

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

FRACTUS, S.A.
Patent Owner.

Case No. IPR2025-01027
Patent No. 11,349,200

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

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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, p. 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")
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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)
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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), available at https://www.itu.int/pub/R-REP-M.2134-2008/en (visited May 22, 2025)</p>
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I. INTRODUCTION

Patent Owner (“Fractus”) is a Spanish non-practicing entity that sued Petitioners (“Geotab”), a leading provider of telematic (vehicle-tracking) solutions, in the Eastern District of Texas (“EDTX”) for allegedly infringing five patents. Geotab challenged the ’200 patent, which issued just over *three* years ago, early in its life. That weighs against discretionary denial. Patent Owner’s request for discretionary denial (Paper 9, “Req.”) is baseless.

The Director discretionarily denied petitions that Geotab filed against two other asserted Fractus patents based on *very different facts*. *Geotab v. Fractus*, IPR2025-00928 and -00929, Paper 11, 2-3 (Dir. Sep. 12, 2025). The Director discretionarily denied Geotab’s other petitions because they challenged patents “*in force for more than eleven years, creating strong settled expectations* for Patent Owner.”¹ *Id.* The Director was also influenced by Fractus having sent Geotab a letter in 2021 alleging that Geotab infringed those challenged patents. *Id.* Here, the ’200 patent issued just *three* years ago, and Fractus never accused Geotab of infringing it before filing suit. On these materially different facts discretionary denial is not warranted.

Fintiv does not favor discretionary denial for the reasons the Director

¹ Unless otherwise indicated all emphasis is added throughout the Opposition.

already found. *Id.*, 2. While Fractus relies on the scheduled trial of September 14, 2026, the time-to-trial statistics suggest trial would begin after Final Written Decision (“FWD”), so “it is unclear” whether the trial would precede the FWD. *Id.* “These considerations neither favor nor counsel against discretionary denial.” *Id.*

Moreover, the Examiner materially erred in allowing the ’200 patent. The claims were allowed *without rejection* after Fractus buried the Examiner in **1,900+** references. The Examiner allowed the claims based on a limitation that is clearly in the prior art. A trial should be instituted to correct the Examiner’s material error.

II. FRACTUS HAS NO “SETTLED EXPECTATIONS”

Geotab challenged the ’200 patent just over three years post-issuance. 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 Geotab was “aware of patents *related to* the ’200 Patent since at least 2021, when Patent Owner brought those patents to Petitioners’ attention.” Req., 13. Fractus references its October 28, 2021 letter that identified nine patents Geotab allegedly infringed. EX1062, 4-9. The ’200 Patent was *not* on the list. 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 so. EX1062, 3; EX1063, 2 (requesting “claim charts... so that Geotab can understand the basis for Fractus’s claims”). Fractus never substantiated any infringement accusation. EX1064; EX1062, 4-9; 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. And when Fractus filed suit out of the blue, Fractus did not follow through on its accusations for *two-thirds* of the patents it accused Geotab of infringing. Of the nine patents Fractus identified as purportedly infringed by Geotab in the letter that brought “patents related to the ’200 Patent” to Geotab’s attention in 2021 (Req., 13), six (8,593,349; 8,362,960; 7,872,605; 8,111,199; 7,471,246 and 7,907,092) were not included in the lawsuit Fractus filed years later against Geotab in EDTX.

Fractus says Geotab should have challenged the ’200 Patent earlier because

it is “related” to patents Fractus brought to Geotab’s attention. Req., 13. But Geotab had no reason to believe that Fractus had infringement concerns about the ’200 Patent. The ’200 Patent issued *after* Geotab had asked Fractus (on January 25, 2022) to substantiate its accusation that Geotab infringed the *other* Fractus patents that Fractus actually identified. EX1062, 4-8. Fractus could have added the ’200 Patent to the list of patents about which Fractus expressed infringement concerns. Instead, Fractus stopped communicating altogether. The first Geotab learned that Fractus had infringement concerns about the ’200 Patent was when Fractus filed suit. Fractus’s assertion it had “settled expectations” that Geotab would not challenge its three-year-old patent is baseless.

