

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LINKPLAY TECHNOLOGY INC.

Petitioner

v.

SONOS, INC.

Patent Owner

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IPR2025-00511

U.S. PATENT NO. 9,213,357

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**PETITIONER'S OPPOSITION TO PATENT OWNER'S REQUEST FOR  
DISCRETIONARY DENIAL**

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EX1003	Declaration of Dr. Bruce Hartpence
EX1004	<i>Ex Parte</i> Reexamination (Control No. 90/013,959) History of Claims 9-12 and 19 of the ’357 Patent
EX1005	U.S. Patent App. Pub. No. US 2003/0083024 A1 (“Richenstein”)
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EX1007	MOST May 2000 Press Release
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EX1062	Dec. 2, 2024, Letter from A. Ramos to M. Boyea RE: Sonos’s Infringement Contentions (Redacted)
EX1063	Jan. 6, 2025, Letter from C. Richter to A. Ramos RE: Sonos’s Infringement Contentions (Redacted)

## **I. Introduction**

Discretionary denial of the instant petition for Inter Partes Review (“IPR”) of U.S. Patent No. 9,213,357 (“’357 patent”) is wholly unwarranted. Petitioner has presented grounds of unpatentability that are strong on the merits based on anticipation and obviousness. As explained below and in the Petition, the claims of the ’357 patent are anticipated or rendered obvious under six different Grounds. All elements of the challenged claims are either expressly disclosed or taught by the prior art references. Indeed, the prior art, Richenstein and Chatterton, disclose the exact subject matter which the Patent Office indicated as the subject matter that rendered the claims allowable during patent prosecution. Sonos’s arguments to the contrary concerning the merits of the Petition are merely obfuscations of the prior art teachings.

Discretionary denial is also not warranted because of the complexity of issues at play where Petitioner has filed three petitions for IPRs from three distinct families. These three patents are also involved in a parallel district court litigation pending in the District of Delaware, which includes three additional patents from the same family as the ’357 patent. The scope of the challenged claims is vast implicating diverse devices, methods, and storage media. Sonos has initially asserted infringement of nearly every claim in each of the six patents, totaling 141 claims with 20 independent claims, forcing Petitioner to challenge all claims of the

three patents pending in the related IPRs including all claims of the '357 patent. In complicated matters like these, involving multiple patents and diverse subject matters, the Director has ruled that the PTAB is a more suited forum to handle such cases.

A holistic analysis of the *Fintiv* factors also does not favor discretionary denial. For example, the actual trial date as shown by time-to-trial statistics is likely to be after the projected date for a final written decision (“FWD”). The investment in the parallel litigation also has not been extensive with the district court unlikely to have issued any substantive order by the institution date. Further, by the institution date, fact discovery would still be ongoing and expert discovery would not have even begun. There will also be no overlap between the issues raised in this Petition and the parallel litigation as Petitioner has agreed to a broad *Sotera* stipulation.

Sonos’s arguments concerning other considerations are baseless and should be rejected. The fact that the '357 patent underwent reexamination does not favor discretionary denial because 1) the primary prior art references cited in this Petition were not of record in the reexamination; and 2) the examiner in the reexamination proceeding committed material error by overlooking relevant prior art teachings, which would have provided a much stronger case of *prima facie* obviousness that would have withstood scrutiny on appeal.

Finally, the discretionary denial is inappropriate because the parties do not have settled expectations respecting the '357 patent. As shown by Sonos's own allegations, Petitioner filed the instant petition barely a little more than a year after learning of the '357 patent before any settled expectation was established. Moreover, the reexamination certificate for the '357 patent did not issue until October 2019. Thus, the reexamined '357 patent has not been in force for any significant period to develop any settled expectation.

**II. Discretionary Denial Is Not Warranted Because the Merits of the Petition's Grounds for Unpatentability Are Strong**

Discretionary denial is unwarranted given the strong merits of the unpatentability grounds set forth in the Petition. The Petition demonstrates that every element of all challenged claims is disclosed or rendered obvious by not one, but *six* different prior art grounds. Pet., 3. The six grounds include two separate and distinct references, Chatterton and Richenstein, and include two anticipation grounds; two single-reference obviousness grounds; and two obviousness grounds that combine each of Richenstein and Chatterton with standards specifically referenced therein:

<b>Ground</b>	<b>Claims</b>	<b>Basis</b>	<b>References</b>
1	1-20	§ 102	Richenstein
2	1-20	§ 103	Richenstein
3	4-7, 12-17	§ 103	Richenstein in view of MOST-2.0
4	1-20	§ 102	Chatterton
5	1-20	§ 103	Chatterton

6	1-20	§ 103	Chatterton in view of RFC1889
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Any one of these six grounds presents a sufficiently high likelihood of success, warranting institution.

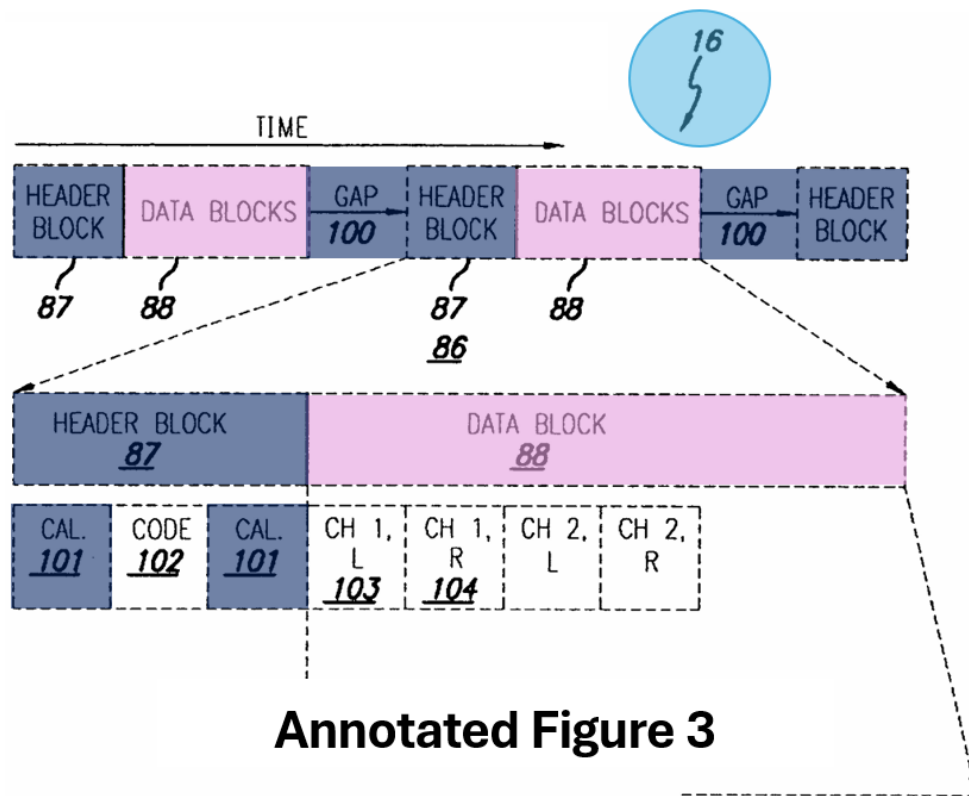
The Petition clearly articulates how Chatterton and Richenstein independently, or in combination with another reference, disclose each and every feature of the challenged claims. Specifically, during the original prosecution, the PTO identified the following subject matter (*italicized*) (contained in claim element [9.3.2] noted in the Petition) as rendering the claims allowable:

