E.D. Tex. Apr. 4, 2024)) (emphasis in Request). But KPN leaves out the very next sentence that “KPN’s unjust enrichment claim comes closer.” *Id.*

15. Indeed, the Court found the very opposite, noting that “KPN actually raised ... Samsung’s use of KPN’s patents in demonstrating Samsung’s unjust enrichment.” 2024 WL 2019739, at *3. The Court’s decision remanding back to state court was instead based on several other factors from the pleadings, not based on discovery or trial, and the notion that patent infringement was not a “necessary element” to KPN’s claims of unjust enrichment or breach of contract as pled. *Id.* The “avoidance of litigation and the associated costs” were also alleged “windfall[s]” that Samsung received. *Id.*

Nor was Samsung’s filing of its motion for judgment notwithstanding the verdict any indication of abuse. In its motion, Samsung made numerous arguments against both the breach-of-contract claim and the unjust-enrichment claim. Ex. 1107. The federal preemption argument was merely one argument out of five directed to the unjust-enrichment claim, and was not made against the breach-of-contract claim. Ex. 1107, 42-44. Moreover, the argument was well-founded given that a District Court expressly found the judgment relied on KPN’s assertion of “Samsung’s use of KPN’s patents.” 2024 WL 2019739, at *3. The State Court denied the motion in a single sentence order that did not explain its reasoning, much less indicate in any way that the argument was abusive. Ex. 1107, 53.

Perhaps recognizing the weakness of its accusations, KPN urges that the Board deny the Petition without actually finding that Samsung engaged in any abuse,

since “the mere existence of a *legitimate question* should weigh in favor of” denial. Request at 23 (emphasis in original). KPN does not raise any legitimate question of abuse and provides no evidence to support its accusations which are based entirely on speculation and innuendo. Instead, it is indisputable that KPN accused Samsung of “using” the ’560 patent in open court, a fact which KPN conveniently leaves out of its briefing. Exs. 1100, 1102, 1103, 1111-13; 2024 WL 2019739, at *3 (“KPN actually raised ... Samsung’s use of KPN’s patents in demonstrating Samsung’s unjust enrichment.”). This cannot be a basis for the Director to exercise her discretion to deny.

Finally, KPN further accuses Samsung of engaging in a pattern of abuse by pointing to the Oura case where a district court dismissed Samsung’s declaratory judgment action for lack of jurisdiction despite several IPR and PGR petitions challenging Oura’s patents. Request at 20-21. As an initial matter, the Oura case has no bearing on this one, since there, the Court’s dismissal was based on Samsung’s “fail[ure] to allege any action by Oura directed at Samsung.” *Samsung Electronics Corp., Ltd. v. Oura Health Oy*, No. 24-cv-03245, 2025 WL 929410 at *3 (N.D. Cal. Mar. 27, 2025). Instead, Samsung was motivated to bring the action in view of the numerous lawsuits brought by Oura against other “smart ring” companies. By contrast, in this case, KPN has made specific allegations that Samsung practiced the ’560 patent.

In addition, the IPR and PGR petitions that Samsung filed were in no way abusive or burdensome to the Board. Indeed, as a result of the strength of those *Oura* petitions, *Oura* ***disclaimed*** six of the challenged patents. And the Board went on to institute every one of the petitions that were not rendered moot by the disclaimers. Samsung's petitions have only ***strengthened*** the patent system by ensuring truly novel inventions are asserted.

C. KPN Will Not Suffer Any “Harm” Beyond That Any Other Patent Owner Would Face by Consideration of an IPR Petition

KPN next argues that it would suffer irreparable harm if the Board addresses the merits of the Petition, even if adjudged in favor of KPN. KPN's alleged “harms” are what any Patent Owner would face because of an IPR petition filed against its patent. To elevate such a harm as worthy of discretionarily denying a petition would undermine the entire Congressionally-established post-grant system.

Furthermore, the safeguard against KPN's alleged “harms” is the Board's reasoned consideration of the merits of Samsung's petition. KPN's alleged “harms” simply stem from the fact that the '560 patent lacks novelty, as evidenced by Samsung's Petition and KPN's immediate reaction to disclaim all challenged claims except claim 7—which makes the Petition far from “weak.” Request at 24. If the remaining claim is ultimately invalidated, there is no legitimate “harm” to KPN because it had no right in the first place to own and assert a claim that lacks novelty. Moreover, invalidation would clarify for the public the metes and bounds of KPN's

patent protection, remedying the harm to the public of allowing an invalid patent to stand.

