

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LINKPLAY TECHNOLOGY INC.,
Petitioner,

v.

SONOS, INC.,
Patent Owner.

Case No. IPR2025-00511
U.S. Patent No. 9,213,357

**PATENT OWNER SONOS, INC.'S REQUEST
FOR DISCRETIONARY DENIAL OF INSTITUTION**

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EXHIBIT LIST

Exhibit	Description
2001 to 2100	RESERVED FOR PRELIMINARY RESPONSE
2101	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 156, Oral Order Scheduling Discovery Hearing
2102	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 174, Oral Order re Discovery Dispute
2103	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 172, Order Granting <i>Pro Hac Vice</i> Motion
2104	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 159, Order Amending Scheduling Order
2105	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 111, Order Denying Linkplay's Motion
2106	Judge Ranjan's Practices and Procedures (rev. 3/10/23)
2107	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 45, Rule 16 Conference Transcript
2108	<i>Samsung Electronics Co., Ltd. v. Technical Consumer Products, Inc.</i> , 23-cv-00186 (D. Del.), D.I. 134, Oral Argument Transcript
2109	Linkplay Source Code Reviewer Log
2110	Linkplay's Initial Invalidity Contentions, served Feb. 27, 2025
2111	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 132, Linkplay's Answer, Defenses, Counterclaims
2112	March 25, 2025 Email Correspondence
2113	April 1, 2025 Email Correspondence Chain

2114	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 19, Order Re: Judge Ranjan Practices and Procedures
2115	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 188, Joint Claim Construction Chart
2116	Mendelsohn and Rak, “These Companies Were the Patent Powerhouses of 2024,” IEEE Spectrum (Apr. 23, 2025) <i>available at</i> https://spectrum.ieee.org/patent-power-2025 .
2117	“Issa: China is Stealing America’s Intellectual Property While Benefitting From America’s Laws” (Mar. 9, 2023) <i>available at</i> https://issa.house.gov/media/press-releases/issa-china-stealing-americas-intellectual-property-while-benefitting-americas
2118	“GOP Lawmakers Introduce Bill to Protect US Intellectual Property From CCP” (July 7, 2025) <i>available at</i> https://youngkim.house.gov/2024/07/07/gop-lawmakers-introduce-bill-to-protect-us-intellectual-property-from-ccp/
2119	<i>Sonos, Inc. v. D&M Holdings Inc., et al.</i> , 14-cv-1330-WCB (D. Del.), D.I. 427, Memorandum Opinion and Order
2120	<i>The Dictionary of Multimedia Terms & Acronyms</i> (1999 ed.) (excerpts)
2121	<i>The Music Tech Dictionary: A Glossary of Audio-Related Terms and Technologies</i> (2009) (excerpts)
2122	<i>The Audio Dictionary</i> , 3rd Edition (2005) (excerpts)

I. INTRODUCTION

Pursuant to the March 26, 2025 Memorandum titled “Interim Processes for PTAB Workload Management” (“Workload Memo”), Patent Owner Sonos, Inc. (“Sonos” or “Patent Owner”) respectfully requests that the Director exercise its discretion to deny institution of IPR filed by Petitioner Linkplay Technology Inc. (“Linkplay” or “Petitioner”).

As set forth below, *five* of the six *Fintiv* factors and *six* additional relevant considerations clearly *favor* discretionary denial. The *one* remaining *Fintiv* factor is, at best for Linkplay, *neutral*. Thus, the interests of efficiency and integrity of the IPR process strongly call for discretionary denial.

***Fintiv* Factor 1 Favors Denial:** given at least the facts that (a) Linkplay waited to file this IPR until the last moment resulting in the parallel Delaware Litigation (*Sonos, Inc. v. Linkplay Technology Inc, et al.*, 24-cv-00131 (D. Del.)) progressing significantly, (b) this IPR would not meaningfully simplify the Delaware Litigation, and (c) Sonos and Linkplay are competitors, a stay in the Delaware Litigation is unrealistic under District of Delaware precedent. Moreover, Linkplay has only escalated its district court efforts after filing this IPR demonstrating no intention to even request a stay of the Delaware Litigation.

***Fintiv* Factor 2 Favors Denial:** the Delaware trial is set for August 10, 2026—two months before the expected Final Written Decision (“FWD”) on October

11, 2026. This trial date was recently agreed upon by the parties—after Linkplay’s IPR filing—and fixed by Judge Ranjan, a visiting judge specifically appointed to ease Delaware’s court congestion, who also called for strict adherence to the schedule absent extraordinary circumstances. Moreover, while statistical trial forecasts are rendered irrelevant in view of Judge Ranjan’s strict schedule, even Delaware’s speculative 32-month median time-to-trial projects a trial date of October 1, 2026—still *before* the expected FWD.

***Fintiv* Factor 3 Favors Denial:** Linkplay’s eleventh-hour IPR filing—over one year after Sonos filed its Original Complaint and only two days before the one-year anniversary of Sonos serving the Original Complaint —results in this paper being filed after the District Court for the District of Delaware (the “Delaware Court”) and parties have substantially invested in the Delaware Litigation, and that investment will grow significantly leading up to the expected institution decision. By the October 11, 2025 institution decision deadline, *Markman* briefing and the hearing will be complete. Given Judge Ranjan’s track record of timely *Markman* rulings and stated adherence to the set schedule, a *Markman* order is expected around the institution decision deadline.

***Fintiv* Factor 4 Is, At Best for Linkplay, Neutral:** rather than serving as a true alternative to the Delaware Litigation, this IPR is a detour that would only create inefficiencies. The Delaware Litigation—spanning six patents, dozens of accused

products, 15 affirmative defenses, and 18 counterclaims—raises far broader issues than an IPR can address, even for the '357 Patent alone. Further, the Federal Circuit's recent decision in *Ingenico Inc. v. IOENGINE, LLC* (*infra* §II.A.4) erodes the practical value of Linkplay's *Sotera* stipulation.

***Fintiv* Factor 5 Favors Denial:** the parties are identical in this IPR and the Delaware Litigation.

***Fintiv* Factor 6 Favors Denial:** the Petition is objectively weak on the merits. For instance, the '357 Patent claims aspects of Sonos's synchronous playback technology, which involves the claimed "*first playback device*" not only transmitting to a "*second playback device*" "*audio information*" but also "*play[ing] back... the audio information in synchrony with the second playback device....*" Yet, neither of Linkplay's primary references, Richenstein nor Chatterton, has anything to do with such a "*first playback device*" "*play[ing] back... audio information in synchrony with the second playback device....*" As such, both Richenstein and Chatterton fail to teach or suggest a vast majority of the elements of the independent claims (not to mention the dependent claims).

PTAB's Prior Adjudication of Patentability Favors Denial: in 2019, the PTAB confirmed the patentability of all challenged claims at issue in an *Ex Parte* Reexamination. Thus, here, Linkplay is needlessly asking the Board to retread old ground.

Heavy Reliance on Unfocused Expert Testimony Favors Denial: in view of the weakness of Linkplay’s prior art references, Linkplay leans heavily on the unfocused and conclusory testimony of Dr. Hartpence, who attempts to backfill missing claim limitations with legally deficient analysis. If this IPR is instituted, Sonos’s own expert’s testimony will expose further flaws in Dr. Hartpence’s opinions, setting up a complex expert dispute far better suited for resolution in an Article III court.

Settled Expectations of the Parties Favor Denial: the ’357 Patent claims priority to an original non-provisional patent application filing from April 2004, issued in December 2015, and expired in April 2024. Given its age and expired status, the expectations of the parties with respect to the ’357 Patent are well settled, and its validity should be respected.

Delaware Court Applying Its Own Constructions Favors Denial: the Delaware Court previously construed claim terms implicated by this IPR. The Delaware Court is the obvious choice for applying constructions of claim terms that it previously construed and applied to Sonos’s patents.

Avoiding Possible Conflicting Constructions Favors Denial: Linkplay’s intent in the current Delaware Litigation to challenge the Delaware Court’s prior constructions—such as for the terms “*playback timing information*” and “*independently clocked*” in the challenged claims—risks creating conflicting claim

interpretations in parallel proceedings. If successful, Linkplay could exploit a narrow construction in the Delaware Litigation to argue noninfringement, while advancing a broader construction here to pursue invalidity. This duplicative strategy is inefficient, prejudices Sonos, and wastes judicial resources.

