

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GEOTAB INC. AND GEOTAB USA, INC.,  
Petitioners,

v.

FRACTUS, S.A.  
Patent Owner.

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Case No. IPR2025-01026  
Patent No. 11,031,677

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**PETITIONERS' OPPOSITION TO  
PATENT OWNER'S DISCRETIONARY DENIAL BRIEF**

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1003	U.S. Patent No. 11,349,200
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1007	Declaration of Daniel van der Weide, Ph.D.
1008	Curriculum Vitae of Daniel van der Weide, Ph.D.
1009	P. Ciais, R. Staraj, G. Kossiavas, and C. Luxey. "Design of an Internal Quad-Band Antenna for Mobile Phones," <i>IEEE Microwave and Wireless Components Letters</i> , vol. 14, no. 4, pp. 148-150, April 2004 ("Ciais-Quadband").
1010	P. Ciais, R. Staraj, G. Kossiavas, and C. Luxey. "Compact Internal Multiband Antenna for Mobile Phone and WLAN Standards," <i>Electronics Letters</i> , vol. 40, no. 15, pp. 920-921, July 2004 ("Ciais-Multiband")
1011	X. Jing, Z. Du, and K. Gong. "Compact Planar Monopole Antenna for Multi-band Mobile Phones," in <i>2005 Asia-Pacific Microwave Conference Proceedings</i> , vol. 4, pp. 2657-2660, IEEE, 2005 ("Jing").
1012	H. Nakano, Y. Sato, H. Mimaki and J. Yamauchi. "An Inverted FL Antenna for Dual-Frequency Operation," <i>IEEE Transactions on Antennas and Propagation</i> , vol. 53, no. 8, pp. 2417-2421, Aug. 2005 ("Nakano")
1013	U.S. Patent App. Pub. No. 2007/0200773 ("Dou")
1014	Declaration of James L. Mullins, Ph.D.

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1016	Plaintiff's Disclosure of Asserted Claims and Infringement Contentions Against Geotab Pursuant to Local Patent Rules 3-1 and 3-2, <i>Fractus, S.A., v. Geotab Inc.</i> , No. 2:24-cv-01008 (E.D. Tex.), served March 12, 2025
1017	D.I. 75, Fractus's Opening Claim Construction Brief, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Nov. 16, 2023)
1018	D.I. 75-1, Exhibit 1 to D.I. 75, Fractus's Opening Claim Construction Brief, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Nov. 16, 2023)
1019	D.I. 92, Joint Claim Construction Chart, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Jan. 4, 2024)
1020	D.I. 115, Claim Construction Order, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Feb. 25, 2024) (Payne, M.J.)
1021	D.I. 127, Order, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Mar. 15, 2024) (Gilstrap, D.J.)
1022	D.I. 82, Defendants ADT LLC and Vivint, Inc.'s Responsive Claim Construction Brief, <i>Fractus, S.A. v. ADT LLC</i> , No. 2:22-cv-00412 (E.D. Tex. Dec. 14, 2023)
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1025	3GPP TS 36.101 v8.4.0 (2008-12) Technical Specification: 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Evolved Universal Terrestrial Radio Access (E-UTRA); User Equipment (UE) radio transmission and reception (Release 8), 2008

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1029	U.S. Patent Publication No. 2006/0214857 (“Ollikainen”)
1030	ETSI TS 145 005 V4.3.0 (2001-14) Technical Specification: Digital cellular telecommunications system (Phase 2+); Radio transmission and reception (3GPP TS 45.005 version 4.3.0 Release 4)
1031	ZigBee Specification (Jun. 27, 2005)
1032	ETSI TS 125 308 V6.2.0 (2004-09) Technical Specification: Universal Mobile Telecommunications System (UMTS); UTRA High Speed Downlink Packet Access (HSDPA); Overall description; Stage 2 (3GPP TS 25.308 version 6.2.0 Release 6)
1033	ETSI TS 125 101 V6.5.0 (2004-09) Technical Specification: Universal Mobile Telecommunications System (UMTS); User Equipment (UE) radio transmission and reception (FDD) (3GPP TS 25.101 version 6.5.0 Release 6)
1034	ETSI TS 125 102 V6.0.0 (2003-12) Technical Specification: Universal Mobile Telecommunications System (UMTS); User Equipment (UE) radio transmission and reception (TDD) (3GPP TS 25.102 version 6.0.0 Release 6)
1035	ETSI TS 121 101 V6.0.0 (2004-12) Technical Specification: Universal Mobile Telecommunications System (UMTS); Technical Specifications and Technical Reports for a UTRAN-based 3GPP system (3GPP TS 21.101 version 6.0.0 Release 6)
1036	3GPP TR 23.882 V1.2.3 (2006-06) Technical Report: 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; 3GPP System Architecture Evolution: Report on Technical Options and Conclusions (Release 7)

