

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NVIDIA CORPORATION,
Petitioner,

v.

NEURAL AI, LLC,
Patent Owner.

Case No. IPR2025-00609
U.S. Patent No. RE48,438

**PETITIONER'S STATEMENT REGARDING MULTIPLE PETITIONS
CHALLENGING U.S. PATENT NO. RE48,438 AND
RANKING OF PETITIONS**

As required by the Board’s Trial Practice Guide,¹ Petitioner NVIDIA Corporation (“Petitioner”) provides this statement explaining the need for two parallel petitions requesting *inter partes* review (“IPR”) of U.S. Patent No. RE48,438 (“the ’438 patent”) and Petitioner’s ranking of the two petitions. Petitioner filed two concurrent IPR petitions challenging the ’438 patent: IPR2025-00609 (filed April 29, 2025) challenging 47 claims of the ’438 patent (“Petition 1”), and IPR2025-00610 (also filed April 29, 2025) challenging the same 47 claims of the ’438 Patent (“Petition 2,” and collectively, the “Petitions”). The Petitions rely on different base and supplemental prior art references for their invalidity grounds, with only two supplemental references in common between the Petitions. Specifically, all grounds in Petition 1 rely on a combination of Nickolls (Ex1004) and ANN (Ex1006), and all grounds in Petition 2 rely on a combination of Kirk (Ex1005) and Oh (Ex1007). Both Petitions include Tamura (Ex1008) and GPU Gems (Ex1032) for certain grounds.

For the reasons explained below, the Board should exercise its discretion to institute both Petitions.

¹ See Consolidated Trial Practice Guide (Nov. 2019) (“Trial Practice Guide”), 59 (accessible at <https://www.uspto.gov/TrialPracticeGuideConsolidated>).

I. Factors Supporting Multiple Petitions

The Trial Practice Guide notes that while “multiple petitions . . . are not necessary in the vast majority of cases,” “the Board recognizes that there may be circumstances in which more than one petition may be necessary.” Trial Practice Guide, 59. Two exemplary circumstances that justify more than one petition are “when the patent owner has asserted a large number of claims in litigation or when there is a dispute about priority date requiring arguments under multiple prior art references.” *Id.* Both circumstances are present here.

Both Petitions challenge the same 48 claims of the '438 patent—43 of which Patent Owner has asserted against Petitioner in a parallel District Court Action.² *See Platform Sci., Inc. v. Omnitrac, LLC*, IPR2020-01518, Paper 14 at 17-18 (P.T.A.B. Apr. 15, 2021) (finding “that about twenty claims constitutes a ‘large number’ that the CTPG suggests may justify multiple petitions.”). Petitioner also challenges 5 additional unasserted claims due to the similarities between some of the asserted and unasserted claims in the parallel litigation. Because Petitioner is challenging a large number of complex claims, addressing more than one invalidity ground in a single petition is not possible due to the word limitations. 37 C.F.R. § 42.24; *see also*

² Patent Owner asserts in the parallel litigation Claims 1–10, 12–14, 16–18, 20–32, and 40–53.

Cellco Partnership D/B/A/ Verizon Wireless et al. v. Headwater Research LLC, IPR2024-01041, Paper 10 at 9–10 (P.T.A.B. Jan. 14, 2025) (finding that “more than one petition is not unreasonable,” including in view of the large number of asserted claims and “large number of words” in the claims).

In the parallel District Court Action, Patent Owner also asserted an earlier priority date for the ’438 patent that allegedly pre-dates the Nickolls and ANN references in Petition 1. Petitioner disagrees that Patent Owner is entitled to the alleged priority date. Out of an abundance of caution, however, Petitioner seeks to also challenge the claims using references in Petition 2 (the Kirk and Oh references) that pre-date Patent Owner’s asserted priority date. The Board has previously instituted parallel petitions where “[t]here is a dispute about the effective filing date of the [challenged] patent.” *Amazon.com, et al. v. Nokia Technologies OY*, IPR2024-00799, Paper 9 at 13–14 (P.T.A.B. Jan. 28, 2025); *see also Medtronic, Inc. v. Teleflex Innovs. S.A.R.L.*, IPR2020-00130, Paper 20 at 11–13 (P.T.A.B. June 26, 2020).

Additional factors that weigh in favor of the Board exercising its discretion to institute both Petitions include the fact that both Petitions rely on the same expert declarant and were filed nearly simultaneously. Both Petitions can track the same schedule and the parties can maximize the efficiency of depositions, briefing, and

oral argument. Any potential inefficiency may also be resolved by consolidating these two proceedings. 35 U.S.C. § 325(d); 37 C.F.R. § 42.122.

For the foregoing reasons, Petitioner respectfully requests that the Board consider both Petitions and not exercise its discretion to deny institution.

II. Petition Ranking

In the event that the Board exercises its discretion to not institute both Petitions, Petitioner requests that the Board consider the Petitions in the following order:

Rank	Petition
1	IPR2025-00609
2	IPR2025-00610

DATED: April 30, 2025

Respectfully Submitted,

/Brian M. Buroker/

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CERTIFICATE OF SERVICE

The undersigned certifies service pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(a), (b) on the Patent Owner via FedEx overnight mail of a copy of this document at the correspondence address of record for the '438 patent:

SMITH BALUCH LLP
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A courtesy copy has also been mailed to and served on litigation counsel at:

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