UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD., and

SAMSUNG ELECTRONICS AMERICA, INC.,

Petitioners,

v.

XIFI NETWORKS R&D, INC.,

Patent Owner.

Case IPR2025-01204

Patent No. 11,818,591

PATENT OWNER'S MEMORANDUM

IN SUPPORT OF DISCRETIONARY DENIAL

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Exhibit No.	Description
EX2001	Complaint, *XiFi Networks R&D, Inc. v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.*, No. 2:24-cv-01057-JRG, Dkt. 1 (E.D. Tex. Dec. 17, 2024).
EX2002	First Amended Docket Control Order, *XiFi Networks R&D, Inc. v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.*, No. 2:24-cv-01057-JRG, Dkt. 28 (E.D. Tex. Apr. 14, 2025).
EX2003	Plaintiff's First Amended Complaint, *XiFi Networks R&D, Inc. v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.*, No. 2:24-cv-01057-JRG, Dkt. 13 (E.D. Tex. Mar. 11, 2025).
EX2004	Defendants' Answer and Affirmative Defenses to Plaintiff's First Amended Complaint, *XiFi Networks R&D, Inc. v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.*, No. 2:24-cv-01057-JRG, Dkt. 31 (E.D. Tex. Jun. 9, 2025).
EX2005	Defendants' P.R 3.3 and 3.4 Invalidity Contentions (Jun. 18, 2025).
EX2006	Table 1 Comparing Select Sections of Almeroth Declaration to Corresponding Sections of Petition (EX1002).

I. INTRODUCTION

The Director should exercise discretion and deny institution of Samsung's petition for *inter partes* review of U.S. Patent No. 11,891,591 ("the '591 patent"). A trial in the United States District Court for the Eastern District of Texas will decide validity of the '591 patent over two months before the Board's deadline to issue a final written decision. That court is unlikely to grant a motion to stay while the petition is pending, and Samsung's *Sotera* stipulation does not eliminate the overlap between Samsung's arguments in the district court and in its petition. Institution would thus result in inefficient use of the Board's, the parties', and the district court's time and resources. Equally important, Samsung's petition depends extensively on questionable expert testimony. That testimony strays beyond providing "helpful context" and instead broadly attempts to breathe meaning into the alleged prior art beyond its actual disclosure.

Pursuant to Acting Director Stewart's March 26, 2025 Memorandum titled "Interim Processes for PTAB Workload Management" ("Stewart Memorandum"), Patent Owner XiFi Networks R&D, Inc. ("XiFi") respectfully requests that the Director exercise discretion and deny Petitioners Samsung Electronics Co, Ltd.'s and Samsung Electronics America, Inc.'s ("Petitioners" or "Samsung") request for *inter partes* review.

II. BACKGROUND

XiFi sued Samsung in the Eastern District of Texas on December 17, 2024. *XiFi Networks R&D, Inc. v. Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.*, No. 2:24-cv-01057-JRG, Dkt. 1 (E.D. Tex. Dec. 17, 2024). EX2001 (Complaint). The district court established a case schedule, and has set trial for October 19, 2026. EX2002 (District Court First Amended Docket Control Order, dated April 14, 2025) at 1. The parties are currently engaged in active discovery.

XiFi asserts eleven patents against Samsung. EX2003 (First Amended Complaint) at ¶1.[1] The eleven patents are from the same patent family and involve closely related subject matter. *Id*. at ¶¶33-42. Faced with these assertions, Samsung did not seek a stay to prepare petitions for *inter partes* review, but instead engaged directly and actively in defending that case. In particular, Samsung has asserted invalidity of all asserted claims. EX2004 (Defendant's Answer and Affirmative Defenses to Plaintiff's First Amended Complaint for Patent Infringement, Second Affirmative Defense (Invalidity)) at pg. 30. Samsung served its invalidity contentions on June 18, 2025. EX2005 (Samsung's P.R 3.3 and 3.4 Invalidity

[1] Nine patents were asserted in the original complaint filed in December 2024, including the '591 patent; two patents were added in the amended complaint.

Contentions) at 151. Several weeks later, on July 3 and 10, 2025, Samsung filed IPR petitions challenging eight of the patents originally asserted by XiFi. IPR2025-01203, IPR2025-01204, IPR2025-01205, IPR2025-01206, IPR2025-01207, IPR2025-01208, IPR2025-01209, IPR2025-01270. On July 21, 2025 Samsung filed PGR petitions challenging the remaining three XiFi patents. PGR2025-00067, PGR2025-00068, PGR2025-00069.