Economic and National Interests Favors Denial: this IPR juxtaposes two parties with fundamentally different views on intellectual property protection: (1) Sonos, an American innovator that has invested heavily in protecting its innovations and building its U.S. patent portfolio, and (2) Linkplay, a Chinese entity seeking to misuse and thereby, capitalize on Sonos’s 20+ years of innovation. There is a clear economic and national interest in protecting American innovators, like Sonos, by preventing foreign entities from exploiting the legal system through duplicative and unnecessary parallel litigation

In sum, viewed as a whole, the *Fintiv* factors and additional relevant considerations compel a single conclusion: discretionary denial is necessary to safeguard the efficiency, fairness, and integrity of the IPR process.

II. DISCRETIONARY DENIAL IS WARRANTED UNDER § 314(A)

The Director should deny institution of IPR under 35 U.S.C. § 314(a). It is well-settled that institution of IPR is discretionary. *See* 35 U.S.C. § 314(a) (“The Director may not authorize an inter partes review to be instituted unless...”); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he

PTO is permitted, but never compelled, to institute an IPR proceeding”); *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (“[T]he agency’s decision to deny a petition is a matter committed to the Patent Office’s discretion.”).

The core of the Board’s precedential decision in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB March 20, 2020) (“*Fintiv*”) focuses on whether institution would promote efficiency, fairness, and align with the strength of the unpatentability challenge. *Fintiv*, 5-6. The Director’s Workload Memo lends further support to this approach by accounting for “all relevant considerations,” including, *inter alia*, the strength of the unpatentability challenge, the extent of the petition’s reliance on expert testimony, and compelling economic interests, among others. Workload Memo, 2-3. As discussed below, both the *Fintiv* factors and several additional “relevant considerations” weigh decisively in favor of denying institution.

A. The *Fintiv* Factors Favor Discretionary Denial

Fintiv identifies the following non-exclusive six factors for the Director to consider in deciding whether to exercise discretion to deny institution based on parallel proceedings involving the same patent:

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision;

3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. other circumstances that impact the [Director]'s exercise of discretion, including the merits.

Fintiv, 5-6. When the Director evaluates these factors, it is to take “a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review.” *Id.*, 6.

Together, these factors strongly support the Director’s discretion to deny institution.

1. Factor 1 Favors Denial: Stay in Delaware Litigation Is Unrealistic—Linkplay’s Intent Not to Seek One Confirms This

Factor 1 favors denial because a stay would not be warranted in the Delaware Litigation. The Delaware Litigation involves five other patents beyond the ’357 Patent, three of which are not subject to any IPR, has progressed significantly (*see infra* §II.A.3), and would not be simplified by this IPR (*see infra* §II.A.4), and a stay of the Delaware Litigation would prejudice Sonos given that the parties are direct market competitors.

Courts in the District of Delaware routinely deny stay motions under similar circumstances. *See, e.g., N. Atl. Imports, LLC v. LoCo-Crazy Good Cookers, Inc.*, 23-cv-999, 2024 WL 4827250, at *3-4 (D. Del. Nov. 19, 2024) (denying stay motion pending IPR outcome because IPR outcome would simplify only “some portion of the issues for trial” and stay would be prejudicial to Patent Owner given that parties are “direct competitors in the market”); *Tigo Energy Inc. v. SMA Solar Tech. Am. LLC*, 22-cv-915, 2024 WL 1637511, at *2-3 (D. Del. Apr. 16, 2024) (denying stay motion because fact discovery is substantially underway, claim construction briefing is complete, and parties are direct competitors).

Nevertheless, Linkplay asserts that Factor 1 is “neutral as no stay has been requested or granted.” Pet., 87. But Linkplay’s escalating litigation efforts and complete silence on any stay request tell a different story: Linkplay knows a stay is not realistic. Since filing this IPR, Linkplay has not once suggested a stay—even after multiple hearings before the Delaware Court (*see* Ex.2101, Ex.2102). Instead, Linkplay has doubled down in the Delaware Litigation, initiating multiple discovery dispute hearings before the Court (*see id.*), retaining an additional (third) law firm as outside counsel (Ex.2103), and engaging multiple experts, all reinforcing that it has no intention to seek a stay. *See also infra* §II.A.3.

Factor 1 therefore favors denial.

2. Factor 2 Favors Denial: Jury Trial Is Set Two Months

Before the Projected FWD

Factor 2 favors denial because trial in the Delaware Litigation is set for August 10, 2026 (Ex.2104, 2)—two months *before* the projected FWD on October 11, 2026. *See, e.g., Nxp Usa, Inc. v. Impinj, Inc.*, IPR2021-01556, 2022 WL 1262218, at *3 (PTAB Apr. 21, 2022) (finding Factor 2 favored denial because trial date was set two months before FWD deadline); *Cisco Sys., Inc. v. Portsmouth Network Corp.*, IPR2024-00503, 2024 WL 3678420, at *5 (PTAB Aug. 6, 2024) (same).

Linkplay’s arguments to the contrary are premised on two incorrect assumptions.

First, Linkplay incorrectly assumed “an FWD in August 2026.” Pet., 85 n.5. However, the Notice of Filing Date Accorded to Petition was mailed April 11, 2025 (Paper 6), which means that the FWD is not actually expected until October 11, 2026.

Second, Linkplay incorrectly assumed that “the Court will likely reschedule the rest of the case, putting trial after... when the FWD is expected.” Pet., 86. To the contrary, Judge Ranjan sitting by designation in the District of Delaware recently rescheduled trial for August 10, 2026. Ex.2104, 2.

Moreover, Linkplay’s attempts to cast doubt on the certainty of the Delaware Court’s actual schedule by pointing to statistical forecasts (i.e., “[t]he median and

average time to trial in Delaware for jury trial cases....”) are misplaced for multiple reasons. *See* Pet., 85-86.

To start, the recently-rescheduled August trial date is, without a doubt, a better indicator of the actual trial date than any statistical forecast. Judge Ranjan is a visiting judge from the Western District of Pennsylvania, and according to Judge Ranjan himself, he was “designated to preside over [the Delaware Litigation] from another district, specifically to alleviate concerns about court congestion in Delaware.” Ex.2105, 19. Under these unique circumstances, forecasting based on District of Delaware statistics is much less instructive than looking at the actually-scheduled jury trial date.

Judge Ranjan also left no doubt that he intends to hold the parties accountable as to the schedule, and Linkplay voluntarily *agreed* with Sonos on the August 2026 trial date *after* Linkplay filed this IPR. *See* Ex.2104, 1; Ex.2106, 5(“Requests to continue the trial date will be granted only in extraordinary circumstances.”); Ex.2107, 10 [37:22-38:3] (“I do try to hold, as a general matter, hold people’s feet to the fire as to the schedule and so that might be something you can also take into account. I like to set the deadlines and try not to move them as best as we can.”); Ex.2108, 28 (“I hate to do it. And I think maybe at our first status conference I mentioned this to counsel, that I don’t like extensions generally.”). Thus, the August trial date should be taken at face value. *See, e.g., Dell Inc. v. Universal Connectivity*

Techs., Inc., IPR2024-01480, 2025 WL 1195479, at *4 (PTAB Apr. 24, 2025) (finding trial date not speculative because district court stated trial date “cannot be changed without an acceptable showing of good cause.”).

Next, Linkplay cites to the Board’s 2022 Interim Procedure and asserts that the Board “valu[es] the time to trial statistics because the actual scheduled trial date is ‘unreliable’ and ‘not by itself a good indicator.’” Pet., 85-86. But the USPTO’s March 24, 2025 memorandum (“Recission Memo”) rescinded the Board’s 2022 Interim Procedure and its guidance.

Finally, even if considering statistical forecasts (i.e., “[t]he median and average time to trial in Delaware for jury trial cases”) were appropriate, Linkplay’s invocation of “average time to trial” is misplaced for Factor 2. *See, e.g., Orthopedics v. Med.*, IPR2023-00894, 2023 WL 8001473, at *13 (PTAB Nov. 17, 2023) (rejecting “average time-to-trial” statistics) (emphasis in original); *see also, e.g.*, 2022 Interim Procedure, 8-9 (considering “median time-to-trial” statistics; not average statistics). Moreover, even if the Director were to consider Delaware’s median time-to-trial (that Linkplay represents is 32 months), the trial date would fall on October 1, 2026,¹ which is still *before* the projected FWD (i.e., October 11, 2026).

For all of these reasons, Factor 2 favors denial.

3. Factor 3 Favors Denial: There Has Been Substantial

¹ 32 months from February 1, 2024—the filing date of the Original Complaint.

