

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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KOITO MANUFACTURING CO., LTD.

Petitioner

v.

LONGHORN AUTOMOTIVE GROUP LLC

Patent Owner

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**PETITIONER'S RESPONSE TO PATENT OWNER'S REQUEST  
FOR DISCRETIONARY DENIAL OF INSTITUTION**

Case No. IPR2025-00955

U.S. Patent No. 8,810,803

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1001	U.S. Patent No. 8,810,803 to Bell
1002	Prosecution File History of U.S. Patent No. 8,810,803
1003	Declaration of Adam Phenis
1004	German Patent Application Publication No. 10129743C2 (Weidel)
1005	U.S. Patent No. 7,563,008B2 (Chinniah)
1006	German Patent Application Publication No. 102006004587A1 (Brandenburg)
1007	U.S. Patent No. 7,736,036B2 (Tatsukawa)
1008	U.S. Patent No. 7,733,574B2 (Mizusawa)
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1012	Curriculum Vitae of Adam Phenis
1013	Declaration of John F. Rabena
1014	Press release of 2007 Lexus LS from <a href="https://na1.com/innovation/">https://na1.com/innovation/</a>
1015	Excerpt of PTAB Trial Statistics January 2025 IPR & PGR, <a href="https://www.uspto.gov/patents/ptab/statistics">https://www.uspto.gov/patents/ptab/statistics</a> , p. 7
1016	Assignment Record for U.S. Patent No. 8,810,803
1017	2007 Lexus LS 600h Launch Edition, dated January 5, 2007

## I. INTRODUCTION

The “settled expectations” issue presented here is different from recent Board decisions in that Petitioner Koito Manufacturing Co. Ltd (“Koito”) is the party that had a settled expectation that its patented headlamp technology would not be accused of infringement based on a later-filed patent. Koito developed, patented and sold its headlamp technology prior to the ‘803 patent at issue here. EX1013 ¶¶ 6-7. In fact, Koito’s patent is one of the prior art references cited in one of the Petition’s unpatentability grounds.

Koito is also not a party to any of the related District Court Litigations, and thus cannot challenge the ‘803 patent’s validity in those cases. Koito supplies *some* of the accused products to three of the seven defendants in those litigations, but has nothing more than a customer-supplier relationship with these defendants. Thus, contrary to Patent Owner’s bald assertion otherwise, none of Koito’s customers or other defendants are real parties in interest. Moreover, none of them had any control, contribution or participation in any part of the Petition.

For these reasons and the reasons below, Koito submits that Patent Owner Longhorn Automotive Group LLC (“LAG”)’s request should be denied.

## II. KOITO’S SETTLED EXPECTATIONS FAVOR ALLOWING THIS PETITION TO PROCEED TO INSTITUTION

On March 26, 2025, the Acting Director introduced the “settled expectation

of the parties” as a factor to be considered in deciding whether to discretionarily deny an IPR petition. As introduced, the settled expectation is “of the parties,” not just the patent owner. Petitioner Koito had settled expectations that are unique and warrant denial of LAG’s Request.

LAG’s ‘803 patent issued in 2014. But Koito developed the accused vehicle headlamp technology in 2006, sold its first headlamp product in the United States using this technology by “mid 2007”,<sup>1</sup> and filed patent applications for this technology in Japan in 2006 and in the United States in 2007. EX1007; EX1013 ¶¶ 6-7. Koito was then awarded its U.S. Patent No. 7,736,036 on this technology in 2010, which is prior art to the challenged ‘803 patent. EX1007. In fact, the Petition applies Koito’s patent in one of the Petition’s unpatentability grounds.

