

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

ADVANCED MICRO DEVICES,  
Petitioner,

v.

ADVANCED CLUSTER SYSTEMS, INC.,  
Patent Owner

---

IPR2025-00862  
Patent No. 10,333,768

---

**PATENT OWNER'S REPLY IN SUPPORT OF REQUEST FOR  
DISCRETIONARY DENIAL<sup>1</sup>**

---

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

**PATENT OWNER'S EXHIBIT LIST**

<u>Exhibit</u>	<u>Description</u>
2001	DocketNavigator Statistics for Motion Success for Stay Pending IPR (Post-Institution) for Judge Albright
2002	J. Albright Standing Order Governing Proceedings (OGP) 4.4 – Patent Cases (Jan 23, 2024)
2003	DocketNavigator Statistics for Time-to-Milestones for Judge Albright
2004	<i>Advanced Cluster Systems, Inc. v. Advanced Micro Devices, Inc.</i> , Scheduling Order (D.I. 36)
2005	<i>Allani v. Apple Inc.</i> , No. 6:24-cv-304-ADA (W.D. Tex. May 6, 2025) (D.I. 30)
2006	<i>Intellectual Ventures I LLC v. TCL Elects. Holdings Ltd.</i> , No. 6:23-cv-309-ADA (W.D. Tex. Sept. 10, 2024) (D.I. 44)
2007	<i>Acquis, LLC v. Hon Hai Precision Indus Co. Ltd.</i> , No. 6:23-cv-264-ADA (W.D. Tex. May 31, 2024) (D.I. 46)
2008	AMD's Preliminary Invalidity and Subject-Matter Eligibility Contentions Cover Pleading (Corrected Apr. 23, 2025)
2009	AMD's Preliminary Invalidity Contention – Chart A-8
2010	Declaration of Dr. Melissa C. Smith Under 37 C.F.R. § 1.68
2011	<i>Curriculum Vitae</i> of Dr. Melissa C. Smith
2012	AMD Feb. 5, 2025 – 10-K Annual Report
2013	NVIDIA Company Overview (May 2025) (available at <a href="https://investor.nvidia.com/events-and-presentations/presentations/presentation-details/2025/Company-Overview-5-25/default.aspx">https://investor.nvidia.com/events-and-presentations/presentations/presentation-details/2025/Company-Overview-5-25/default.aspx</a> )

PO Reply in Support of Discretionary Denial

2014 Advanced Micro Device's Answer and Affirmative Defenses to Plaintiff's Complaint, *Advanced Cluster Systems, Inc. v. Advanced Micro Devices, Inc.* 7:24-cv-00244 (W.D. Tex. Jan. 8, 2025) (D.I. 29)

Patent Owner submits this reply brief in support of its request for discretionary denial (Paper 9, “DD Req.”).

**I. Petitioner’s Arguments About Economic, National Security, and Public Health Interests Lack Merit (Paper 11 (“DD Opp.”) §II)**

The Acting Director recently exercised discretion to deny two IPR petitions filed by Intel against the ’768 Patent, IPR2025-00794, Paper 13; IPR2025-00795, Paper 13, in part because Intel had evidentiary gaps in its position regarding national security interests. This is relevant here because Petitioner is now improperly using its opposition to fill Intel’s evidentiary gaps in an otherwise identical national security interests position. DD Opp. at 10-12. Petitioner improperly seeks to use Intel’s opposition from the above-identified proceedings, Patent Owner’s replies, and the Acting Director’s decisions—all available prior to Petitioner filing its opposition—as a roadmap to find an argument that will stick resulting in the grant of review. This is akin to an improper follow-on petition and should not be rewarded.

Petitioner’s arguments regarding economic, national security, and public health interests also fail because they are premised on how a hypothetical injunction might impact the market. But a hypothetical injunction has nothing to do with patentability; the district court would be the proper venue to decide infringement remedies on a developed record—which does not exist here.

Petitioner’s arguments also fail as factually unsupported speculation. With respect to economic impact, simply because Petitioner’s products may be used in the

## PO Reply in Support of Discretionary Denial

data center market does not factually support their alleged economic impact. There are other sources for the types of products offered by Petitioner that are not affected by the '768 Patent, including NVIDIA—the largest supplier by far. Ex. 2013 at 28 (NVIDIA company overview stating it is the “Leader in AI and HPC [High Performance Computing]”). Petitioner’s allegations regarding other chip manufacturers’ capacity in the future are pure speculation. DD Opp. at 8, n.4.

Moreover, Petitioner cites no decisions finding that commercial importance shields a patent challenge from discretionary denial. Nothing in the executive branch statements, congressional hearing testimony, or industry observations quoted by Petitioner (DD Opp. at 2-8) immunize it from liability for patent infringement.

With respect to national security, Petitioner’s arguments also lack evidentiary support. Petitioner alleges its products have “strategic sensitivity to the United States[.]” DD Opp. at 11. But the cited source says nothing about strategic sensitivity. *See* Ex. 1083. Petitioner relies on other broad statements about systems using its products (DD Opp. at 10-11), but these statements are divorced from the actual claims of the '768 Patent. Simply put, Petitioner has provided no evidence supporting how a hypothetical injunction would implicate national security interests.

Finally, Petitioner’s arguments regarding public health interests are likewise unsupported. Patent law provides a limited safe harbor from infringement for certain health-related activities. 35 U.S.C. § 271(e). None of these activities are present here,

and Petitioner did not assert an affirmative defense in the Parallel Litigation based on it. Ex. 2014 at 10-13. Petitioner's other arguments in this section are similarly unhelpful to Petitioner as they are unsupported by the cited references (DD Opp. at 12-13 citing Exs. 1083, 1084), unsupported attorney argument (*id.* at 14), and a Petitioner-generated video (*id.* at 13 citing Ex. 1095).