KPN further argues that even a *denial* on the merits would provide a “blueprint for future petitioners to prepare an improved petition.” Request at 21-22. This again is merely an acknowledgement that the ’560 patent is not a novel patent and that future petitioners will be able to find prior art that improves upon Samsung’s already-compelling petition.

KPN also argues Samsung suffers no prejudice from discretionary denial at this time because “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.” Request at 18-19. *First*, Samsung would be deeply prejudiced by not having its invalidity positions efficiently adjudicated by the Board or having IPR proceedings delayed. *Second*, a Patent Owner does not get to decide whether and when a petitioner is able to file a petition by holding back or pursuing infringement claims at the Patent Owner’s choosing. There is no support in precedent for that proposition, and KPN cited none. *Third*, it is likely that if Samsung ever re-filed this Petition, KPN would contend under *General Plastic* that the Board should deny the Petition.

D. The Economic Interests Weigh Against Discretionary Denial

Samsung is one of the most innovative companies in the world. Over the past three years, Samsung has been awarded over 18,000 U.S. patents—the most of any company—including patents in cellular technologies, smartphone user interfaces, biometrics, OLED displays, chip fabrication, and battery technologies. Samsung commercializes these innovations into hundreds of products and services across dozens of industries, including smartphones, cellular base stations, televisions, semiconductors, batteries for consumer products and electric vehicles, and household appliances like refrigerators, dishwashers, microwaves, and washing machines.

There are compelling economic interests in adjudicating the validity of patents that target Samsung's products. To allow KPN to extract licensing fees on an invalid patent against innovative companies like Samsung would be a significant, unjustified cost to not only Samsung, but Samsung's American customers who would bear the brunt of such fees.

In addition, the patentability of these patents go beyond Samsung. KPN has repeatedly asserted that the '560 patent is essential to the cellular 3G, 4G, and 5G standards. Exs. 1100, 1102, 1103, 1111. Given the ubiquity of products that use such standards, which account for hundreds of billions of dollars in revenue in the United States alone, there are significant compelling economic interests in deciding

the merits of Samsung’s Petition against the ’560 patent. Since the Board has already found the vast majority of the ’560 patent’s original claims to be unpatentable, there is a compelling economic interest in deciding the patentability of the remaining claims in light of Samsung’s cited prior art.

KPN nevertheless argues the Petition should be denied because “there is a compelling economic interest in innovative technology companies, such as KPN, developing new patented technology.” Request at 22-23. This argument, however, would apply to all petitions and, as such, is nothing more than a broadside attack on *inter partes* review proceedings as a whole. Yet in establishing such proceedings, Congress already weighed the various economic interests in favor of allowing the efficient and reasoned consideration of patents by the Board. KPN’s argument for incentivizing “innovative technology companies” by preventing IPR review of their patents is an argument appropriately presented to Congress, not the Office.

Moreover, KPN’s alleged economic interest on its face requires assuring that patentees are, in fact, providing “innovative” and “new” patented technology. Such a determination involves ascertaining the *merits* of Samsung’s Petition—*i.e.*, whether the challenged patent is, in fact, “innovative” and “new patented technology.”

E. *General Plastic* and *Advanced Bionic* Do Not Favor Denial

As discussed, the Director instructed parties to consider various factors in the context of “existing Board precedent (including *Fintiv*, *General Plastic*, and *Advanced Bionics*).” Memorandum at 2. KPN does not mention *Advanced Bionics*, though does argue that the Petition should be denied under *General Plastic*. Request at 26-31. Both the *General Plastic* and *Advanced Bionics* factors weigh against denial, as discussed below.

1. The *General Plastic* Factors Weigh Against Denial

The *General Plastic* factors weigh against discretionary denial for multiple reasons:

First, as KPN admits, Samsung is not the same petitioner as Ericsson, which weighs against discretionary denial. Request at 27-28. Samsung was also not a real party-in-interest to Ericsson, nor does KPN allege any relationship between Samsung and Ericsson. Request at 28 (“[T]here is no significant relationship between Samsung and Ericsson.”). KPN cites to only one non-precedential decision where an unrelated party’s petition was denied under *General Plastic*, but there, multiple IPR proceedings were pending against the same patent, and the Board found no good reason to consume additional resources instituting another review. *Ericsson Inc. v. Uniloc 2017 LLC*, IPR2020-00420, Paper 7 (June 18, 2020). That is far

different than here, where the Board dismissed the previous instituted proceeding against the '560 patent because of the parties' settlement.