(ii) transmit, via the network interface of the first playback device to a second playback device, the audio information, playback timing information associated with the audio information, and device clock information of the first playback device, and (iii) *play back the audio information in synchrony with the second playback device by using the playback timing information associated with the audio information and the clock information of the first playback device to play back the audio information, wherein the first and second playback devices remain independently clocked during synchronous playback of the audio information.*

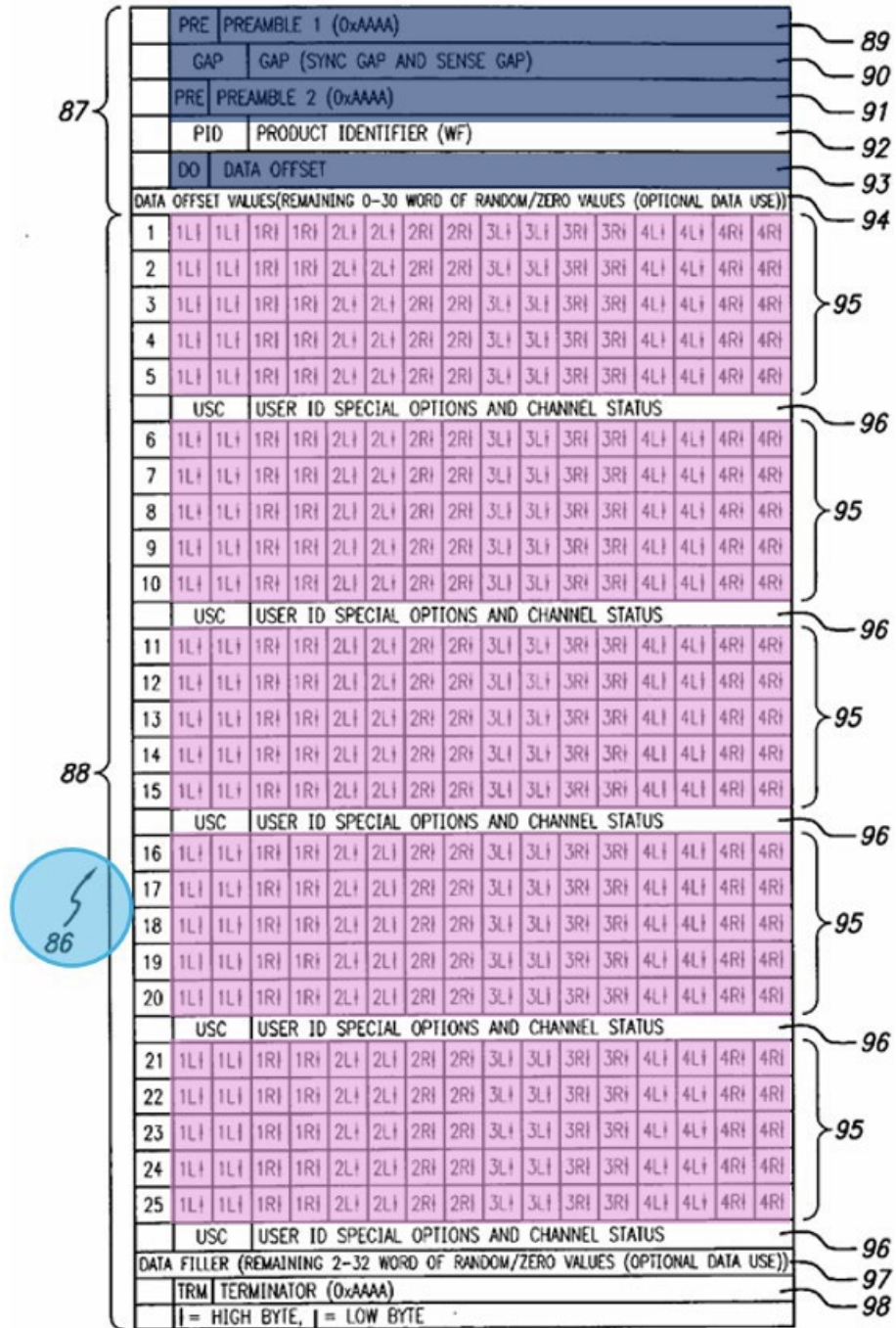
EX1002, 68, 71, 111, 119; *see* Pet., 40.

These features, however, are explicitly disclosed in or suggested by all six proposed grounds in the Petition. For example, the Petition shows that Richenstein

discloses the “*first playback device*” functionality of [9.3.2] in multiple embodiments of its “audio device 34” in both the car and home settings. Specifically, Richenstein discloses audio device 34 transmitting signals 16 and 1122 (*light blue*) with exemplary formats for data content in Fig. 3 and Fig. 12 that satisfy element [9.3.2]. Both Fig. 3 and Fig. 12 provide the transmitted signals include “*audio information*” (*pink*) that is “*associated with playback timing information*” (*dark blue*), as recited in element [9.3.2]. Pet., 30-31; EX1005, [0052]-[0054], [0057], [0066].



