

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners

v.

MOBILE DATA TECHNOLOGIES LLC,

Patent Owner

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

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**PATENT OWNER'S AUTHORIZED RESPONSE TO PETITIONERS'  
REQUEST FOR DIRECTOR REVIEW**

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. History of the Meta IPRs is Inapplicable to This Case .....1

III. The Decision Correctly Found PO’s Strong Settled Expectations.....2

    A. PO Has Strong Settled Expectations in the ‘336 Patent .....2

    B. Petitioners Have No Legitimate Settled Expectations .....6

IV. This Decision Is Consistent with the Director’s Other Decisions.....7

V. The Decision’s Factual Findings Regarding the Likely Time to Trial  
and Likelihood of a Stay are Supported by the Record.....10

VI. Discretionary Denial Does Not Violate the Due Process Clause or the  
APA .....13

VII. CONCLUSION.....14

**TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page(s)</b>
<i>Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH</i> , IPR2019-01469, Paper 6 (Feb. 13, 2020) (precedential).....	9
<i>Anaheim Gardens, L.P. v. United States</i> , 953 F.3d 1344 (Fed. Cir. 2020) .....	3, 4
<i>Anthony, Inc. v. ControlTec, LLC</i> , IPR2025-00559, Paper 12 (July 16, 2025) .....	9
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential) .....	13
<i>Cambridge Indus. v. Applied Optoelectronics, Inc.</i> , IPR2025-00434, Paper 11 (June 26, 2025).....	3
<i>Celgene Corp. v. Peter</i> , 931 F.3d 1342 (Fed. Cir. 2019) .....	5
<i>Cuozzo Speed Techs., LLC v. Lee</i> , 579 U.S. 261 (2016).....	1, 13
<i>Ecto World, LLC and SV3, LLC v. RAI Strategic Holdings, Inc.</i> , IPR2024-01280, Paper 10 (Mar. 6, 2025) .....	9
<i>Embodiment, Inc. v. Lifenet Health</i> , IPR2025-00248, Paper 13 (June 26, 2025).....	3
<i>Ericsson Inc. v. Procomm Int'l Pte. Ltd.</i> , IPR2024-01453, Paper 15 (June 25, 2025).....	2
<i>Google LLC v. Soundclear Techs. LLC</i> , IPR2025-00344, Paper 15 (Aug. 4, 2025) .....	2, 4
<i>Harmonic Inc. v. Avid Tech., Inc.</i> , 815 F.3d 1356 (Fed. Cir. 2016) .....	1

<i>Intel v. Proxense LLC</i> , IPR2025-00327, Paper 12 (June 26, 2025).....	4, 5, 7
<i>iRhythm, Inc., v. Welch Allyn, Inc.</i> , IPR2025-00363, Paper 10 (June 6, 2025).....	2
<i>iRhythm, Inc., v. Welch Allyn, Inc.</i> , IPR2025-00363, Paper 11 (July 3, 2025) .....	13
<i>iRhythm, Inc., v. Welch Allyn, Inc.</i> , IPR2025-00363, Paper 13 (Aug. 5, 2025) .....	13
<i>Kahoot! AS v. Interstellar Inc.</i> , IPR2025-00696, Paper 12 (July 31, 2025) .....	4, 6
<i>Linkplay Technology Inc. et al. vs Sonos, Inc.</i> , IPR2025-00509, Paper 10 (July 31, 2025) .....	11
<i>Microsoft Corp. v. ParTec Cluster Competence Ctr. GmbH</i> , IPR2025-00318, Paper 9 (June 12, 2025).....	9
<i>Mylan Labs. Ltd. v. Janssen Pharma., N.V.</i> , 989 F.3d 1375 (Fed. Cir. 2021) .....	13
<i>Nat’l Steel Car, Ltd. v. Canadian Pacific Ry., Ltd.</i> , 357 F.3d 1319 (Fed. Cir. 2004) .....	5
<i>Netlist, Inc. v. Micron Tech., Inc.</i> , No. 2:22-cv-00203-JRG-RSP, Dkt. No. 493 (E.D. Tex. Feb. 10, 2024).....	12
<i>Padagis US LLC v. Neurelis, Inc.</i> , IPR2025-00464, Paper 12 (July 16, 2025) .....	9
<i>Prima Tek II, L.L.C. v. A-Roo Co.</i> , 222 F.3d 1372 (Fed. Cir. 2000) .....	3
<i>RØDE Microphones, LLC v. Zaxcom, Inc.</i> , IPR2025-00557, Paper 11 (July 17, 2025) .....	9
<i>SAP Am., Inc. v. Valtrus Innov. Ltd.</i> , IPR2025-00416, Paper 10 (July 10, 2025) .....	3