Thus, Koito developed and patented the accused headlamp technology before LAG’s ‘803 patent, which has an earliest priority date of November 12, 2007. EX1013 ¶¶ 6-7; EX1001. Koito also had no knowledge of the ‘803 patent

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<sup>1</sup> EX1017, p. 3; EX1014.

prior to the District Court Litigations. But had Koito known of the ‘803 patent when it issued in 2014, Koito would have had a settled expectation that the ‘803 patent could never be asserted against Koito’s *prior art* technology. Yet that is exactly what LAG is asserting in some of the District Court Litigations. The “settled expectations” factor applies to both parties, not just the Patent Owner (PO); if there ever was a case where the accused product manufacturer should be afforded a settled expectation that the patent-at-issue would not be used against its product, this is it. Accordingly, Koito’s settled expectation that a later filed patent, i.e., the ‘803 patent, could not be used against its prior art technology, supports allowing Koito’s Petition to proceed to the Board.

As mentioned, Koito was not aware of the ‘803 patent until LAG filed lawsuits against some of its customers in 2024. In *Dabico Airport Sols. Inc. v. AXA Powers Aps*, IPR2025-00408, Paper 21 at 3 (P.T.A.B. June 18, 2025) and other decisions, the Acting Director has suggested that interested parties should search publicly available issued patents and file IPRs sooner to avoid discretionary denial based on “settled expectations.” But Koito first launched the accused technology in its U.S. products in mid-2007 (EX1017, p. 3), prior to the ‘803 patent’s earliest priority date and seven years before the ‘803 patent issued. Thus,

Koito could not have found the '803 patent in 2007 when it launched this technology. On the other hand, LAG could have found Koito's prior art patent when it first issued, and taken care not to sue OEM vehicle makers that use Koito's prior art technology.

In *Intel Corporation v. Proxense LLC*, the Acting Director provided examples of what may be persuasive reasons as to why an *inter partes* review is an appropriate use of Board resources, including that "a patent may have been in force for years but may not have been commercialized, asserted, marked, licensed, or otherwise applied in a petitioner's particular technology space, if at all." IPR 2025-00327, 328, 329, Paper 12, at 2-3 (Jun. 26, 2025). Although the '803 patent may have been in force for years, LAG has provided no evidence that the '803 patent was previously commercialized, asserted, marked, licensed, or otherwise applied in Koito's particular technology space of vehicle headlamps. This is consistent with the fact that Koito, a leader in vehicle headlight technology, had not previously heard of the '803 patent before the District Court Litigations. This lack of evidence disfavors discretionary denial of the Petition.

Putting aside that Koito would not have considered its prior art technology to ever be accused of infringing a later-filed '803 patent (even if it had been aware

of the patent), and that LAG provided no evidence that the ‘803 patent was previously commercialized or asserted in any way in Koito’s space of vehicle headlamps, it was simply impractical for Koito to have located the ‘803 patent in the first place. The ‘803 patent is entitled “Lens System,” and never mentions such terms as “headlamp” or “headlight” let alone describe Koito’s particular technology space of vehicle headlamps or headlights. EX1001. When the ‘803 patent finally did issue in 2014, there were approximately 18,000 U.S. patents in force that had the word “lens” in the title, according to USPTO database records.<sup>2</sup> Accordingly, it was simply impractical for Koito to locate the ‘803 patent in the first place, and even more impractical to file IPRs on so many issued patents.<sup>3</sup>

Finally, in reality, LAG had no settled expectations as to the validity of the

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<sup>2</sup> EX1013, Declaration of John F. Rabena, Esq, ¶¶ 2-3.

<sup>3</sup> That would have required Koito to file 18,000 IPRs to challenge those patents. At an average cost of \$400,000 per IPR (EX1013 ¶ 4), that would have cost Koito \$7,200,000,000 (seven billion, two hundred million dollars). No manufacturer could reasonably be held to this standard, assuming that the PTAB would even institute 18,000 IPRs filed by the same petitioner.

