

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

MOBILE DATA TECHNOLOGIES LLC,
Patent Owner

IPR2025-00540
U.S. Patent No. 8,793,336

**PETITIONERS' REQUEST FOR DIRECTOR REVIEW OF DECISION
DENYING INSTITUTION OF *INTER PARTES* REVIEW**

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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I. INTRODUCTION

The Decision reflects a clear abuse of discretion. The Board previously instituted review of the challenged patent in an IPR brought by Meta, which was terminated by settlement before a Final Written Decision. The present Petition challenges the same claims as the Meta IPR, on the basis of additional prior art. But here, review was discretionarily denied. Those disparate outcomes indicate an arbitrariness and inconsistency incompatible with a reasonable exercise of discretion. By preempting review of a patent the Board has already determined warrants review, the Decision creates perverse incentives that harm innovation and reward gamesmanship.

The history here is crucial and distinguishes this case from run-of-the-mill IPRs. PO is a patent assertion entity whose only business is acquiring and asserting others' patents. PO acquired the challenged patent in 2022, at which time the patent had never been commercialized, licensed, marked, or enforced, and was of questionable validity in view of the complete invalidation of two of its predecessor patents. PO sued Meta in November 2022, asserting the challenged patent and four related patents (which Petitioners have also challenged). Meta challenged all five patents in IPR, and the Board instituted review on all.

But PO did not sue Petitioners until June 10, 2024 and did not assert the '336 patent against Petitioners until October 6, 2024. The timing of PO's suit

against Petitioners only can be explained as gamesmanship. June 10, 2024 was eighteen months after PO sued Meta and *three days* before the statutory deadline for an institution decision on the Meta IPRs. And October 6, 2024 was three months after the July 11, 2024 joinder deadline for the Meta IPRs. By springing suit on Petitioners on that late date, PO effectively ensured Petitioners could not join the Meta proceedings. Then, on March 7, 2025, just four days before oral argument in the Meta IPRs, PO and Meta filed a joint motion to terminate the IPR. The settlement agreement was submitted under seal. PO refused to allow the Director to consider it here. But the circumstances paint a clear picture: PO did not want a FWD invalidating the patents. So, PO cut the IPR short and switched focus to Petitioners.

The Director should not reward such gamesmanship, which intentionally wastes Board and judicial resources in serial proceedings, while avoiding a FWD that could put an end to such tactics. The Director should reverse the Decision and refer the Petition to a merits panel for review.

II. ARGUMENT

A. The Decision's Reliance On "Settled Expectations" Is Factually Unfounded And An Abuse of Discretion

1. PO Has No Legitimate Settled Expectations

Having acquired the patent only three years ago in April 2022, PO has not owned the '336 patent long enough to have developed any settled expectations.

That short time period itself requires a finding of no “settled” expectations. *See Embody, Inc. v. Lifenet Health*, IPR2025-00248-249, Paper 13, 2-3 (Stewart June 26, 2025) (referring where patents were in force for 3 and 7 years); *Cambridge Indus. v. Applied Optoelectronics, Inc.*, IPR2025-00434, -436-437, Paper 11, 2-3 (Stewart June 26, 2025) (referring where patents were in force for 5-6 years).

Moreover, for nearly all of that period, PO faced challenges to the patent that precluded any settled expectations. Meta filed a petition for IPR in December 2023, and by June 2024—just two years after PO’s acquisition—the Board found a reasonable likelihood at least one claim was unpatentable, and instituted IPR. *Meta Platforms, Inc. v. Mobile Data Techs. LLC*, IPR2024-00246, Paper 12, 31 (PTAB June 11, 2024).

PO argues it had settled expectations based on an ex parte reexamination proceeding regarding the ’336 patent. (Paper 13, 2.) That makes no sense. The reexam decision issued only in March 2024. Even assuming PO could reasonably form new expectations concerning the ’336 patent in March 2024, those expectations had no time to become “settled.” After all, the Board instituted Meta’s IPRs against the ’336 patent only three months later in June 2024, along with five other patents in the ’336 patent family.

PO has argued that even if it does not have its own settled expectations, it should be entitled to the expectations of the prior owner. That is wrong as a matter

of law. While a patent assignee acquires the prior owner’s right to enforce the patent, the assignee does not thereby inherit the prior owner’s expectation interests. As with other property, the assignment or purchase marks a change in ownership, and the new owner’s expectations are evaluated in view of the circumstances at that time. For example, in the takings context, it is the expectations of a property owner at the time of purchase—not the expectations of the former owner—that matter. *See Anaheim Gardens, L.P. v. United States*, 953 F.3d 1344, 1350-51 (Fed. Cir. 2020). So too here: it is the expectations of the parties themselves that the Director should consider, not the prior owner’s expectations.