<i>SAP Am., Inc. v. Valtrus Innov. Ltd.</i> , IPR2025-00416, Paper 8 (June 9, 2025).....	3
<i>Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.</i> , IPR2025-00438, Paper 10 (July 17, 2025) .....	4, 7
<i>STA Grp. LLC v. Motorola Sols., Inc.</i> , No. 2:22-cv-00381-JRG-RSP, 2024 WL 2852961 (E.D. Tex. June 5, 2024).....	12
<i>Tesla, Inc. v. Charge Fusion Techs., LLC</i> , IPR2025-00152, Paper 11 (June 12, 2025).....	9
<i>TQ Delta, LLC v. DISH Network LLC</i> , 929 F.3d 1350 (Fed. Cir. 2019) .....	13
<i>Vital Connect, Inc. v. Bardy Diagnostics, Inc.</i> , IPR2023-00381, Paper 7 (July 11, 2023) .....	6, 8
<i>Wilson v. Rousseau</i> , 45 U.S. 646 (1846).....	3
 <b>Statutes</b>	
35 U.S.C. § 314.....	1, 6, 8, 13

**EXHIBIT LIST**

<b>Ex.</b>	<b>Description</b>
2001	E-mail serving amended infringement contentions in EDTX-Litigation
2002	Comparison between the specifications of the '336 and '801 Patents
2003	Petition for <i>Inter Partes</i> Review in IPR2025-00539 (Feb. 7, 2025)
2004	Reserved
2005	Reserved
2006	E-mail from the Board regarding the 539 and 540 IPR panel assignments (May 2, 2025)
2007	Reserved
2008	E-mail from Erick S. Robinson memorializing the phone conversation with Petitioners' counsel (September 26, 2024)
2009	Reserved
2010	Reserved
2011	Reserved
2012	Reserved
2013	E-mail exchange between Erick S. Robinson and Petitioners' counsel regarding a stay (October 17, 2024)
2014	E-mail exchange between Erick S. Robinson and Petitioners' counsel regarding a stay (February 19, 2025)
2015	E-mail exchange between Erick S. Robinson and Petitioners' counsel wherein Petitioners shared their motion to stay with Patent Owner (March 4, 2025)
2016	Second Amended Docket Control Order in the EDTX-Litigation (December 19, 2024)
2017	United States District Courts — National Judicial Caseload Profile (March 31, 2025)
2018	E-mail from Petitioners' counsel serving their initial and additional disclosures (October 16, 2024)
2019	E-mail from Petitioners' counsel serving their invalidity contentions (January 31, 2025)
2020	E-mail from Petitioners providing materials produced by third-party Microsoft Corporation and Sybase, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (April 25, 2025)
2021	E-mail from Petitioners providing materials produced by third-party Casio America, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (March 7, 2025)