Investment in the Delaware Litigation

Factor 3 also favors denial because the parties and the Delaware Court have expended—and will continue to expend—significant resources in the Delaware Litigation leading up to the institution decision. This is because Linkplay waited until the eve of its one-year deadline to file this Petition.

The Board routinely finds this factor favors denial when parties have exchanged contentions and the district court has held a *Markman* hearing before the institution decision. *See, e.g.:*

- *Samsung Elecs. Co., Ltd. v. Truesight Commc'ns LLC*, IPR2025-00123, 2025 WL 1170627, at *3 (PTAB Apr. 22, 2025) (finding this factor favors denial because “[t]he parties have exchanged infringement and invalidity contentions and substantially completed document production, and the District Court has held a claim construction hearing.”)
- *Nokia of Am. Corp., et al. v. Pegasus Wireless Innovation LLC*, IPR2025-00036, 2025 WL 1203702, at *6 (PTAB Apr. 25, 2025) (finding this factor favors denial because *Markman* hearing was held, and “the parties have exchanged [preliminary] invalidity contentions”)
- *Arthrex, Inc., v. Medshape, Inc.*, IPR2025-00053, 2025 WL 1203664, at *5 (PTAB Apr. 25, 2025) (finding this factor favors denial even when fact discovery recently opened and no deposition have taken place but parties exchanged infringement and invalidity contentions, claim construction briefing, and held a *Markman* hearing before institution decision).

The Delaware Litigation presents these circumstances—and significantly

more. In short, the Delaware Litigation involves six asserted patents, with extensive fact and written discovery already completed, substantial document production closed, and detailed contentions exchanged. By the October 11, 2025 institution decision deadline, *Markman* briefing will be complete, with a hearing scheduled for September 2025. Given Judge Ranjan's track record of timely *Markman* rulings, a *Markman* order is expected around the institution decision deadline.

Below, Sonos provides further detail regarding the substantial investment in the Delaware Litigation, as well as Linkplay's lack of diligence in pursuing this IPR.

a. The Parties' and Delaware Court's Substantial Investment

Sonos filed the Delaware Litigation well over a year ago on February 1, 2024. Today, the litigation involves six asserted patents,² approximately ten accused products (along with software apps) directly sold by Linkplay, as well as approximately ten additional accused products (along with software apps) that Linkplay provides to third parties, 15 affirmative defenses, and 18 counterclaims, including counterclaims of noninfringement, invalidity, and unenforceability based on at least lack of standing, equitable estoppel, waiver, inequitable conduct, prosecution laches, unclean hands, and patent misuse. *See, e.g., Ex.2111.*

² As previously mentioned, Linkplay has only filed IPRs against three of the asserted patents.

Given the breadth of the Delaware Litigation, both parties have poured in substantial resources since its inception, including an extensive amount of fact discovery, written discovery, contention work, and *Markman*-related work.

To start, the deadline for substantial completion of document production has already passed. To date, the parties have produced thousands of documents spanning hundreds of thousands of pages, including Chinese technical documents produced by Linkplay that required Sonos to expend additional resources to translate for review. Email production is also underway. And Sonos has served and completed numerous document subpoenas on third parties.

Further, Linkplay has produced for inspection well over a million files of source code, and Sonos has so far spent over 500 man-hours reviewing that source code. Ex.2109. Depositions have also begun, and Sonos has served three 30(b)(6) deposition notices on Linkplay, for which depositions are expected to begin in June.

Turning to written discovery, the parties have exchanged multiple rounds of written discovery that began more than a year ago in May 2024. To date, Linkplay has served at least 20 interrogatories and 161 requests for production, while Sonos has served at least 21 interrogatories and 120 requests for production. Both parties have exchanged dozens of written discovery responses and letters, met and conferred on numerous occasions over discovery disputes, and ultimately sought court intervention on numerous occasions.

Moreover, the parties' contention work has been extensive. Sonos has already served initial and supplemental infringement contentions that contain detailed source code traces. For its part, Linkplay has served multiple rounds of its so-called "non-infringement contentions." Linkplay has also served multiple iterations of invalidity contentions. Linkplay's invalidity contentions for the '357 Patent *alone* include an identification of over 100 prior art references (14 of which are charted and another 8 of which relate to alleged prior use, sale, and/or offer for sale), at least 25 different § 112 grounds, and at least four other invalidity grounds, including grounds under §§ 101, 102(c), 102(f), and 111(a). *See* Ex.2110, 21-31, 46, 131-34, 145-48, 169-71, 173-82; Ex.2111, 71-73. At Linkplay's insistence and despite Sonos having no Court-imposed obligation to do so, Sonos also served so-called "validity contentions" in April 2025, spanning over 525 pages of rebuttals to Linkplay's invalidity contentions.

Turning to *Markman*, to date, the parties have completed many *Markman* deadlines. More significantly, before the institution decision deadline of October 11, 2025, all *Markman* briefing will be completed, and with the *Markman* hearing scheduled for September 4, 2025, there is a strong likelihood that Judge Ranjan's *Markman* order will issue before, or only shortly after, the institution decision

deadline.³

It is also worth noting that, absent Linkplay's litigation delay tactics, a *Markman* order issuing before the institution decision deadline would have been a near certainty. Linkplay's strategic conduct is exemplified by its last-minute request to delay all *Markman* deadlines—made two months after its IPR filing and just three days before the parties' first original *Markman* deadline. *See* Ex.2112; Ex.2113, 5-6. Despite Sonos's opposition, the Delaware Court ultimately acquiesced to Linkplay's request and moved the *Markman* deadlines by about one month. Ex.2104.

In sum, the Delaware Litigation has progressed significantly, and as a result, the Delaware Court and the parties have invested substantial resources, which will continue to compound in the coming months ahead of the October institution decision deadline.

³ To date, Judge Ranjan has only issued two *Markman* orders and both were issued promptly after the *Markman* hearing. In 19-cv-1636 (W.D. Pa.), Judge Ranjan issued his *Markman* order 27 days after the *Markman* hearing, and in 23-cv-186 (D. Del.), Judge Ranjan issued his *Markman* order 29 days after the *Markman* hearing.

b. Linkplay’s Lack of Diligence

As noted above, Linkplay waited until the eleventh hour to file its Petition. In particular, Sonos filed the Original Complaint on February 1, 2024 and served it on February 6, 2024. The Original Complaint included a detailed explanation of Linkplay’s infringement of the independent claims of the ’357 Patent. Sonos’s initial infringement contentions were later served on September 27, 2024, which identified additional dependent claims that Linkplay infringes.

In turn, Linkplay filed its Petition on February 4, 2025— a mere two days before the one-year anniversary of Sonos serving the Original Complaint. Linkplay offered no explanation to justify the eleventh-hour filing. *See* Pet., 87. Instead, Linkplay states “Petitioner filed this Petition only half a month after PO’s supplemental contentions, which included an identification of asserted claims.” *Id.* This is greatly misleading. The “supplemental contentions” Linkplay refers to have nothing to do with the ’357 Patent; instead, they are Sonos’s initial infringement contentions served on January 16, 2025 for a newly-added patent.

In truth, Linkplay has no justification for its delay, which favors discretionary denial. *See, e.g., Samsung Elecs. Co., Ltd.*, IPR2025-00123, 2025 WL 1170627, at *3 (PTAB April 22, 2025) (finding this factor favors denial because “Petitioner filed the Petition ten months after Patent Owner filed its complaint in the District Court Litigation and five months after Patent Owner served its infringement

contentions.”); *Nokia of Am. Corp.*, IPR2025-00036, 2025 WL 1203702, at *6 (PTAB April 25, 2025) (finding this factor favors denial because “Petitioner did not file the Petition expeditiously.”); *Ericsson Inc. and Cellco Partnership d/b/a Verizon Wireless v. Procomm International PTE. Ltd.*, IPR2024-01455, Paper 15, at *2-3 (PTAB May 16, 2025) (granting discretionary denial, highlighting Petitioner’s failure to sufficiently “explain why it waited nearly a year to file the Petition” and “insufficient evidence the district court is likely to stay its proceeding even if the Board were to institute trial.”).

* * *

In view of the substantial investment by the Delaware Court and parties in the Delaware Litigation, and Linkplay’s lack of diligence in filing this Petition, Factor 3 favors denial.

4. Factor 4 Is Neutral (If Not in Favor of Denial): IPR Here Would Not Be a True Alternative to the Delaware Litigation

This factor is, at best for Linkplay, neutral for several reasons.

First, Linkplay’s reliance on several other invalidity theories in the Delaware Litigation severely limits any potential efficiencies gained from this IPR.