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1037	3GPP TR 23.882 V1.6.1 (2006-11) Technical Report: 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; 3GPP System Architecture Evolution: Report on Technical Options and Conclusions (Release 7)
1038	3GPP TR 23.882 V1.8.0 (2007-02) Technical Report: 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; 3GPP System Architecture Evolution: Report on Technical Options and Conclusions (Release 7)
1039	Pages from E. Dahlman et al., <i>3G Evolution: HSPA and LTE for Mobile Broadband</i> (Academic Press 2d ed. 2008)
1040	U.S. Patent Publication No. 2008/0018543 (Baliarda-543)
1041	U.S. Department of State, <i>United States Delegation Report: World Radiotelecommunications Conference 2007</i> (2007), available at <a href="https://2001-2009.state.gov/documents/organization/108955.pdf">https://2001-2009.state.gov/documents/organization/108955.pdf</a> (visited May 19, 2025)
1042	IEEE Std. 802.11a-1999, Supplement to the IEEE Standard for Information Technology—Telecommunications and information exchange between systems—Local and metropolitan area networks—Specific requirements— Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) specifications: High-speed Physical Layer in the 5 GHz Band (Dec. 30, 1999)
1043	IEEE Std. 802.11b-1999, Supplement to the IEEE Standard for Information Technology—Telecommunications and information exchange between systems—Local and metropolitan area networks—Specific requirements— Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) specifications: Higher-Speed Physical Layer Extension in the 2.4 GHz Band (Jan. 20, 2000)
1044	Specification of the Bluetooth System version 2.0, volume 2 (issued Nov. 4, 2004)

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1046	<p>ITU, Report ITU-R M.2134-0: Requirements related to technical performance for IMT-Advanced radio interface(s) (2008), <i>available at</i> <a href="https://www.itu.int/pub/R-REP-M.2134-2008/en">https://www.itu.int/pub/R-REP-M.2134-2008/en</a> (visited May 22, 2025)</p>
1047	Chart 45 to EX1016 [Confidential]
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1069	Eastern District of Texas Model Patent Order
1070	D.I. 14-1, Proof of Service of Complaint, <i>Fractus, S.A. v. Geotab</i> , No. 2:24-cv-01008 (E.D. Tex. Jan. 3, 2025)
1071	D.I. 18, Consolidation Order, <i>Cornell Univ. v. AT&amp;T</i> , No. 2:25-cv-00054 (E.D. Tex. Feb. 18, 2025)
1072	D.I. 25, Docket Control Order, <i>Cornell Univ. v. AT&amp;T</i> , No. 2:25-cv-00054 (E.D. Tex. Mar. 26, 2025)
1073	D.I. 11, Consolidation Order, <i>H2 Intellect v. The Home Depot</i> , No. 2:25-cv-00123 (E.D. Tex. Apr. 6, 2025)
1074	D.I. 46, Docket Control Order, <i>H2 Intellect v. The Home Depot</i> , No. 2:25-cv-00123 (E.D. Tex. May 30, 2025)
1075	D.I. 9, Consolidation Order, <i>HyperQuery v. Nemetschek Group</i> , No. 2:25-cv-00043 (E.D. Tex. Apr. 6, 2025)
1076	D.I. 17, Docket Control Order, <i>HyperQuery v. Nemetschek Group</i> , No. 2:25-cv-00043 (E.D. Tex. Jun. 2, 2025)
1077	D.I. 7, Consolidation Order, <i>Infogation v. TomTom</i> , No. 2:24-cv-01022 (E.D. Tex. Feb. 18, 2025)
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## I. INTRODUCTION

Patent Owner (“Fractus”) is a Spanish non-practicing entity that sued Petitioners (“Geotab”), a leading provider of vehicle-tracking solutions, in the Eastern District of Texas (“EDTX”), for allegedly infringing five patents. Geotab challenged the *four-year-old* ’677 patent early in its life. That weighs against denial. Fractus’s request for discretionary denial (Paper 9, “Req.”) is baseless.

The Director discretionarily denied petitions that Geotab filed against two other Fractus patents based on very different facts. *Geotab v. Fractus*, IPR2025-00928, -00929, Paper 11 (Dir. Sep. 12, 2025). The Director discretionarily denied Geotab’s other petitions because they challenged patents that had “*been in force for more than eleven years, creating strong settled expectations* for Patent Owner.” *Id.*, 2.<sup>1</sup> This case is materially different. The ’677 patent was *less than four years* old when Geotab filed the Petition.

*Fintiv* does not favor discretionary denial for the same reasons the Director already found. *Id.* Fractus relies on the scheduled trial of September 14, 2026, but the time-to-trial statistics suggest trial would begin after the Final Written Decision (“FWD”), so “it is unclear whether the trial will take place prior to” FWD. *Id.* “These considerations neither favor nor counsel against discretionary denial.” *Id.*

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<sup>1</sup> Unless otherwise indicated all emphasis is added throughout this Opposition.