So too is Fractus’s assertion that Geotab should have monitored Fractus’s “publicly available” application and challenged the ’200 Patent immediately upon issuance. Req., 13. Geotab and Fractus are not competitors. Geotab is in the fleet tracking business. Fractus is an NPE whose patents do not relate to fleet tracking. Fractus has sued operating companies across multiple industries. In the other cases, the Director did not find this compelling because Geotab “had notice” of the challenged patents because Fractus’s letter identified them as allegedly infringed by Geotab. *Geotab*, IPR2025-00928, Paper 11, 3. That “notice” is lacking here.

Fractus’s “notice” letter identified nine patents Fractus alleged that Geotab infringed, and the ’200 Patent was not among them. EX1062, 4-8. Fractus also

identified almost 130 other patent assets in its “very large patent portfolio” as “available for license” but never asserted that Geotab infringed any of its other patent assets. *Id.*, 9 (Exhibit II). The obligations Fractus purports to impose on Geotab are unreasonable. Fractus did nothing to distinguish the ’200 Patent from among any other patent in Fractus’s “very large patent portfolio” available for license, and it would have been commercially infeasible for Geotab to challenge *every* one of Fractus’s 100+ patents.

Fractus’s assertion that it has “settled expectations” for its three-year-old patent is based entirely on Fractus’s own conduct in bringing *different* patents to Geotab’s attention and then waiting three years to bring suit. Req., 14. The Director should not allow Fractus to manufacture alleged “settled expectations” in this manner to insulate from review the facially-unpatentable claims in its three-year-old patent that Fractus never even identified to Geotab in advance of filing suit. Geotab’s “early challenge[.]” to this three-year-old patent “favor[s] robust, predictable patent rights.” *Withrow Networks*, IPR2025-00775, Paper 10, 2.

Fractus cites three cases to purportedly support its assertion that Geotab “had many years” to challenge the ’200 Patent but “chose[.] not to do so.” Req., 13. None of those cases says anything like that, let alone for a patent that is only three years old; none discusses infringement allegations or notice to the petitioner. Fractus has failed to establish that it had “settled expectations.”

III. THE EXAMINER MATERIALLY ERRED

Fractus overwhelmed the Examiner by filing *twenty-six* IDSs listing over *1900 references*. EX1004, 382-388, 88-109, 139-379. The Examiner did not make a single rejection. The Examiner explained that he allowed the claims in a first action because he (mistakenly) believed that no prior art reference disclosed a first antenna with a “*first antenna contour ha[ving] a level of complexity defined by complexity factor F_{21} having a value of at least 1.20 and complexity factor F_{32} having a value of at least 1.35.*” EX1004, 504-509. The “*complexity factor[s] F_{21}* ” and “ *F_{32}* ” that appear in every challenged claim (*see* Limitations [1.f], [6.e], and [11.e] at Pet., 87-92 (defining claim-limitation labels)) are coined terms that the ’200 patent specifies by a complicated definition that is time-consuming to apply. EX1003, 16:64-19:25. This hindered the Examiner’s ability to search and evaluate prior art. Calculating the complexity factors for every antenna disclosed among the 1900+ references of record would have been a Herculean task. There is no evidence that the Examiner even tried. That weighs against discretionary denial.

The Examiner materially erred by failing to recognize that Jing (EX1011)—No. 32 on the fourth IDS that Fractus filed (EX1004, 188)—discloses the claimed first antenna with the claimed complexity factors, and that it would have been obvious to use Jing’s antenna in a wireless device like Dou. Pet., 31-72 (Ground 1). This simple Dou+Jing combination meets claims 1-15, 17, and 19-20. *Id.*

Fractus's Request does not even try to dispute this.

