

Case No. IPR 2025-00875
U.S. Patent No. 9,940,972 B2

Authorized Response to
Director Review Request

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC

Petitioner,

v.

CELLULAR SOUTH, INC.

Patent Owner.

Case No. IPR2025-00875

U.S. Patent No. 9,940,972

**AUTHORIZED RESPONSE TO
DIRECTOR REVIEW REQUEST**

TABLE OF CONTENTS

I. INTRODUCTION1

II. DIRECTOR REVIEW IS NOT WARRANTED2

 A. PETITIONER’S ARGUMENTS ARE A REHASHING OF ARGUMENTS WHICH
 HAVE ALREADY BEEN REJECTED2

 B. THE DENIAL WAS BASED ON A “HOLISTIC ASSESSMENT” OF THE
 ARGUMENTS AND EVIDENCE6

III. CONCLUSION.....7

IV. CERTIFICATE OF SERVICE.....9

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Cuozzo Speed Techs., LLC v. Lee</i> , 579 U.S. 261 (2016).....	5
<i>Dabico Airport Solutions Inc. v. AXA Power ApS</i> , IPR2025-00408, Paper 21 (Director June 18, 2025)	2
<i>Google LLC v. Advanced Coding Technologies LLC</i> , IPR2025-00998, Paper 12.....	1, 3
<i>Google LLC v. SoundClear Technologies, LLC</i> , IPR2025-00344, Paper 16.....	1, 2
<i>Google LLC v. Virtamove, Corp.</i> , IPR2025-00487, Paper 12.....	1, 2
<i>Harmonic Inc. v. Avid Tech., Inc.</i> , 815 F.3d 1356 (Fed. Cir. 2016)	5
<i>iRhythm Technologies, Inc. v. Welch Allyn</i> , IPR2025-00363, -00374, -00376, -00377, -00378 (P.T.A.B. Jun. 6, 2025)	2, 5
<i>iRhythm Technologies, Inc. v. Welch Allyn</i> , IPR2025-00363, Paper 11	5
<i>JEM Broadcasting Co. v. F.C.C.</i> , 22 F.3d 320 (D.C. Cir. 1994).....	5
<i>Mylan Lab ’ys Ltd. v. Janssen Pharmaceutica, N.V.</i> , 989 F.3d 1375 (Fed. Cir. 2021)	4
<i>Perez v. Mortg. Bankers Ass’n</i> , 575 U.S. 92 (2015).....	4
<i>TQ Delta, LLC v. DISH Network LLC</i> , 929 F.3d 1350 (Fed. Cir. 2019)	5

Statutes

35 U.S.C. § 314(a)5

Other Authorities

H.R. Rep. No. 112-98 (2011).....4

I. INTRODUCTION

Patent Owner Cellular South, Inc. submits this response to the Request for Director Review filed by Petitioner Google LLC under the November 18, 2025 email authorizing a response. Ex. 3100.

Petitioner's Request for Director Review should be denied. In its Request, Petitioner challenges the use of the "settled expectations" doctrine in the discretionary denial analysis. To be clear, there are no facts or evidence particular to the parties in Petitioner's Request. Rather, Petitioner argues that the use of the "settled expectations" doctrine in the discretionary denial analysis is wholesale improper. Petitioner has filed similar Requests in multiple IPRs. *See, e.g., Google LLC v. SoundClear Technologies, LLC*, IPR2025-00344, Paper 16; *Google LLC v. Virtamove, Corp.*, IPR2025-00487, Paper 12; *Google LLC v. Advanced Coding Technologies LLC*, IPR2025-00998, Paper 12. Indeed, Petitioner's Request even cites to *Virtamove*.

What Petitioner seeks is another bite at the apple. Petitioner's arguments here are a rehashing of arguments Petitioner (and others) have made elsewhere, which have already been rejected by the Director. Petitioner is wasting valuable resources with these repeated Requests. As such, Petitioner's Request should be denied.

