

Filed on behalf of: Google LLC

Entered on: October 8, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

ADVANCED CODING TECHNOLOGIES LLC,
Patent Owner.

IPR2025-01161
Patent 7,804,891

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

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1001	U.S. Patent No. 7,804,891
1002	Prosecution History of U.S. Patent No. 7,804,891
1003	Declaration and <i>Curriculum Vitae</i> of Harry Bims, Ph.D.
1004	EIA/TIA Interim Standard – Cellular System Dual-Mode Mobile Station – Base Station Compatibility Standard, IS-54-B, April 1992 (“IS-54-B”)
1005	U.S. Patent No. 6,519,740 to Mårtensson (“Mårtensson”)
1006	Ernest Nanjung Yeh, “Advanced Vocoder Idle Slot Exploitation for TIA IS-136 Standard,” Massachusetts Institute of Technology, May 1998 (“Yeh”)
1007	U.S. Patent No. 5,555,257 to Paul W. Dent (“Dent”)
1008	U.S. Patent No. 5,255,343 to Huan-yu Su (“Su”)
1009	Declaration and <i>Curriculum Vitae</i> of June Munford
1010	Plaintiff Advanced Coding Technologies, LLC’s Preliminary Claim Constructions and Preliminary Identification of Extrinsic Evidence Pursuant to P.R. 4-2 and Appendix A
1011	“Communication Systems,” Simon Haykin, 4 th ed. (2001)
1012	U.S. Patent No. 5,471,655
1013	U.S. Patent No. 5,845,215
1014	GSM Arena BlackBerry 7230 Article
1015	CNET RIM BlackBerry 7230 (T-Mobile) Review
1016	Third Amended Docket Control Order
1017	Letter from P. Young to P. Lambrianakos re: Google’s Sotera Stipulation
1018-1052	[reserved]

1053	U.S. Patent No. 7,804,891 Patent Assignment, Reel: 059497 Frame: 0108 ("ACT Assignment")
1054	About Advanced Coding Technologies LLC, https://advancedcodingtechnologies.com/about (last visited Aug. 28, 2025) ("About ACT")
1055	[reserved]
1056	Complaint for Patent Infringement, <i>Advanced Coding Technologies LLC v. LG Electronics Inc.</i> , No. 2:22-cv-00501 (E.D. Tex. Dec. 30, 2022), ECF 1 ("ACT-LG Complaint")
1057	Complaint for Patent Infringement, <i>Advanced Coding Technologies LLC v. Samsung Electronics Co.</i> , No. 2:22-cv-00499 (E.D. Tex. Dec. 30, 2022), ECF 1 ("ACT-Samsung Complaint")
1058	Plaintiff Advanced Coding Technologies LLC's Objections and Responses to Google's First Set of Interrogatories, <i>Advanced Coding Technologies LLC v. Google LLC</i> , No. 2:24-cv-00353 (E.D. Tex. Nov. 20, 2024) ("ACT Rog Response")
1059	Answer to Second Amended Complaint, <i>Advanced Coding Technologies LLC v. Google LLC</i> , No. 2:24-cv-00353 (E.D. Tex. Feb. 20, 2025), ECF 55 ("ACT-Google Answer")
1060-1063	[reserved]
1064	Complaint for Patent Infringement, <i>Advanced Coding Technologies LLC v. ByteDance Ltd.</i> , No. 2:22-cv-00129 (E.D. Tex. Apr. 29, 2022), ECF 1 ("ACT-TikTok Complaint")
1065	Docket, <i>Advanced Coding Technologies LLC v. ByteDance Ltd.</i> , No. 2:22-cv-00129 (E.D. Tex.) ("ACT-TikTok Docket")
1066	Order of Dismissal, <i>Advanced Coding Technologies LLC v. ByteDance Ltd.</i> , No. 2:22-cv-00129 (E.D. Tex. Sept. 27, 2023), ECF 138 ("ACT-TikTok Dismissal")
1067	Order of Dismissal, <i>Advanced Coding Technologies LLC v. LG Electronics Inc.</i> , No. 2:22-cv-00501 (E.D. Tex. May 31, 2024), ECF 120 ("ACT-LG Dismissal")
1068	Docket, <i>Advanced Coding Technologies LLC v. LG Electronics Inc.</i> , No. 2:22-cv-00501 (E.D. Tex.) ("ACT-LG Docket")
1069	[reserved]
1070	Order of Dismissal, <i>Advanced Coding Technologies LLC v. Samsung Electronics Co.</i> , No. 2:22-cv-00499 (E.D. Tex. Sept. 13, 2024), ECF 222 ("ACT-Samsung Dismissal")