Even if the prior owner’s expectations were relevant, they would not help PO here. To start, just over a year after the ’336 patent issued, the Federal Circuit affirmed the invalidation of similar claims in its parent patent (the ’5801 patent), and thereafter invalidated a second predecessor patent (the ’342 patent). Both the prior owner and PO should have expected the ’336 patent to be susceptible to the same fate as its predecessors if it were ever challenged.

The Director also has determined that years of non-enforcement weigh against the patent owner’s claim to “settled expectations” of enforceability. *Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.*, IPR2025-00531, Paper 10, 3 (Stewart July 17, 2025) (referring based in part on evidence that the challenged patents, which had been in force for approximately 10 years, had “never been

commercialized, asserted, marked, licensed, or otherwise applied” in petitioner’s “technology space”); *Intel Corp. v. Proxense LLC*, IPR2025-00327-329, Paper 12, 2-3 (Stewart June 26, 2025). Here, the prior owner never tried to exclude anyone from practicing the challenged patent. It also never asserted or used the ’336 patent in any way that could support an expectation of enforcement. (Paper 12, 20-21.) That was the case even though the Samsung technology MDT accuses of infringement has been in use since 2016. (*Id.*, 20-21 & n.4.)

Finally, at the time PO purchased the ’336 patent in 2022, a reasonable acquirer could have harbored no expectations that the patent was immune from challenge. As the Federal Circuit has held, patent owners know and expect that their patents may be subject to post-issuance reconsideration proceedings by the PTO, including IPRs. *See Celgene Corp. v. Peter*, 931 F.3d 1342, 1361-63 (Fed. Cir. 2019). The PTO intervened in *Celgene*, and advanced the position that patent owners lack a settled expectation that their patents will not be subject to post-issuance challenges, including IPRs. *See* Brief for Intervenor at 42-43, *Celgene Corp. v. Iancu*, No. 2018-1167 (Fed. Cir. Aug. 30, 2018) (Doc. No. 43). Having prevailed by making this argument in *Celgene*, the PTO is estopped from taking the opposite position in later proceedings, including this one. *See Trs. in Bankr. of N. Am. Rubber Thread Co. v. United States*, 593 F.3d 1346, 1353 (Fed. Cir. 2010).

2. Petitioners' Settled Expectations Weigh Strongly Against Discretionary Denial

While PO has no legitimate settled expectations, Petitioners and the public have considerable settled expectations.

As noted above, similar claims in the '336 patent's parent, the '5801 patent, were invalidated almost as soon as the '336 patent issued. Moreover, Samsung introduced the presently accused technology to the U.S. in 2016, shortly after the '336 patent issued, and Samsung's innovative products have been in continuous use in the U.S. market since that time. Not once did the prior owner claim that those products infringed the challenged patent. This history weighs against discretionary denial for the same reasons the Board recognized in *Shenzhen* and *Proxense*: when there is no reason to challenge a patent earlier in its term, the age of the patent should not protect it from review. IPR2025-00531, Paper 10, 3; IPR2025-00327, Paper 12, 2-3.

PO notes that the '5801 patent was cited as prior art during examination of a Samsung Design Patent in May 2015, and on that basis argues that Samsung knew about the '5801 patent family (including the '336 patent) and therefore can have no settled expectations. (Paper 8, 42-43.) That argument is facially unsound.

Petitioners are among the most highly innovative companies in the world, holding over 145,000 issued patents. Even if Petitioners could be charged with a duty to investigate the hundreds of thousands of patents cited during examination of its

patents, citing a patent as prior art gives no indication of that patent's validity.

Indeed, at the time the '5801 patent was cited with respect to Samsung's design patent in May 2015, the '5801 patent had already been invalidated. (EX-1055, 1.)

Accordingly, the May 2015 citation could only have provided notice of invalidity and expectations of invalidity for similar progeny in the same patent family.

B. The Decision Relies Solely On Erroneous Factual Findings Regarding the Likely Time to Trial and Likelihood of a Stay

The Decision relied on only two factors, in addition to settled expectations, in deciding to exercise discretion to deny review: the trial date and the likelihood of a stay of trial court proceedings. It was an abuse of discretion for the Decision to rely on those factors in granting discretionary denial.