As previously mentioned, the Delaware Litigation involves five patents in addition to the ’357 Patent, 15 affirmative defenses, and 18 counterclaims. Linkplay’s supplemental invalidity contentions for the ’357 Patent also identify eight alleged prior use, sale, and/or offer for sale grounds, at least 25 different § 112

grounds, and at least four other invalidity grounds, including grounds under §§ 101, 102(c), 102(f), and 111(a). *Supra* II.A.3. Thus, carving Linkplay’s patent and printed publication prior art grounds from the Delaware Litigation would barely scratch the surface of the broader issues at play, and the Board’s FWD—projected two months *after* the Delaware trial—would not serve to mitigate concerns of duplicative efforts and inconsistent outcomes.

Second, the Federal Circuit’s recent decision in *Ingenico Inc. v. IOENGINE, LLC* casts significant doubt on how meaningful a *Sotera* stipulation remains to be. 136 F.4th 1354 (Fed. Cir. May 7, 2025).

As background, Linkplay initially offered a *Sand Revolution* stipulation in its Petition. Pet., 87. However, likely in view of the Recission Memo dated March 24, 2025 and the Board’s recent decisions, Linkplay strategically changed course and crafted a *Sotera* stipulation on May 5, 2025 stating:

[Linkplay] agrees that if IPR2025-00511 is instituted, Linkplay will not pursue in the [Delaware Litigation] the following invalidity challenges to U.S. Patent No. 9,213,357 relying on 35 U.S.C. §§ 102, 103: (1) any *ground* raised or that could have been reasonably raised in IPR2025-00511, as well as (2) any *ground* based on corresponding system prior art.

Ex.1045 (emphasis added). As the Recission Memo states, such a stipulation is “highly relevant, but will not be dispositive by itself.” Recission Memo, 2-3.

That said, the Federal Circuit’s recent decision in *Ingenico* raises serious questions as to whether a *Sotera* stipulation like Linkplay’s is “highly relevant” anymore. In *Ingenico*, the Federal Circuit interpreted the word “ground”—found in a *Sotera* stipulation like Linkplay’s—narrowly in the context of IPR estoppel under 35 U.S.C. § 315(e)(2). 136 F.4th at 1365-66. The Federal Circuit made clear that “a ground is *not* the prior art asserted during an IPR” and “IPR estoppel does *not* preclude a petitioner from asserting the *same* prior art raised in an IPR in district court, but rather precludes a petitioner from asserting grounds that were raised or reasonably could have been raised during an IPR.” *Id.* (emphasis added). In other words, the Federal Circuit explained “IPR estoppel does *not* preclude a petitioner from relying *on the same patents and printed publications* as evidence in asserting a ground that could not be raised during the IPR, such as that the claimed invention was known or used by others, on sale, or in public use.” *Id.*, 1366 (emphasis added).

The Federal Circuit’s interpretation of the word “ground” in connection with IPRs likewise limits the scope of a *Sotera* stipulation. For example, a Petitioner that agrees to a *Sotera* stipulation can lose before the Board in arguing a given prior art publication anticipates challenged claims but get a second bite at the apple by arguing before a district court that the same prior art publication renders the challenged claims obvious in combination with system art (whether related to the publication or not) that was known or used by others, on sale, or in public use, even

if that obviousness combination relies almost exclusively on the disclosure of the prior art publication and gap fills with the system art.

This contravenes the *Sotera* Board’s rationale that a stipulation like Linkplay’s here “mitigates any concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions.” *Sotera Wireless, Inc. v. Masimo Corporation*, IPR2020-01019, Paper 12, p.19 (PTAB Dec. 1, 2020). As such, a *Sotera* stipulation in view of the Federal Circuit’s interpretation of the word “ground” no longer ensures that an IPR is a “true alternative” to a district court proceeding. *Id.* (quoting *Sand Revolution II, LLC v. Cont’l Intermodal Group – Trucking LLC*, IPR2019-01393, Paper 24 at *7 (PTAB June 16, 2020)).

Factor 4 is therefore, at best for Linkplay, neutral.

5. Factor 5 Favors Denial: The Parties Overlap

Factor 5 clearly favors denial because the parties involved in this IPR and the Delaware Litigation overlap.

Yet, Linkplay asserts—without any explanation—that “[a]lthough Petitioner is also the defendant in the litigation, **Factor 5** does not warrant denial.” Pet., 87 (emphasis in original). The Board’s recent decisions say otherwise. *See, e.g., Samsung Elecs. Am., Inc. v. Collision Commc’ns, Inc.*, IPR2025-00011, 2025 WL 1221026, at *9 (PTAB Apr. 28, 2025) (agreeing with Patent Owner that “precedential PTAB authority holds that where the petitioner and the defendant in

the parallel proceedings are the same party, Factor 5 favors denial.”); *CIPLA Limited v. Gilead Sciences, Inc.*, IPR2025-00033, Paper 22, p. 12 (PTAB May 15, 2025); *Arashi Vision (U.S.) LLC d/b/a Insta360 v. GoPro, Inc.*, IPR2025-00017, 2025 WL 1223981, at *6 (PTAB Apr. 28, 2025).

Thus, Factor 5 favors denial.

6. Factor 6 Favors Denial: The Merits of Linkplay’s Arguments Are Weak

Factor 6 favors denial because Linkplay’s invalidity grounds are objectively weak. *See, e.g., Innolux Corp. v. Phenix Longhorn LLC*, IPR2025-00043, Paper No. 10, p.13 (PTAB May 15, 2025) (finding weakness of petitioner’s arguments “determinative” “for application of [Board’s] discretion overall” to deny institution).

Sonos’s forthcoming Preliminary Patent Owner’s Response (“POPR”) more fully demonstrates the weak merits of the Petition, but the Petition’s (1) reliance on six separate grounds premised on two primary references, (2) heavy reliance on expert testimony to fill in the gaps of the primary references (*infra* §II.B.2), and (3) numerous (mostly incomplete) theories of invalidity evince the weakness of the Petition’s merits. Sonos provides a preview of the Petition’s deficiencies below and will provide a more fulsome explanation of why the Petition fails to show a reasonable likelihood of prevailing on any challenged claim in its POPR.

a. Brief Overview of the '357 Patent

The '357 Patent stems from Sonos's foundational non-provisional patent filing on April 1, 2004. *See* Ex.1001, code (63). The '357 Patent discloses and claims aspects of Sonos's synchronous playback technology developed by inventor, Nicholas Millington.

As explained in the '357 Patent, Mr. Millington recognized that it is “desirable to maintain synchrony of operations among a plurality of independently-clocked digital data processing devices in relation to, for example, information that is provided thereto by a common source.” *Id.*, 1:48-51. For example, in systems where audio information for the same audio program is provided to a plurality of independently-clocked “audio playback devices” that are distributed throughout a residence, an office, or the like, it is desirable for the playback devices to play back the same audio in synchrony. *Id.*, 1:51-2:11. However, Mr. Millington recognized that playing back the same audio on multiple, independently-clocked playback devices in synchrony presents several challenges.

One challenge is that “[s]mall differences” in the devices’ “start times and/or playback speeds can be perceived by a listener as an echo effect, and larger differences can be very annoying.” *Id.*, 2:12-14. Mr. Millington recognized that these “[d]ifferences can arise because [of] a number of reasons, including delays in the transfer of audio information over the network” and further that “[s]uch delays

can differ as among the various audio playback devices for a variety of reasons, including where they are connected into the network, message traffic and other reasons....” *Id.*, 2:15-20.

Another challenge is that “[w]hen an audio playback device converts the digital audio information from digital to analog form, it does so using a clock that provides timing information,” and “[g]enerally, the audio playback devices that are being developed have independent clocks....” *Id.*, 2:21-28. In operation, such independently-clocked playback devices cannot be expected to “clock[] at precisely the same rate....” *Id.*, 2:25-26. And as a result, such independently-clocked playback devices could not play back audio in synchrony. *Id.*, 2:26-28.

To overcome these challenges, Mr. Millington developed technology “for synchronizing operations among a number of digital data processing devices that are regulated by independent clocking devices” with the invention being “described in connection with a plurality of audio playback devices that receive digital audio information that is to be played back in synchrony....” *Id.*, 2:32-40.

For instance, the ’357 Patent discloses a “network audio system” comprising “digital data processing devices” that connect to a data network and are configured to process and output audio. *Id.*, 2:32-35, 3:41-48. The specification refers to these “digital data processing devices” as “zone players” or “playback devices.” *Id.*, 2:38-40, 3:43-48.