Moreover, the Examiner materially erred in allowing the '677 patent. The claims were allowed after Fractus buried the Examiner in **1,900+** references. The Examiner allowed the claims based on limitations that are clearly in the prior art. A trial should be instituted to correct the Examiner's material error early in the life of the '677 patent.

## II. FRACTUS HAS NO "SETTLED EXPECTATIONS"

The '677 patent issued on June 8, 2021. Geotab challenged it less than four years later on June 6, 2025. That weighs against denial. *Google v. Withrow Networks*, IPR2025-00775, Paper 10, 2 (Dir. Aug. 14, 2025) ("early challenges [as against a five-year-old patent] favor robust, predictable patent rights and weigh against discretionary denial").

Fractus alleges it has "settled expectations" because Fractus "brought [the '677 patent] to Petitioners' attention" in 2021. Req., 14. Fractus refers to a letter dated October 28, 2021 that identified the '677 patent among **nine** patents Fractus alleged that Geotab infringed. EX1062, 4-9. The letter also identified **129** patents and applications "owned by Fractus... and available for license to Geotab." *Id.*

Fractus encouraged Geotab to engage in business discussions "to determine where the companies' interests align." *Id.*, 5. Geotab did. EX1062, 3; EX1063, 2 (requesting "claim charts... so that Geotab can understand the basis for Fractus's claims"). Fractus never substantiated any accusation of infringement. EX1063, 1-3.

After discussions over Fractus's demand that Geotab sign an NDA before Fractus would explain its infringement accusations, Fractus stopped communicating.

While the Director found that Geotab "was engaged in discussions with Patent Owner about the challenged patents *until shortly before* Patent Owner asserted the challenged patent," *Geotab*, IPR2025-00928, Paper 11, 3, that is incorrect. Geotab's January 25, 2022, email was the last communication between the parties. EX1063, 1. Fractus never responded. Then Fractus waited almost *three years* before suing Geotab in EDTX on December 6, 2024. EX2005.

Fractus alleges that Geotab "had many years" to challenge the '677 patent. Req., 14. But Fractus never explains *when* it allegedly could have developed "settled expectations" for its four-year-old patent.

In its October 2021 letter that "brought [the '677 patent] to Petitioner's attention" (Req., 14), Fractus "invit[ed]" discussion and encouraged a "negotiat[ed]" business solution. EX1062, 5 ("Fractus has a *strong preference for* resolving intellectual property infringement by *negotiation* and *invites Geotab to engage in meaningful discussions to determine where the companies' interests align.*"). Geotab accepted Fractus's invitation to engage in "discussions" to "resolv[e]" Fractus's alleged concerns. Those discussions continued for three months. EX1062, 4; EX1064, EX1063. Fractus cannot credibly assert that it developed "settled expectations" from Geotab not challenging the '677 patent

during a time period where Geotab, at Fractus's invitation, engaged with Fractus in discussions to see if a business solution could be negotiated.

Nor can Fractus credibly assert that it developed "settled expectations" for its four-year-old patent after it unilaterally stopped communicating. In its January 25, 2022 email, Geotab explained that it remained open to continuing the discussion that Fractus had initiated. EX1063, 1 ("[I]f you [Fractus] wish to proceed further with this discussion, I would suggest that you provide us with any claim charts or other information that you can share regarding your alleged claims against Geotab that do not require confidential treatment under an NDA.>"). Fractus never responded. Roughly three years passed before Fractus filed suit.

Geotab never gave Fractus a reason to believe that Geotab acceded to Fractus's (unexplained) infringement allegations. Quite the opposite. Geotab repeatedly asked Fractus to substantiate those accusations. The ball was in Fractus's court. Fractus never responded. Geotab never gave Fractus a reason to believe that Geotab would not challenge the '677 patent if Fractus pressed its infringement accusations.

Fractus cites three cases to purportedly support its assertion that Geotab "had many years" to challenge the '677 patent but "chose[] not to do so." Req., 14. None of those cases says anything like that, let alone for a patent that is only four years old; none even discusses infringement allegations or notice to the petitioner.

The Director has noted that “there may be good reasons why a patent owner has strong settled expectations in a patent that has been in force for two, three, or four years,” but the patent owner must establish them. *Apple v. Apex Beam Tech.*, IPR2025-00896, Paper 10, 3 (Dir. Sep. 3, 2025). Fractus has not done so.

Fractus’s assertion that it has “settled expectations” for its four-year-old patent is based entirely on Fractus’s own conduct in bringing the ’677 patent to Geotab’s attention then waiting three years to bring suit. Req., 14. The Director should not reward Fractus’s attempt to use its own conduct in dissuading Geotab from challenging the ’677 patent in favor of a negotiated business resolution, then abandoning discussions and waiting three years to file suit against Geotab, as a sword to manufacture alleged “settled expectations” for its four-year-old patent.