<b>Ex.</b>	<b>Description</b>
2022	E-mail from Petitioners providing materials produced by third-party Sony Electronics, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (February 24, 2025)
2023	E-mail from Petitioners providing materials produced by third-party Casio America, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (February 21, 2025)
2024	E-mail from Petitioners providing materials produced by third-party Sony Electronics, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (February 11, 2025)
2025	E-mail from Petitioners providing materials produced by third-party AT&T Mobility LLC in response to Petitioners' subpoena in the EDTX-Litigation (February 5, 2025)
2026	Patent Owner's Amended Infringement Contentions in the EDTX-Litigation (October 6, 2024)
2027	Petitioners' Invalidity Contentions in the EDTX-Litigation (January 31, 2025)
2028	E-mail exchange between Homayoon Rafatijo and Petitioners' counsel regarding Petitioners' contacting the Board for filing their proposed <i>Sotera</i> stipulation (April 21-23, 2025)
2029	E-mail from Petitioners' counsel with a draft of a proposed communication to the Board (April 30, 2025)
2030	E-mail from Petitioners' counsel sharing with Patent Owner their proposed <i>Sotera</i> stipulation (April 18, 2025)
2031	Reserved
2032	Petitioners' proposed <i>Sotera</i> stipulation for '539 and '540 IPRs (April 21, 2025)
2033	Petitioners' claim chart against '336 Patent based on the Nokia 9210 System (January 31, 2025)
2034	Reserved
2035	Summary of verbatim (or nearly verbatim) matches between the '540 petition to the Houh Declaration (Ex.1003)
2036	E-Mail from Petitioners providing Casio America, Inc.'s declarations certifying business records in response to Petitioners' subpoena in the EDTX-Litigation (May 9, 2025)
2037	Joel West & David Wood, <i>EVOLVING AN OPEN ECOSYSTEM: THE RISE AND FALL OF THE SYMBIAN PLATFORM</i> (2013)

<b>Ex.</b>	<b>Description</b>
2038	Bradston Henry, <i>Multiplayer Server Basics   Creating a Multiplayer Game Server - Part 1</i> (Oct. 25, 2021), <a href="https://dev.to/ibmdeveloper/multiplayer-server-basics-ep-1-creating-a-multiplayer-game-server-5aed">https://dev.to/ibmdeveloper/multiplayer-server-basics-ep-1-creating-a-multiplayer-game-server-5aed</a>
2039	Declaration of George Edwards in Regard to the Petitions for <i>Inter Partes</i> Review of U.S. Patent No. 8,793,336
2040	Order of the EDTX court denying Samsung's Motion for Relief from Protective Order
2041	Redacted version of Samsung's Motion for Relief from Protective Order filed in the EDTX-Litigation (May 29, 2025)
2042	Patent Owner's and Meta's February 21, 2025 joint email to the Board regarding the settlement of the MDT-Meta-Litigation and Meta-MDT-IPRs
2043	U.S. Design Patent 753,156 Assigned to Samsung
2044	Prosecution History of the U.S. Design Patent 753,156 Assigned to Samsung
2045	Reserved
2046	Petitioner's Authorized Reply to Patent Owner's Preliminary Response (IPR2021-00917, Paper 7, Sept. 22, 2021)
2047	Declaration of Kevin Jakel in IPR2021-00917 (May 11, 2021)
2048	Petition for Inter Partes Review in IPR2024-00246 (Dec. 6, 2023)
2049	Petition for Inter Partes Review in IPR2025-00538 (Feb. 3, 2025)
2050	Declaration of Mahdi Eslamimehr for IPR2025-00540 of U.S. Patent No. 8,793,336
2051	Patent Owner's Discretionary Denial Brief in IPR2025-00539 (Paper 8)
2052	Comparison of independent claims of the '336 and '5801 Patents

## I. INTRODUCTION

Petitioners' Request for Director Review is nothing more than a second bite at the apple. Petitioners have identified no change in controlling law or material fact that would warrant disturbing the Decision (Paper 15, "Decision").