Figure 1 of the '357 Patent provides an illustration of an example of this “network audio system”:

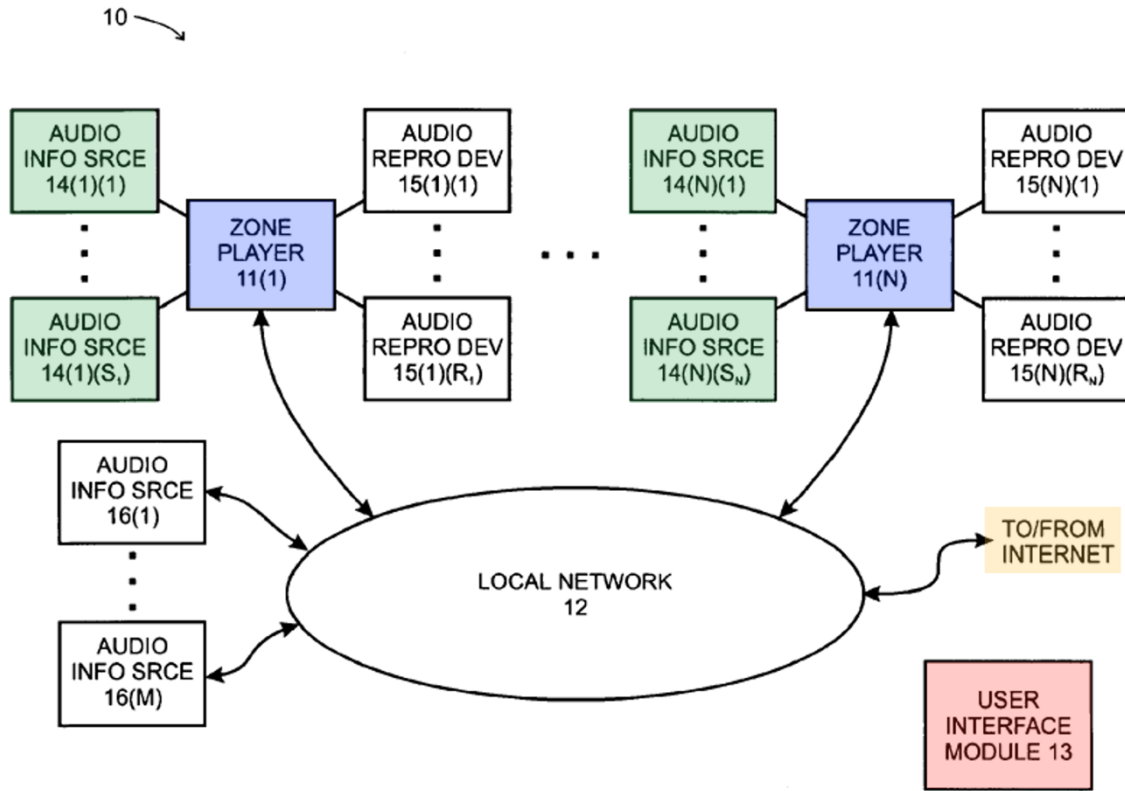


FIG. 1

Id., FIG. 1 (annotated).

In this “network audio system,” each “zone player” (in blue, above) is configured to communicate over a “local network” with various other devices, including one or more other “zone players” and one or more “user interface modules” (in red, above). *Id.*, 3:41-48.

Each “user interface module” is configured to control the “zone players” in the “network audio system” over the “local network” and generally enables a user to interact with the “network audio system,” such as by allowing the user to select a

particular “audio information source” (examples of which are in green, above) from which one or more “zone players” are to playback audio. *Id.*, 3:46-48, 5:32-52, 7:42-45.

Another manner by which a “user interface module” enables a user to interact with the “network audio system” is by allowing the user to “establish[] and modif[y] dynamically” “synchrony groups” within the “network audio system.” *Id.*, 5:32-6:30. The ’357 Patent explains that two or more “zone players” can enter into a “synchrony group” for purposes of playing the same audio program synchronously. *Id.*, 5:53-6:9 (“[T]he term ‘synchrony group’ will be used to refer to a set of one or more zone players that are to play the same audio program synchronously.”).

The ’357 Patent describes different roles or responsibilities that are assigned to “zone players” in connection with a given “synchrony group.” *Id.*, 6:46-58, 7:55-60. In example embodiments, the ’357 Patent describes three roles in connection with a given “synchrony group”: (1) a “slave device” role, (2) a “master device” role, and (3) an “audio information channel device” (AICD) role.

A “zone player” of a “synchrony group” assigned the “slave device” role abides by the instructions provided by the “zone player” assigned the “master device” role of the “synchrony group.” *Id.*, 8:16-20, 13:1-28.

In general, the “zone player” assigned the “master device” role of the “synchrony group” is primarily responsible for interfacing with any controller (“user

interface module 13”) on behalf of the “synchrony group” and facilitates control of the operations of the one or more “zone players” assigned the “slave device” role. *Id.*, 8:16-20, 8:56-9:19.

Further, in general, the “zone player” assigned the AICD role for a “synchrony group” is responsible for obtaining audio information from an audio information source and then providing to the “zone players” of the “synchrony group” assigned the “master” and “slave” roles the audio information and “playback timing information” that indicates when the audio information is to be played back. *Id.*, 2:63-3:14, 7:66-8:11, 11:14-20, 20:30-42. The “zone player” assigned the AICD role for the “synchrony group” is also responsible for providing “clock timing information” to the “zone players” of the “synchrony group” assigned the “master” and “slave” roles. *Id.*, 2:63-3:14, 8:5-11, 11:25-47. The “zone players” of the “synchrony group” are able to playback the same audio program synchronously based on the audio information, “playback timing information,” and “clock timing information” provided by the “zone player” assigned the AICD role. *Id.*, 8:5-11, 11:47-58, 22:65-25:25.

As noted above, each of the “slave device,” “master device,” and AICD roles is assigned to a “zone player.” *Id.*, 7:60-66. In many cases, a single “zone player” is assigned both the “master device” and AICD roles for a given “synchrony group.” *Id.*, 8:40-42, 8:45-47, 9:58-62, 12:19-21, 12:26-28, 21:52-54, 23:45-47. But in some

cases, a first “zone player” is assigned the “master device” role of a given “synchrony group” and a second “zone player” (that may or may not be a member of the given “synchrony group”) is assigned the AICD role for the given “synchrony group.” *Id.*, 9:30-38, FIG. 2A. This latter situation may arise if, for example, the selected audio information source for the given “synchrony group” is an audio information source directly connected to the second “zone player,” such as a record player/turntable or the like, that was already a member (“master device” or “slave device”) of another “synchrony group.” *Id.*, 9:30-38, 9:58-10:13, 15:21-26.

The claims of the ’357 Patent focus on embodiments where a single “zone player” (referred to in the claims as a “*first playback device*”⁴) is assigned both the “master device” and AICD roles for a given “synchrony group” comprising itself and at least one other “zone player” (referred to in the claims as a “*second playback device*”). This is evident from the fact that, for example, limitation [1.2.1] recites the “*first playback device*” obtaining audio information after receiving “*control information*” from a “*network device configured to control the first playback device*” (e.g., “user interface module 13”), limitation [1.2.2] recites the “*first playback device*” transmitting to the “*second playback device*” the obtained audio information, associated “*playback timing information*,” and “*clock information*,” and limitation

⁴ For clarity, claim language is in italics and within quotation marks throughout.

[1.2.3] recites the “*first playback device*” playing back the audio information in synchrony with the “*second playback device.*”

b. Neither of Linkplay’s Primary References Relates to the Claimed “Playing Back... Audio Information In Synchrony”

Linkplay’s Petition advances six grounds: three premised on the Richenstein reference (Ex.1005) and another three premised on the Chatterton reference (Ex.1009). Pet., 2-3. Each of the Petition’s six grounds relies on Richenstein or Chatterton as supplying limitation [1.2.3] that requires a “*first playback device*” “*playing back... the audio information in synchrony with the second playback device by using the playback timing information associated with the audio information and the device clock information of the first playback device to play back the audio information.*” Pet., 35, 70-71.

