

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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ADVANCED MICRO DEVICES, INC.,

Petitioner,

v.

ADVANCED CLUSTER SYSTEMS, INC.,

Patent Owner.

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IPR2025-00862

U.S. Patent No. 10,333,768

**PETITIONER'S SUR-REPLY REGARDING PATENT OWNER'S REQUEST  
FOR DISCRETIONARY DENIAL<sup>1</sup>**

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<sup>1</sup> Authorized on August 21, 2025. Ex. 3101.

**This matter warrants the Board reconsidering patentability based on compelling economic, national security, and public health interests**

In the Interim Processes Memo, the Director stated that compelling economic, public health, or national security interests may be relevant when considering discretionary denial arguments. EX-1077, 2. These IPRs present a unique opportunity for the Director to hold that such interests warrant the Board taking a fresh look at the patentability of the 768 patent claims. The current Administration has stressed the vital importance of the U.S. winning the AI race and has singled out AMD's accused chips as *critical* to that effort. It would be consistent with the Administration's goals that a potentially invalid patent does not interfere with the country's critical AI efforts. And it also would be consistent with Congressional intent for the Board to consider the merits of these petitions. *See* 157 Cong. Rec. S1326 (Mar. 7, 2011) (Sen. Sessions) (stating that a goal of the IPR process was to weed out "invalid patents ... before they *disrupt an entire industry*"); 157 Cong. Rec. S1352 (Mar. 8, 2011) (statement of Sen. Udall) (stating that Congress intended the IPR process to "provide additional access to the expertise of the Patent Office on questions of patentability").

AMD presented copious evidence supporting its position that the Board's review of the 768 patent would serve compelling economic, national security, and public health interests. DD Opp., 2–14. ACS offers no reason to find otherwise.

First, ACS does not deny that it seeks an injunction against AMD's accused AI products, instead asserting that an "injunction has nothing to do with patentability" and that IPR is not the "proper venue" to consider it. DD Reply, 1. But Congress intended that IPRs be used to cull invalid patents before they can "disrupt an entire industry." *See supra*. Consistent with this, the Interim Processes Memo recognizes that compelling economic, public health, or national security interests may weigh against discretionary denial, if petitioners explain why "in sufficient detail." *Intel Corp. v. Advanced Cluster Sys., Inc.*, IPR2025-00794, Paper 13 (Director Aug. 14, 2025). AMD did so, presenting evidence that an injunction against AMD's products would be contrary to the Administration's goals as it would have a ***direct, negative impact*** on the U.S.'s economic, national security, and public health interests. DD Opp., 2–14. The impact is not speculative, but a foreseeable consequence supported by evidence unrebutted by ACS. *Id.*

Second, ACS argues that there would be no economic impact to the U.S. because "[t]here are other sources for the types of products offered by Petitioner that are not affected by the '768 Patent, including NVIDIA." DD Reply, 2. This argument misunderstands market dynamics and ignores evidence to the contrary. *See* DD Opp., 8 n. 4. AMD, as Nvidia's competitor and market participant, knows that manufacturing capacity is causing supply chain constraints. *See* EX-1093, 1–5.

Nvidia itself has acknowledged that it is experiencing “certain supply constraints” and “demand *is expected to exceed supply for several quarters in fiscal 2026.*” *Id.*, 1; EX-1089, 2 (explaining that Nvidia’s chips “can be hard to obtain due to high demand”). AI companies therefore need another chip supplier, and AMD is the only “credible second source” for such chips. EX-1091, 3, 8. This un rebutted evidence refutes ACS’s bald assertion that Nvidia could fill the gap if AMD is enjoined. Such an injunction would adversely impact an already constrained market, causing a major disruption in the U.S.’s race to develop AI.

Third, ACS fails to rebut “executive branch statements, congressional hearing testimony, [and] industry observations” confirming the importance of AI to the U.S. and AMD’s critical role therein. PO Reply, 2. Instead, ACS deflects that AMD should not be “immunize[d] ... from liability for patent infringement.” *Id.* This argument is misplaced: AMD is not seeking infringement immunity. Instead, it asks that the Board, consistent with Congressional intent, review the petitions’ merits when compelling U.S. interests justify using the PTO’s resources to do so.

Fourth, ACS argues that AMD’s products have no strategic sensitivity to the U.S. (DD Reply, 2) but ignores evidence to the contrary. DD Opp., 10–12. ACS fails to rebut the fact that AMD’s accused chips power the most advanced computing infrastructure in the U.S. government. For example, AMD’s accused

chips support the government's "mission of *ensuring the nation's nuclear deterrent is safe, secure and reliable.*" Ex-1094, 2. It is a fair assumption that the Government has a compelling interest in ensuring the country's safety from nuclear attacks, and ACS ignores AMD's role in this. AMD's chips (e.g., Instinct MI300A, MI250X GPUs) help provide for the Government's "unmatched depth in HPC, from next-generation exascale platforms to *workhorse machines critical for national security, AI research* and scientific discovery." *Id.*, 3; *see* EX-1082, 1. Further, demonstrating the AMD's key role in national security, AMD's chips (and Nvidia's) are now blocked from export to China. EX-1083, 2. ACS's only response is to argue that these facts are "divorced from the actual claims of the '768 Patent." DD Reply, 2. But this makes no sense, as ACS is the one alleging that these AMD chips infringe those claims. *See* EX-1019, 16-17.

Fifth and finally, on public health, ACS presents no substantive rebuttal to the facts AMD presented. DD Opp., 12-14. AMD's chips help solve "the biggest science problems on the planet," such as modeling "cancer cells" and "the coronavirus." EX-1082, 2-3. And Biotech company Illumina "is using the power of AMD adaptive computing technology to accelerate genomic testing and improve healthcare," which has helped save patient lives. EX-1095, 1. ACS argues that AMD pled no affirmative defense based on the "new animal drug or veterinary

biological product" exception under 35 U.S.C. § 271(e) (DD Reply, 2–3) but fails to explain why this is relevant to the Director's compelling public health analysis.

In short, AMD's compelling interests evidence stands unrebutted, and as such supports the Director passing these IPRs to the Board for merits analysis.

**The 768 Patent has not been in force long enough to create strong settled expectations that favor discretionary denial**

Patents issuing around the same time as the 768 patent (June 25, 2019) did not provide strong settled expectations. *Cambridge Indus. USA, Inc. v. Applied Optoelectronics, Inc.*, IPR2025-00436, Paper 1 (Director June 26, 2025) (considering a patent that issued three weeks before the 768 patent and finding that it had “not been in force for a significant period of time (issued in . . . 2019), and, accordingly, [PO] has not developed strong settled expectations that favor discretionary denial”); *Berkshire Hathaway Energy Co. v. Birchtech Corp.*, IPR2025-00274, Paper 23 (Director July 2, 2025) (finding no “strong settled expectations” for a patent that issued in July 2019).

Further, the fact that multiple parent patents of the 768 patent have been found likely to be unpatentable weighs against settled expectations. DD Opp., 14–16. This differs from situations where challenged patents have been repeatedly *upheld* by the Board. In ACS's own words, “[e]ach petition must rise or fall on its own merits.” PO Reply, 4 (citing 35 U.S.C. 314(a)).

Respectfully submitted,

Dated: August 27, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of August, 2025, I caused to be served a true and correct copy of the foregoing Petitioner's Sur-Reply Regarding Patent Owner's Request for Discretionary Denial on the following:

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Dated: August 27, 2025

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