A decision to deny institution of an IPR "is a matter committed to the Patent Office's *discretion*." *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (citing 35 U.S.C. § 314(a)); *see also Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) ("PTO is permitted, but never compelled, to institute an IPR"). Petitioners have not shown that the Director's delegate abused this discretion.

## II. History of the Meta IPRs is Inapplicable to This Case

Petitioners rely on the "history" of the Meta IPRs in an effort to show error in the Decision. That effort fails. The institution of the Meta IPRs does not render the discretionary denial in this case "arbitrary" or "inconsistent." In fact, it supports it as Petitioners used the Meta IPRs as a roadmap to prepare their own IPRs challenges. This is in-and-of-itself improper. Petitioners' assertions of gamesmanship based on the settlement of the Meta IPRs are also meritless. Settlement is not gamesmanship; it is the resolution of the underlying dispute. Petitioners' speculation that a FWD would have invalidated any of the Asserted Patents in the Meta IPRs is just that—speculation. Indeed, Petitioners made this same argument in the EDTX-Litigation to de-designate the MDT-Meta settlement agreement, and the court rejected it.

### III. The Decision Correctly Found PO's Strong Settled Expectations

#### A. PO Has Strong Settled Expectations in the '336 Patent

The Decision correctly found that PO has “strong settled expectations” in the ‘336 Patent, which issued in 2014. Decision, 2. And Petitioners had knowledge of the Asserted Patents family since at least May 2015: U.S. Patent 8,135,801 (“‘5801 Patent”) was brought to Petitioners’ attention by the Examiner during the prosecution of Petitioners’ U.S. Design Patent 753,156. *See, e.g.*, IPR2025-00537, Paper 13, 1. Petitioners’ effort to sidestep this fact is misplaced and unavailing. In *iRhythm*, the Director concluded that “settled expectations favor[ed] denial of institution” where petitioner knew of a family patent but delayed seeking USPTO review. *iRhythm, Inc., v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10, 3 (June 6, 2025); *see also Ericsson Inc. v. Procomm Int’l Pte. Ltd.*, IPR2024-01453, Paper 15, 3 (June 25, 2025) (applying *iRhythm* where the challenged patent was “brought to Petitioner’s attention” by Examiner); *Google LLC v. Soundclear Techs. LLC*, IPR2025-00344, Paper 15, 2-3 (Aug. 4, 2025) (“[C]onsidering that Petitioner had knowledge of the challenged patents as early as 2019 ... Patent Owner’s strong settled expectations tip the balance in favor of discretionary denial.”).

Petitioners’ arguments fail for additional reasons. **First**, PO is an assignee of the ‘336 Patent, which issued in 2014. As a matter of law, PO is therefore deemed the effective patentee: “[T]he assignee stands in the shoes or in the place of the

patentee, and represents him.” *Wilson v. Rousseau*, 45 U.S. 646, 703 (1846); *see also Prima Tek II, L.L.C. v. A-Roo Co.*, 222 F.3d 1372, 1377 (Fed. Cir. 2000) (“[W]here the patentee makes an assignment of all substantial rights under the patent, the assignee may be deemed the effective ‘patentee.’”). The Director has previously found that a PO has “strong settled expectations” despite PO having “acquire[d] the challenged patent” following its issue date. *SAP Am., Inc. v. Valtrus Innov. Ltd.*, IPR2025-00416, Paper 10 (July 10, 2025), Paper 8, 20 (June 9, 2025).

Petitioners’ reliance on *Embody* and *Cambridge* is misplaced. There, unlike here, the challenged patents issued only a few years prior to IPR filing. *Embody, Inc. v. Lifenet Health*, IPR2025-00248, Paper 13, 2-3 (June 26, 2025) (one patent “has been in force” for 3 years and the other patent is a parent of the first); *Cambridge Indus. v. Applied Optoelectronics, Inc.*, IPR2025-00434, Paper 11, 2-3 (June 26, 2025) (most of patents were in force for five to six years). Indeed, *Cambridge* actually supports the Decision because, there, the Director granted discretionary denial on patents that had been in force for more than six years, like the ‘336 Patent. *Cambridge*, IPR2025-00434, Paper 11, 3.