Trial likely will happen close to the FWD date. The Decision notes that time-to-trial statistics suggest that trial in the district court will begin by August 2026. The FWD in this proceeding would be expected just two months later, in October 2026. Consistency with other Board proceedings requires a finding that the trial timing therefore neither favors nor disfavors discretionary denial. The Board repeatedly has found that a difference of two months between a trial date and a later FWD date renders this factor "neutral." *See, e.g., Apple Inc. v. Koss Corp.*, IPR2021-00255, Paper 22, 10-12 (PTAB June 3, 2021) (granting institution where FWD expected two months after anticipated trial date); *Quibi Holdings*,

LLC v. JBF Interlude 2009 Ltd, IPR2021-00231, Paper 10, 8 (June 7, 2021)

(granting institution where FWD expected seven weeks after anticipated trial date).

Moreover, the record suggests trial in the district court will happen even later than August 2026, as median times to trial have been increasing in that District even over the past year. (Paper 12, 35-36.) It was an abuse of discretion for the Decision to depart without reason from the Board’s practice of instituting review when the likely trial date falls so close to the expected FWD date.

A stay of the district court litigation is likely. The Decision also abused discretion in finding there is “insufficient evidence that the district court is likely to stay its proceeding even if the Board were to institute trial.” (Paper 15, 2.) The district court litigation is still in its early stages. A decision instituting IPR would take place two weeks before the current scheduled *Markman* date. (Paper 12, 30-31.) While no party has yet requested a stay, Petitioners anticipate filing a motion to stay within days of any IPR institution. (*Id.*, 32.)

Judge Gilstrap routinely stays cases when a party moves to stay litigation after IPR is instituted, including when institution happens at a similar stage of litigation. *See, e.g., Cellspin Soft, Inc. v. ByteDance Ltd.*, No. 2:23-cv-00496-JRG-RSP, Dkt. No. 106, 5 (E.D. Tex. Jan. 26, 2025); *Broadphone LLC v. Samsung Elecs. Co. Ltd.*, No. 2:23-cv-00001-JRG-RSP, Dkt. No. 134, 1-2 (E.D. Tex. July 24, 2024); *Commc’n Techs., Inc. v. Samsung Elecs. Am., Inc.*, No. 2:21-cv-00444-

JRG-RSP, Dkt. No. 134, 1-2 (E.D. Tex. Feb. 2, 2023) (granting motion to stay 13 days before *Markman* hearing where IPR instituted seven weeks before hearing).

Indeed, Judge Gilstrap has stayed cases based on IPR institution even after a *Markman* hearing where proceeding would otherwise “risk[] an inefficient consumption of limited judicial resources.” *Netlist, Inc. v. Micron Tech., Inc.*, No. 2:22-cv-00203-JRG-RSP, Dkt. No. 493, 1 (E.D. Tex. Feb. 10, 2024) (*sua sponte* staying case pending IPR after issuing *Markman* opinion); *see also STA Grp. LLC v. Motorola Sols., Inc.*, No. 2:22-cv -00381-JRG-RSP, 2024 WL 2852961, *2 (E.D. Tex. June 5, 2024) (granting motion to stay after issuing *Markman* order).

There can be no question that going forward without a stay in this case would “risk[] an inefficient consumption of limited judicial resources.” Even PO conceded in the *Meta* litigation that a stay was warranted as it would “simpl[if]y the issues in the case.” (EX-1045, 5.) In view of Judge Gilstrap’s record, a stay in this proceeding is therefore likely, and the Decision abused discretion in finding otherwise. *Accord Microsoft Corp. v. XI Discovery, Inc.*, IPR2025-00253, Paper 13, 2 (Stewart June 25, 2025) (noting “evidence that a stay would be likely” weighs against discretionary denial).

C. The Director Should Review The Discretionary Denial In This Case To Establish Consistency Across Board Proceedings

“Discretion is not whim,” and must be “limit[ed]” according to “legal standards” to “promote the basic principle of justice that like cases should be

decided alike.” *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 139 (2005). The Decision failed to consider factors that have resulted in the rejection of discretionary denial in other proceedings. That resulted in the Decision being at odds with precedent, which is itself an abuse of discretion.