‘803 patent. Although the ‘803 patent issued in 2014, LAG acquired it just a few years ago in 2023. EX1016. In 2023, there was no “settled expectations” doctrine and approximately 72% of IPR’s were instituted.<sup>4</sup> So given the high rate of IPR institution in 2023, when LAG decided to acquire the ‘803 patent, its actual settled expectation was that it would have to survive an IPR if it asserted the ‘803 patent in district court.

### **III. FINTIV FACTORS ALSO FAVOR DENYING LONGHORN’S REQUEST UNDER 35 U.S.C. § 314**

#### **A. The District Court litigations and the Petition Involve Different Parties**

LAG baldly asserts that the District Court Litigations involve the same parties or real parties-in-interest.<sup>5</sup> LAG has not sued either Koito or its identified

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<sup>4</sup> EX1015 (PTAB Trial Statistics January 2025 IPR & PGR, <https://www.uspto.gov/patents/ptab/statistics>), p. 7.

<sup>5</sup> LAG failed to request any discovery in an attempt to substantiate its assertion that non-parties to this Petition are actual real parties-in-interest. Rather, LAG makes this assertion based only on its own “say so.”

real party in interest North American Lighting (“NAL”). Accordingly, neither Koito nor NAL is a party in any of the District Court Litigations. Moreover, none of the parties actually named in those District Court Litigations are real parties-in-interest to either Koito or NAL. EX1013 ¶ 5.

The PTAB’s America Invents Action (AIA) Trial Practice Guide states that the PTAB is guided by common law principles and that the real party in interest inquiry is “highly fact-dependent” and often considers whether entities “exercised or could have exercised control.” U.S. Patent & Trademark Off., Pat. Trial & Appeal Bd., *Consolidated Trial Practice Guide* 13, 16 (Nov. 2019). In *Applications in Internet Time, LLC (AIT) v. RPX Corp.*, 897 F.3d 1236 (Fed. Cir. 2018), the Federal Circuit instructed that “[d]etermining whether a non-party is a ‘real party in interest’ demands a flexible approach that takes into account both equitable and practical considerations, with an eye toward determining whether the non-party is a clear beneficiary that has a preexisting, established relationship with the petitioner.” *Id.* at 1351. Since the decision in AIT, the PTAB has held that “the customer-supplier relationship” alone does not necessarily mean parties are RPIs. Specifically, the PTAB has held that “solely because [a related entity] has a preexisting, established relationship with Petitioner and is a clear beneficiary of the

Petition” does not automatically make that entity an RPI. *Merck Sharp & Dohme Corp. v. GlaxoSmithKline Biologicals SA*, No. IPR2018-01229, Paper 13 at 12 (P.T.A.B. Dec. 18, 2018). Thus, despite the PTAB taking a more flexible approach to RPI designations following the AIT decision, it still recognizes that “customer-supplier relationships, without more, are insufficient to establish the requisite ‘close relationship’ required to find that a party is a real party in interest.” *Toshiba Memory Corp. v. Anza Technology Inc.*, No. IPR2018-01597, Paper 56 at 15; *see also, Samsung Elecs. Co., v. Seven Networks, LLC*, No. IPR2018-01108, Paper 22 at 11 (P.T.A.B. Nov. 28, 2018) (refusing to deny institution based on failure to name supplier Google as an RPI); *see also, Merck Sharp & Dohme Corp. v. GlaxoSmithKline Biologicals SA*, No. IPR2018-01229, Paper 13 at 10-13 (finding that a company licensing technology to Merck for development of Merck’s vaccine was not an RPI because the company merely licensed its technology to Merck). Thus, the existence of a customer-supplier relationship without more is insufficient to create an RPI.

Here, Koito and NAL are suppliers of vehicle headlamps and other vehicle lighting products. But neither Koito nor NAL has an exclusive supply relationship with any particular OEM customer, which could potentially arise to something

more than a customer-supplier relationship. Rather, Koito and NAL supply their vehicle headlamps and other lighting products to numerous different OEM vehicle manufacturers. Many of these vehicle manufacturers are competitors to each other, including the three named District Court Litigation defendants that Koito supplies: Nissan, Mitsubishi and Mazda.<sup>6</sup> Accordingly, Koito's and NAL's relationship with the defendants in the District Court Litigations is nothing more than a customer-supplier relationship.