EX1003, ¶171 — EX1005, FIG. 3 (Annotated)



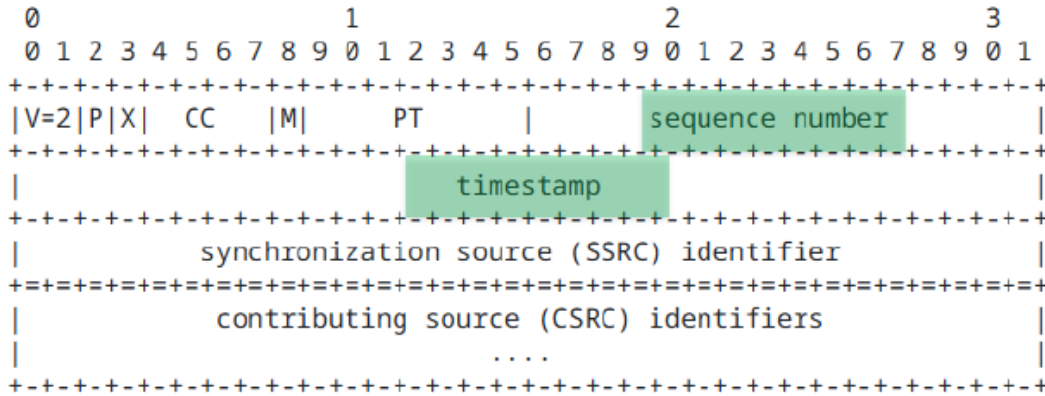
**Annotated Fig. 12**

EX1003, ¶171 — EX1005, FIG. 12 (Annotated)

Richenstein further discloses the transmission of content in the headers “useful to convey clocking information” and the specific example of transmitting both PPM IR (“*device clock information*”) from audio device 34 (“*first playback device*”) to receiving devices (“*second playback devices*”). Pet., 33-34; EX1005, [0118]-[0121], [0132] (transmitter clock (CLKX)), Figs. 15 and 16. Richenstein also discloses the requirement of [9.3.2] with regard to “*independent clocking.*” Specifically, Richenstein discloses that both audio device 34 (“*first playback device*”) and the receiving devices (“*second playback devices*”) operate according to their own respective clocking mechanisms (“*independently clocked*”), which can be synchronized using an exemplary “pulse loop lock” or “PLL” implementation. Pet., 36; EX1005, [0119] (receiver Voltage Controlled Oscillator), Fig. 8 (base crystal 665), [0068], and [0119]; EX1003, ¶¶184-88.

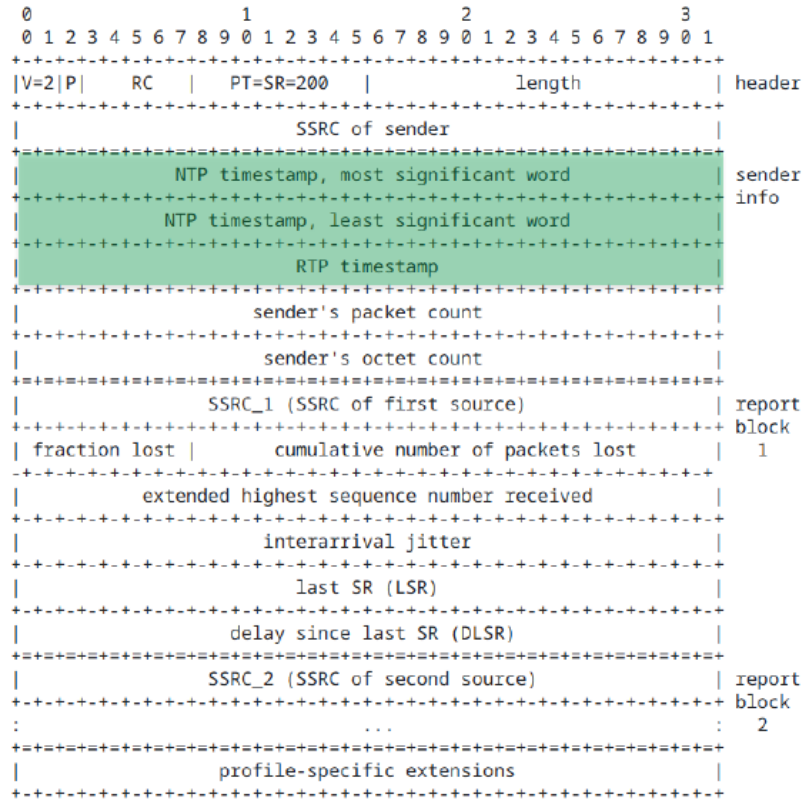
Chatterton also discloses the purportedly allowable subject matter indicated by the examiner during prosecution. Specifically, Chatterton discloses a home media server (“*first playback device*”) that transmits the media streams (“*audio information*”) to devices 160-163 and multimedia nodes 150 and 151 (each a “*second playback device*”) for synchronized playback. Pet., 70; EX1003, ¶¶369-70. To achieve this, Chatterton discloses the use of the well-known standard RTP with timestamps associated with the media streams (“*associated with playback timing*”).

information”). EX1009, 8:36-47, EX1009, 8:54-67, and EX1010, 10 (timestamping streams); EX1003, ¶¶359-63.



**EX1003, ¶362 — EX1010, 10 (Annotated)**

Chatterton further discloses that in order to synchronize playback, the home server provides a resynchronization signal, as well as NTP and RTP timestamps through RTP’s control protocol RTCP. Pet., 67-68, EX1009, 26:47-52, 28:42-47, and 5:38-46 (synchronization signal 616); EX1003, ¶¶364-65; EX1009, 16:12-15, EX1010, 23; EX1003, ¶¶366-67 (NTP and RTP timestamps); EX1003, ¶367.



**EX1003, ¶367 — EX1010, 23 (Annotated)**

Ignoring these explicit disclosures and the fact that the supposed allowable subject matter is disclosed in Richenstein and Chatterton, Sonos asserts that the prior art does not disclose a single element “*playing back...in synchrony.*” Patent Owner Sonos, Inc.’s Request for Discretionary Denial of Institution (“Br.”), 29-39. As shown below, Sonos’s argument is baseless and should be rejected.