**Second**, Petitioners’ argument that “the assignee does not ... inherit the prior owner’s expectation interests” (Req. 3-4) is unsupported. *Anaheim Gardens*, relied upon by Petitioners, is not a patent case; it addresses regulatory taking under the Fifth Amendment’s “just compensation” clause. *Anaheim Gardens, L.P. v. United*

*States*, 953 F.3d 1344, 1349-50 (Fed. Cir. 2020). Petitioners cite no authority in the patent or IPR context.

**Third**, Petitioners’ assertion that PO does not have settled expectations because the “prior owner never tried to exclude anyone from practicing the challenged patent” is also without merit. Req. 4-5. The Director has previously rejected this very argument: “Petitioner’s argument that Patent Owner does not have settled expectations because Patent Owner did not previously assert the challenged patent against Petitioner does not defeat Patent Owner’s settled expectations.” *Kahoot! AS v. Interstellar Inc.*, IPR2025-00696, Paper 12, 2 (July 31, 2025); *see also Google LLC*, IPR2025-00344, Paper 15, 2-3 (substantively the same).

Petitioners’ reliance on *Shenzhen* and *Intel* (Req. 4-5) is also misplaced. In *Shenzhen*, the petitioners “never ‘commercialized, asserted, marked, licensed, or otherwise applied’” the challenged patents. *Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.*, IPR2025-00438, Paper 10, 3 (July 17, 2025). To the contrary, here, Petitioners admitted in related IPRs that they “***applied***” and “***commercialized***” the Asserted Patents: “***Unlike Petitioners***, neither PO nor its predecessors ever ***commercialized or applied the claimed technology*** in any way.” *See, e.g.*, IPR2025-00537, Paper 11, 2. Similarly, in *Intel*, the Director granted discretionary denial, where, as here, the “challenged patents have been in force over nine years, creating settled expectations, and Petitioner does not provide any persuasive reasoning why

an *inter partes* review is an appropriate use of Board resources.” *Intel v. Proxense LLC*, IPR2025-00327, Paper 12, 3 (June 26, 2025).

**Fourth**, Petitioners’ suggestion that the PTAB’s invalidation of the ‘5801 Patent—the ancestor of the ‘336—somehow further suggests that the ‘336 Patent “is invalid” is unsupported. Req. 6. As an initial matter, this is an improper new argument and should be rejected on that basis alone. *See* USPTO Director Review Process (“The Director will not consider new evidence or new arguments not part of the official record.”). Regardless, Petitioners ignore the undisputed record that confirms that the claims of the ‘336 Patent are materially different from those of the ‘5801 Patent. *See* Ex. 2009; *Nat’l Steel Car, Ltd. v. Canadian Pacific Ry., Ltd.*, 357 F.3d 1319, 1334 (Fed. Cir. 2004) (“A validity analysis must be conducted on a claim-by-claim basis.”). As a result, PO has strong settled expectations of validity.

**Fifth**, Petitioners’ judicial estoppel argument against the Director’ delegate and the USPTO, based on the USPTO’s intervenor brief in *Celgene*, is unfounded. Req. 5. *Celgene* addressed whether “the retroactive application of IPR proceedings to pre-AIA patents is [] an unconstitutional taking under the Fifth Amendment.” *Celgene Corp. v. Peter*, 931 F.3d 1342, 1362 (Fed. Cir. 2019). *Celgene* had nothing to do with the Director’s discretion to consider a PO’s settled expectations. Indeed, Congressional directive confirms that the Director, and her designees, enjoy a broad “nonappealable” discretion to determine “whether to institute an *inter partes*

review.” 35 U.S.C. § 314(d). There is no judicial estoppel preventing the Director’s application of settled expectations. Req. 5.