## **II. Petitioner's "Family Weakness" Argument is Itself Weak and Inapplicable to the '768 Patent (DD Opp. §III)**

Petitioner's "family weakness" argument (DD Opp. at 14-16) misstates the record and misconstrues the legal relevance of prior institution decisions.

None of the cited IPRs resulted in a Final Written Decision, rather all were terminated early by dismissal. *See* IPR2020-01608, Paper 17 at 2 (PTAB Jun. 22, 2021) ('289 Patent), IPR2021-00075, Paper 15 at 2 (PTAB Jun. 30, 2021) ('612 Patent), and IPR2021-00108, Paper 15 at 2 (PTAB Jun. 30, 2021) ('877 Patent). No tribunal evaluated the full merits, no testimony was taken, and no patent claims were found unpatentable. The mere fact that institution was granted in prior proceedings carries no probative value. Institution decisions are not findings of invalidity; they are threshold procedural gatekeeping determinations that are not adjudicative.

Petitioner ignores the only relevant outcome for the '768 Patent itself. In IPR2021-00019 and IPR2021-00020, the Board denied institution on the very patent now at issue. While those earlier petitions were brought by a different party, the PTAB's denial was substantive and based on its determination that the petition failed

## PO Reply in Support of Discretionary Denial

to show at least one claim limitation among the many that were identified was taught by the cited prior art. *See* IPR2021-00019, Paper 9 at 2 (PTAB May 5, 2021).

Petitioner also disregards the most compelling fact: the Board has already considered and rejected the very argument Petitioner makes here. While the Board chose to institute petitions against the '289, '612, and '877 Patents, in contrast, the Board declined to institute two petitions challenging the '768 Patent—IPR2021-00019 and IPR2021-00020. The implication is clear: the Board did not treat the '768 Patent as just another patent in, what Petitioner characterizes is, a “weak family.” Moreover, the Director confirmed the Board decisions to decline institution in its most recent denial decisions. IPR2025-00794, Paper 13; IPR2025-00794, Paper 13.

The Board does not presume that continuation or CIP patents are weak or duplicative merely because their predecessors were challenged, and Petitioner offered no legal support for the notion that a patent’s parentage weighs in favor of institution under § 314(a). Nor is there any PTAB precedent holding that institution is favored simply because institution was once ordered for patents in the same family. Each petition must rise or fall on its own merits. 35 U.S.C. 314(a).

### **III. Settled Expectations Favor Denial (DD Opp. §V)**

After first acknowledging that the “’768 Patent issued [ ] six years ago,” (DD Opp. at 19 (top of page)), Petitioner attempts to manufacture a new argument that because the '768 Patent issued on June 25, 2019—5 years, 9 months, and 22 days—

## PO Reply in Support of Discretionary Denial

before Petitioner filed its petition on April 16, 2025, that settled expectations have not been created. *Id.* at 19. The Board should give no credence to this argument. First, the Acting Director has confirmed that “there is no bright-line rule on when expectations become settled[.]” *Dabico Airport Sols. Inc. v. Axa Power Apps.*, IPR2025-00408, Paper 21 at 3 (PTAB Jun. 18, 2025). In *Kahoot! AS v. Interstellar Inc.*, despite the corresponding parallel district court litigation being stayed, the Acting Director denied institution for a 2019 issued patent that was in force for 5 years, 8 months, and 5 days before the IPR petition was filed. IPR2025-00969, Paper 12 (PTAB Jul. 31, 2025)—approximately 2 months younger than the ’768 Patent.

Second, Petitioner ignores the Acting Director’s recent determination that “repeated prior [unsuccessful Board] challenges” further supports finding settled expectations exist for the ’768 Patent. IPR2025-00794, Paper 13 at 2-3.

**IV. Petitioner Misrepresents that Patent Owner Did Not Challenge Dr. Bajaj’s Testimony (DD Opp. §VIII.B)**

Petitioner misrepresents that Patent Owner “fails to even allege that Dr. Bajaj’s testimony is not supported by evidence or lacks technical reasoning.” DD Opp. at 58. To the contrary, Patent Owner and its expert explained in detail over multiple pages why and how Dr. Bajaj mischaracterized the RS6000 reference (Ex. 1007). DD Req. at 24-29.

PO Reply in Support of Discretionary Denial

Dated: August 25, 2025

Respectfully submitted,

*/David P. Lindner/*

---

David P. Lindner, Reg. No. 53,222

*Counsel for Patent Owner*

*Advanced Cluster Systems, Inc.*

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that I caused true and correct copies of the foregoing **REPLY IN SUPPORT OF PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL AND EXHIBITS 2013-2014** to be served in their entirety on August 25, 2025 by filing this document through the U.S. Patent Office's P-TACTS Filing System as well as causing true and correct copies be delivered by electronic mail on Petitioner's lead and backup counsel at the following email addresses (as agreed by counsel for Petitioner):

Brian E. Ferguson  
Chaoxuan Charles Liu  
James Kappos  
Winston & Strawn LLP  
BEFerguson@winston.com  
CCLiu@winston.com  
jkappos@winston.com

Dated: August 25, 2025

*/David P. Lindner/*

---

David P. Lindner, Reg. No. 53,222  
*Counsel for Patent Owner*  
*Advanced Cluster Systems, Inc.*