Second, at the time of the filing of Ericsson's petition, Samsung was prohibited by its 2016 Settlement Agreement with KPN from challenging the validity of the '560 patent until December 31, 2024. Thus, while Samsung was aware of the '560 patent at the time Ericsson filed its IPR petition (it had been identified by KPN), Samsung had no reason to conduct prior art searches regarding the '560 patent or otherwise should have known of the Kazmi and Mach references it now asserts. KPN argues otherwise, but provides no reason why Samsung should have known of these references in view of the Settlement Agreement. Request at 28.

Third, while Samsung did have the benefit of KPN's preliminary response and the Institution Decision at the time Samsung filed its Petition,⁶ Samsung's Petition does not "raise the potential for abuse" identified in *General Plastic* because

⁶ KPN chastises Samsung's Section 325(d) argument in its Petition as "untethered to any authority" (Request 28), yet fails to acknowledge that Samsung's argument was directed toward the now-disclaimed independent claims, noting that the Board's institution decision could not have provided any roadmap because the Board *instituted* based on merits against the independent claims.

Ericsson's IPR petition was *instituted*, and *General Plastic* was concerned with petitioners having multiple opportunities "to strategically stage their prior art and arguments ... until a ground is found *that results in the grant of review.*" *General Plastic*, IPR2016-01357, Paper 19 at 17-18. KPN now seeks to shield the remaining claim 7 against review from any other would-be petitioner, even though it simply claims the use of well-known location information, such as GPS location information. But that is not a proper use of *General Plastic*.

Fourth, Samsung learned of the new prior art references it relies on, Kazmi and Mach, within a few months of filing its petition. This weighs against denial.

Fifth, Samsung's legitimate reasons for the time elapsed between Ericsson's petition and Samsung's Petition weighs against denial. As discussed above, it was not until 2024 that KPN clearly alleged that Samsung was "using" the '560 patent. Exs. 1100, 6 ("Samsung *ha[s] to be using those patents*"); 2024 WL 2019739, at *3 ("KPN actually raised ... Samsung's use of KPN's patents in demonstrating Samsung's unjust enrichment."). Moreover, the 2016 agreement between Samsung and KPN barred Samsung from challenging the validity of the '560 patent at least until December 31, 2024. KPN criticizes Samsung's supposed "delay" but fails to acknowledge this critical fact. Request at 30.

Sixth, the finite resources of the Board do not support denial. Here, the Board instituted on the independent claims, but the case was settled shortly after KPN filed

its Patent Owner Response. Thus, not only has the Board already made a preliminary assessment that the vast majority of the limitations of claim 7 are anticipated or rendered obvious, the Board did not consume many resources in making that decision. It would therefore be an efficient use of the Board's resources to examine the remaining claim 7 in view of Samsung's prior art, which was not previously before the Board in the prior IPR. KPN cites to *Ericsson* in support of its argument to the contrary, yet the Board expressly noted in *Ericsson* that the presence of two pending proceedings against the same patent militated against spending resources instituting *another* review. *Ericsson* at 14. Here, there is no pending IPR proceeding against the '560 patent.

In addition, as discussed above, reviewing the '560 patent would be a valuable use of the Board's finite resources because it could resolve the nascent declaratory judgment action, thus allowing the Board to fulfil its function as a true alternative to district court litigation.

Accordingly, the *General Plastic* factors weigh against discretionary denial.

2. The *Advanced Bionics* Factors Weigh Against Discretionary Denial

Under *Advanced Bionics*, discretionary denial may be warranted if the Office was previously presented with the same or substantially the same prior art or arguments. As explained in Samsung's Petition, the new references relied on Samsung (Kazmi and Mach) were not before the Office during examination nor used

in Ericsson’s IPR. Pet. at 66. In addition, Section 325(d) is “not implicated” where a previous proceeding “was terminated after institution but before a final written decision was issued.” *BMW of N.A., LLC v. Michigan Motor Techs., LLC*, IPR2023-01032, Paper 14 at 16 (Jan. 29, 2024).