III. ARGUMENT

Considering all relevant factors here, efficiency and integrity of the system are best served if the Director denies institution. Institution of *inter partes* review is a matter of discretion. *Cuozzo Speed Techs. v. Lee*, 579 U.S. 261, 273 (2016) (citing 35 U.S.C. § 314); *Mylan Lab'ys Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021) ("[N]o petitioner has a right to such institution."). Where institution does not align with the AIA's objective "to provide an effective and efficient alternative to district court litigation," it should be denied. *Gen. Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16-17 (PTAB Sept. 6, 2017) (precedential). The Board and the Director routinely deny institution where IPR would be inefficient in view of parallel litigation. *See, e.g.*, *Ericsson Inc. v. Procomm Int'l Pte. Ltd.*, IPR2024-01455, Paper 15 at 3 (PTAB May 16, 2025); *Arm Ltd. v. Daedalus Prime LLC*, IPR2025-00207, Paper 10 at 2 (PTAB May 16, 2025); *Google LLC v. Cerence Op. Co.*, IPR2024-01465,

2025 WL 1182608, at *7 (PTAB Apr. 23, 2025); *Charter Commc'ns, Inc. v. Adaptive Spectrum & Signal Alignment, Inc.*, IPR2025-00087, 2025 WL 1297798, at *8 (PTAB May 5, 2025).

The Board and the Director take "a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review." *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (PTAB Mar. 20, 2020) (precedential) (citing *NHK Spring Co. v. Interi-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential)). When determining whether to exercise its discretion to deny institution under 35 U.S.C. § 314, the Board considers six factors:

(1) whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;

(2) proximity of the court's trial date to the Board's projected statutory deadline for a final written decision;

(3) investment in the parallel proceeding by the court and the parties;

(4) overlap between issues raised in the petition and in the parallel proceeding;

(5) whether the petitioner and the defendant in the parallel proceeding are the same party; and

(6) other circumstances that impact the Board's exercise of discretion, including the merits.

Fintiv, IPR2020-00019, Paper 11 at 6. In the evaluation and application of the *Fintiv* factors, the Director also may consider the extent of the petition's reliance on expert testimony and strength of the unpatentability challenges. Stewart Memorandum at 2-3.

A. The District Court Trial Will Precede a Final Written Decision by Over Two Months.

The trial date alone is grounds for denial. Over two months before the Board must issue a final written decision, a jury will determine validity of the same claims in view of the same art. Trial is set to begin on October 19, 2026. EX2002. If IPR is instituted on the '591 patent, a final written decision is not due until January 10, 2027—over two months after trial. *See* 35 U.S.C. §316(a)(11). Samsung's eight trailing IPRs, including this one, and three trailing PGRs, are not an efficient use of the Board's resources. *See, e.g.*, *Shenzen Tuozhu v. Stratasys, Inc.*, IPR2025-00354, Paper 11 at 2 (PTAB June 12, 2025) ("[I]t will be inefficient to maintain two parallel proceedings when the district court scheduled trial date and the projected final written decision due date are in close proximity."). Discretionary denial is appropriate where parallel litigation will conclude well in advance of the Board's statutory decision deadline. *Fintiv*, IPR2020-00019, Paper

11 at 9; *see also Cisco Systems, Inc. v. WSOU Investments LLC*, IPR2025-00429, Paper 15 at 2 (PTAB June 25, 20225) (denying institution where trial scheduled to begin three months before final written decision deadline); *Full-Metal-Power B.V. v. Infocus Downhole Soln's USA LLC*, IPR2025-00391, Paper 14 at 2 (PTAB June 25, 2025) (denying institution where trial scheduled to begin five weeks before final written decision deadline).

Even if the district court postpones the trial for several weeks due to other cases on its docket, trial likely will still precede a final written decision by approximately two months. Therefore, discretionary denial is appropriate. *See Google*, 2025 WL 1182608, at *4 (denying institution despite "a number of cases . . . scheduled for jury selection on the same day as the District Court Litigation.").[2]

[2] The Director has found that a high likelihood that a district court trial will precede any final written decision, particularly when coupled with the parties' significant investment in the district court proceeding, weighs in favor of discretionary denial even where the petition was filed within nine months of the patent's issuance. *See, e.g.*, *Azurity Pharma., Inc. v. Heron Therapeutics, Inc.*, PGR2025-0035, Paper 11 at 2-3 (PTAB Aug. 14, 2025); *RingConn, LLC v. OuraRing, Inc.*, PGR2025-0018, Paper 11 at 2-3 (PTAB Jun. 25, 2025).