A. Fractus Burying the Examiner Weighs Against Denial

Fractus's submitting more than 1,900 references without explaining their relevance weighs against discretionary denial. *Ecto World v. RAI Strategic Holdings*, IPR2024-01280, Paper 13 at 2, 5-7 (Dir. May 19, 2025) (precedential). In *Ecto World*, the Petition relied only on references that were submitted via IDS and that the examiner initialed. 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 submitted without explanation is 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* applies to Petitioner's showing that the Examiner's material error disfavors discretionary denial. Fractus buried Jing among 1900+ other references. The record does not reflect that the Examiner gave Jing any meaningful consideration before initialing the IDS. "[T]he Examiner did not issue any prior art rejections... so the Examiner materially erred by overlooking certain teachings in the [Jing] prior art on the IDS." *Id.*, 5-6.

B. The Examiner Materially Erred by Failing to Appreciate That Jing Discloses the Claimed First Antenna

The Examiner could not have found prior art meeting the claimed *complexity factors* via a keyword search because these terms are coined. The Examiner would

have needed to calculate, using the specification's *extremely complicated* definition, the *complexity factors* F_{21} and F_{32} for each prior art antenna evaluated.

To compute F_{21} and F_{32} , “a first, a second, and a third grid (hereinafter called grid G₁, grid G₂ and grid G₃ respectively) of substantially square or rectangular cells are placed on the antenna rectangle.” EX1003, 17:5-8. Each grid “is selected such that the aspect ratio” (i.e., cell width to cell height) is closest to or “larger than” one. *Id.*, 17:65-18:7. Grid G₂ 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.*, 17:28-32, Fig. 14B. Grid G₁ is “created by grouping four cells of grid G₂ 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.*, 18:66-19:2, Fig. 14A. Grid G₃ fits twice as many rows and columns within the antenna rectangle as G₂, replacing “each cell of... grid G₂... with 2-by-2 cells of... grid G₃[.]” *Id.*, Fig. 14C, 19:62-20:4, 34:53-56, 35:12-17. *Complexity factors* F_{21} and F_{32} are computed by counting the number of cells N₁, N₂, and N₃ in grids G₁, G₂, and G₃, respectively, that are “inside the antenna rectangle” and “include at least a point of the antenna contour.” *Id.*, 19:12-20, 20:5-12. The formulas below are then applied using N₁, N₂, and N₃:

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

Id., 19:12-25, 20:12-16.

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 each 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 for *every* antenna buried in the 1900+ references Fractus submitted. Without doing this work, the Examiner could not have properly allowed the claims based on the claimed *complexity factors* F_{21} and F_{32} .

The Petition applies the '200 patent's definition and demonstrates that Jing's antenna meets the claimed *complexity factors* with F_{21} being 1.43 ("at least 1.20") and F_{32} being 1.70 ("at least 1.35"). See Pet., 51-56 ([1.f]), 65 ([6.e]), 69 ([11.e]). The Petition shows its work. Fractus cannot reasonably dispute that Jing's antenna meets the claimed first antenna with the claimed *complexity factors*.

Ground 1 presents a straightforward combination of Jing with Dou (EX1013). Dou discloses a wireless device with two antennas, arranged with a ground plane, and conventional components for using the antennas to communicate over multiple frequency bands. Pet., 31. The Petition explains that a POSA had reasons to use Jing's multi-band antenna in Dou with a reasonable expectation of

success because Jing’s antenna was designed for use in 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., 33-39. The straightforward Dou+Jing combination meets claims 1-15, 17 and 19-20. Pet., 31-72.

C. Correcting the Examiner’s Material Error Warrants Institution

Fractus never even attempts to substantiate its assertion that the Petition’s patentability challenges are “weak” because the grounds either 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.” Req., 14. Fractus’s attempt to “incorporate[] herein the merit arguments and evidence from its forthcoming... POPR” (*id.*) fails. Petitioners cannot oppose arguments Fractus has not even advanced yet. Fractus’s POPR will be unable to refute that Jing teaches the complexity factor limitations the Examiner erroneously found novel.