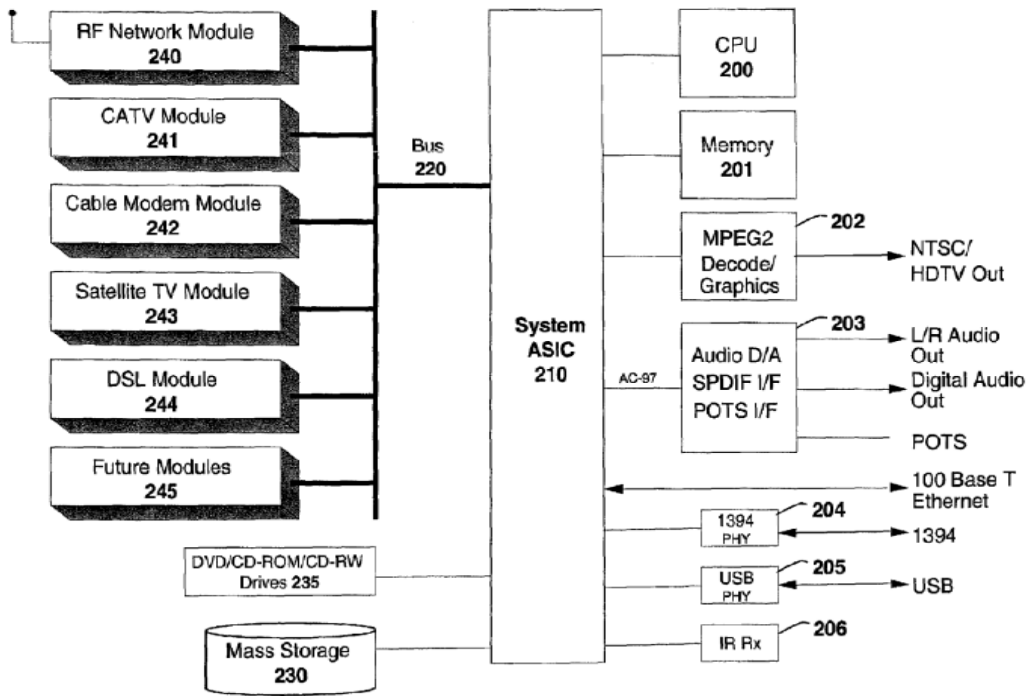
Sonos bases its position on the contention that while Chatterton and Richenstein both disclose audio transmission by the first playback device, they fail to disclose the first playback device playing back audio, and as a result, they also fail to disclose playing back in synchrony. Sonos is wrong.

**A. Chatterton Discloses “Playing Back ... Audio Information in Synchrony”**

Sonos alleges that Chatterton’s home media server 110 is incapable of playing back audio, and instead merely transmits audio. Simply put, Sonos argues that “Chatterton’s ‘home media server 110’ transmits and (some of) Chatterton’s purported ‘*second playback devices*’ play back.” Br., 37-38.

This depiction distorts Chatterton’s teachings, which show that the home media server 110 is not only a transmitter, but a player in and of itself. Specifically, Chatterton explains that while the home media server must be able to retrieve, store, and distribute audio (i.e., *obtain and transmit audio*), embodiments of the server include both a DVD player 420 and a CD player, each of which is fully capable of outputting audio itself (i.e., *playing back audio*). EX1009, 4:56-63; 12:49-55.

Chatterton’s component diagrams, which Sonos ignores, tell the same story. Home media server 110 is shown in figure 2a as including audio source modules 240-245 (i.e., *obtaining audio*), IR port 206 and digital audio out (i.e., *transmitting audio*), and L/R audio out (i.e., *playing audio*).



**FIG. 2a**

Hence, because Chatterton not only discloses obtaining and transmitting audio information, which Sonos does not refute, as well as playing back audio, Chatterton discloses each and every element of the challenged claims and, therefore, forms a strong case for the unpatentability of the challenged claims.

**B. Richenstein Discloses “Playing Back ... Audio Information in Synchrony”**

For Richenstein, Sonos tells a similarly flawed story. Sonos contends that in Richenstein “there is nothing about ‘audio device 34’ itself playing back audio.” Br., 37. And by limiting audio device 34 to solely audio transmission, Sonos argues that audio device 34 cannot playback audio and thus cannot playback in synchrony. For example, in Richenstein’s automobile embodiment, Sonos tries to

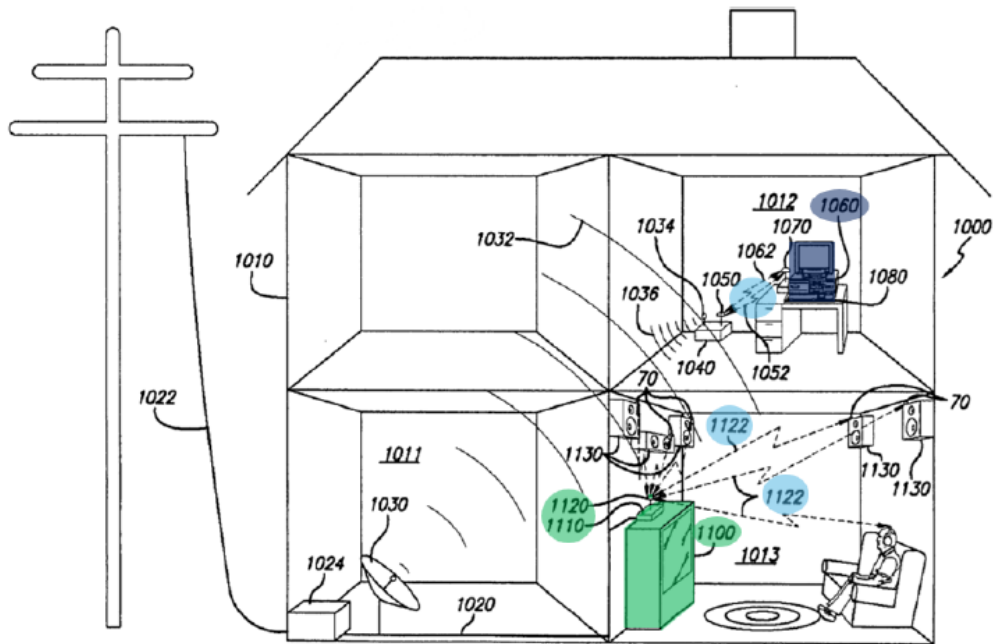
liken, and thereby limit, audio device 34 to a *traditional* “in-dash unit” which would “only ever playback audio via a vehicle loudspeaker that was hardwired.” Br., 31. And thus, because Sonos contends that Richenstein merely transmits audio data to speakers wirelessly instead of over hardwiring, Sonos concocts the strawman argument that Richenstein cannot playback audio unless playing back and transmitting are the same act. *Id.*, 31-32.

Similarly, Sonos argues that in Richenstein’s home theatre embodiment, “the purported ‘*first playback device*’ in the home setting [only] transmits, and ‘wireless headphones 14’ or ‘remote speakers 1130’ play back.” Br., 34.

Richenstein specifically discloses, however, that the exemplary audio devices 34 include “mono and stereo radios, CD and cassette players, mini-disc players” and the audio components of “computers, television sets, DVD players and the like.” EX1005, [0036], [0139], [0162]. Hence, every one of the disclosed embodiments of audio device 34 is an audio playback device capable of playing back audio.