F. The Merits of the Petition are Strong

In response to the strong merits of Samsung’s Petition, KPN has disclaimed all challenged claims except dependent claim 7, which simply recites that “the telecommunications system is further configured for receiving location information from one or more of the detected user terminals and wherein the location information is used as a selection parameter for selecting the part of the detected user terminals.” Yet as demonstrated by Samsung’s Petition and the Kazmi and Mach references, receiving location information, such as GPS information, was well-known, as was its use as a selection criteria. Pet. 50-52, 58-64.

KPN’s arguments to the contrary misrepresent the Petition and the prior art. Request at 32-33.

For Kazmi, KPN argues that the determination of speed does not necessarily require determining location. Request at 32. However, Samsung did not argue that Kazmi inherently discloses location, but rather that it would have been obvious to use a user terminal’s location information to calculate the speed parameter,

especially given the ubiquity and precision of GPS receivers in mobile devices by the time of the '560 patent's earliest filing data. Pet. 51-52.

For Mach, KPN merely states its preliminary response will demonstrate that Mach does not suggest or motivate using location as a selection parameter, but provides no specific arguments. As explained in the Petition, Mach clearly teaches using location information received by user terminals to improve base station algorithms. Pet. 62-63 (citing Ex. 1008, ¶¶46-48). Thus, it would have been obvious to combine Mach's teachings with Kazmi's selection of user terminals, given that Kazmi uses such user terminal parameters such as base station proximity and speed that a POSITA would have understood would highly benefit from location information, especially the precision of GPS location information. Pet. 59-61, 63-64.

G. The Petition's Reliance on Expert Testimony Does Not Warrant Discretionary Denial

As the Director noted, a petition's reliance on expert testimony should consider whether "extensive 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." FAQ #21. The Director appears to suggest that the issue of "reliance on expert testimony" should be considered in the total context of a *Fintiv* analysis because a Court may be better suited to make credibility determinations. However, as discussed above, no Article III court currently has the

patentability of the '560 patent at issue before it, and thus such questions *cannot* be resolved by an Article III court.

In any event, even if the expert testimony factor applies here, KPN did not show it militates in favor of denial. Rather than explaining how Samsung's expert Dr. Almeroth failed to "provid[e] focused testimony" (FAQ #21), KPN instead focuses on the length of his testimony (an unremarkable 86 pages), the Petition's "extensive[] cit[at]ions]" to the declaration, and the fact that his declaration "contains much of the same language as the Petition." Request at 33-35. These arguments are fundamentally at odds with each other—if the scope of Dr. Almeroth's declaration is similar to that of the Petition, it suggests, if anything, that the testimony is indeed "focused" on the key issues.

Moreover, it would be unfair to Samsung for its focused expert testimony to be used against it here, especially given the technology at issue and timeline. *First*, as the Director is no doubt aware, petitions in technological areas more complex relative to other fields are often denied when they are not supported by expert testimony to aid the Board in its analysis of the merits. *HVLPO2, LLC v. Oxygen Frog, LLC*, 949 F.3d 685, 689 (Fed. Cir. 2020) ("[T]he conclusion of obviousness and its underlying technical questions[] is the province of qualified experts"). As a result, petitioners are well-served by extensive citations to their expert and any documentary evidence including the prior art. That is precisely what Samsung has

done here. *Second*, Samsung filed the petition *before* the Director’s Memorandum indicating that extensive reliance on expert testimony may be a factor for discretionary denial was issued. Retroactively applying that factor would be unfair to Samsung, if not a violation of its due process rights.

KPN’s criticism of the Petition’s extensive citation to and overlap with the supporting declaration also falls flat because it would penalize Samsung for simply following the Board’s rules. Parties are forbidden from incorporating by reference other papers into their briefs. 37 C.F.R. § 42.6(a)(3); *Cisco Systems, Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12 (Aug. 29, 2014) (informative). Thus, arguments made by an expert but not made in the Petition will likely not be considered by the Board. Samsung properly focused the expert declaration on the arguments in the Petition that are appropriately illuminated by expert testimony.