1071	Complaint for Patent Infringement, <i>Advanced Coding Technologies LLC v. Apple Inc.</i> , No. 2:24-cv-00687 (E.D. Tex. Aug. 20, 2024), ECF 1 (“ACT-Apple Complaint II”)
1072	How We Started and Where We Are Today – Google – About Google, http://about.google/company-info/our-story/ (last visited Aug. 6, 2025) (“About Google”)
1073	A New Era of American Innovation – About Google Around the World, https://about.google/intl/ALL_us/around-the-globe/local-info/ (last visited Aug. 6, 2025) (“Google – New Era”)
1074-1078	[reserved]
1079	Letter from IP Subcommittee Ranking Member Schiff to U.S. Dept. of Commerce, dated Apr. 18, 2025 (“Schiff letter to DOC”)
1080	The Patent Trial and Appeal Board and Inter Partes Review, https://crsreports.congress.gov (updated May 28, 2024) (“CRS Report”)
1081-1085	[reserved]
1086	Judge Gilstrap Motion to Stay Results https://search.docketnavigator.com/patent/binder/0/0?print=true (last visited Sept. 4, 2025) (“Gilstrap Stay Results”)
1087	United States District Courts – National Judicial Caseload Profile, https://www.uscourts.gov/data-news/data-tables/2025/03/31/federal-judicial-caseload-statistics/c-5 (“Caseload Stats”)
1088	U.S. District Courts – Median Time Intervals from Filing to Disposition of Civil Cases Terminated, https://www.uscourts.gov/sites/default/files/document/fcms_na_distprofile0331.2025.pdf (last visited Apr. 24, 2025) (“Median Time Intervals”)
1089	Minute Entry, <i>Advanced Coding Technologies LLC v. Google LLC</i> , No. 2:24-cv-00353 (E.D. Tex. July 19, 2024) (“Minute Entry re Scheduling Conference”)
1090-1091	[reserved]
1092	First Amended Complaint for Patent Infringement, <i>Advanced Coding Technologies LLC v. Google LLC</i> , No. 2:24-cv-00353 (E.D. Tex. Aug. 2, 2024), ECF 23 (“ACT-Google Amended Complaint”)

1093	U.S. District Court, Eastern District of Texas Calendar of Events Set for 3/2/2026-3/2/2026, Judge Rodney Gilstrap, Presiding (“Gilstrap March 2, 2026 Schedule”)
1094	Dufresne et al., “How Reliable Are Trial Dates Relied on by the PTAB in the Fintiv Analysis?” Perkins Coie (Oct. 29, 2021) (“Fintiv Study”)
1095-1102	[reserved]
1103	ETSI TS 138 212 V15.3.0 (2018-10) 5G; NR; Multiplexing and channel coding (3GPP TS 38.212 version 15.3.0 Release 15) (“3GPP TS 38.212”)
1104	802.11ax-2021 - 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 Amendment 1: Enhancements for High-Efficiency WLAN (“802.11ax-2021”)
1105	Pixel 4a (5G) and Pixel 5 pack 5G speeds and so much more, https://blog.google/products/pixel/new-5g-pixels-more-helpful-features/ (last visited Oct. 2, 2025) (“Google Pixel 4a”)
1106	Get a faster connection with Wi-Fi 6E on Nest Wifi Pro, https://blog.google/products/google-nest/google-nest-wifi-pro-6e/ (last visited Oct. 2, 2025) (“Google Nest Pro”)
1107	WiFi® (MAC/PHY) WiFi Alliance, https://www.wi-fi.org/wi-fi-macphy , last visited Oct. 6, 2025 (“Wi-Fi 6”)
1108	Googe discontinues Pixel 5, Pixel 4a 5G after Pixel 5a launch, https://www.digitaltrends.com/mobile/pixel-5-4a-5g-discontinued-after-5a-launch/ , last visited Oct. 6, 2025 (“Pixel 4a (5G) Discontinued”)
1109	[reserved]
1110	<i>Commc’n Techs., Inc. v. Samsung Elecs. Am., Inc.</i> , No. 2:21-cv-00444-JRG, 2023 WL 1478447 (E.D. Tex. Feb. 2, 2023)
1111	<i>Broadphone LLC v. Samsung Elecs. Co.</i> , No. 2:23-cv-00001-JRG, 2024 WL 3524022 (E.D. Tex. July 24, 2024)
1112	<i>Cobblestone Wireless, LLC v. Cisco Sys., Inc.</i> , No. 2:23-cv-00454-JRG-RSP, 2024 WL 5047854 (E.D. Tex. Dec. 9, 2024)
1113	<i>Foras Techs. Ltd. v. Aptiv PLC</i> , No. 2:23-cv-00314-JRG, 2024 WL 5348631 (E.D. Tex. July 25, 2024)
1114	<i>STA Grp. LLC v. Motorola Sols., Inc.</i> , No. 2:22-cv-00381-JRG-RSP, 2024 WL 2852961 (E.D. Tex. June 5, 2024)

1115	<i>Resonant Sys., Inc. v. Samsung Elecs. Co.</i> , No. 2:22-cv-00423-JRG, 2024 WL 1021023 (E.D. Tex. Mar. 8, 2024)
1116	<i>Vill. Green Techs., LLC v. Samsung Elecs. Co.</i> , No. 2:22-cv-00099-JRG, 2023 WL 416419 (E.D. Tex. Jan. 25, 2023)
1117	Guidance on USPTO's rescission of "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation," Mar. 24, 2025, https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_rescission_20250324.pdf ("Interim Procedure for Discretionary Denials")

Petitioner Google LLC (“Google”) submits this opposition to Patent Owner’s Request for Discretionary Denial of Institution (“PO Brief,” Paper 7) filed by Advanced Coding Technologies, LLC (“Patent Owner” or “ACT”). When holistically assessing the circumstances of this case, it is clear that reviewing the ’891 patent is an appropriate use of Office resources. The Petition should be referred for an institution decision on the merits by the Board and not denied discretionarily.