Consistent with the Director’s guidance encouraging challenges to patents early in their lives, Geotab recently filed PGR2025-00056 against one of Fractus’s patents. But Geotab did not have the benefit of that guidance when it received Fractus’s letter in 2021. Fractus’s letter identified nine allegedly infringed patents and 129 total patent assets “available for license.” EX1062, 4-9. Fractus refused to substantiate any of its infringement accusations. If Geotab had filed IPRs before Fractus filed suit against the patents Fractus accused Geotab of infringing, that would have proven a substantial waste of resources given that Fractus did not sue on six of them. Geotab acted reasonably under the PTAB’s guidance in effect at

the time and did nothing to create “settled expectations” for Fractus.

Fractus fails to establish that it had “settled expectations” for its four-year-old patent. Geotab’s “early challenge[] favor[]s robust, predictable patent rights and weigh[]s against discretionary denial.” *Withrow Networks*, IPR2025-00775, Paper 10, 2.

### **III. CORRECTING THE EXAMINER’S MATERIAL ERROR WEIGHS AGAINST DENIAL**

Fractus overwhelmed the Examiner by filing *twenty-six* IDSs listing *1910 references*. EX1002, 118-389. The Examiner did not discuss a single prior art reference. The only rejections were for double patenting including over the claims in parent Patent No. 8,738,103. EX1002, 557-560. The Examiner allowed the case after Fractus filed a terminal disclaimer (EX1002, 882, 892-895) curing the double patenting rejection and found the claims “*allowable over prior art of record.*” EX1002, 959, 964.

#### **A. The Examiner Allowed the Claims Because He Failed to Find Fractus’s Coined “Complexity Factors” in the Prior Art**

Every claim in the ‘677 patent recites an antenna with an “*antenna contour*” having a “*complexity factor  $F_{21}$  having a value of at least 1.20*” and a “*complexity factor  $F_{32}$  less than 1.75.*” See Limitations [1.f], [6.f] and [12.f] at Pet., 103-106 (defining claim-limitation labels). This same limitation appears in three of the four independent claims (claims 1, 6 and 16) in the ’103 patent and was the reason the

Examiner allowed those claims in the '103 patent. EX1093, 41:41-44:28; EX1094, 2 (claims that issued as claims 1, 6 and 16 were “allowed because the prior art of record does not anticipate or render obvious” these “*complexity factor*” “features”).

Thus, the Examiner allowed the claims of the '677 patent because he found them “patentably indistinct” from claims in the '103 patent, which the Examiner allowed based on the “*complexity factor*” limitations. EX1002, 557-560; EX1094, 2. That was material error. As detailed *infra* §III.B, an antenna with the claimed *complexity factors* was indisputably in the prior art.

Fractus made the Examiner’s job exceedingly difficult by overwhelming the Examiner with volume (*infra* §III.C) and by using coined *complexity factor* claim terms defined using definitions that are time consuming to apply. The Examiner’s keyword search for prior art meeting the claimed *complexity factors* was doomed because these terms are coined. E.g., EX1002, 515 (search history). The Examiner would have needed to calculate, using the specification’s complicated definition, the *complexity factors*  $F_{21}$  and  $F_{32}$  for every prior art antenna evaluated.

To compute  $F_{21}$  and  $F_{32}$ , “a first, a second, and a third grid (hereinafter called grid  $G_1$ , grid  $G_2$  and grid  $G_3$  respectively) of substantially square or rectangular cells are placed on the antenna rectangle.” EX1001, 16:62-65. Each grid “is selected such that the aspect ratio” (i.e., cell width to cell height) is “closest to” or “larger than” one. *Id.*, 17:47-64. Grid  $G_2$  is determined such that the

cell size and aspect ratio “perfectly tessellate[.]” the “antenna rectangle” with “an odd number of columns and an odd number of rows.” *Id.*, 17:18-22, Fig. 14B. Grid G<sub>1</sub> is “created by grouping four cells of grid G<sub>2</sub> in such a manner that a corner of the first cell is the feeding point corner, and the first cell is positioned completely inside the antenna rectangle.” *Id.*, 18:55-58, Fig. 14A. Grid G<sub>3</sub> fits twice as many rows and columns within the antenna rectangle as G<sub>2</sub>, replacing “each cell of... grid G<sub>2</sub>... with 2-by-2 cells of... grid G<sub>3</sub>[.]” *Id.*, Fig. 14C, 19:57-60, 34:65-35:17. Complexity factors  $F_{21}$  and  $F_{32}$  are computed by counting the number of cells  $N_1$ ,  $N_2$ , and  $N_3$  in grids G<sub>1</sub>, G<sub>2</sub>, and G<sub>3</sub>, respectively, that are “inside the antenna rectangle” and “include at least a point of the antenna contour.” *Id.*, 19:1-14, 19:61-20:5. The formulas below are then applied to calculate  $F_{21}$  and  $F_{32}$ :

$$F_{21} = -\frac{\log(N_2) - \log(N_1)}{\log(1/2)} \quad F_{32} = -\frac{\log(N_3) - \log(N_2)}{\log(1/2)}$$

*Id.*, 19:1-14, 19:61-20:5, 34:54-35:17.