**Sixth**, Petitioners’ assumption that the ‘336 Patent would have been invalidated in the Meta IPR is speculation. Req. 2, 3. IPR institution is not evidence of material error by the Examiner. *See Vital Connect, Inc. v. Bardy Diagnostics, Inc.*, IPR2023-00381, Paper 7, 20 (July 11, 2023). And, as shown in PO’s briefing, the ‘336 patent survived *ex parte* reexamination without amendment or cancellation. Paper 13, 2. The ‘336 reexamination was based on Neibauer—the very same reference asserted in the Meta IPR and considered by the Examiner of the ‘336 Patent. *Id.* Surviving an *ex parte* reexamination confirms PO’s settled expectations.

#### **B. Petitioners Have No Legitimate Settled Expectations**

Petitioners’ brand-new claim that they and the public “have considerable settled expectations” is untimely and unsupported. Req. 6-7. **First**, it is undisputed that the ‘336 Patent claims are materially different from those of the ‘5801 Patent and the Examiner considered the ‘5801 reexamination during prosecution of the ‘336 Patent. The earlier invalidation has no bearing on any of Petitioners’ expectations.

**Second**, Petitioners do not establish their own settled expectations merely because the “Patent Owner did not previously assert the challenged patent against Petitioner.” *Kahoot! AS*, IPR2025-00696, Paper 12, 2. In *Intel*, like here, Petitioner did not have its own settled expectations where the patents were “in force over nine

years.” *Intel*, IPR2025-00327, Paper 12, 2. And in *Shenzhen*, the Director found that the complexity of the parallel litigation, involving nine patents spanning six families with vast scope, along with the evidence that the challenged patents had not been commercialized or otherwise applied, “tip the balance against discretionary denial,” not in favor of Petitioner’s expectations. *Shenzhen*, IPR2025-00438, Paper 10, 2. Here, the parallel litigation involves patents from the same family and with similar subject matter. Unlike *Shenzhen*, here the Petitioners admitted in related IPRs that they “*applied*” and “*commercialized*” the Asserted Patents, as established above.

*Third*, Petitioners argue that the citing of the ‘5801 patent during prosecution of one of their design patents is not relevant because Petitioners hold “over 145,000 issued patents” (Req. 6) and thus, they cannot be responsible for reviewing all of the cited art. Petitioners provide no support for this position. Accepting Petitioners’ position would encourage willful blindness amongst all stakeholders, which would be detrimental to our patent system.

#### **IV. This Decision Is Consistent with the Director’s Other Decisions**

Petitioners fault the Decision by claiming that it “failed to consider factors that have resulted in the rejection of discretionary denial in other proceedings.” Req. 9-10. Incorrect. The Decision states that “[a]lthough certain arguments are highlighted above, the determination to exercise discretion to deny institution is

*based on a holistic assessment* of all of the evidence and arguments presented.”

Decision, 2-3.

**The petition lacks merits.** In its Discretionary Denial brief, PO identified many deficiencies of the Petition. DD, 56-68. Moreover, Petitioners essentially concede that they used the Meta IPRs as a roadmap when they argue that institution of the Meta IPRs is suggestive that Petitioners’ own IPRs are “strong on the merits.” Req. 10. Institution of the Meta IPRs, however, is not evidence of “strong merits” at least because this Petition relies on different prior art than in the Meta IPRs. In addition, PO’s merits arguments responding to the present Petition are *new arguments not asserted* in the Meta IPRs. DD, 56-68.

Petitioners’ attempt to show Examiner error by relying on the Meta IPR institution (Req. 11-12) is also legally flawed, as it would collapse the § 314(a) reasonable-likelihood standard and the material error into one. *Vital Connect*, IPR2023-00381, Paper 7, 20.