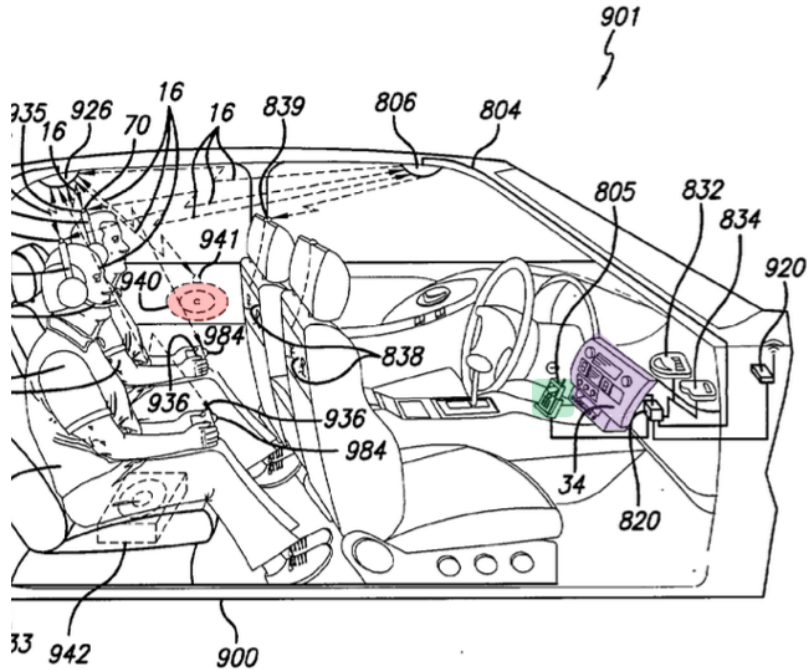
But no purported “*first playback device*” of Richenstein or Chatterton ever plays back audio information that the purported “*first playback device*” transmits to another device, much less in the manner required by the ’357 claims. Instead, the purported “*first playback device[s]*” of Richenstein and Chatterton are effectively media servers that transmit audio over a network to other devices, and those other devices play back the audio. But the plain language of the ’357 claims is clear that “*transmitting... the audio information*” is a separate and distinct function from

“*playing back... the audio information.*” For at least this reason, the Petition is fundamentally flawed.

(1) Richenstein’s Failures Regarding [1.2.3]

With respect to the Richenstein grounds, the Petition presents two theories against the challenged claims based on Richenstein’s so-called “vehicle infotainment embodiments” and “home entertainment embodiment.”

To achieve limitation [1.2.3] in the so-called “vehicle infotainment embodiments,” Richenstein’s “audio device 34” (purported “*first playback device*”; in purple, below) would have to playback in synchrony a “voice stream” from “telephone 805” (purported “*audio information*” from “*the audio information source outside of the LAN*”; in green, below) with vehicle loudspeakers 842/940 (purported “*second playback device*”; in red, below). But Richenstein neither discloses nor suggests anything of this sort.



Ex.1005, FIG. 21 (annotated and cropped).

Indeed, there is no teaching or suggestion in Richenstein of “audio device 34” playing back any audio or voice information that it transmits to another device within the vehicle. Nor would this make any sense with respect to Richenstein’s “audio device 34” in the vehicle setting. This is because, in such a setting, “audio device 34” is an “in-dash head unit” that traditionally would only ever playback audio via a vehicle loudspeaker that was hardwired to the “in-dash head unit.” See Ex.1005, ¶139, ¶153. Richenstein’s twist on this conventional arrangement is that “audio device 34” is able to wirelessly transmit IR signals via “transmitter/receiver 806” to a vehicle loudspeaker (e.g., loudspeaker 842/940) that in turn processes the IR signals to decode audio for the vehicle loudspeaker to playback. In short, “audio

device 34” transmits, and a vehicle loudspeaker (e.g., loudspeaker 842/940) plays back.

But mere transmission of audio information is not the same thing as playing back audio information. The claim language of the ’357 Patent makes it clear that no POSITA would conflate the two: limitation [1.2.2] recites the “*first playback device*” “*transmitting... the audio information*” and limitation [1.2.3] separately recites the “*first playback device*” “*playing back... the audio information....*”

The Delaware Court’s *Markman* order and additional commentary in *Sonos, Inc. v. D&M Holdings, Inc.*, 1:14-cv-01330-RGA (D. Del.) (“D&M Litigation”) regarding the term “*playback device*” is instructive as to why a device transmitting audio information over a network to another device does not constitute playing back the audio information in synchrony with the other device.

In this respect, at *Markman*, Judge Andrews construed the phrases “playback device” and “zone player” as claimed and disclosed in the ’357 Patent as a “data network device configured to process and output audio.” Ex.1006, 9. Judge Andrews further explained “the device may output audio either in the form of an audio signal to an external speaker or as sound waves from an integrated speaker.” *Id.*, 16-17. Later, prior to the D&M jury trial, Judge Bryson sitting by designation ruled on a *Daubert* motion in which D&M tried to prevent Sonos’s expert from opining that a device like a media server that merely transmits audio data over a

network does not amount to a “playback device”/“zone player” since transmitting audio data over a network is not outputting (i.e., rendering/playing) audio. *See* Ex.2119, 25-27. Judge Bryson denied D&M’s motion and explained that the expert opinions were consistent with Judge Andrews’ *Markman* order since “[a] device that only sends and receives network data packets would not be processing and outputting audio.” *Id.*, 26-27.

Thus, since a device transmitting audio data over a network does not amount to outputting (i.e., playing) audio, it then follows that a device transmitting audio data over a network to another device cannot amount to it playing back audio in synchrony with the other device. If the Board agrees with this conclusion (i.e., that transmitting audio over a network is not playing back audio), then the Petition unequivocally fails.

* * *

Returning to the Petition, the so-called “home entertainment embodiment” fares no better than the so-called “vehicle infotainment embodiments.” To achieve limitation [1.2.3] in the so-called “home entertainment embodiment,” Richenstein’s “home theatre system 1100” (purported “*first playback device*”) would have to playback in synchrony “audio programming” with “wireless headphones 14” or “remote speakers 1130” (purported “*second playback device*”; *see* Pet., p.28). But, again, Richenstein discloses nothing of this sort.

Indeed, there is no teaching or suggestion in Richenstein of “home theatre system 1100” itself playing back any “audio programming” that it transmits to “wireless headphones 14” or “remote speakers 1130.” *See* Ex.1005, ¶176. Much like the so-called “vehicle infotainment embodiments,” the purported “*first playback device*” in the home setting transmits, and “wireless headphones 14” or “remote speakers 1130” play back. But mere transmission of audio is not the same thing as playing back audio.

* * *

Thus, neither of the Petition’s Richenstein theories is on point for limitation [1.2.3]. Tellingly, the Petition is virtually devoid of any quotation to actual disclosure from Richenstein for this limitation. *See* Pet., 35. This is for good reason.

The only disclosed synchronization between Richenstein’s “audio device 34” (purported “*first playback device*”) and a purported “*second playback device*” is synchronizing “the decoding and related operations” of the purported “*second playback device*” to the “sampling and/or A/D operations” of the audio device 34. Ex.1005, ¶66; *accord* Ex.1005:

- ¶53 (“Gap 100 is useful to convey clocking information for synchronizing the [purported ‘*second playback device*’] decoding to the clock rate of [‘audio device 34’]”);

- ¶68 (“[F]or synchronizing the decoding and/or sampling of the IR data, for example, by controlling the clock rate of the D/A conversion functions of DSP 76 [of purported ‘*second playback device*’]”);
- ¶119 (“The PLL [of purported ‘*second playback device*’] is used to generate a synchronized clock, which is used by DSP 710 [of purported ‘*second playback device*’] to sample the IR data signal 712.... Receiver DSP 710 uses the recovered data clock to synchronize with transmitter DSP 600 [of ‘audio device 34’] such that the data encoded and transmitted by transmitter 500 [sic] is received and decoded by receiver 500 at the same rate.”).

In other words, the purported “*second playback device*” attempts to synchronize its rate of decoding received infrared (IR) data that was transmitted by the “audio device 34” to the rate at which “audio device 34” encoded an analog signal to generate the IR data in the first instance. *See id.*

But no POSITA would confuse (a) a second device synchronizing its rate of ***decoding*** received data to the rate that a first device ***encoded*** the data with (b) first and second devices ***playing back*** audio in synchrony. Indeed, encoding enables audio to be transmitted over a data network, whereas decoding allows the recipient to recover the audio from its encoded form. *See, e.g.,* Ex.1001, 19:65-67, 31:65-32:2; Ex.2120, 3 (“Encoding is the final step in converting an analog signal into a data representation.”); Ex.2121, 4 (“Encoders are used to create versions of data that can be easily and safely stored and transmitted.”); Ex.2122, 4 (“In the audio world, a codec is a software application that encodes a digitized audio signal into a different

format, often for the purpose of reducing its size.... The encoded file must be decoded to recover the original audio file....”). In turn, playing back audio occurs well after any encoding and decoding occurs. More to the point: encoding and decoding audio are distinct functions from playing back audio.