First, the Office erred in issuing the ’891 patent. The § 325(d)/*Advanced Bionics* analysis confirms multiple errors occurred during examination, and the Office’s resources are effectively utilized in evaluating and correcting those errors.

Second, the sole discretionary factors addressed in the PO Brief, the status of the parallel litigation and “settled expectations,” do not warrant denial. ACT does not have the “settled expectations” it claims to, and the litigation’s status, in combination with other factors, does not suggest discretionary denial is appropriate.

I. The Process Memorandum’s Relevant Considerations Favor Institution

Relevant considerations in Board precedent and the Process Memorandum, including Process Memorandum Factors 3-7, support referral for a merits institution determination. *See* Interim Director Discretionary Process (“IDDP”), § I.B.

A. Strong Unpatentability Challenges Support Referral (Factor 3)

ACT does not address the Petition’s strength or explain the merits’ relevance; accordingly, this factor cannot weigh towards denial. *See generally* PO Brief; IDDP

§II.C.i; *Twitch Interactive, Inc. v. Razdog Holdings LLC*, IPR2025-00307, Paper 18 at 3 (Dir. May 16, 2025) (“*Twitch*”) (referring petition and noting patent owner’s allegations in favor of discretionary denial lacked explanation).

Google’s Petition shows explicit disclosure or teaching of each challenged claim limitation, backed by expert testimony from Dr. Harry Bims (Ex.1003) explaining how a POSITA would have viewed the art’s teachings and why those teachings would have been combined. Given the lack of **any** argument countering the strength of Google’s Petition, this factor weighs strongly in favor of referral.

B. Reliance on Expert Testimony Supports Referral (Factor 4)

Consistent with precedent and Office guidance, Dr. Bims’ testimony weighs towards referral because it provides an overview of relevant technologies, a detailed summary of the art, and why/how the art would be combined to render obvious the claims. Additionally, the cited art, and additional evidence a POSITA would have considered in evaluating the patent, support his testimony. ACT doesn’t address this factor or argue the Petition’s reliance isn’t proper, which would be incorrect.

C. Settled Expectations Favor Referral (Factor 5)

Google’s settled expectations and numerous other facts outweigh ACT’s settled expectations argument relying solely on the patent’s age. First, despite the IDDP’s requirement that a party’s brief be “supported with facts **and evidence**” (IDDP § I.C.) ACT’s brief includes no evidence supporting its expectations.

Nevertheless, even considering a challenged patent's age and resultant potential settled expectations, there may be, as here, persuasive reasons why claims should be reviewed. *See Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 at 2-3 (Director June 26, 2025) ("*Intel*"); *see also Shenzhen Tuozhu Tech. Co. v. Stratasys, Inc.*, IPR2025-00438, Paper 10 at 3 (Director July 17, 2025) ("*Shenzen*"). These considerations weigh overwhelmingly against ACT's settled expectations claim.

No commercialization/marketing: The patent statute requires marking products commercializing the '891 patent's apparatus claims. *See* 35 USC § 287(a). ACT alleges compliance with §287 (Ex.1092, 36) but hasn't provided evidence of marked products. ACT is a non-practicing entity that did not commercialize the patent (*see* Ex.1054) and hasn't shown commercialization or marking by licensees.

ACT's '891 patent district court case accuses Google's products implementing the 5G-NR or WiFi 6 communication standards, meaning ACT considers the mere use of these standards a factor in infringement. *See, e.g.*, Ex.1092, ¶177, PO Brief 4. But ACT cannot argue their development or use is commercialization of the patent because there has been no determination these standards implicate the patent. Accordingly, this consideration weighs against ACT.

No assertion until 2024: The '891 patent was never asserted by its original owners. ACT acquired the patent in February 2022 (Ex.1053) but did not assert the patent for over two years, until August 2024. Thus, for 14 years (two during ACT's

ownership), the patent sat dormant, with no evidence that it would be asserted. The lack of assertion cuts against any claim of settled expectations.

Additionally, this delay in assertion, including after ACT's acquisition, meant Google had no reason to anticipate assertion. The 5G-NR and WiFi 6 communications standards were standardized in 2018 and 2021, respectively. Ex.1103-1104. ACT's 5G-related infringement case accuses Google's Pixel 4a (5G), which was released in 2020 (*see* Ex.1105) and was discontinued in August 2021 (*see* Ex.1108), **before** ACT even acquired the '891 patent. ACT's WiFi 6-related infringement case accuses Google's Nest WiFi Pro, released in 2022. *See* Ex.1106. ACT's years-long delay of assertion after acquiring the patent, despite the targeted products being released, or not even being available, before or near its acquisition, led to Google expecting non-assertion, outweighing ACT's expectations. *See also Home Depot USA, Inc. v. H2 Intellect LLC*, IPR2025-00480, Paper 11 at 2-3 (Dir. Sept. 4, 2025) (referring petition where petitioner's reasons it didn't anticipate assertion weighed against patent owner's expectations).