Moreover, none of the car manufacturers named in the District Court Litigations provided any input into the Petition, let alone exerted any control over Koito or NAL in connection with preparing or filing the Petition. EX1013 ¶ 5. Specifically, Koito and NAL assert that no other entity, including Nissan, Mitsubishi and Mazda requested that the Petition be filed, and that no entity other than Koito directed, controlled or contributed to the Petition, financially or

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<sup>6</sup> Contrary to LAG's suggestions, Koito does not supply accused products to Hyundai, Kia, Volkswagen, or any other defendant other than Nissan, Mitsubishi, and Mazda.

otherwise. EX1013 ¶ 5. In short, neither Nissan, Mitsubishi nor Mazda, nor any of the non-customer defendants, had any role whatsoever in the Petition. EX1013 ¶ 5. Rather, Koito and NAL filed the Petition based on their own interests in clearing their products. EX1013 ¶ 5. LAG chose not to sue Koito or NAL, and therefore filing this IPR Petition was the efficient and cost-effective proceeding that Congress established for challenging the '803 patent.

Considering the totality of the facts presented, and the controlling legal authority discussed above, none of the customers named in the District Court Litigations are real parties-in-interest for purposes of this Petition. Accordingly, this *Fintiv* factor disfavors denial of the Petition.

### **B. The District Court Litigations Will Involve Different Claims and Different Prior Art**

As an initial matter, LAG did not sue either Koito or NAL (or any Koito/NAL RPI). Accordingly, there are *no underlying District Court Litigations*

*with respect to either Koito or NAL.*<sup>7</sup> This strongly disfavors denial of the Petition on discretionary grounds.

But even considering the District Court Litigations, LAG overplays their relevance to the Petition. LAG argues that since the Petition challenges all claims of the ‘803 patent, the Petition therefore challenges all claims in the District Court Litigations. Based on this alone, LAG argues there would be duplicate effort and the possibility of conflicting decisions. Request p. 5. LAG’s argument, however, is insincere since LAG knows that it will almost certainly not assert all of the ‘803 patent claims at trial. The Second Amended Docket Control Order requires LAG “to disclose final election of Asserted Claims” 10 days before Jury selection. EX2001 (2<sup>nd</sup> Amended Docket Control Order), p. 2. In providing this due date, the Court specifically notes that “[g]iven the *Court’s past experiences with litigants dropping claims* and defenses during or on the eve of trial, the Court is of the

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<sup>7</sup> Because there is no underlying district court case, the Petition does not include a Sotera stipulation. If, however, LAG were to sue Koito and/or NAL on the ‘803 patent, then Koito/NAL would agree to a full Sotera stipulation upon institution of the Petition.

opinion that these deadlines are necessary.” *Id.*, fn. 2 (emphasis added). Since the Petition challenges all of the ‘803 patent claims, as a practical matter, there will be claims challenged in the Petition that will not be challenged or adjudicated in the District Court Litigations.

Moreover, although LAG notes overlap in the claims, LAG is noticeably silent as to whether there are differences between the prior art asserted in the Petition and the District Court Litigations. LAG is in the unique position to know what prior art was asserted against the ‘803 patent in both the Petition and the various District Court Litigations, yet LAG mentions only an overlap in claims. Koito/NAL do not know what prior art each defendant in the various District Court Litigations has asserted. Of course, decisions based on different prior art do not create the possibility of conflicting decisions, nor do they duplicate judicial resources. LAG’s silence as to the prior art suggests there are substantial differences between the prior art asserted in the Petition and the various District Court Litigations. Thus, even considering the District Court Litigations, there will be different claims challenged in the Petition based on different prior art.