In fact, the novelty of Richenstein’s disclosure is in teaching how these exemplary playback devices, all well-known for playing back audio, could be designed to *also* transmit audio to other devices for simultaneous playback. Richenstein’s disclosure of synchronized playback between audio device 34 and the remote speakers is especially clear in the home theatre embodiment.

As shown in Fig. 23, audio device 34 is shown as home theatre system 1100 in green including a transmitter 1120 with the ability to transmit audio to speakers located in front of and behind the listener. Richenstein further discloses that exemplary audio devices 34 include stereos and the audio components of DVD players and television sets. For example, Fig. 23 shows that home theatre system 1100 includes a TV set. In the home theatre embodiment, Richenstein specifically discloses the use of surround sound formatting (5.1 and 7.1) for the home theatre system and a group of speakers to play back the desired audio in synchrony. EX1005, [0046]. Therefore, Sonos's premise that excludes audio device 34 from synchronous playback strains credulity.



**Annotated Figure 23**

Finally, were there to be any doubt that Richenstein's bidirectional devices were capable of both playing back *and* transmitting audio as separate actions, Richenstein describes such a capability. Specifically, Richenstein provides an example of taking phone calls on "two-way headphones," where the headsets tasked with receiving and outputting audio (i.e., *obtaining and playing audio*) is also capable of receiving audio from a microphone "for encoding and IR transmission" (i.e., *transmitting audio*). EX1005, [0165]. Thus, Richenstein expressly discloses audio devices which simultaneously transmit and play back audio.

In sum, because Richenstein discloses both obtaining and transmitting audio information, which Sonos does not refute, and playing back audio, Richenstein discloses each and every element of the challenged claims and forms a strong case for the unpatentability of the challenged claims.

### **III. Discretionary Denial Is Not Warranted Because the Board Is Better Suited to Review Cases Involving Multiple Patents and Complex Technical Subject Matters**

The parallel district court litigation involves six patents: U.S. Patent Nos. 7,571,014 ("014 patent"), 9,164,532 ("532 patent"), 9,213,357 ("357 patent"), 10,146,498 ("498 patent"), 10,541,883 ("883 patent"), and the '023 patent". These six patents are from three distinct families with the '357 patent being in the same family as the '014, '532, and '498 patents.

Petitioner has filed petitions for IPR of three of the six patents, the '357 patent, '883 patent, and '023 patent. The '357 patent is the subject of the instant Petition filed on February 4, 2025. The '883 patent is the subject of IPR2025-00510 filed on February 5, 2025. The '023 patent is the subject of IPR2025-00509 filed on February 1, 2025. Each of the '357 patent, '883 patent, and '023 patent is in a different family. All three IPRs are pending a decision on institution.

In the three IPRs at issue, Petitioner is challenging a total of 57 claims with 9 claims being independent. The scope of the claims challenged is vast and diverse involving devices, network interfaces, digital media, and methods. The '023 patent claims a playback device, a tangible, non-transitory computer-readable media, and a method performed by a playback device such that the device can preempt playing certain type of media content. The '883 and '357 patents claim, *inter alia*, different playback devices with a network interface and different methods performed by the device, one involving communication with a network and the other involving algorithms that control multiple devices in different zones to playback synchronously. Since these IPRs involve patents from three distinct families, the claimed inventions have different components and alleged patentable features.

Sonos initially asserted infringement of nearly every claim in each of the six patents, totaling 141 claims with 20 independent claims, forcing Petitioner to

challenge all claims of the '357 patent, the '883 patent, and the '023 patent.<sup>1</sup>

Indeed, Sonos itself points out the complexity of the district court litigation, stating that there are 15 affirmative defenses, 18 counterclaims, and numerous invalidity grounds. Br., 18. As a result, the district court will be burdened with managing an array of complex and distinct issues.

In cases like these, involving multiple patents and complicated technical issues, discretionary denial is not warranted because the PTAB is a more suited forum to review such complicated issues. In *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 (PTAB June 13, 2025) (Director Review), although the scheduled trial date preceded the projected FWD date and meaningful investment was made in the parallel litigation, the Director held that “[t]he large number and vast scope of the patents asserted in the district court litigation ... weighs against discretionary denial, as the Board is better suited to review a large number of patents involving diverse subject matter.” *Id.* at 3. See also *Tesla, Inc. v. The United States of America as Represented by the Secretary of the Navy*, IPR2025-00341, Paper 12 at 2-3 (PTAB June 13, 2025) (Director Review) (same).

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<sup>1</sup> Sonos initially asserted every claim in the '883 patent, the '357 patent, and the '023 patent. Three months after the Petitions were filed, in May 2025, Sonos reduced the total number of asserted claims to 57.

Accordingly, the complexity of the IPRs with multiple patents and diverse claim scope makes the PTAB a more appropriate forum to efficiently resolve the patentability questions.<sup>2</sup>

#### **IV. A Holistic Analysis of the *Fintiv* Factors Does Not Favor Discretionary Denial**

##### **A. Factor 1: The Court Is Likely to Grant a Stay**

Factor 1 is whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted. This factor favors granting institution. Neither party has yet requested a stay. If the Board grants institution, however, Petitioner will ask for a stay of the parallel litigation as to the patent at issue. The pending litigation involves six patents, three of which are being challenged by the petitioners before the PTAB. An analysis shows that stays pending IPR in District of Delaware cases have been on the rise, reaching as high as 80% of stay requests being granted in 2021. EX1051; *see also* EX1052 (showing that the majority of

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<sup>2</sup> Further, a search on Lex Machina of Judge Ranjan's cases reveals that His Honor has presided over 19 patent cases, none of which has gone to trial or through the summary judgment motion stage. EX1047. In these cases, Judge Ranjan has not issued a ruling on any issues related to patentability. *Id.* The only two substantive rulings Judge Ranjan has issued in his patent cases are the two *Markman* rulings discussed below.

requests to stay pending IPR were granted in D. Del.); EX1053 (showing 67-94% grant rate for motions to stay pending IPR by Judge Andrews from 2019 to 2024). Further, the District of Delaware has granted partial stays of litigations with respect to patents undergoing IPRs, while continuing the litigation with respect to the other patents. *See, e.g., IBM v. Rakuten, Inc.*, 680 F. Supp. 3d 531, 534-535 (D. Del. 2023) (staying case for 4 of 6 asserted patents due to IPR institutions). Since Judge Ranjan is following Delaware rules and Judge Andrew’s “forms and orders” (EX2114), it is likely that a stay or a partial stay involving the patents in instituted IPRs will be granted.