No licensing: ACT has alleged licensing to three parties, but each appears to be the product of ACT's assertions (detailed below), which began only in 2022. Ex.1058, 25. ACT has only owned the patent since February 2022. Ex.1053. There is no evidence provided by ACT in this IPR that the previous owner licensed the '891 patent. The lack of licensing of the '891 patent prior to ACT's ownership also

cuts against any claim of settled expectations and in favor of review.

No application in technology space: Google does not infringe any claim of the '891 patent, and there is no evidence that the '891 patent's claims are implicated by any standard. *See also* Ex.1059, 41. There is no evidence the '891 patent has been applied in Google's technology space, cutting against any settled expectations.

No long-standing knowledge of patent: ACT gave no actual or constructive notice of its patents or allegations to Google before filing suit, cutting against any claim of settled expectations. *Cf. iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 at 2-3 (Dir. June 6, 2025).

Other facts contradict ACT's settled expectations: ACT's underdeveloped settled expectations arguments are plainly insufficient. *Twitch*, 3 (“alleged settled expectations” allegation not “sufficiently explained”). And, when ACT acquired the patent, it did so knowing it would be subject to challenge and would have **expected** challenges upon assertion. *See Celgene Corp. v. Peter*, 931 F.3d 1342, 1361-1362 (Fed. Cir. 2019) (patent owners have had the “expectation...for nearly four decades” that “patents are open to PTO reconsideration”). ACT's assignment enumerated rights, title, and interest in the patents, including “reexaminations” confirming ACT had expectations that its purchased patents would be reviewed. Ex.1053, 19.

Further, ACT provided nothing to support its barebones, conclusory argument of settled expectations, and did not show it acquired the prior owner's expectations

or that it developed its own expectations after the acquisition. ACT withheld from the Director the purchase agreement, which would have shown, e.g., the amount paid, and any validity representations, for the '891 patent. ACT's strategic decision to withhold relevant facts suggests the facts are adverse to ACT, and its discretionary denial request based on settled expectations without evidence to support existence of those settled expectations should be held against ACT.

While ACT refrained from providing evidence of its subjective expectations, ACT's litigation strategy provides substantial circumstantial evidence that ACT has no settled expectations in any one particular patent it acquired. ACT's pattern of filing multiple lawsuits asserting numerous patents and then settling the cases before any merits evaluation occurs, or once IPRs are instituted, indicates ACT has no settled expectations as to any asserted patent. *See, e.g.*, Ex.1064-1066 (filing and quickly settling suit against TikTok); Ex.1056-1057, 1067-1068, 1070 (filing suits against LG/Samsung and quickly settling LG suit before merits evaluation and Samsung suit after IPRs instituted). ACT apparently has no willingness to have its patents fully evaluated on the merits, whether by the Office or district court.

ACT's argument also runs contrary to governing statutes. While Congress has expressly immunized patents of a certain age from post-issuance challenges (*see, e.g.*, H.R. Rep. No. 112-98, pt. 1, at 46-48 (2011) (certain patents immunized from *inter partes* reexamination)) or expressly limited them in other ways (*see* AIA

§§ 3(n)(1), 6(f)(2)(A) (immunizing patents from PGR); AIA § 18 (sunset for CBMs)), Congress took the opposite approach for IPRs, eliminating any date-based carveout such that “**all patents can be challenged** in *inter partes* review,” regardless of age. *See* H.R. Rep. No. 112-98, at 46-48 (emphasis added). “Congress’s choice to depart from the model of a closely related statute is a choice neither we nor the agency may disregard.” *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364 (2018).¹

Google’s settled expectations accordingly weigh in favor of referral and outweigh ACT’s underexplained settled expectations contentions.

D. Compelling Economic and Public Interests Supports Referral

Compelling economic interests also favor institution because Google’s strong economic presence in the United States has contributed to American innovation for almost 30 years. Ex.1072. Google employs over 100,000 people. Ex.1073. In 2024, Google invested over \$49 billion in research and development to power American technological leadership, and to produce unprecedented leaps in artificial intelligence and quantum computing capabilities that advance national security. *See*

¹ The Director’s application of “settled expectations” also exceeds his authority under the law and is barred by judicial estoppel based on the Office repeatedly advancing the position that a patentee lacked an expectation that its patents would not be challenged. *See Celgene*, 931 F.3d at 1361-62; *see also* 5 U.S.C. § 706(2)(A).

Ex.1073. Moreover, in 2024, Google created \$850 billion in economic activity for American businesses, nonprofits, publishers, creators, and developers and maintains offices or data centers in twenty-six states. *See* Ex.1073.