Discretionary denial is not warranted because “it is an appropriate use of Office resources” to review the Examiner’s material error. *Anthony v. ControlTec*, IPR2025-00559, Paper 12, 2 (Dir. July 16, 2025).

Fractus’s assertions that settled expectations (*supra* §II) and *Fintiv* (*infra* §V) favor denial both fail. But even if either argument had merit, reviewing the Examiner’s material error would outweigh them and favor referring the Petition to the merits panel. *Anthony*, IPR2025-00559, Paper 12, 2 (the examiner’s material

error 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)..

IV. THE REEXAMINATION DOES NOT SUPPORT DENIAL

Fractus cites no authority supporting its incredible assertion that discretionary denial is warranted because of the reexamination. Req., 12-13. The reexamination of two claims does not insulate **all 20 claims** of the ’200 patent from review. Fractus’s assertions that claims 11-12 are “representative of all the independent claims” and that “Petitioners rely on the same ... obviousness rationales for independent claims 6 and 11 that they rely on for claim 1” are false. *Id.* Independent claims 1 and 6 include limitations **absent** from claims 11-12. *See e.g.*, Limitations [1.b]-[1.c], [1.h] and [6.g]; Petition, 69-70 (not relying on its showing for any of those limitations in claims 1 and 6 to meet claim 11).

Moreover, the CRU did not consider the Petition’s grounds. The CRU

confirmed claims 11-12 because of specific problems with the reexamination's grounds that are not shared by the Petition's grounds. The CRU found that the reexamination grounds added a ground plane to a reference (Langley) designed to work without one which would have rendered Langley inoperable and yielded a device that would not operate in at least three frequency bands as claimed.

EX1047, 13-14. Additionally, the reexamination grounds combined Langley's Bluetooth antenna with Bolin's Bluetooth antenna, which the CRU found would have caused interference between the two Bluetooth antennas so "either or both of Langley and Bolin would not operate as intended." *Id.*, 14. Thus, the CRU confirmed claims 11-12 because it found the *particular* references used in the reexamination grounds to be uncombinable.

None of those deficiencies are relevant to the Petition. Ground 1 combines Dou and Jing, which describe antennas that do not interfere and that each is designed to operate with a ground plane. Pet., 35-36 (ground plane) and 37-39 (explaining that Jing's WLAN coverage at 2400-2500 MHz does not interfere with Dou's Bluetooth antenna); EX1029, Fig. 9, [0044]) (corroborating that mobile devices conventionally included compatible WLAN and Bluetooth antennas).

Moreover, the record does not reflect that the CRU ever considered Jing, alone or in combination with Dou, so the reexamination does not refute the Petition's showing that the Examiner materially erred in allowing the claims during

original prosecution. Indeed, the CRU’s finding that the references relied on therein disclose “the individual features of claims 11 and 12 of the 200 Patent” (EX1047, 13) confirms that the original examiner erred in finding the first antenna with the claimed complexity factors to be missing from the prior art. *Supra* §III.

V. 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, 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* §V.A; 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* §V.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, 2; *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., 10-11. 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., 6-10) 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., 15. 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., 84-85. 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 '200 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 '200 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 '200 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.

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); *Tesla v. Charge Fusion*., IPR2025-00152, Paper 11, 2-3 (Dir. Jun. 12, 2025) (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 “Petitioner is a defendant” in the litigation. Req., 16. Where the IPR and litigation involve the same parties, factor 5 is neutral. *Google v. Parus Holdings*, IPR2020-00846, Paper 9, 20-21 (Oct. 21, 2020) (same); *Shenzhen Root Tech. v. Chiaro Tech.*, IPR2024-01296, Paper 9, 20 (Feb. 25, 2025) (instituting).

* * *

Discretionary denial is unwarranted. The Director should refer the Petition to the Board to correct the Examiner’s material error in prosecution.

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

Date: October 1, 2025

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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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