II. DIRECTOR REVIEW IS NOT WARRANTED

A. Petitioner's Arguments Are a Rehashing of Arguments Which Have Already Been Rejected

Petitioner puts forth three arguments for why use of the “settled expectations” doctrine is improper. Each of these arguments has been presented to and rejected by the Director before, including by Petitioner itself. Petitioner concedes that these issues are not new. Indeed, Petitioner highlights similar situations regarding “settled expectations” existed in *Dabico Airport Solutions Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 (Director June 18, 2025) and *iRhythm Technologies, Inc. v. Welch Allyn*, IPR2025-00363, -00374, -00376, -00377, -00378, Paper 10 (P.T.A.B. Jun. 6, 2025). Request at 2. In each of those IPRs, Petitioner filed a Request for Director Review, making similar arguments to those here, which was denied. For the same reasons these arguments have been rejected before, Petitioner’s Request should be denied.

First, Petitioner argues that the “settled expectations” doctrine violates the APA and AIA as arbitrary and capricious as it “contradicts Congressional intent by imposing a statute of limitations on IPR petitions.” Request at 3-9. Petitioner has made similar arguments before. *See, e.g., Google LLC v. SoundClear Technologies, LLC*, IPR2025-00344, Paper 16 at 6-7 (arguing that the “settled expectations” doctrine essentially applies a time bar that Congress did not intend); *Google LLC v.*

Virtamove, Corp., IPR2025-00487, Paper 12 at 10-13 (same); *Google LLC v. Advanced Coding Technologies LLC*, IPR2025-00998, Paper 12 at 15 (same). As others have noted, there is no time bar that all patents over a certain age are exempt from being challenged in an IPR. Rather, there are situations where a patent owner may have settled expectations due to the age and situation of the patent, which may be considered when the Director exercises the discretion Congress granted him. Indeed, Congress recognized the benefits of early challenges to a patent:

The intent of the post-grant review process is to enable **early challenges to patents**, while still protecting the rights of inventors and patent owners against new patent challenges unbounded in time and scope. The Committee believes that this **new, early stage process** for challenging patent validity and its clear procedures for submission of art will **make the patent system more efficient and improve the quality of patents and the patent system.** . . . The Committee recognizes the **importance of quiet title to patent owners** to ensure continued investment resources.

H.R. Rep. No. 112-98, at 48 (2011) (“America Invents Act”) (emphasis added). Moreover, the Director is not compelled to institute an IPR in any circumstance. *Mylan Lab ’ys Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021) (“The Director is permitted, but never compelled, to institute an IPR. And no petitioner has a right to such institution. For example, the Director is free, as in this case, to determine that for reasons of administrative efficiency an IPR will not be instituted, as agencies generally are free, for similar reasons, to choose not to initiate enforcement proceedings.”). Petitioner’s argument should be rejected here as it has been in the past.

Second, Petitioner argues that the “settled expectations” doctrine violates the APA and AIA because it was not subject to notice and comment. Request at 10-13. But again, Petitioner’s argument is premised on the idea that the “settled expectations” doctrine is effectively a six-year statute of limitations. *See, e.g.*, Request at 10 (“But, since then, the ‘settled expectations’ rule has functioned as a six-year statute of limitations.”). As discussed above, this is not correct and that argument has already been rejected by the Director. Moreover, rules of agency practice and procedure, or interpretive rules, and do not require notice-and-comment rulemaking. *See Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 97, 101 (2015) (interpretive rules “advise the public of the agency’s construction of the statutes and

rules which it administers” and do not require notice and comment when issued or amended); *JEM Broadcasting Co. v. F.C.C.*, 22 F.3d 320, 328 (D.C. Cir. 1994) (“[T]he ‘critical feature’ of the procedural exception ‘is that it covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency.’”). In any case, Petitioner was on notice that “settled expectations” may be considered in an institution decision and was given (and took) the opportunity to discuss this issue in briefing. *TQ Delta, LLC v. DISH Network LLC*, 929 F.3d 1350, 1356 (Fed. Cir. 2019) (“Because TQ Delta had notice of the claim construction issue and the opportunity to be heard, the PTAB did not violate the APA.”).

