

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC., AMAZON.COM SERVICES LLC,
AMAZON WEB SERVICES, INC., and AUDIBLE, INC.,
Petitioner

v.

AUDIO POD IP, LLC,
Patent Owner

Case IPR2025-00757
U.S. Patent No. 10,091,266

**PATENT OWNER'S REPLY BRIEF ON
DISCRETIONARY DENIAL**

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Settled expectations strongly favor denial here. The '266 patent issued nearly seven years ago. Amazon contends efficiency considerations support proceeding with this IPR, but the opposite is true. The majority of the challenged patents in the related proceedings issued in 2018 or earlier. Further, despite being intimately aware of Audio Pod's innovative technology since 2007—having met with Audio Pod, who sought to license it to Amazon—and the '266 patent family since at least 2012, Amazon never challenged Audio Pod's property rights until now. But in any event, actual knowledge of the patent is not required for settled expectations to apply. And a holistic assessment of *all* discretionary considerations further supports denial here. *See* DD Br. (Paper 8); POPR (Paper 10).

I. AUDIO POD'S SETTLED EXPECTATIONS STRONGLY SUPPORT DISCRETIONARY DENIAL OF INSTITUTION.

Amazon's arguments here ignore the big picture. Relying on *Embodys, Inc. v. LifeNet Health*, IPR2025-00248, Paper 13 (Stewart June 26, 2025), Amazon argues that, because “the '266 patent is one of several related patents challenged by Petitioners, and other patents in the family have issued much more recently,” “it would be an efficient use of Board resources” to address the '266 patent along with more recently issued patents. Opp., 15. However, the petitioner in *Embodys* challenged only two patents—one issued in 2022 and its parent (issued in November 2018). *Embodys*, 2-3; U.S. Patent No. 10,137,223, at [45]. Here, there are *eight* related proceedings, challenging *seven* patents. Five of those seven

patents issued in 2018 or earlier. And the two newest patents still issued nearly five years ago. Thus, Amazon’s argument that “other patents in the family have issued much more recently,” Opp., 15, falls flat.

Proceeding	Challenged Patent	Issue Date
IPR2025-00765; IPR2025-00774	8,738,740	May 27, 2014
IPR2025-00777	9,319,720	April 19, 2016
IPR2025-01003	9,729,907	August 8, 2017
IPR2025-00769	9,954,922	April 14, 2018
IPR2025-00757	10,091,266	October 2, 2018
IPR2025-00768	10,805,111	October 13, 2020
IPR2025-01041	10,735,488	August 4, 2020

The Acting Director has repeatedly determined that settled expectations apply for patents issued in 2018—like the ’266 patent—or earlier (like the majority of related patents). *E.g.*, *Cambridge Indus. USA, Inc. v. Applied Optoelects., Inc.*, IPR2025-00433, Paper 12 (Stewart June 27, 2025) (patents issued in 2016, 2018); *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 (Stewart June 18, 2025) (patent issued in 2017); *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 (Stewart June 26, 2025) (patents issued in 2012, 2013, 2016); *SIG Sauer Inc. v. Lone Star Future Weapons, Inc.*, IPR2025-00410, Paper 13 (Stewart June 26, 2025) (patent issued in 2014); *Coretronic Corp. v. Maxell, Ltd.*, IPR2025-00474, Paper 11 (Stewart July 10, 2025) (patents issued in 2010, 2013, 2017).

Thus, Audio Pod's settled expectations strongly weigh in favor of discretionary denial for the '266 patent, which issued in 2018. And contrary to Amazon's contentions, efficiency dictates denial here. Only two of the seven challenged patents issued after 2018 and, even then, are nearly five years old.

II. AMAZON HAD KNOWLEDGE OF THE '266 PATENT FAMILY; ALTHOUGH ACTUAL KNOWLEDGE OF THE PATENT IS NOT REQUIRED FOR SETTLED EXPECTATIONS TO APPLY.

Amazon has been aware of Audio Pod's innovative technology since 2007 and of the '266 patent family since at least 2012. *See* DD Br., 7-9, 13-16. Despite this knowledge, Amazon waited until now to challenge Audio Pod's property rights. And it was Amazon's disregard for Audio Pod's intellectual property that led to Audio Pod's infringement suit. *Id.*, 3-4, 7-9.

Amazon attempts to distinguish *iRhythm Techs, Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 (Stewart June 6, 2025). *See* Opp., 16-17. According to Amazon, it "did not have adequate knowledge of the '266 patent to hold them to the standard in *iRhythm*." Opp., 17. But, as Acting Director Stewart indicated in *Dabico*, "*actual notice* of a patent or of possible infringement *is not necessary* to create settled expectations." IPR2025-00408, Paper 21 at 3 (emphasis added). While the *Dabico* decision issued prior to Amazon's Opposition brief, Amazon conveniently fails to mention or cite it therein.

Further, Amazon alleges this standard creates a "sweeping obligation ... to

research the entire portfolio” of any entity that informs them of existing patent rights. Opp., 17. But Amazon ignores the specific facts here, where *all* of the challenged patents stem from a *single application* (U.S. Appl. No. 12/096,933, issued as U.S. Patent No. 8,285,809) of which Amazon was explicitly aware (*see* EX2013). Amazon did not need to “research the entire portfolio” and could easily have found every relevant patent from a single continuity search on this earliest application. The “burden” Amazon alleges is vastly overstated. *See* Opp., 17.

III. AMAZON PROVIDES NO PERSUASIVE REASONS TO DISTURB AUDIO POD’S SETTLED EXPECTATIONS.

Amazon advocates for generalized efficiency considerations and argues it had an expectation of challenging a patent in an IPR. *See* Opp., 14-17. But “in the absence of any such information [about why an IPR is an appropriate use of Board resources], the Office is disinclined to disturb the settled expectations of Patent Owner.” *Dabico*, IPR2025-00408, Paper 21 at 2-3; *Intel*, IPR2025-00327, Paper 12 at 2-3. *Dabico* and *Intel* issued before Amazon filed its Opposition brief, yet are unaddressed. The Director should not consider any belatedly-provided reasons in Amazon’s sur-reply that could and should have been presented in its Opposition.

IV. CONCLUSION

Audio Pod has strong settled expectations that its property rights to the claims of the ’266 patent—which have been in force for nearly seven years—are enforceable. Thus, this proceeding and the related IPRs should not be instituted.

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PATENT OWNER'S REPLY BRIEF**
ON DISCRETIONARY DENIAL was served in its entirety on July 28, 2025,
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