Moreover, as the Board made clear in *Xerox*, it is the expert’s repeating of *conclusory* arguments that is entitled to little weight. *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (Aug. 24, 2022) (precedential) (“Dr. Jones does not cite to any *additional supporting evidence* or provide any technical reasoning to support his statement. Thus, the cited declaration testimony is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight.”). Here, Dr. Almeroth did not make conclusory arguments—he provided detailed explanations for his opinions. Moreover, *Xerox*

requires consideration of the merits before determining whether an expert’s testimony is entitled to weight or not. *See, e.g., PLR Worldwide Sales Limited v. Flip Phone Games, Inc.*, IPR2024-00171, Paper 31 at 41 (Apr. 24, 2025) (“[W]e find that the assertions in the Petition are supported by the teachings of Hays and thus are not conclusory, thus distinguishing this situation from the one described in *Xerox*.”).

Finally, KPN argues that the petition should be denied because it relies on Dr. Almeroth’s testimony to “plug holes by arguing that certain features not disclosed in the relied-on reference would have been obvious.” Request at 34. This is incorrect; Dr. Almeroth appropriately explained how a POSITA would understand the prior art and what would be obvious to the POSITA in light thereof.

KPN’s argument would require the Director to ignore the Supreme Court’s instruction in *KSR*, where the Court held that an obviousness inquiry need not solely rely on the teachings in the prior art but can instead rely on the knowledge of an ordinary artisan. *KSR Intern. Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (“As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”). Whether Dr. Almeroth’s testimony rises to *KSR*’s flexible approach is more appropriately determined by the panel’s consideration of the merits of the Petition, especially where KPN does not even dispute Samsung’s analysis.

H. The Parties Do Not Have “Long-Settled Expectations” Favoring Discretionary Denial

KPN argues that because the ’560 patent issued over seven years ago and Samsung knew of it since 2019, that establishes “long-settled expectations” that warrant discretionary denial. Request at 35-36. KPN omits a critical fact: the 2016 agreement between the parties forbade KPN from suing Samsung for infringement of the ’560 patent until December 31, 2024. That expectation was shattered when, at trial in the state court proceeding, KPN accused Samsung of practicing the ’560 patent via its implementation of wireless standards. Ex. 1100, 6 (Samsung “*ha[s] to be using those patents*”); *id.*, 1 (KPN’s allegation that Samsung was “not paying KPN for *the use of their patents*”); 2024 WL 2019739, at *3 (“KPN actually raised ... Samsung’s use of KPN’s patents in demonstrating Samsung’s unjust enrichment.”).

In addition, the same agreement forbade Samsung from challenging the invalidity of the ’560 patent. Ex. 1103, 12. As a result, there were no long-settled expectations with respect to the infringement or the validity of the ’560 patent.

In addition, KPN’s argument that it had a “reasonable expectation that the ’560 Patent would remain a valuable source of licensing revenue” (Request at 36) is belied by the successful institution of Ericsson’s IPR petition, and KPN’s disclaimer of all but one claim in response to Samsung’s IPR petition.

I. Samsung Files Many Petitions Because It Is the Most Frequent Target of Patent Suits

Lastly, KPN argues that the volume of IPR and PGR petitions filed this year by Samsung warrants discretionary denial. Request at 36-38. KPN ignores why Samsung is forced to file these petitions—it is the most frequent target of patent infringement lawsuits in the United States. Ex. 1108 (noting that between 2019 and 2023, Samsung faced “over 404 patent infringement cases,” more than any other large company). This is a result of the incredibly broad range of products and technologies sold by Samsung.

Moreover, KPN’s citation of the 67 IPR petitions filed by Samsung this year is misleading because it fails to group the petitions where they were directed at a single patent owner—generally non-practicing entities—that asserted multiple patents against Samsung in litigation. Of the 67 IPRs filed in 2025 by Samsung, nearly two-thirds were filed against seven patent owners: 10 against Mobile Data Technologies, LLC; 8 against GenghisComm Holdings, LLC; 7 against iCashe, Inc.; 6 against Sinotechnix LLC; 6 against KPN; and 5 against Headwater Partners II LLC. Ex. 2116.

Given the high volume of lawsuits targeted at Samsung, to deny Samsung access to the Board on that basis would be fundamentally unfair and deny it access to the alternative to district court litigation that Congress provided via the IPR process.

V. CONCLUSION

For these reasons, the Director should not exercise her discretion to deny and should submit this Petition to the panel for review of its merits.

Date: May 27, 2025

Respectfully submitted,

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2. This Petition complies with the general format requirements of 37 C.F.R. § 42.6(a) and has been prepared using Microsoft Word in 14-point Times New Roman.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 27, 2025, true and correct copies of the foregoing document were served via electronic mail to Patent Owner's counsel of record:

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