The Examiner could not have looked at a figure of a prior art antenna and determined intuitively whether the claimed *complexity factors* were met. Instead, the Examiner would have needed to generate three different grids over the antenna, count the number of cells in each grid that include a portion of the antenna contour, and then apply the formulas for  $F_{21}$  and  $F_{32}$ . The record does not reflect that the Examiner performed this time-consuming analysis for even a single prior art

antenna, let alone took on the Herculean task of doing so for *every* antenna in the 1900+ references that Fractus buried the Examiner with. Without doing this work, the Examiner could not have properly allowed the claims based on the claimed *complexity factors*. EX1094, 2.

**B. The Examiner Materially Erred by Failing to Appreciate That Ciais-Quadband Discloses the Claimed Complexity Factors**

The Petition does the work the Examiner did not. The Petition demonstrates that the “*antenna contour*” for the antenna in Ciais-Quadband (EX1009) meets the claimed *complexity factors*. *See e.g.*, Pet., 50-57 (Limitation [1f]). The Petition shows its work. Fractus cannot reasonably dispute that Ciais-Quadband’s antenna meets the claimed first antenna with the claimed *complexity factors*. This demonstrates that the Examiner materially erred in finding the claimed complexity factors absent from the prior art. *See supra* §III.A.

Grounds 1-2 use Ciais-Quadband in simple combinations that meet every claim. For example, Ground 1 shows that a POSA had reasons to use Ciais-Quadband’s antenna to implement Dou (EX1013) with a reasonable expectation of success because Ciais-Quadband’s antenna was designed for mobile handsets like Dou’s, making it suitable for implementing Dou’s “internal antenna[s]” 306 and 308 that are “integrated with the wireless device.” Pet., 33-36. This straightforward Dou+Ciais-Quadband combination meets claims 1-9. *Id.*, 32-69.

In *Hamilton Technologies v. Tehrani*, IPR2020-01199, Paper 6, 21 (Jan. 6, 2021), the examiner materially erred in allowing claims while failing to consider the petition’s references that were not before the examiner. Similarly here, the Examiner “did not have the benefit of the teachings” (*id.*) of Ciais-Quadband or the other the prior art used in the Petition and committed material error by failing to appreciate that an antenna with the claimed *complexity factors* was not inventive, and that the claims are unpatentable in view of the Petition’s prior art. Correcting that material error is an effective use of the Board’s resources and makes discretionary denial unwarranted.

**C. Fractus Burying the Examiner in 1900+ References Without Explaining Their Relevance Weighs Against Discretionary Denial**

Fractus submission of 1,910 references without explaining their relevance weighs against discretionary denial. *Ecto World v. RAI Strategic Holdings*, IPR2024-01280, Paper 13, 2, 5-7 (Dir. May 19, 2025) (precedential). In *Ecto World*, the Director noted that the “over 1,000 references” the applicant submitted far exceeded the typical number. *Id.*, 7 n.3. The volume of references the patent owner submitted without explaining their relevance was relevant to showing material error and “may demonstrate that discretionary denial under §325(d) is not warranted.” *Id.*, 6-7. While Fractus did not argue for discretionary denial under §325(d), the Director’s reasoning in *Ecto World* directly applies to Petitioner’s showing that the Examiner’s material error disfavors discretionary denial. *Id.*, 5-6.

#### **D. Correcting the Examiner’s Material Error Warrants Institution**

Fractus never even attempts to substantiate its boilerplate assertion that the Petition’s patentability challenges are “weak” because the grounds require a POSA “to modify the primary reference in a way directly contrary to the design guidelines provided in the reference, or rely on a misunderstanding of claim terms.”<sup>2</sup> Req., 14-15. Fractus’s attempt to “incorporate[] herein the merit arguments and evidence from its forthcoming... POPR” (*id.*, 14) fails. Petitioner cannot oppose merits arguments Fractus has not even advanced. Req., 14-15.

The fact that the Examiner erred “in a manner material to the patentability of the challenged claims” demonstrates that discretionary denial is not warranted. *Tesla v. Charge Fusion Techs.*, IPR2025-00152, Paper 11, 2-3 (Dir. June 12, 2025) (rejecting discretionary denial because material examiner error was shown); *Anthony v. ControlTec*, IPR2025-00559, Paper 12, 2 (Dir. July 16, 2025) (same). “[I]t is an appropriate use of Office resources” to review the Examiner’s material error. *Anthony*, IPR2025-00559, Paper 12, 2.