Petitioners argue examiner error because the Examiner did not consider the same art that was cited in the present Petition, namely Randall, Forsyth, Pelkey, and Eck. Req. 11. *First*, it is hypocritical for Petitioners to suggest, on the one hand, that they *cannot possibly* examine each piece of cited art because they have a sizable docket of issued patents (Req., 6), but then accuse the Examiner of clear error when that examiner sees a similar number of documents in the course of his/her work, on

the other hand. Req., 11. **Second**, Petitioners offer *no evidence or reasoning* that the Examiner was clearly in error, other than the conclusory statement that the “Examiner’s failure to consider these prior art references was error.” Req., 11. This argument must therefore fail.

**Third**, Petitioners’ cited cases do not convert any non-considered reference into “Examiner error.” Under *Advanced Bionics* and *Ecto World*, discretionary denial turns on a specific showing that “the Office erred in a manner material to the patentability of the challenged claims,” not on the *mere existence* of additional art. *Microsoft Corp. v. ParTec Cluster Competence Ctr. GmbH*, IPR2025-00318, Paper 9 (June 12, 2025) illustrates this: the Director declined discretionary denial because the petitioner appeared to show a material examination error tied to concrete teachings in particular references, and not a merits finding. Likewise, *Tesla/Charge Fusion*, *RØDE/Zaxcom*, *Anthony/ControlTec*, and *Padagis* reflect fact-bound referrals where the petitioner identified allowance-critical teachings or other specific Office mistakes (e.g., allowance without an office action), and *not* a blanket rule that any unconsidered reference equals “error.” Petitioners’ cited cases require a persuasive, claim-specific demonstration of material Office error; they do not endorse the categorical rule.

Similarly, Petitioners’ reliance on *Intell. Ventures* is unavailing. Req. 10-11. There, an ancestor patent found unpatentable had “**similar claims.**” *Intell. Ventures*,

IPR2025-00217, Paper 9, 2. Here, the ‘336 Patent claims are *substantially different* from those in the ‘5801 Patent. *See* Ex. 2009. Further, unlike *Intell. Ventures*, the ‘336 Patent survived an *ex parte* reexam, and all Asserted Patents spring from the ‘336 Patent. Paper 13, 2.

**The Asserted Patents belong to a single family.** Petitioners concede that “the subject matter is similar across the asserted patents,” yet rely on *Intell. Ventures* to argue that the Board is better suited than the district court to review their validity. Req. 12. As established above, *Intell. Ventures*, which involved eleven patents spanning nine different families with “a diverse range of subject matter,” is inapposite. *Intell. Ventures*, IPR2025-00217, Paper 9, 2-3.

**Petitioners’ stipulation was untimely and ineffective.** Petitioners complain the Decision made no mention of Petitioners’ eleventh-hour stipulation. Req. 12-13, Ex.2032. But the timeliness and effectiveness of the stipulation was discussed extensively by both parties in the briefing. Papers 8, 12. And the Decision consistently noted that it was “*based on a holistic assessment of all of the evidence and arguments presented.*” Decision, 2-3.

#### **V. The Decision’s Factual Findings Regarding the Likely Time to Trial and Likelihood of a Stay are Supported by the Record**

Petitioners wrongly accuse the Director’s delegate of an abuse of discretion, Req. 7, when they argue that it was improper for the decision to rely on the trial date and likelihood of a stay to grant discretionary denial.

**There is no dispute that the trial will happen before the FWD date.** The parallel litigation is set for trial in April 2026. The Director has recently held that when “the district court judge has indicated an intention to maintain the current trial schedule and only delay the trial schedule under extraordinary circumstances,” the scheduled trial date should control. *Linkplay Technology Inc. et al. vs Sonos, Inc.*, IPR2025-00509, Paper 10, 2 (July 31, 2025). Here, Judge Gilstrap’s Docket Control Order states that “The jury selection is ‘a deadline that cannot be changed without an acceptable showing of good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.’” DD, 17. Thus, consistent with *Linkplay*, the scheduled trial date controls.