The petition is strong on the merits and presents Examiner Error. In the Meta IPR, the Board found the art presented in Meta’s petition likely rendered at least one of the challenged claims unpatentable. IPR2024-00246, Paper 12, 31. The same finding should apply here. While Petitioners rely on different art in this proceeding, the Board’s decision in the Meta IPR at least casts doubt on the Examiner’s judgement in allowing the claims of the ’336 patent. There is no sound reason to deny review now of claims the Board previously determined were likely invalid. The strength of the challenges advanced in the Petition is further evidenced by the Board’s decision during a reexamination proceeding rejecting similar claims of the ’336 patent’s parent, the ’5801 patent. (*Supra*, §2.A.1.)

The Decision failed to expressly address the strength of the Petition or weigh it against other factors. That failure was an abuse of discretion, as evidenced by other proceedings in which the Director weighed similar evidence against discretionary denial. *See, e.g., Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00217, -219-222, -339, Paper 9, 2 (Stewart June 13, 2025) (declining discretionary denial where Board had “previously determined there was a reasonable likelihood

that similar claims of an ancestor patent were unpatentable”); *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464-466, Paper 12, 2-3 (Stewart July 16, 2025) (no discretionary denial based on the similarity of issues raised in the petition to those previously adjudicated in a prior IPR on a related patent).

Moreover, Petitioners have set forth a clear case of Examiner error that weighs heavily in favor of review. The Examiner failed to identify Randall, Forsyth, Pelkey, and Eck, which, as demonstrated in the Petition, render obvious all claims of the '336 patent.

The Examiner’s failure to consider these prior art references was error, just as the Examiner erred in failing to consider the references in the Meta IPR. Even if other factors weighed in favor of denial (they do not, as discussed above), the Director should not deny review in a case of clear Examiner error. *See, e.g., XI Discovery, Inc.*, IPR2025-00253, Paper 13, 2 (discretionary denial “is not appropriate” when “the Office erred in a manner material to the patentability of the challenged claims”); *Tesla, Inc. v. Charge Fusion Techs., LLC*, IPR2025-00152, -153, Paper 11, 2 (Stewart June 12, 2025) (referring where Office missed prior art disclosing element that was the basis for allowance); *RØDE Microphones, LLC v. Zaxcom, Inc.*, IPR2025-00557, Paper 11, 2 (Stewart July 17, 2025) (referring based in part on evidence of Examiner error). As the Director has recognized, “it is an appropriate use of Office resources to review [a] potential error” by the Patent

Office even if other factors might weigh in favor of denial. *Microsoft Corp. v. ParTec Cluster Competence Ctr. GmbH*, IPR2025-00318, Paper 9, 3 (Stewart June 12, 2025) (referring to review Examiner error despite district court trial date preceding FWD date); *Anthony, Inc. v. ControlTec, LLC*, IPR2025-00559, Paper 12, 2 (Stewart July 16, 2025) (referring to review potential Examiner error where patents had been in force for 17-18 years); *Padagis*, IPR2025-00464-466, Paper 12, 2-3 (noting “concerns of material error” made review “an appropriate use of Office resources” despite “some factors weigh[ing] in favor of discretionary denial”).

The district court proceeding involves multiple patents. In the district court litigation, PO has asserted 70 claims across five different patents. Although the subject matter is similar across the asserted patents, the sheer number of claims should weigh against discretionary denial as the Board is better suited to review alleged differences between a large number of patents. *Cf., Intell. Ventures*, IPR2025-00217, Paper 9, 2-3; *id.*, Paper 8, 6; *Shenzhen*, IPR2025-00531, Paper 10, 3.

Petitioners offered a stipulation broader than *Sotera*. With their Petition, Petitioners offered a *Sotera* stipulation agreeing that if the Board institutes IPR in either or both IPRs concerning the '336 patent, Petitioners will not pursue in the district court litigation any invalidity defense based on the same grounds raised—

or any other grounds that could have reasonably been raised—in the instituted proceeding. (EX-2032.) Petitioners then extended their *Sotera* stipulation to “any commercial prior art theory that is coextensive with prior art presented to the Board.” (EX-1051.) Petitioners’ stipulation is even broader than the one Tesla offered in *Tesla, Inc. v. Intell. Ventures II LLC*, which the Director found counseled against discretionary denial. IPR2025-00217, Paper 9, 2; *see also Shenzhen*, IPR2025-00531, Paper 10, 2; *Tesla, Inc. v. Navy*, IPR2025-00341, Paper 12, 2 (Stewart June 13, 2025). The Decision here, however, made no mention of the proffered broad stipulation.