**B. Factor 2: The Actual Trial Date Is Likely to Occur After the Projected FWD Date**

Factor 2 is proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision. This factor favors granting institution because the actual trial date will likely take place after the projected FWD date.

Petitioner filed the instant petition on February 4, 2025, but the notice of filing date accorded was not mailed until April 11, 2025—more than 2 months later. As a result, the projected FWD date is October 11, 2026. Although a trial date is tentatively set for August 10, 2026 in the parallel litigation (EX2104), that date is not likely to be held.

As discussed above, the parallel litigation is extremely complex, involving six patents from three different patent families with 57 asserted claims and over 100 alleged infringing products. Given the complexity of the case, the Scheduling Order has already been amended twice with many key dates extended for 30 to 90 days. EX1037; EX2104. For example, deadlines concerning claim construction briefing have been extended twice, totaling 120 days or more. EX1037; EX2104. Fact discovery cut-off was extended 90 days. EX2104. Dates relating to expert discovery, such as due dates for expert reports and close of expert discovery were extended 90 days. EX2104. Importantly, the trial date has already been extended once for more than three months from May 4 to August 10, 2026. *Id.* Since fact discovery is not scheduled to complete until December 23, 2025, and expert discovery has not even begun and is not scheduled to close until February 18, 2026, with case dispositive and Daubert motions to follow, the chance for a further postponement of the trial date is very likely.<sup>3</sup> *Id.*

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<sup>3</sup> Sonos cites Judge Ranjan’s Practices and Procedures to suggest that Judge Ranjan would postpone a trial date only in “extraordinary circumstances.” Br., 10.

However, Sonos itself admits those procedures do not apply as Judge Ranjan made clear he would utilize the “forms and orders” of Judge Andrews. *Id.*, 45; EX2114.

Further, as Sonos recognizes, Judge Ranjan has already agreed to extend the trial

Moreover, the trial is currently scheduled for only five days (i.e., about 10 to 13 hours per side), which is the presumptive length of a patent jury trial, but the Scheduling Order makes clear that “[a] final decision on the precise length of trial will not be made before the final pretrial conference.” EX1036, 12 n.7. Given the multitude of patents involved in this case from three different families and the voluminous number of accused products and asserted claims, it is likely that multiple trials will be needed to try all six patents to avoid jury confusion and overload and undue complexity, and to ensure that due process is respected by allowing sufficient time and clarity for each issue to be fairly adjudicated.

For example, in a previous case involving Sonos, Judge Andrews indicated that a five-day trial would be appropriate for only a 2-patent case. EX1054 at 2 (quoting transcript of initial scheduling conference at 25:20-26:2). However, after Sonos insisted keeping 11 patents in the case, Judge Bryson (sitting by designation) ordered to divide them into multiple trials, proceeding first with a

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by more than 90 days. EX2104. Sonos also failed to mention that Judge Ranjan told the parties that he preferred “the lawyers and the parties can have more flexibility to meet those deadlines.” EX2107, 10 (38:7-8). In an unrelated case cited by Sonos, Judge Ranjan reiterated that he had “no issues with modifying the scheduling order” and that he was “fine extending the schedule.” EX2108, 28.

five-day bell-weather trial limited to two to three patents (only if two of which were substantially similar). EX1055, 1. Following that practice, it will take at least two trials to try all six asserted patents in this case, and at least the second trial will undoubtedly occur after the projected FWD date.

Further, both the Director and the Board have routinely considered median time-to-trial statistics in determining the likely trial date. *See Amazon.com, Inc. v. NL Giken Inc.*, IPR2025-00250, Paper 14 at 2 (PTAB May 16, 2025) (Director Review) (noting that although the scheduled trial date falls before the projected FWD date, time-to-trial statistics suggest that trial would not actually begin until after the FWD is issued); *Twitch Interactive, Inc. v. Razdog Holdings LLC*, IPR2025-00307, Paper 18 at 2 (PTAB May 16, 2025) (Director Review); *Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasy, Inc.*, IPR2025-00321, Paper 10 at 10 (PTAB June 18, 2025) (finding factor 2 neutral or weighing slightly against discretionary denial based on time-to-trial statistics showing actual trial date likely to be after projected FWD date despite scheduled trial date being before the projected FWD date).

As of December 31, 2024, the median time from filing to trial for civil cases in the District of Delaware is 32.3 months (EX1056, 2), which has increased to 33 months as of March 31, 2025. EX1057, 2. Using the most updated figure of 33

months, the projected trial date would be November 1, 2026, three weeks after the projected FWD date.

Moreover, Sonos failed to inform the Director that although it filed its original complaint on February 1, 2024 (EX1048), it amended its complaint twice. Sonos filed its First Amended Complaint on April 17, 2024 (EX1049) and did not file its Second Amended Complaint until December 19, 2024—more than ten and a half months after the filing of the original complaint. The Second Amended Complaint added a brand new sixth patent to the litigation. EX1050. Using the date of the Second Amended Complaint as the filing date, the projected trial date would be September 19, 2027, nearly one year after the projected FWD date.

Given that the actual trial date is likely to be after the projected FWD date, this factor favors granting institution.

**C. Factor 3: Investment in the District Court Litigation Has Not Been Extensive**

Factor 3 is investment in the parallel proceeding by the court and the parties. This factor also favors granting institution.

Contrary to Sonos's arguments, investment by the parties and the Court on the pending litigation has not been extensive. By the projected date for the institution decision, fact discovery would still be ongoing, expert discovery *would not have even begun*, and the parties would not have provided their *final* infringement and invalidity contentions. EX2104. Plaintiff's Final Infringement

Contentions are not due until October 31, 2025. *Id.* And Defendant’s Final Invalidity Contentions are not due until December 5, 2025, nearly two months after the projected institution date. *Id.* More importantly, expert discovery is not even scheduled to begin until December 9, 2025, when opening expert reports are due. *Id. Cf. NeoGenomics Labs, Inc. v. Natera, Inc.*, IPR2025-00455, Paper 13 at 2 (PTAB June 12, 2025) (stating that discretionary denial was favored because “fact discovery was complete, expert discovery was already underway, *final* invalidity and infringement contentions had been exchanged, and the district court had issued a *Markman* order”).

Moreover, the Court in the parallel litigation has not issued a single substantive order in the case. Further, very little work has been done on issues relating to patentability other than the exchange of *preliminary* invalidity contentions. *See Google LLC v. Sonos, Inc.*, IPR2021-01563, Paper 14 at 12 (PTAB April 12, 2022) (finding the investment-in-parallel proceeding factor to be effectively neutral even though substantial amount of work have already been completed because no substantive orders have been entered and the completed work in the district court did not overlap with the unpatentability issues in the IPR proceeding).