Notably, the Petition contains a single quotation for limitation [1.2.3], which is suspiciously cropped:

To the extent playing in synchrony requires simultaneous play, Richenstein discloses or suggests simultaneous playback between audio device 34 or home theater system 1100 and other IR playback devices. *See e.g.*, EX1005, [0146] (“*passengers to converse on the telephone via audio device 34 and other IR devices*”), Figs. 19-23 (showing various vehicle infotainment and home entertainment settings for simultaneous and synchronous playback between audio devices 34/1100 and respective receiving speakers 842/940, headsets 14, or speakers 1130); EX1003, ¶¶180-83.

Pet., 35 (emphasis added). But this token quotation does not say anything about “audio device 34” playing back in synchrony with another device. In full, that sentence unremarkably states, “[a]s described below, equipment may be provided for two-way communication by passengers to converse on the telephone via audio device 34 and other IR devices according to the invention.” Ex.1005, ¶146. Richenstein goes on to explain how “two-way communications” enable “audio device 34” to “accept data received by transmitter/receiver 806 from other IR

devices in vehicle 900 and channel the data to such devices as... cellular telephone 805.” *Id.*, ¶161. This enables “[t]wo-way headphones 980... to access cellular telephone 805 through audio device 34 to place a call and conduct a two-way conversation.” *Id.*, ¶165. But, again, this disclosure is merely about “audio device 34” transmitting data to a reception device like “headphones 980”; there is nothing about “audio device 34” itself playing back audio, much less in synchrony with another device.

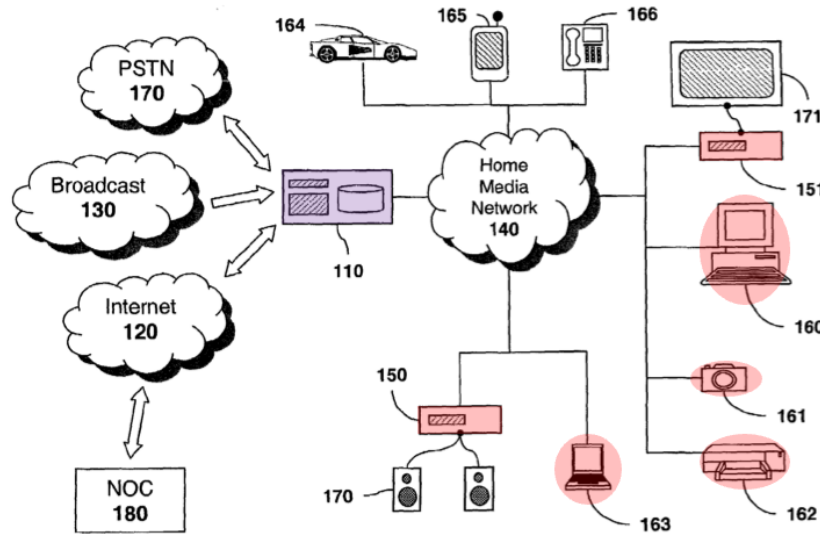
* * *

Thus, for at least these reasons, the Petition fails to establish a reasonable likelihood of success that Richenstein satisfies limitation [1.2.3].

(2) Chatterton’s Failures Regarding 1.2.3

To achieve limitation [1.2.3], Chatterton’s “home media server 110” (purported “*first playback device*”; in purple, below) would have to playback in synchrony “audio content... on broadcast or internet channels” (purported “*audio information*” from “*the audio information source outside of the LAN*”) with any of “devices 160-163” or “multimedia nodes 150 and 151” (purported “*second playback*

device”; in red, below). But Chatterton neither discloses nor suggests anything of this sort.



Ex.1009, FIG. 1 (annotated).

Indeed, there is no teaching or suggestion in Chatterton of “home media server 110” playing back any audio information that it transmits to another device. Simply put, much like the relationship between Richenstein’s “audio device 34” and Richenstein’s purported “*second playback devices*,” Chatterton’s “home media server 110” transmits and (some of) Chatterton’s purported “*second playback devices*” play back. But as the claim language of the ’357 Patent makes clear, mere transmission of audio information is not the same thing as playing back audio information.

As such, the Petition’s contentions about “home media server 110” providing “real time transmission of voice and video,” “simultaneous streams at once,” and

“simultaneous distribution of realtime streams of the same content” (Pet., 70-71) fail to amount to “home media server 110” *playing back* any audio information it transmits to another device, much less doing so in synchrony with another device.

And as with Richenstein, the Petition’s heavy reliance on expert testimony to gap fill for this limitation and the Petition’s inability to quote actual disclosure from Chatterton of “home media server 110” playing back audio (that it transmits to a purported “*second playback device*”) in synchrony with a purported “*second playback device*” speaks volumes. *See* Pet., 70-71.

Thus, for at least these reasons, the Petition fails to establish a reasonable likelihood of success that Chatterton satisfies limitation [1.2.3].

7. Summary of *Fintiv* Factors

In summary, *Fintiv* factors 1, 2, 3, 5, and 6 favor denial, some of which weigh heavily toward denial, and factor 4 is, at best for Linkplay, neutral. Thus, when considered holistically, the *Fintiv* factors strongly favor denial.

B. Other Considerations Also Favor Discretionary Denial

The Workload Memo identifies additional considerations that the Director may consider for discretionary denial, including:

1. Whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims;
2. Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability;

3. The strength of the unpatentability challenge;
4. The extent of the petition's reliance on expert testimony;
5. Settled expectations of the parties, such as the length of time the claims have been in force;
6. Compelling economic, public health, or national security interests; and
7. Any other considerations bearing on the Director's discretion.

Workload Memo, 2.

As explained below, several of these considerations further favor denial.

1. The PTAB's Prior Adjudication of the '357 Patent's Patentability Favors Denial

Pursuant to the Workload Memo, the Director may consider “[w]hether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims.” Workload Memo, 2. Because the PTAB has already adjudicated the patentability of many of the claims challenged here, this consideration favors discretionary denial.

In parallel with the D&M Litigation, the defendant there initiated *Ex Parte* Reexamination of the '357 Patent in May 2017. Ex.1004, 4467-68. The PTAB ultimately confirmed the patentability of all challenged claims at issue in that reexamination (i.e., claims 9-12 and 19), issuing an *Ex Parte* Reexamination Certificate on October 4, 2019. *See* Ex.1001, 33-35.

Claim 9 of the '357 Patent is an independent claim that is substantively similar to independent claims 1 and 8. Claims 10, 11, and 12 are dependent claims that are

substantively similar to dependent claims 2, 3, and 4. Accordingly, of the 20 claims challenged by the Petition, the PTAB has previously indicated that the subject matter of all three independent claims –by definition, the broadest claims of the ’357 Patent– and seven dependent claims is patentable.

Thus, the PTAB’s prior adjudication of the ’357 Patent’s patentability favors denial.

2. Linkplay’s Heavy Reliance on Expert Testimony Favors Denial

As noted above, “[t]he extent of the petition’s reliance on expert testimony” is a consideration set forth in the Workload Memo. Since that memo issued, the USPTO further explained the importance of “focused” expert testimony:

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

FAQs for Interim Processes for PTAB Workload Management, at #21 (published Apr. 25, 2025), <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management> (“FAQ #21”) (emphasis added).

This consideration favors discretionary denial here for several reasons.

First, Linkplay relies extensively on the unfocused testimony of Dr. Hartpence. This testimony consists of 465 paragraphs spanning nearly 200 pages and lacks the hallmarks of offering helpful context or explanation about terms of art. *See* Ex.1003.

Second, if instituted, this IPR will inevitably present “reasonable disputes between experts on dispositive issues” that are “better resolved in an Article III court.” FAQ #21. Indeed, Sonos’s forthcoming POPR will identify several flaws in the Petition (and by extension, Dr. Hartpence’s opinions), and if the Director institutes IPR, Sonos’s own expert plans to address the flaws in Dr. Hartpence’s analysis that doom the Petition.