Third, Petitioner argues that retroactive application of the “settled expectations” doctrine violates Petitioner’s due process. Request at 13-15. Again this is not a new argument. *See, e.g., iRhythm Technologies, Inc. v. Welch Allyn*, IPR2025-00363, Paper 11 at 14-15. But, as the Patent Owner noted in *iRhythm*, there can be no due process violation as Petitioner has not been deprived of any rights by the denial of institution. 35 U.S.C. § 314(a); *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (“the agency’s decision to deny a petition is a matter committed to the Patent Office’s discretion”); *Harmonic Inc. v. Avid Tech., Inc.*, 815

F.3d 1356, 1367 (Fed. Cir. 2016) (“the PTO is permitted, but never compelled, to institute an IPR”). Just as the argument was rejected there, so should it be here.

To the extent that Petitioner purports to make new arguments regarding the legality of “settled expectations,” such arguments could have and should have been made in prior Requests. Having Petitioner present its arguments regarding “settled expectations” piecemeal is inefficient and a waste of resources.

In sum, Petitioner’s Request is merely a rehashing of prior Requests for Director Review and should be denied for the reasons those requests were.

B. The Denial Was Based on a “Holistic Assessment” of the Arguments and Evidence

Petitioner asserts that the “Decision did not address the merits” and that settled expectations was the sole factor for discretionary denial. *See, e.g.*, Director Request at 2, 11. This is not true. While the Decision notes that “these challenged patents have been in force for seven and six years, respectively, creating settled expectations for Patent Owner, and Petitioner does not provide persuasive reasoning why an inter partes review is an appropriate use of Board resources,” it also states that “the determinations in this Decision are based on a holistic assessment of all of the evidence and arguments presented.” Decision at 3; *see also id.* at 2 (“This determination is based on the totality of the evidence and arguments the parties have presented.”). There is no requirement to specifically address every argument

advanced by the parties in detail as it is “final and nonappealable.” And Patent Owner showed in its request for discretionary denial that discretionary denial was appropriate for multiple reasons, including that the Petition was weak and over-reliant on expert testimony to fill gaps in the prior art.

Moreover, Petitioner does not appear to dispute that there were settled expectations in this case. Rather, Petitioner argues that settled expectations should not be considered at all. In other words, Petitioner does not present any argument that would change the end result.

III. CONCLUSION

The Acting Chief Administrative Patent Judge properly determined “discretionary denial of institution is appropriate” for this Petition. Paper 10 at 2. As discussed above, Director Review of the Decision denying institution is not warranted and Google’s request should be denied.

Dated: November 24, 2025

Respectfully submitted,

Holland & Knight LLP

/s/ Amy Simpson

Amy Simpson (Reg. No. 54,688)
Amy.simpson@hklaw.com
HOLLAND & KNIGHT LLP
1901 Avenue of the Stars, Suite 1200
Los Angeles, CA 90067

Case No. IPR 2025-00875
U.S. Patent No. 9,940,972 B2

Authorized Response to
Request for Director Review

Telephone: (310) 201-8925
Facsimile: (310) 201-8922

Counsel for Cellular South, Inc.

IV. CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing **AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST** was served in their entirety via filing through the Patent Trial and Appeal Case Tracking System (P-TACTS), as well as electronic mail on the attorneys of record for Petitioners:

Heidi L. Keefe (Reg. No. 40,673) hkeefe@cooley.com
Andrew C. Mace (Reg. No. 63,342) amace@cooley.com
Mark R. Weinstein: mweinstein@cooley.com
Reuben Chen : rchen@cooley.com
Alexandra D. Leeper: aleeper@cooley.com
COOLEY LLP
ATTN: Patent Group
1299 Pennsylvania Ave. NW, Suite 700
Washington, DC 20004
Tel: (650) 843-5001
Fax: (650) 849-7400

Dated: November 24, 2025

/s/ Amy Simpson
Amy Simpson (Reg. No. 54,688)
amy.simpson@hklaw.com
HOLLAND & KNIGHT LLP
1901 Avenue of the Stars, Suite 1200
Los Angeles, California 90067
Email: amy.simpson@hklaw.com
Telephone: (310) 201-8925
Facsimile: (310) 201-8922

Counsel for Cellular South, Inc.