ACT, by contrast, is a holding company formed just months before it acquired the '891 patent and others. Ex.1054. ACT does not practice the claimed invention or sell any products related to the claimed technology, and does not contribute to or otherwise use its intellectual property for the advancement of economic interests in the United States. This factor therefore favors institution.

ACT's request to reward its actions with discretionary denial of this IPR is unwarranted. This IPR epitomizes IPRs' very purpose: "to weed out bad patent claims" being levied against the industry and burdening American companies' technological and economic contributions via "overpatenting." *Thryv, Inc. v. Click-To-Call Techs., LP*, 590 U.S. 45, 54 (2020). In creating the PTAB, the "signature accomplishment" of the AIA (Ex.1079, 2), "Congress was [] concerned that poor-quality patents fueled litigation by so-called 'patent trolls,' a pejorative term for patent plaintiffs that do not manufacture or sell the patented products." Ex.1080, 2.

Referral and institution serves the public interest; doing so would streamline the instant dispute between ACT and Google and disputes involving other parties (e.g., Apple, *see* Ex.1071). Institution and an unpatentability finding would prevent ACT from future unjustifiable assertions. Although the '891 patent is only currently

asserted against Google and Apple, ACT's litigation history and its allegations against products employing the widely used 5G-NR and WiFi 6 standards suggest Google and Apple do not complete the list of ACT's targets, and ACT is likely to continue its pattern of serially asserting its patent against additional defendants that also use these standards, creating further inefficiencies with the courts and the Office. *See, e.g., Ex.1108 (2.9B WiFi 6 product shipments in 2025).*

E. Other Considerations Support Referral (Factor 7)

The "complex and diverse" litigation, involving multiple patents in different families, "tip[s] the balance against discretionary denial": "the Board is better suited to review a large number of patents involving diverse subject matter." *Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00217, Paper 9 at 2 (Dir. June 13, 2025).

ACT's litigation involves six patents in five families, with distinct subject matter and differences in accused products; all patents are subject to Google's IPRs:

IPR	Patent No.	Claimed Subject Matter	Accused Product
IPR2025-00998	8,090,025	Motion Compensation and Smoothing Block Borders	AV1 encoder/decoder chipsets and software
IPR2025-00999	9,986,303	Adaptive Bitrate Streaming	AV1 encoder/decoder chipsets and software
IPR2025-01000	10,218,995	Super-Resolution Image Enhancement	AV1 encoder/decoder chipsets and software
IPR2025-01161	7,804,891	Communication Quality Judgment for Wireless Communication	5G NR Smartphones and WiFi 6 devices
IPR2025-01277	8,230,101	Storage of Multimedia Content	Network content delivery systems
IPR2025-01278	9,042,448	Super-Resolution Image Enhancement	AV1 encoder/decoder chipsets and software

Unique to this case, the Board is particularly well-situated to evaluate this large number of patents because the Board has already performed a preliminary evaluation, for purposes of instituting trial, of half of the patents. *See also* IPR2025-00998, Paper 8; IPR2025-00999, Paper 8; IPR2025-01000, Paper 8.

Additionally, review is justified based on ACT's litigation strategy of serially asserting patents against defendants alleging infringement by similar products, imposing inefficiencies on the courts and Office. *See also Berkshire Hathaway Energy Co. v. Birchtech Corp.*, IPR2025-00274, Paper 23 at 2 (Director July 2, 2025) (patent owner's assertion against a large number of parties weighed in favor of referral because "resolving the dispute ... at the Office would be more efficient").

F. Process Memorandum Factors 1-2 are Neutral

The '891 patent has not been previously evaluated, and there is no new judicial precedent impacting this case, making these considerations neutral.

II. The Office's Error During Examination Supports Referral

ACT presents no §325(d)-based arguments; any such arguments are waived. The record reflects significant Office error during examination, supporting referral.

Advanced Bionics' first part is not satisfied because the "same or substantially the same art" was not presented to the Office. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential) ("*Advanced Bionics*"). Google's Petition relies on IS-54-B,

Dent, Yeh, Mårtensson, and Su. Mårtensson was applied by the examiner during examination, but IS-54-B, Dent, Yeh, and Su were not cited by the applicant or examiner during examination, none appear on the '891 patent's face, and none were applied in a rejection or identified in the examiner's reasons for allowance. Accordingly, this Petition's art and arguments are not the same as, or substantially similar to, the art or arguments previously presented to the Office. The Office therefore erred at least in not applying the teachings of IS-54-B, Dent, Yeh, and Su.

Even if *Advanced Bionics* part 2 is reached, Office error pervaded examination, supporting referral. During examination, original claims 1 and 9-10 were rejected over Minde and Mårtensson, and the examiner found allowable subject matter in original claims 2-8. Ex.1002, 579-589. Instead of arguing the independent claims' merits, the applicant incorporated claim 2's subject matter into the independent claims (Ex.1002, 605-606), and the application proceeded to issue.

But the Office erred in identifying claim 2's subject matter as allowable, because it was well-known before the '891 patent's priority date. Claim 2 recited a "data changing means" with language now appearing in the '891 patent's 1/8/9[c].