Fractus’s assertions that it has settled expectations (*supra* §II) and that *Fintiv* favors denial (*infra* §IV) fail. But even if either argument had merit, reviewing the

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<sup>2</sup> Fractus made the same unsubstantiated assertion word-for-word in all five of its requests for discretionary denial against Geotab’s five petitions.

Examiner’s material error would outweigh them and favor referring the Petition to the merits panel. *Anthony*, IPR2025-00559, Paper 12, 2 (the Director found that the examiner’s material error in overlooking teachings in a reference used in the petition outweighed settled expectations); *Xencor v. Merus*, IPR2025-00604, Paper 12, 2-3 (Dir. July 17, 2025) (same); *Skullcandy v. Earin*, IPR2025-00690, Paper 9, 2-3 (Dir. July 31, 2025) (same); *Microsoft v. Partec Cluster Competence Center*, IPR2025-00318, Paper 9, 2 (Dir. June 12, 2025) (reviewing the examiner’s material error outweighed trial expected before FWD); *Padagis US v. Neurelis*, IPR2025-00464, Paper 12, 2-3 (Dir. July 16, 2025) (same); *Samsung Elecs. v. Wilus Inst. of Stds. and Tech.*, IPR2025-00935, Paper 12, 2 (Dir. Sep. 26, 2025) (referring petition where examiner overlooked prior art teachings that disclosed challenged claim features even when FWD was expected after trial).

Fractus has weaponized the ’677 Patent, obtained as a result of Examiner error, by suing Petitioner Geotab and other companies across a range of industries. The Board’s resources should be used to redress the Examiner’s material error.

#### **IV. THE *FINTIV* FACTORS WEIGH AGAINST DENIAL**

Discretionary denial under *Apple v. Fintiv*, IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential) (“*Fintiv*”) is unwarranted for the same reasons the Director has already found. *Geotab*, IPR2025-00928, Paper 11 at 3.

Fractus argues that trial “is set for September 14, 2026.” Req., 5. But Judge

Gilstrap has currently set jury selection for that same date in *thirteen* cases. *Infra* §IV.A.2; EX1085 (listing cases consolidated only for pre-trial issues as separate cases). Median-time-to-trial statistics more reliably indicate when trial is likely to occur. *Amazon.com v. NL Giken*, IPR2025-00250, Paper 14, 2 (Dir. May 16, 2025).

Applying the 25.1 month median-time-to-trial statistics in EDTX (*infra* §IV.A), a trial is unlikely to be held before January 9, 2027—*after* FWD is expected by January 1, 2027. Neither *Fintiv* factor 2 nor any other *Fintiv* factor weighs in favor of discretionary denial. *Geotab*, IPR2025-00928, Paper 11, 2.

**A. Factor 2 Weighs Against Denial or Is at Worst Neutral**

No evidence supports that the EDTX trial against Geotab is likely to begin on September 14, 2026. Req., 5, 11. Fractus relies on a scheduling order for separate litigations, against Geotab *and Verizon*, consolidated only for pre-trial issues. EX1066. Verizon and Geotab will have separate trials. 35 U.S.C. §299; *Team Worldwide v. Wal-Mart Stores*, 287 F.Supp.3d 651, 656 (E.D. Tex. 2018) (Judge Gilstrap recognizing “Section 299 bars... consolidation of [accused infringers’] cases for trial”). Judge Gilstrap has currently scheduled *thirteen* cases to begin jury selection on September 14, 2026. EX1085 (listing cases). Because Judge Gilstrap originally schedules many trials to begin on the same date, his trials begin on the *originally*-scheduled date less than 8% of the time. EX1086.

A “number of cases [] scheduled for jury selection on [the same date]... [raises] some uncertainty whether the trial... would actually begin on that date.” *Boe Tech. Grp. v. Optronix Scis.*, IPR2024-01130, Paper 16, 10 (Jan. 27, 2025) (instituting IPR). EDTX’s 25.1 month median time-to-trial (EX1067, 35) is a more reliable indicator of when the district court trial is likely to begin. That MTTT indicates that a trial is unlikely to be held before January 9, 2027—25 months and 3 days (i.e., 25.1 months) after Fractus filed its complaint on December 6, 2024 (EX2005). That trial date is *after FWD* is expected by January 1, 2027.

Where a scheduled district court trial falls before FWD but MTTT statistics indicate the trial will be after FWD, the Director has found that factor 2 does not favor discretionary denial. *Geotab*, IPR2025-00928, Paper 11 at 3; *NL Giken*, IPR2025-00250, Paper 14, 2. Fractus’s discretionary denial arguments rely heavily on the proposition that the district court trial will beat the FWD, but EDTX’s MTTT statistics do not support that assertion.