Further, contrary to Sonos’s argument, by the projected institution date, it is unlikely that the Court would have issued a ruling on claim construction. A hearing

on claim construction is not scheduled until September 4, 2025, merely a little more than a month before the projected institution date. EX2104. The scope of the claim construction disputes is vast, with the parties briefing claim construction issues on 10 different terms spanning six patents. EX1046 (proposing 22 terms to brief); EX1058 (order setting ten terms to brief).

Given the complexity of the case and the scope of the disputes, the Court is likely to take two months or more to render a ruling on claim construction. Thus, by the projected institution date, it is highly likely that the Court would not have issued any substantive order related to the patent. This weighs against denial. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 9-10 (PTAB Mar. 20, 2020) (“If at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising discretion to deny institution.”); *Nikon Corp. v. Optimum Imaging Techs., LLC*, IPR2024-01374, Paper 19 at 18 (PTAB Apr. 29, 2025) (same).

Sonos refers to Judge Ranjan’s two prior *Markman* rulings, which were issued 27 and 29 days after their respective *Markman* hearing. Br., 16 n.3. Sonos failed to inform the Director, however, that the complexity and scope of the issues addressed in these rulings paled in comparison to those of the claim construction disputes in the pending litigation. In 19-cv-1636 (W.D. Pa.), only three disputed terms from a single patent were construed in the ruling. EX1059, 25. And in 23-cv-

186 (D. Del.), only four disputed terms from two patents were construed, with three of the disputed terms construed as having “[p]lain and ordinary meaning.” EX1060, 2. In stark contrast, in the parallel litigation, the parties are offering competing constructions on *ten disputed terms from six patents*. EX1046 (proposing 22 terms to brief); EX1058 (order setting ten terms to brief). The likelihood that Judge Ranjan will have issued the claim construction ruling by the projected institution date is extremely small.<sup>4</sup>

Sonos’s argument that Petitioner lacked diligence in filing the instant petition is wholly without merit. Once again, Sonos failed to inform the Director of all the pertinent facts. As discussed above, Sonos amended its complaint twice and did not file its Second Amended Complaint until December 19, 2024, less than two months prior to the filing of the instant petition. In all three complaints, Sonos identified only claim 9 of the ’357 patent as an asserted claim in a claim chart and casually added that defendant infringed “one or more of the claims of the ’357 patent” without providing any additional details. EX1048, ¶¶145-46; EX1049, ¶¶162-63; EX1050, ¶¶190-91. Indeed, Sonos did not identify the asserted claims

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<sup>4</sup> Sonos claims that Judge Ranjan has a “track record of timely *Markman* rulings.” Br., 13. But given that Judge Ranjan has issued only two such rulings—a fact Sonos itself acknowledges—that hardly amounts to a “track record.”

until September 27, 2024—almost 6 months after the filing of its original complaint. EX1061.

Petitioner acted promptly and worked diligently to file the instant petition merely four months (with Thanksgiving and Christmas holidays in between) after Sonos’s identification of its asserted claims. *See Savant Techs. LLC v. Feit Elec. Co.*, IPR2025-00260, Paper 16 at 3 (PTAB June 12, 2025) (stating that petitioner “acted diligently” in filing the petition less than three months after learning of the asserted claims); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 9-10 (PTAB Mar. 20, 2020) (“[I]t is often reasonable for a petitioner to wait to file its petition until it learns which claims are being asserted against it in the parallel proceeding.”).

Indeed, during this four-month period, the parties were still in discussion about Sonos having to supplement its infringement contentions, and Sonos in fact did supplement its infringement contentions on January 16, 2025.<sup>5</sup> *See, e.g.*, EX1062; EX1063. Moreover, Petitioner filed this Petition two months before it

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<sup>5</sup> While the January 16, 2025 supplementation ended up not adjusting the asserted claims (total number of asserted claims remained at 141), Petitioner was under the impression that it could have modified the asserted claims until served with the January 16, 2025 supplementation.

received Sonos’s “validity contentions,” (Br., 15) demonstrating that Petitioner acted diligently in filing this Petition. *See Nikon Corp. v. Optimum Imaging Techs., LLC*, IPR2024-01374, Paper 19 at 19 (PTAB Apr. 29, 2025) (finding petitioner acted diligently by filing its petition “approximately two months before Patent Owner served its invalidity contentions”); *Google LLC v. Sonos, Inc.*, IPR2021-01563, Paper 14 at 12 (PTAB April 12, 2022) (noting the argument that “Petitioner did not engage in inexcusable delay, because it filed [the petition] before Patent Owner responded to Petitioner’s invalidity contentions”).

**D. Factor 4: There Will Be No Overlap of Issues Between the IPR and the District Court Litigation**

Factor 4 is the overlap between issues raised in the petition and in the parallel proceeding. This factor strongly favors granting institution as there will be no overlap between issues raised in this Petition and the parallel litigation.

Petitioner has agreed to a broad *Sotera* stipulation stating that if this IPR were instituted, it will not pursue in the parallel litigation (1) any ground raised or that could have been reasonably raised in this IPR, as well as (2) any ground based on corresponding system prior art. EX1045. This *broad* stipulation ensures that the IPR proceeding would be a true alternative to the district proceeding and mitigate any concern of duplication between the district court case and this proceeding. *See Tesla*, IPR2025-00217, Paper 9 at 2; *Tesla*, IPR2025-00341, Paper 12 at 2.

Sonos mistakenly argues that “the Federal Circuit’s recent decision in *Ingenico Inc. v. IOENGINE, LLC* casts significant doubt on how meaningful a *Sotera* stipulation remains to be.” Br., 19. Sonos cites no support for its position. On the contrary, since the *Ingenico* decision, the Director and the Board have continued to maintain that a *Sotera* stipulation is highly relevant in the *Fintiv* analysis. *See, e.g., Google LLC v. Mullen Indus. LLC*, IPR2025-00021, Paper 14 at 10 (PTAB May 14, 2025); *Tesla*, IPR2025-00217, Paper 9 at 2; *Tesla*, IPR2025-00341, Paper 12 at 2.

Further, *Ingenico* merely held that IPR estoppel does not preclude a petitioner from asserting in a district court litigation a ground that could not be raised in an IPR proceeding, such as that a claimed invention was known or used by others, on sale, or in public use. *Ingenico v. IOENGINE, LLC*, 136 F.4th 1354, 1366 (Fed. Cir. 2025). Hence, the *Ingenico* court held that the petitioner was not precluded from raising a ground based on system prior art with related printed publications. *Id.* Here, Petitioner’s stipulation expressly states that it will not pursue in the parallel litigation any ground based on corresponding system prior art. EX1045. Thus, any concern raised by *Ingenico* has no relevance here.