But "making a predetermined change" to data to be transmitted was well-known: the Petition cites IS-54-B and its "**bad frame masking system** [] based on a 6 state machine" to teach this subject matter. Pet.27-28. IS-54-B's state machine replaces bits (makes a predetermined change) dependent on the state determination.

Id.; IS-54-B, p. 75. This is exactly like the '891 patent's disclosure of this subject matter: a "bad frame masking process." *See* Pet.3-4 (citing Ex.1001, 10:45-54, Fig. 8). IS-54-B is a fundamental technical standard for wireless communications published in April 1992, a decade before the '891 patent's priority. The Office therefore erred in not applying during examination a well-known technical standard with teachings exactly corresponding to the claimed and disclosed concepts.

Additionally, use of a "predetermined condition" was likewise well-known. As Dr. Bims explained, using "thresholds for purposes of determining whether to make a change" to data "was a well-known technique in the wireless communication field" (Pet.28); for example, CRC checksums and hash functions were well-known. Yeh (Ground 1) teaches comparing a Hamming distance to a threshold to make a change to data (*see* Pet.28), and Su (Ground 2) similarly uses thresholds when describing a "metric to determine" bit corruption necessitating a data change (*see* Pet.55). This subject matter was likewise well-known years before the priority date: Yeh was published in May 1998, and Su issued in October 1993.

Again, the file history indicates the Examiner never considered IS-54-B, Yeh, and Su as in the Petition. Thus, the lack of Office consideration of the pertinent teachings of those references warrants referral. The omission of these references, and failure to consider their teachings in combination with Mårtensson as the Petition proposes, constitutes material error and warrants reconsideration of the '891

patent's claims, especially since the features that were added for allowance were all known and obvious to apply in combination before the priority date. For each of these reasons, the *Advanced Bionics* second part is not satisfied.

The Office error shown above, the Board's *Advanced Bionics* precedent, and the Director's discretionary decisions all support referral, and trial is warranted to review "a material error by the Office." *See, e.g., Microsoft v. ParTec*, IPR2025-00318, Paper 9, 3 (Dir. June 12, 2025) ("*ParTec*"); *Anthony Inc. v. Controltec LLC*, IPR2025-00559, Paper 9, 2 (Dir. July 16, 2025) (finding error where petition's reference was not considered during prosecution); *Taiwan Semiconductor Mfg. Co. v. Marlin Semiconductor Ltd.*, IPR2025-00847, Paper 11, 3-4 (Dir. Sept. 3, 2025); *see also Yealink (USA) Network Tech. Co. v. Barco N.V.*, IPR2025-00491, Paper 18, 2-3 (Dir. June 25, 2025); *Tesla, Inc. v. Charge Fusion Techs., LLC*, IPR2025-00152, Paper 11, 2 (Dir. June 12, 2025); *Microsoft Corp. v. XI Discovery, Inc.*, IPR2025-00253, Paper 13, 2-3 (Dir. June 25, 2025); *Eunsung Glob. Corp. v. Hydrafacial LLC*, IPR2025-00445, Paper 14, 2-3 (Dir. July 10, 2025); *Embodiment, Inc. v. LifeNet Health*, IPR2025-00248, Paper 13, 2-3 (Dir. June 26, 2025); *Activision Blizzard, Inc. v. Milestone Ent. LLC*, IPR2025-00708, Paper 13, 2-3 (Dir. Aug. 14, 2025); *Skullcandy, Inc. v. Earin AB*, IPR2025-00690, Paper 9, 2 (Dir. July 31, 2025); *Xencor, Inc. v. Merus N.V.*, IPR2025-00604, Paper 12, 2 (Dir. July 17, 2025); *Amazon.com, Inc., v. Soundclear Techs. LLC*, IPR2025-00565, Paper 11, 2 (Dir. July 10, 2025).

Accordingly, Google has “show[n] a material error by the Office and it is an appropriate use of Office resources to review the potential error.” *ParTec* at 3. The Office's errors during examination weigh heavily against discretionary denial.

III. *General Plastic* Factors Weigh in Favor of Referral

ACT does not address *General Plastic*, which nevertheless does not weigh in favor of denial, because Google has not previously filed a petition against any claim of the '891 patent. *See Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (PTAB Sept. 6, 2017) (precedential); *Valve Corp. v. Elec. Scripting Prods., Inc.*, IPR2019-00062, Paper 11 (PTAB Apr. 2, 2019) (precedential).

The '891 patent is also being challenged by Apple Inc., but ACT doesn't argue Apple's petition should impact the discretionary decision, and it should not. Google and Apple are not the same party and do not possess a *Valve*-like significant relationship, and Google had no involvement with or input into Apple's IPR. Nor are the petitions “parallel petitions.” *See* Trial Practice Guide, 58-59. Google and Apple are simply defendants in different district court proceedings with different allegedly infringing products; their separate IPR filings are the product solely of ACT's “staggered assertions,” nothing more. *Volkswagen Group of Am., Inc. v. Neo Wireless LLC*, IPR2022-01537, Paper 8 at 11-12 (PTAB May 5, 2023).