Fractus cites “two year[]” data for Judge Gilstrap alone. Req., 11. The Director should reject Fractus’s data in favor of the 12-month district-wide data the Director regularly relies on (*see, e.g., NL Giken*, IPR2025-00250, Paper 14, 2) because that data uses a larger sample size for all 10 EDTX judges, making it more reliable, and it avoids stale two-year old data. Avoiding stale data is important because EDTX’s caseload increased by 16% in 2023 and 2024. EX1067, 35.

Even if the Director were to consider data for Judge Gilstrap alone, the last year of data is more reliable than Fractus's two-year data because Judge Gilstrap's patent docket increased 76% from 2023 (453 cases) to 2024 (799 cases), and 2025 is on pace to increase another 34% over 2024 (1074 new cases projected). EX1092 (800 cases as of Sep. 29, 2025). Judge Gilstrap held 14 patent trials over the past 12 months, with a 766-day median time-to-trial—i.e., 25.2 months from complaint—which places trial on January 11, 2027, after the FWD will issue. EX1086.

Fractus's 33 cases where the Director discretionarily denied institution based on a parallel EDTX litigation (Req., 7-11) are inapposite because none presented facts like those here where EDTX's MTTT statistics indicate that trial is unlikely to occur before FWD. In the 22 cases that considered MTTT statistics (EX1090), each expected trial date based on the MTTT beat the FWD. The remaining 11 cases did not discuss MTTT. None of Fractus's 33 cases presented the facts here where the MTTT statistics show that a trial is unlikely to occur until after FWD.

**B. Factor 4 Weighs Against Discretionary Denial**

Fractus's factor 4 analysis relies entirely on the fact that the current invalidity contentions in the case consolidating the Verizon and Geotab litigations overlap with the Petition. Req., 16. Fractus cites no authority supporting that this means factor 4 favors denial. None does.

Fractus ignores Geotab's *Sotera* stipulation. If a trial is instituted in this IPR, Petitioner "will not pursue in the Texas Litigation, any ground raised or that reasonably could have been raised in IPR." Pet., 100. This eliminates "concerns of inefficiency and the possibility of conflicting decisions," which "weigh[s] against" discretionary denial. *Fintiv*, IPR2020-00019, Paper 11, 12-13.

Fractus also ignores EDTX's Model Patent Order which will force Fractus to go to trial on no more than *five claims per patent* and *16 total* across the five patents Fractus asserted against Geotab. EX1069, ¶3. The Petition challenges all 20 claims of the '677 Patent. Pet., 3. The Petition challenging claims that will not be addressed in the litigation also "weighs heavily against discretionary denial." *POSCO v. ArcelorMittal*, IPR2024-01377, Paper 11, 15-16 (Mar. 18, 2025).

Given Fractus's nearly 20-year history of filing serial patent litigations against multiple defendants, one or more future suits involving the '677 patent's unpatentable claims is highly probable. Fractus has a history of settling cases early before the merits can be reached and its facially-unpatentable claims invalidated. EX1091 (listing cases Fractus "Settled/Voluntarily Terminated"). The Board is uniquely positioned to address the unpatentability of *every* claim of the '677 patent in a single matter and avoid duplicative litigation and potentially inconsistent results. *Berkshire Hathaway Energy Company v. Birchtech*, IPR2025-00274, Paper 23, 2 (Dir. July 2, 2025) (rejecting discretionary denial because resolving at the

Office was more efficient than multiple district court cases). Geotab’s timely *Sotera* stipulation (Pet., 84-85) and Judge Gilstrap’s forced reduction in claims prior to trial mean there will be minimal overlap between this IPR and the EDTX case, which weighs heavily against denial.

Nothing supports Fractus’s incredible assertion that Geotab is somehow “seeking two bites at the apple” because *Verizon* is not bound by Geotab’s *Sotera* stipulation. Req., 13. There is no relationship between Geotab and Verizon. Req., 12-13. That Fractus faces validity challenges from Verizon and Geotab results from *Fractus*’s decision to sue two unrelated parties simultaneously.

### **C. Factor 3 Weighs Against Discretionary Denial**

“[P]etitioner filed the petition expeditiously” and there has been limited “investment in the parallel proceeding” and no “[court-]issued substantive orders.” *Fintiv*, IPR2020-00019, Paper 11, 6, 9-12 (this weighs against denial).

Geotab diligently filed its Petition less than three months after Fractus served infringement contentions (EX1016, 8), which weighs against discretionary denial. *Dish Network v. Broadband iTV*, IPR2020-01359, Paper 15, 19-20 (Feb. 12, 2021) (instituted; petition filed three months after service of infringement contentions). Geotab filed its Petition nearly *seven months before* the statutory bar date (January 3, 2026). EX1070 (EDTX complaint served). The Board has found petitioners diligent, weighing against denial, when the IPR was filed much closer

to the statutory deadline. *Samsung Elecs. v. Headwater Rsch.*, IPR2024-01396, Paper 13, 7 (Apr. 1, 2025) (filed approximately 4 months before deadline).