The median time-to-trial statistics are not dispositive because the trial date was agreed to by the parties and has not changed. *See Linkplay*, IPR2025-00509, Paper 10, 2 (recognizing that even when “time-to-trial statistics suggest” a trial later than the FWD date, the parties’ agreed trial date should control). But even considering the median time-to-trial statistics, Petitioners admit that the trial date would still be before the FWD. Req. 7.

**A stay of the litigation is unlikely.** Petitioners’ new argument about the likelihood of a stay is at odds with Petitioners’ own Response. There, Petitioners stated that “no litigation stay has been requested and *no objective evidence exists regarding whether a stay in the litigation will be granted.*” Compare Req. 8 with

Response, 29-30. Petitioners' contention that "a stay in this proceeding is therefore likely" is conjecture stacked upon unfounded assumptions: first that this IPR will be instituted and second that Judge Gilstrap would grant a stay. Furthermore, PO has previously informed Petitioners that PO will oppose any request for a stay (DD, 15), and as of the date of this brief, Petitioners have not yet sought a stay.

Petitioners' assertion that "Judge Gilstrap routinely stays cases when a party moves to stay litigation after an IPR has been instituted" is inaccurate at best. While Judge Gilstrap has occasionally stayed cases, each of Petitioner's cases were stayed because *all* of the asserted claims *had already been instituted* in an IPR. That is not the situation here, as none of the claims have been instituted. Petitioners' additional assertion that "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,'" is unfounded. *STA Group* had instituted IPRs on all asserted claims. In addition, and perhaps most importantly, the movant sought a stay four days after the last institution decision—facts the court emphasized in granting a stay. Those facts simply do not exist here. *Netlist* is likewise inapposite. There, Judge Gilstrap imposed a targeted, two-month stay because PTAB final written decisions on the remaining patents were imminent; his reasoning expressly warned against wasting judicial resources when PTAB guidance was weeks away.

**VI. Discretionary Denial Does Not Violate the Due Process Clause or the APA**

Petitioners argue that the Decision violates the Due Process Clause of the Fifth Amendment and the APA. Req. 13-15. This argument is unnecessary to preserve the record as there are no appeals from institution decisions. 35 U.S.C. §314(a). The argument also fails in view of the Director's prior decisions. *See, e.g., iRhythm, Inc., v. Welch Allyn, Inc.*, IPR2025-00363, Paper 11 (July 3, 2025) (arguing violation of the Due Process Clause and the APA); Paper 13 (Aug. 5, 2025) (denying request for Director review). PO argued several well-established bases for discretionary denial, other than those set forth in the Director's March 2025 Memorandum. *See, e.g., DD, 12-22 (Fintiv factors 1-3), 22-67 (Fintiv factors 5-6)*. Petitioners do not contend that these further grounds present any Constitutional infirmity.

In any case, Petitioners have not established a Due Process violation because Petitioners have not been deprived of any rights. The decision whether to institute an IPR is within the Director's unreviewable discretion and a petitioner has no right to such institution. 35 U.S.C. § 314(d); *Cuozzo*, 579 U.S. at 273; *Mylan Labs. Ltd. v. Janssen Pharma., N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021).

Petitioners have also failed to establish any violation of the APA. Petitioners were on notice of the March 2025 Memorandum, had an opportunity to brief their arguments, and did so extensively. *See TQ Delta, LLC v. DISH Network LLC*, 929 F.3d 1350, 1356 (Fed. Cir. 2019) (no APA violation where "the party asserting the

APA violation ‘had notice...and an opportunity to be heard’”). That Petitioners are dissatisfied with the Decision does not violate the APA.

## VII. CONCLUSION

The Request should be denied.

Date: September 10, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2025, I caused a true and correct copy of the foregoing Patent Owner's Authorized Response to Petitioners' Request for Director Review to be served via electronic mail upon the following attorneys of record for the Petitioners:

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