IV. The *Fintiv* Factors Weigh in Favor of Referral

Most of the PO Brief argues the Director should deny the Petition under

§314(a) given the parallel litigation. But efficiency, fairness, and the merits support institution, especially considering all factors holistically. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential) (“*Fintiv*”).

A. Factor 1: No Stay Requested But May Be Granted, Weighing in Favor of Referral/Institution or, at Worst, Neutral

Factor 1 evaluates whether a stay exists or may be granted after institution (*Fintiv*, 6). Here, “the record contains adequate evidence that the District Court may grant a stay upon institution,” even if “not specifically directed to this proceeding,” and thus Factor 1 weighs against denial. *See Juniper Networks, Inc. v. Packet Intelligence LLC*, IPR2020-00336, Paper 21 at 16 (PTAB Sept. 10, 2020).

A stay is possible. In deciding whether to stay litigation pending IPR, the Eastern District of Texas considers: (1) whether a stay will unduly prejudice or present clear tactical disadvantage to the nonmoving party, (2) whether a stay will simplify the issues in question and the trial of the case, and (3) whether discovery is complete and whether a trial date has been set. *BarTex Rsch., LLC v. FedEx Corp.*, 611 F. Supp. 2d 647, 649-50 (E.D. Tex. 2009).

The court often stays litigation even when the final written decision deadline lags the scheduled trial date by several months. *See, e.g.*, Ex.1110 (five months); Ex.1111 (three months). The court also regularly finds that instituted IPRs meet the stay factors and issues stays despite its otherwise aggressive procedural schedules. *See, e.g.*, Ex.1112; Ex.1113; Ex.1111; Ex.1114; Ex.1115; Ex.1110; Ex.1116. Judge

Gilstrap also grants motions to stay IPRs regularly. *See* Ex.1086.

The court has also observed that the PTAB's IPR determinations "could narrow the issues before the court, prevent duplicative or unnecessary discovery, and encourage settlement or dismissal." *Norman IP Holdings, LLC v. TP-Link Techs., Co.*, No. 6:13-cv-384-JDL, 2014 WL 5035718, at *3 (E.D. Tex. Oct. 8, 2014). That is particularly relevant here, because after the Board instituted Samsung's IPR on ACT's patents, ACT swiftly settled its disputes with Samsung. Removing asserted patents/claims from litigation due to parallel IPR proceedings also creates invaluable efficiencies in the district court. The court has also found that "the outcome of a PTO proceeding is likely to assist the court in determining patent validity or eliminate the need to try infringement issues." *NFC Tech. LLC v. HTC Am., Inc.*, No. 2:13-cv-1058-WCB, 2015 WL 1069111, at *1 (E.D. Tex. Mar. 11, 2015) (citations omitted). Thus, any IPR that would remove or greatly reduce asserted patents/claims is "likely to assist" the court by streamlining a potentially unwieldy trial. *Id.* Streamlining is especially helpful where, as here, the asserted patents cover different subject matter and Google's IPRs cite different prior art. Significant efficiencies would be gained by adjudicating validity before the PTAB.

Even if this factor does not weigh in favor of institution based on the above, at the very least, Google has not requested a stay in the parallel litigation, so *Fintiv* Factor 1 is neutral. *See, e.g., Hulu, LLC v. SITO Mobile R&D IP, Ltd.*, IPR2021-

00298, Paper 11 at 10-11 (PTAB May 19, 2021). Factor 1, properly considered for how the district court will likely rule post-institution under the particular facts here, should weigh in favor of institution, or at worst, neutrally.

B. Factor 2: Schedule Weighs Neutrally for Referral/Institution

There is evidence that trial will not commence on the scheduled date, and thus, Factor 2 does not weigh strongly in favor of discretionary denial. The Board considers “**evidence that the parties make of record that bears on the proximity of the district court’s trial date ... including median time-to-trial statistics**” (emphasis added). *See* Ex.1117. Recent statistics show the median time from filing to trial in the Eastern District of Texas is roughly 26 months. *See* Ex.1087 (26.2 months); Ex.1088 (25.9 months). Measured from ACT’s August 2024 amended complaint asserting the ’891 patent, trial will not occur until at least October 2026 — seven months after the currently scheduled March 2026 jury selection date and three months before the projected final written decision statutory deadline. The Director has referred petitions even in light of a similar difference between a relevant ITC date and the FWD date, after holistically considering discretionary factors as a whole. *See, e.g., POSCO Co. v. ArcelorMittal*, IPR2025-00370, Paper 10 at 2-4 (Dir. June 25, 2025). A balanced *Fintiv* factor assessment has similarly resulted in institution despite a five-month or more gap between a scheduled trial date and FWD due date. *See Kia Corp. v. Emerging Auto. LLC*, IPR2024-00981, Paper 10 at 20, 23

(PTAB Dec. 18, 2024); *Google LLC v. Multimodal Media LLC*, IPR2024-00056, Paper 9 at 8 (PTAB Apr. 12, 2024) (instituting with approx. 6 months' gap).