There has been little investment in the EDTX litigation. The court has issued no substantive orders related to the patent. Claim construction has not been briefed. EX2004, 5. The *Markman* hearing (by 2 months) and close of expert discovery (by 6 months) will come *after* the institution decision. EX2004. These facts weigh against discretionary denial. *Tesla v. Autonomous Devices*, IPR2023-01172, Paper 21, 8-9 (Jan. 8, 2024). Even shorter times have been found to weigh against discretionary denial. *See, e.g., SAP Am. v. Cyandia*, IPR2024-01433, Paper 13, 11 (Apr. 7, 2025) (*Markman* 17 days, and expert discovery closing 2.5 months, after institution decision, weighed against denial); *Kia v. Emerging Auto.*, IPR2024-01167, Paper 14, 17 (Jan. 27, 2025) (*Markman* 18 days, and expert discovery closing 2.5 months, after institution decision, weighed against denial).

#### **D. Factor 1 Weighs Against Discretionary Denial**

Fractus's contention that Judge Gilstrap is unlikely to grant a stay wrongly addresses a *pre*-institution stay. Req., 12-13, 15. The relevant consideration is whether "a stay... is likely to be granted *if a proceeding is instituted.*" *Fintiv*, Paper 11, 6-7 (emphasis added). Even if Judge Gilstrap were to deny the stay pre-institution, it is his "well-established" practice to provide leave to refile a motion to stay after an IPR has been instituted. *See AGIS Software Dev. v. Google*, No. 2:19-

cv-00361, 2021 WL 465424, \*1 (E.D. Tex. Feb. 9, 2021) (Gilstrap, J).

Judge Gilstrap has stayed litigation in favor of an instituted IPR. *See, e.g., Resonant Sys. v. Samsung Elecs.*, No. 2:22-cv-00423, 2024 WL 1021023, \*2-4 (E.D. Tex. Mar. 8, 2024); *Commc'n Techs. v. Samsung Elecs. Am.*, No. 2:21-cv-00444, 2023 WL 1478447, \*2-5 (E.D. Tex. Feb. 2, 2023); *Broadphone v. Samsung Elecs.*, No. 2:23-cv-00001, 2024 WL 3524022, \*2-3 (E.D. Tex. Jul. 24, 2024).

Fractus does not cite a single contrary case. Thus, Fractus fails to show that factor 1 weighs in favor of discretionary denial.

**E. Factor 6 Weighs Against Discretionary Denial Because the Examiner Materially Erred and the Merits Are Strong**

Factor 6 considers “[o]ther circumstances that impact the Board’s exercise of discretion, including the merits.” *Fintiv*, Paper 11, 5-6. The Petition’s strong merits and the examiner’s material error during prosecution (*supra* §III) weigh against denial. *Anthony*, IPR2025-00559, Paper 12, 2 (rejecting discretionary denial because material error was shown by the Examiner in overlooking prior art references used in the IPR’s grounds); *Charge Fusion*, IPR2025-00152, Paper 11, 2-3 (same); *Tesla v. Intellectual Ventures II*, IPR2025-00339, Paper 10, 2-3 (Dir. Jun. 13, 2025) (referred to merits panel after finding strong merits). Correcting the Examiner’s material error and the strong merits are additional “circumstances” that weigh against discretionary denial. *Fintiv*, Paper 11, 5-6.

**F. Factor 5 Is Neutral**

While different parties would weigh factor 5 against denial, the opposite is not true. Fractus cites no case to support its bald assertion that factor 5 “*favours* discretionary denial” because “Petitioners are defendants” in the litigation. Req., 16. Where the IPR and litigation involve the same parties, factor 5 is neutral. *Shenzhen Root Tech. v. Chiaro Tech.*, IPR2024-01296, Paper 9, 20 (Feb. 25, 2025) (granting institution); *Google v. Parus Holdings*, IPR2020-00846, Paper 9, 20-21 (Oct. 21, 2020) (same).

\* \* \*

Discretionary denial is unwarranted. The '677 Patent would never have issued without the Examiner's material error after Fractus buried the Examiner in over 1,900 references—from which he did not make a single rejection. The Director should refer the Petition to the Board to correct the Examiner's error.

Respectfully submitted,  
*Geotab Inc. and Geotab USA, Inc.*

Date: October 1, 2025

By: /Adam R. Wichman/  
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**CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6 (E)(4)**

I certify that on October 1, 2025, a copy of the foregoing document, including any exhibits or appendices filed therewith, is being served via electronic mail, as previously consented to by Patent Owner, upon the following:

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Date: October 1, 2025

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