B. Samsung Waited Almost Seven Months to File its Petitions for *Inter Partes* Review, While the Parties Actively Litigated the Case.

Samsung's delay weighs in favor of denial. Delay favors discretionary denial, particularly "if the petitioner cannot explain the delay in filing its petition." *Fintiv*, IPR2020-00019, Paper 11 at 12; *see also Ericsson*, IPR2024-01455, Paper 15 at 2 (denying institution and noting that petitioner "does not explain sufficiently" how other case events affected the delayed timing of the petition); *see also AT&T*, 2024 WL 5126018, at *5 (denying institution where petitioner filed petition five months after receiving infringement contentions and failed to "present[] any factual evidence to justify this delay").

Samsung's delay created the gap between the trial date and final written decision deadline. XiFi filed its original complaint on December 17, 2024, including an assertion of the '591 patent. EX2001. XiFi served infringement contentions on March 26, 2025, and Samsung served invalidity contentions on June 18, 2025. EX2005. Yet Samsung waited until July 3 and July 10, 2025—almost seven months after the complaint, more than three months after infringement contentions, and several weeks after its own invalidity contentions—to file its IPR petitions. Here, Samsung has offered no explanation for why it delayed filing the petition.

Samsung's delay will require the parties to invest significant resources in litigation even before the Board makes institution decisions. By the Board's institution deadlines of January 10 and January 20, 2026, for the IPRs and February 3, 2026, for the PGRs, the parties will have completed almost 10 months of fact discovery with less than four months of fact discovery remaining, and will have begun claim construction exchanges. *See* 35 U.S.C. § 314; EX2002 at 3-4. The parties' and the district court's meaningful investment in the proceedings weighs in favor of discretionary denial. *See Advanced Micro Devices, Inc. v. Concurrent Ventures, LLC*, IPR2025-00223, Paper 9 at 2 (PTAB Jun. 12, 2025).

C. The District Court Will Likely Deny a Motion to Stay.

Samsung has not requested a stay in the district court proceeding. The likelihood of a stay being granted by Judge Gilstrap in the district court proceeding before institution decisions is near zero. *See, e.g.*, *Force Mos Tech., Co. v. Asustek Computer, Inc.*, No. 2:22-cv-00460-JRG, 2024 WL 1586266, at *4 (E.D. Tex. Apr. 11, 2024) ("[T]his Court has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings.").

Even if the Board institutes IPR, the district court is still unlikely to grant a stay. The district court recently denied a post-institution motion to stay proceedings due to (1) undue prejudice to the patent owner, and (2) the inability of the IPR to moot the petitioner's invalidity case. *Lionra Techs. Ltd. v. Cisco Sys.,*

Inc., No. 2:24-cv-00097-JRG, 2025 WL 1239317, at *2-4 (E.D. Tex. Apr. 28, 2025).

As to the issue of undue prejudice, Judge Gilstrap determined that a stay would inordinately burden the patent owner's "ability to vindicate its patent rights" because the PTAB's final written decision, "which could be subject to further appeals, is not due until a date more than five months after the jury trial is set to begin." *Id*. at *2. XiFi faces a similar timeline here and the same inability to vindicate its patent rights should the district court grant a post-institution stay. By the Board's institution deadline for the last of the eleven asserted patents, February 3, 2026, trial will be only eight months away. EX2002 at 1. A stay at that late stage would halt the district court proceedings for, at minimum, an entire year while the district court and the parties await a final written decision.

As to the issue of mootness, Judge Gilstrap in *Lionra* determined that "the IPR only cover[ed] a portion of Defendant's invalidity arguments" and it was "far from a certainty" that the IPR could simplify the issues of the case. *Lionra*, 2025 WL 1239317, at *4. As discussed in section III.D below, the same is true here.