Additionally, Judge Gilstrap set the March 2026 jury selection date **before** the '891 patent was added to the case; thus, the time-to-trial statistics are even more likely to be accurate here. *See* Ex.1089; *see also* *Shenzhen Tuozhu Tech. Co. v. Stratasys, Inc.*, IPR2025-00321, Paper 10 at 10 (PTAB June 18, 2025) (statistics for Judge Gilstrap meant Factor 2 was neutral or slightly against denial). Other evidence bearing on the proximity of the court's trial date also suggests the trial date is uncertain. Judge Gilstrap's March 2, 2026 schedule shows jury selection in two other cases and pretrial conferences in five other cases. *See* Ex.1093, 3-4 (*Brewster and Wynne* set for jury selection on March 2, 2026); *see also* *BOE Tech. Grp. Co. v. Optronics LLC*, IPR2024-01131, Paper 15 at 11 (PTAB Feb. 12, 2025) (Factor 2 neutral or slightly against discretion where multiple cases scheduled for jury selection on same date). One or more of these dates is likely to slip, and trial is statistically very likely to be delayed. *See* Ex.1094 (studying reliance on initially scheduled trial dates in *Fintiv* analysis, finding dates were "wrong 94% of the time" compared to actual trial dates, the vast majority being delayed 3-6 months). Factor 2 does not weigh strongly in favor of exercising discretion; at worst, it is neutral.

C. Factor 3: Investment Weighs In Favor of Referral/Institution

In the litigation, a claim construction hearing was held, but it is unknown

when an order will issue. No other pertinent orders have issued. Accordingly, the investment in the parallel proceeding (*Fintiv* at 9-12) and circumstances here suggest this factor weighs against discretionary denial or, at worst, is neutral.

D. Factor 4: Limited Overlap Weighs in Favor of Referral

Google provided a *Sotera* stipulation (Ex.1017), which weighs strongly against exercising discretion. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 19 (PTAB Dec. 1, 2020) (precedential). Additionally, ACT has only asserted claims 1-4, 6, and 8-9 (*see* Ex.2002, 2). Google's Petition challenges all claims; thus, the Board will be the only forum that will address claims 5 and 7, further weighing in favor of institution. *See, e.g., Palo Alto Networks, Inc. v. Centripetal Networks, Inc.*, IPR2021-01149, Paper 10 at 10-11 (PTAB Feb. 22, 2022). Given Google's stipulation, the claims that only the Board will address, and the estoppel provision, there will be minimal or no overlap between the Petition's invalidity issues and those in district court, favoring referral. *Fintiv* at 12-13.

E. Factor 5: Same Parties Weighs Neutrally for Referral/Institution

When the parties are the same, the Board regularly weighs this neutrally. *See, e.g., Nokia v. Soto*, IPR2023-00680, Paper 30 at 13 (Dir. Dec. 3, 2024).

F. Factor 6: Other Circumstances Weigh in Favor of Referral

"Other circumstances," such as the petition's merits, strongly favor referral. *See, e.g., ParTec*, 3 (referring petition based on petitioner's showing of material error despite scheduled district court trial date preceding projected final written

decision date). Additionally, decisions issued before the rescinded June 2022 Memo confirm a strong merits showing weighs towards referral and institution when taking a “holistic view of whether efficiency and integrity of the system are best served by denying or instituting review” (*Fintiv*, 6). See also, e.g., *Illumina Inc. v. Trs. of Columbia Univ.*, IPR2020-00988, Paper 20 at 8-15 (PTAB Dec. 8, 2020); *Synthego Corp. v. Agilent Techs., Inc.*, IPR2022-00402, Paper 11 at 12-19 (PTAB May 31, 2022); *Samsung Elecs. Co. v. Scramoge Tech., Ltd.*, IPR2022-00241, Paper 10 (PTAB June 13, 2022); *Illumina, Inc. v. Natera, Inc.*, IPR2019-01201, Paper 19 at 8 (PTAB Dec. 18, 2019); *NetNut Ltd. v. Bright Data Ltd.*, IPR2021-01492, Paper 12 at 9-16 (PTAB Mar. 21, 2022); *Coolit Sys., Inc. v. Asetek Danmark A/S*, IPR2021-01195, Paper 10 at 11 (PTAB Dec. 28, 2021).

V. Conclusion

A holistic assessment of the arguments and evidence present in this case demonstrates the Director should refer the Petition for a merits evaluation.²

² Petitioner reserves the right to challenge the March 26, 2025 Interim Processes for PTAB Workload Management, including that document's list of “relevant factors,” at least because that document is legally invalid as (1) exceeding the Director's authority, (2) arbitrary and capricious, and (3) adopted without notice-and-comment rulemaking.

Respectfully submitted,

Dated: October 8, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 8th day of October, 2025, true and correct copies of the foregoing **Petitioner's Opposition to Patent Owner's Request for Discretionary Denial of Institution and all Exhibits** were served by electronic mail on Patent Owner's lead and backup counsel at the following email addresses:

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