### **C. Proximity of the District Court Trial Dates**

As the Office itself has noted, "...scheduled trial dates are unreliable and often change. A court's schedule trial date, therefore, is not by itself a good indicator of whether the district court trial will occur before the statutory deadline for a final written decision." MEMORANDUM to Members of the Pat. Trial and Appeal Bd., June 21, 2022, at 8. Thus, although the earliest District Court trial is currently scheduled to occur on June 1, 2026, which is less than six months before the Final Written Decision will issue by November 30, 2026, that time difference will likely be reduced, or perhaps eliminated altogether.

But again, regardless of when the trial actually occurs, neither Koito, NAL nor any of their RPIs is a party to the District Court Litigations, which strongly disfavors denial of the Petition on discretionary grounds.

### **D. Koito Timely Filed the Petition for the '803 Patent, which is a Fraction of Longhorn's Investment in the District Court Litigations**

Section D of LAG's Request is entitled "Significant Investment and Petitioner's Delay in Filing the Petition," yet noticeably missing from the section is any argument that Koito somehow delayed in filing the Petition. Although there is

no statutory one-year deadline running against Koito or NAL because no Complaint has been filed or served against either of them or any RPI, the Petition was filed over 4 months before the statutory one-year deadline for the earliest suit by LAG. Accordingly, the Petition was timely filed, and LAG provides no arguments otherwise. The timeliness of the Petition disfavors denial.

LAG's arguments that the parties' and the Court's investment favors discretionary denial is insincere. LAG fails to mention that the '803 patent is but one of the four (4) or more patents that LAG asserted in the various District Court Litigations. Thus, the '803 patent is but a fraction of LAG's investment in the District Court Litigations. In any event, LAG acknowledges that it has served only infringement contentions in the *Kia* and *Volkswagen* cases. LAG's Request provides nothing to indicate that the cases have advanced much since the filing of the Petition. LAG noticeably fails to mention if any written discovery has been served by it or any named party, or if any depositions have even been scheduled, let alone have occurred. And again, Koito and NAL are not parties to any of the District Court Litigations.

LAG references the Claim Construction Hearing scheduled for December 3, 2024, in the *Kia* Case, as being "only two (2) days after the institution is due in this

matter” and on October 23, 2025 in the *Volkswagen* Case as being “more than a month before the institution deadline.” Request p. 9. But the scheduled dates for the Claim Construction Hearings and the due date for the Institution Decision actually counsel against discretionary denial. This is because the Institution Decision will be available to both the *Kia* and *Volkswagen* Courts before they render a decision on claim construction issues. Thus, both the *Kia* and *Volkswagen* Courts will have the benefit of any claim constructions in the Board’s Institution Decision, as well as any other analysis. Finally, at the time of Institution Decision, the cases will still be in the fact discovery stage, and expert discovery would not have yet begun. Thus, as a practical matter, the District Court Litigations will still be in their early stages by the time of the Institution Decision.

Because Koito diligently filed the Petition, the District Court Litigations will still be in their early stages, and neither Koito nor NAL are defendants, this factor weighs against discretionary denial.

#### **E. No Stay Has Been Filed in the District Court Litigations**

Since neither Koito nor NAL are defendants in the District Court Litigations, it is not possible for either of them to file a motion to stay the litigation. At

bottom, this factor is neutral because no litigation stay has been requested by any of the parties in the District Court Litigations, and no objective evidence exists as to whether or not a stay would be granted.