Third, instead of using expert testimony for helpful context or explaining terms of art, Linkplay uses Dr. Hartpence’s testimony as a crutch to supply limitations missing from its relied-on references and patch up clear shortcomings of its obviousness positions. *See, e.g.*, Pet., 21-22 (“[A] POSITA would understand that audio device 34 may include....”), 22-23, 24-25, 34, 35, 37, 40, 43, 44, 55, 56, 63-64, 65-66, 67, 68, 68-69, 71, 72, 73-74, 75, 76, 79, 81. Yet, Dr. Hartpence’s testimony is largely conclusory and merely echoes Linkplay’s Petition, which

renders it unhelpful.⁵ *E.g., compare* Pet., 19-25, *with* Ex.1003, ¶133-47.

Moreover, as with the Petition, Dr. Hartpence’s conclusory analysis (*see, e.g.,* Ex.1003, ¶208, 218, 229, 238, 241) is legally deficient at least because it fails to explain in sufficient detail **how** any proposed modification is supposed to work. *See Personal Web Techs., LLC v. Apple Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017) (“[A] clear, evidence-supported account of the contemplated workings of the combination is a **prerequisite** to adequately explaining and supporting a conclusion that a relevant skilled artisan would have been motivated to make the combination and reasonably expect success in doing so.”) (emphases added).

Thus, in sum, Linkplay’s extensive reliance on unfocused expert testimony favors denial. The Board’s resources would be better allocated to other petitions more grounded in the substance of the prior art.

⁵ *See, e.g., TikTok Inc. v. NTech Properties, Inc.*, IPR2024-01339, 2025 WL 607860, at *7 (PTAB Feb. 25, 2025) (affording “conclusory” expert testimony “little or no weight”); *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, 2022 WL 3648989, at *7 (PTAB. Aug. 24, 2022) (precedential).

3. The Settled Expectations of the Parties Favor Denial

Another consideration the Director can evaluate is the “[s]ettled expectations of the parties, such as the length of time the claims have been in force.” This consideration also favors denial given the ’357 Patent’s age and status.

In this respect, the ’357 Patent claims priority to an original non-provisional patent application filing from April 1, 2004 and a provisional patent filing from July 28, 2003. Ex.1001, codes (63), (60). The ’357 Patent issued on December 15, 2015 and expired on April 1, 2024. Ex.1001, codes (45), (*). Given the age and the expired status of the ’357 Patent, the expectations of the parties with respect to the ’357 Patent are well settled (especially in view of the ’357 Patent’s reexamination) and its validity should be respected.

Thus, this consideration favors denial.

4. The Delaware Court Is Best Positioned to Apply Its Prior Claim Constructions

The Board is entitled to consider “[a]ny other considerations bearing on the Director’s discretion.” Workload Memo, 2. An additional consideration that weighs in favor of denial is that the Delaware Court is the best forum to apply its own claim constructions that the Board would otherwise have to apply here.

In this respect, several terms found in the challenged claims of the ’357 Patent were construed by the Delaware Court in the D&M Litigation. Linkplay purports to apply these constructions throughout the Petition. *See* Pet., 10-11.

However, the Delaware Court is the obvious choice for applying constructions of claim terms that it previously construed and applied to Sonos's patents in the D&M Litigation, which ultimately ended in a jury verdict in favor of Sonos. This holds particularly true given that Judge Ranjan made clear that he intends to utilize the "forms and orders" of Judge Andrews (Ex.2114), who issued the *Markman* Order in the D&M Litigation. *See* Ex.1006. Further, several terms found in the challenged claims that were previously construed by the Delaware Court are found in other of the patents asserted against Linkplay aside from the '357 Patent, including "*playback device*," "*network interface*," "*playback timing information*," "*clock information*," and "*independently clocked*." Having the Delaware Court oversee the application of its constructions in connection with the '357 Patent, as well as the other asserted patents, will help mitigate potential inconsistencies that may result in the Board analyzing the Delaware Court's claim constructions.

5. Risk of Competing Constructions Favors Denial

Somewhat related to the last consideration, another additional consideration that weighs in favor of denial is that Linkplay has indicated its intent to dispute some of the Delaware Court's prior constructions on which the Petition rests, which presents the risk of competing constructions for the same terms of the '357 Patent.

For example, the Petition purports to apply the Delaware Court's prior construction for the term "*playback timing information*." *See* Pet., 10-11. For that

term, the Delaware Court rejected D&M's attempt to limit "*playback timing information*" to be specifically in the form of "time values." See Ex.1006, 33. In construing the term to more broadly mean "information indicating when the audio information [content] is to be played back," the Delaware Court explained "when the information is required to be in a specific form, such as time stamps associated with frames of data, the claims specify that" and so, there was no reason to limit the term to the form of time values. *Id.*, p.33-34. Recently, however, Linkplay has indicated that the Delaware Court's construction for "*playback timing information*" is incorrect, and the term should instead be construed as "information representing a time value indicating when the audio information [content] is to be played back." Ex.2115, 5-6.

As another example, the Petition purports to apply the Delaware Court's prior construction for the term "*independently clocked*." See Pet., 10-11. In construing the term to mean "operating in accordance with their own respective clocks during synchronous playback," the Delaware Court concluded "the players use the clock information obtained from other players to ensure synchronous playback but each player uses its own clock (rather than that of another player) to control playback" and explained, after describing example embodiments from the specification, "[c]onstrued in the context of the specification,... I understand 'independently clocked' to mean simply that the players in a synchrony group each operate (and

play back audio) in accordance with their own internal DAC clocks even while receiving DAC clock information from other players (and possibly adjusting their own clocks according to that information).” Ex.1006, p.17-18. Again, recently Linkplay has indicated that the Delaware Court’s construction for “*independently clocked*” is incorrect, and the term should instead be construed as “operating according to each player’s own clock that does not depend on any other player’s clock at all times of synchronous playback.” Ex.2115, 7-8.

Because the Petition defines the IPR proceeding (*VLSI Tech. LLC v. Intel Corp.*, 53 F.4th 646, 654 (Fed. Cir. 2022)), if Linkplay is successful in changing the Delaware Court’s construction for “*playback timing information*” or “*independently clocked*,” among other examples, there would be two proceedings progressing in parallel involving the same claim term(s) under different constructions. This would be highly inefficient and prejudice Sonos because Linkplay would be able to “have its cake and eat it too.” For instance, Linkplay would proceed before the Delaware Court with a narrow construction for purposes of non-infringement and proceed here under a broader construction for purposes of invalidity. This would be improper and wasteful.

Accordingly, Linkplay’s own claim construction strategy before the Delaware Court weighs in favor of denial.

6. Economic and National Interests Favor Denial

The Board can consider “[c]ompelling economic, public health, or national security interests.” Workload Memo, 2. Economic and general national interests favor denial here.

In this respect, Sonos is an American success story. Founded in 2002 in Santa Barbara, Sonos essentially created the modern-day “multiroom” market and has been routinely lauded for the technological innovations it has created along the way. Sonos has diligently protected that innovation and amassed a U.S. patent portfolio that is ranked amongst the most powerful in consumer electronics. *See* Ex.2116, 3 (ranking Sonos’s patent portfolio #6 in consumer electronics).

Linkplay is a Chinese company (*see* Pet., 88) that is piggybacking off of two decades’ worth of innovation that Sonos has invested tremendously in. By doing so, Linkplay is able to undercut Sonos’s prices and erode sales that would otherwise go to Sonos, thereby undermining the economics of Sonos continuing to invest in innovation and grow its U.S. patent portfolio. This is a common trend among Chinese companies vis-à-vis an American innovator. *See, e.g.*, Ex.2117 (Chairman of Subcommittee on Courts, Intellectual Property, and the Internet stating, “[t]o put it simply: China is stealing what is ours while at the same time availing themselves of the legal and regulatory protections – and ownership of intellectual property – that America created in the name of respect for the rule of law.”); Ex.2118 (“The

C[hinese] C[ommunist] P[arty] seeks to damage or destroy the value of the IP of U.S. businesses, thereby inflicting economic harm to the U.S., while simultaneously enabling Chinese firms to profit from the theft of that IP.”) Denying institution would prevent foreign entities, like Linkplay, from exploiting the American legal system through duplicative and unnecessary parallel litigation.

7. Summary of Additional Considerations

In sum, at least six additional considerations weigh in favor of denial.

III. CONCLUSION

Sonos respectfully submits that discretionary denial is warranted here. Given Linkplay’s unexcused delay in filing its Petition, many of the *Fintiv* factors favor denial, and the Petition’s weak merits leave no doubt that denial is proper. Yet, even more considerations beyond *Fintiv* are present here that weigh strongly in favor of denial.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The undersigned certifies that the foregoing PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION 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, certificate of word count, and certificate of service—contains 10,244 words.

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