**E. Factor 5: The Parties Are Not Identical**

Factor 5 is whether the petitioner and the defendant in the parallel proceeding are the same party. The parties in the litigation and the instant IPR are

not identical. Linkplay Technology, Inc., Nanjing is a party to the litigation but not a party in this IPR.

**F. Factor 6: The Merits of the Petition Are Strong**

Factor 6 is other circumstances that impact the Director's exercise of discretion, including the merits. As discussed above, the merits of the Petition's grounds for unpatentability are strong. Thus, this factor strongly favors granting institution.

**V. Sonos's Arguments Concerning Other Considerations Should Be Rejected**

Sonos's arguments concerning other considerations are wholly without merit. First, the fact that the '357 patent underwent reexamination does not favor discretionary denial. The primary prior art references raised in this Petition, Richenstein and Chatterton, were not of record in the reexamination. More importantly, as discussed above, Richenstein and Chatterton both disclose the exact claimed subject matter which was indicated as the subject matter that rendered the claims allowable during patent prosecution.

Although RFC1889 was of record during reexamination, it was not substantively discussed or addressed. The examiner materially erred by overlooking RFC1889's relevance to the challenged claims, particularly when viewed in combination with Chatterton, which combination was not of record during reexamination. Had the examiner considered Richenstein and Chatterton,

the examiner would have been able to establish a much stronger case of *prima facie* obviousness that would have withstood scrutiny on appeal.

Hence, the examiner in the reexamination erred materially by overlooking these relevant prior art teachings, including the combined teachings of Chatterton and RFC1889. *See Microsoft Corp. v. Partec Cluster Competence Center*, IPR2025-00318, Paper 9 at 2-3 (PTAB June 12, 2025) (Director Review) (finding that the examiner overlooked individual teachings as well as combined teachings of prior art references, some of which were *not* previously before the examiner). As a result, it would be appropriate for the Office to use its resources to review that material error. *See Microsoft*, IPR2025-00318, Paper 9 at 3 (finding that “discretionary denial of institution is not warranted because of Petitioner’s showing of material error during patent examination” and that “it is an appropriate use of Office resources to review the potential error”).

Sonos further argues that Petitioner’s reliance on expert testimony favors denial. To the contrary, Dr. Hartpence’s expert declaration demonstrates that the merits of Petitioner’s grounds for unpatentability are strong, thereby warranting granting institution. *See generally* EX1003. Dr. Hartpence describes in detail the prior art and explains how the challenged claims are anticipated by either Richenstein or Chatterton or, in the alternative, rendered obvious by them. EX1003, ¶¶127-462. He also explains that the challenged claims are obvious over

the combination of Richenstein or Chatterton each in view of a well-known standard. EX1003, ¶¶129-30, 329-31. For example, Dr. Hartpence demonstrates that Richenstein and Chatterton each discloses every limitation of claim 1. EX1003, ¶¶131-326, 332-462.

Sonos relies on pure attorney argument to contend that Dr. Hartpence’s testimony is conclusory and merely quotes some snippets from Dr. Hartpence’s analysis without providing any proper context. Br., 41-43. Indeed, Sonos fails to show that Petitioner used the expert declaration to fill any gaps in the prior art. *See iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 at 2 (PTAB June 6, 2025) (stating that patent owner’s failure to show that the petitioner was “using its expert to fill gaps in the prior art” weighs against discretionary denial).

Sonos’s arguments that denial is favored because the Delaware Court is best positioned to apply its prior claim constructions and because of the risk of competing constructions make little sense. The claim constructions referred to by Sonos are from a prior litigation where Petitioner is not even a party. The Board is not bound by the claim construction rulings from a district court, let alone rulings from a case where Petitioner is not a party. Further, in the parallel litigation, where Petitioner is a party, the district court has not issued any claim construction ruling.

Moreover, Sonos did not even try to show whether the terms it refers to will need to be construed in this IPR. As the Petition states, because the prior art

“discloses embodiments indisputably within the claims’ scope, the Board need not construe the claims’ outer bounds, and all claim terms should be construed according to their plain and ordinary meaning.” Pet., 10. In addition, Dr. Hartpence considered the prior constructions of the ’357 patent and confirmed that the prior art discloses the relevant limitations under those constructions—a notion Sonos did not even dispute. *Id.* In any event, to the extent necessary, the Board is well equipped, and has the necessary expertise, to construe any disputed terms that may arise in this IPR.

Further, the parties did not develop any settled expectations respecting the ’357 patent. Sonos alleges only that Petitioner was aware of the ’357 patent by December 11, 2023—barely a little more than a year before the filing of this Petition. EX1048, ¶149; EX1049, ¶166; EX1050, ¶194. Sonos’s own allegations demonstrate that this Petition was filed soon after Petitioner learned of the ’357 patent before any settled expectation was reached.

In addition, the ’357 patent underwent reexamination for more than two years and the reexamination certificate was not issued until October 4, 2019. EX1004, 8. Hence, the reexamined ’357 patent has not been in force for a significant period to develop any settled expectations. *See Cambridge Industries USA Inc., v. Applied Optoelectronics, Inc.*, IPR2025-00434, Paper 11 at 2-3 (PTAB June 26, 2025) (Director Review) (finding that “most of the challenged

patents have not been in force for a significant period of time issued in 2020, 2019, and 2019), and, accordingly, Patent Owner has not developed strong settled expectations that favor discretionary denial as to at least those patents”).

Finally, appealing to xenophobic fears, Sonos alleges that economic and national interests favor denial mainly because “Linkplay is a Chinese company.” Br., 48-49. Petitioner, Linkplay Technology Inc., however, is an American company incorporated in California.

Respectfully submitted,

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**CERTIFICATION UNDER 37 C.F.R. § 42.24(d)**

The undersigned certifies that the foregoing Petitioner’s Opposition to Patent Owner’s Request for Discretionary Denial complies with the type volume limits in 37 C.F.R. § 42.24(b)(1). According to the utilized word-processing system’s word count, this paper—excluding the caption, table of contents, table of exhibits, table of authorities, certificate of word count, and certificate of service—contains 6,436 words.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing Petitioner's Opposition to Patent Owner's Request for Discretionary Denial and Exhibits 1046-1063 were served on July 11, 2025, via electronic mail, as agreed to by counsel, upon the following counsel for Patent Owner:

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