LAG incorrectly argues that this factor weighs strongly in favor of denial because the Eastern District of Texas routinely denies stays *before institution* on all asserted claims. Request pp. 9-10. The critical inquiry under this factor, however, is whether “evidence exists” that a stay will be “granted if a proceeding *is instituted.*” *Apple Inc. v. Fintiv, Inc.* IPR2020-00019, Paper No. 11 at 6 (PTAB Mar. 20, 2020)(precedential)(emphasis added). As LAG itself states, none of the defendants in the District Court Litigations has yet requested a stay. Request p. 9. This Petition challenges all of the ‘803 patent claims. Thus, it is speculative to predict whether the Court in the District Court Litigations would allow a stay upon institution. Indeed, the Board has refused to “attempt to predict” how a District Court will rule on such stay motions. See, e.g., *Hulu, LLC v. SITO Mobile R&D IP, LLC*, IPR2021-00298, Paper No 11 at 10-11 (May 19, 2021) (because “neither party has produced evidence that a stay has been requested[,]” “[w]e decline to infer, based on actions taken in a different case with different facts, how the District Court would rule should a stay be requested by the parties in the parallel

case here.”); *Sand Revolution II, LLC v. Continental Intermodal Group-Trucking LLC*, IPR2019-01393, Paper 24 at 7 (June 16, 2020).

#### **F. Other Factors Favor Denying Longhorn’s Request**

LAG attempts to mischaracterize the Petition as “weak” because it includes an expert declaration. Request p. 10. In actuality, the Petition provides compelling grounds for unpatentability, and LAG provides no substantive arguments to the contrary. Instead, LAG relies on meaningless page-counting of the Petition and the expert declaration as somehow reflective of the Petition’s strength. *Id.* The Petition includes two separate anticipation grounds under 35 U.S.C. § 102 for the independent claims 1, 8 and 15 of the ‘803 patent, as well as dependent claim 16. The remaining unpatentability grounds are based on obviousness under 35 U.S.C. § 103, and are well reasoned and supported by the expert declaration of Adam Phenis, a true expert in optical systems.<sup>8</sup>

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<sup>8</sup> For example, Mr. Phenis has worked in the optical engineering field for more than 20 years including extensive work in the design and development of optical systems. He is well qualified to opine as to a person of ordinary skill at the

Also, contrary to LAG's characterization, the Petition is not a "cut-and-paste" of the Phenis expert declaration (Request p. 10), but rather cites to the expert declaration to support the Petition's well-reasoned rationale. That the Petition sets forth a compelling basis for unpatentability strongly disfavors denial on discretionary grounds.

As set forth above (see, Section A), Koito had a settled expectation that it would not be sued based on the later-issued '803 patent. Koito filed a U.S. patent and introduced a headlamp product in the U.S. before the '803 patent. As such, Koito's patent and headlamp product are prior art to the '803 patent. Finally, LAG has not sued Koito, NAL nor any of their RPIs. Therefore, instituting an IPR proceeding before the PTAB would be the efficient and economical way to challenge the '803 patent as envisioned by Congress when it enacted the America Invents Act (AIA). Under these circumstances, fairness dictates that Koito be permitted to challenge the patentability of the '803 patent before the PTAB.

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relevant time. EX1012 (Phenis CV).

#### IV. CONCLUSION

For at least the foregoing reasons, Petitioner requests that the Director deny LAG's Request, and allow this case to proceed to the PTAB for a substantive decision on institution.

Respectfully submitted,

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WASHINGTON OFFICE

CUSTOMER NUMBER 23373

Date: SEPTEMBER 2, 2025

**CERTIFICATE OF WORD COUNT**

Pursuant to 37 C.F.R. § 42.24(d), Petitioner hereby certifies that the present paper contains 3413 words (as counted by the “Word Count” feature of Microsoft Word<sup>TM</sup>). This word count excludes the table of contents, table of authorities, table of exhibits, certificate of word count, and certificate of service.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on September 2, 2025, in accordance with 37 C.F.R. §§ 42.105 and 42.6, a complete and entire copy of this Petitioner's Response to Patent Owner's Request for Discretionary Denial of Institution, and all supporting exhibits were provided via Priority Mail Express to the Patent Owner, by serving the correspondence address of record as follows:

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Date: September 2, 2025