D. The Discretionary Denial Violates at Least the Due Process Clause and the Administrative Procedure Act

The Decision violates the Due Process Clause of the Fifth Amendment by retroactively applying new rules that did not exist when Samsung filed its petition in February 2025. At that time, the Board “[would] not discretionarily deny institution of an IPR ... in view of parallel district court litigation” where a petitioner files a *Sotera* stipulation. *See* Director Vidal’s June 21, 2022 Memorandum. On February 28, 2025, however, the USPTO rescinded that rule. The Decision wrongly applies that rescission retroactively to Samsung’s petition, discretionarily denying it based on factors that would have been prohibited under the Vidal Memo. *See Kirwa v. U.S. Dep’t of Def.*, 285 F. Supp. 3d 21, 41 (D.D.C. 2017). Petitioners were entitled to rely on the Vidal Memo in preparing their

strategy and paying the required fees and costs for their Petition. The Decision's reversal on the impact of a *Sotera* stipulation also deprives Petitioners of their rights and protections under the IPR statute solely because they were sued in a court that sets early trial dates. This all violates Petitioners' due process rights.

The Decision also is inconsistent with the governing statute. Congress was explicit on the time frame to file IPR petitions: any time after the later of nine months after patent grant or the termination of any post-grant review, with no end date. 35 U.S.C. § 311(c). Petitions can also be filed after patent expiration. *See Apple Inc. v. Gesture Tech. Partners, LLC*, 127 F.4th 364, 368-69 (Fed. Cir. 2025). There is no *sub silentio* point when patents become immune to IPR due to so-called "settled expectations." Analogously, in *SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, the Supreme Court rejected as a matter of law any attempt to limit patent infringement actions based on timing where Congress was express about the time frame in which such actions are to take place. 580 U.S. 328, 346 (2017).

Third, the Decision violates the APA. The rescission affects "the substantive ... standards by which [the USPTO] examines a party's application," and as such could only properly issue through notice and comment rulemaking. *In re Chestek PLLC*, 92 F.4th 1105, 1109 (Fed. Cir. 2024). The new rules did not go through notice-and-comment rulemaking, and therefore violate the APA. The Director's

retroactive application of those new rules in the Decision likewise violates the APA. Moreover, the rescission changed existing policy without considering the serious reliance interests thereby affected, and without providing a reasoned explanation for the change. Under the change-in-position doctrine, the rescission is therefore arbitrary and capricious in violation of the APA. *See Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 30 (2020).

III. CONCLUSION

Petitioners respectfully request that the Director withdraw the Decision and refer the matter to a panel for consideration.

Date: September 2, 2025

Respectfully submitted,

/Lori A. Gordon/

Lori A. Gordon (Reg. No. 50,633)
Goodwin Procter LLP
1900 N Street, N.W.
Washington, D.C. 20036
Phone: (202) 346 4435
Gordon-ptab@goodwinlaw.com

Lead Counsel for Petitioners

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of Petitioners' Request for Director Review of Decision Denying Institution of *Inter Partes* Review has been served on the Patent Owner via e-mail to the following counsel of record:

Erick S. Robinson (Reg. No. 51,354)
Patrick M. Dunn (Reg. No. 70,474)
Jayme Partridge (Reg. No. 39,011)
Jayne C. Piana (Reg. No. 48,424)
BROWN RUDNICK LLP
811 Main Street, Suite 1825
Houston, TX 77002
erobinson@brownrudnick.com
pdunn@brownrudnick.com
jpartridge@brownrudnick.com
jpiana@brownrudnick.com
MDT-Samsung-BR@brownrudnick.com
Tel: (281) 815-0511
Fax: (281) 605-5699

Eugene Goryunov (Reg. No. 61,579)
Homayoon Rafatijo (Reg. No. 80,870)
BROWN RUDNICK LLP
601 Thirteenth Street NW Suite 600
Washington, D.C. 20005
egoryunov@brownrudnick.com
hrafatijo@brownrudnick.com
Tel: (202) 536-1700
Fax: (202) 536-1701

Ian G. DiBernardo (Reg. No. 40,991)
BROWN RUDNICK LLP
Times Square Tower, 47th Fl.
7 Times Square
New York, NY 10036
idibernardo@brownrudnick.com

Tel: (212) 209-4800
Fax: (212) 209-4801

Attorneys for Mobile Data Technologies LLC

Date: September 2, 2025

/Lori A. Gordon/

Lori A. Gordon

Lead Counsel for Petitioners