Given the similarity between the facts of this dispute, and the reasoning in the recent *Lionra* case before Judge Gilstrap, it is unlikely that the district court

will grant a post-institution stay here.[3]

D. *Inter Partes* Review Will Not Moot the District Court Proceeding.

Samsung's *Sotera* stipulation (Paper 7)is inadequate under *Sotera Wireless, Inc. v. Masimo Corp*., IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020) (precedential). A petition that "includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding" poses the potential for inconsistent results and inefficient efforts; such a situation weighs in favor of discretionary denial. *Fintiv*, IPR2020-00019, Paper 11 at 12 (noting that "concerns of inefficiency and the possibility of conflicting decisions [are] particularly strong" in such circumstances). Although a *Sotera* stipulation may

[3] Even if the Board institutes review of the '591 patent, it is unlikely that the district court would sever and/or stay the district court proceeding if the Board does not also institute review of all ten other patents. *See, e.g.*, *AGIS Software Development LLC v. Google LLC*, No. 2:19-cv-00361-JRG, 2021 WL 465424, at *2 (E.D. Tex. Feb. 9, 2021) ("It has been this Court's consistent and long established practice to deny motions to stay pending IPR [] when the PTAB [] ha[s] instituted review on less than all asserted claims of all asserted patents[.]").

mitigate this risk, it "will not be dispositive by itself." Boalick Memorandum at 3.[4] Ultimately, institution should be denied if the stipulation "does not ensure that the IPR proceedings would be a 'true alternative' to the district court proceeding." *Motorola Sols., Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 4-5 (PTAB Mar. 28, 2025) (quoting *Sotera*, IPR2020-01019, Paper 12 at 19) (vacating institution, noting that the Board gave "too much weight to Petitioner's *Sotera* stipulation").

The two clauses of Samsung's *Sotera* stipulation here do not mitigate overlap between these parallel proceedings. The first clause is limited to grounds for invalidity "involving *only* patent or printed publication art," (Paper 7 at 2) (emphasis added), and therefore does not prevent Samsung from combining any of the 210 patents and 98 printed publications cited in its district court invalidity contentions with any of the twenty-six (26) prior art systems it also identifies. EX2005 at 11-25. Samsung expressly states that it "reserves the right to rely on

[4] March 24, 2025 Memorandum authored by Chief Administrative Patent Judge Scott R. Boalick, titled "Guidance on USPTO's Recission of 'Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation,'" https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_recission_20250324.pdf ("Boalick Memorandum").

any system, public knowledge or use embodying or otherwise incorporating any of the prior art disclosed herein alone *or in combination.*" *Id*. at 2-3 (emphasis added).

The second clause stipulates that Samsung will not pursue "any grounds of invalidity arising under 35 U.S.C. § 102 or § 103 with respect to the '591 patent that include WO2013/126859 ("Chincholi") or U.S. Patent Application 2011/0320625 ("Riggert") (Paper 7 at 2). This language does not prevent Samsung from relying in the district court on Chincholi or Riggert *as evidence of* other invalidity grounds. *See Ingenico Inc. v. IOENGINE, LLC,* 136 F.4th 1354, 1366 (Fed. Cir. 2025) ("IPR estoppel does not preclude a petitioner from relying on the same patents and printed publications as evidence in asserting a ground that could not be raised during the IPR."). As noted above, Samsung's district court invalidity contentions identify 26 prior art systems; Samsung has reserved the right to rely on products and systems embodying any identified patent. EX2005 at 2-3. XiFi has not yet had the opportunity to conduct discovery regarding the provenance of any alleged prior art system, yet given the extent of Samsung's assertions, it is likely that instances of overlap will emerge.

Additionally, Samsung has raised validity challenges under 35 U.S.C. §§ 101 and 112 against the '591 patent, neither of which can be resolved in an IPR proceeding. EX2005 at 114-148. It is inefficient to resort to a forum where only one part of Samsung's invalidity challenge can be resolved.

Samsung's *Sotera* stipulation does not ensure that the IPR would be a true alternative to resolution in the district court trial. Accordingly, its limitations favor discretionary denial. *See Ericsson*, IPR2024-01455, Paper 15 at 2 (denying institution despite *Sotera* stipulation); *Arm*, IPR2025-00207, Paper 10 at 2 (same).

E. The Petition Inappropriately Depends on Extensive and Conclusory Expert Testimony.

The analytic portion of Samsung's petition borrows heavily, often verbatim, from the 169 paragraph declaration of its expert, Dr. Kevin Almeroth. EX1002. The extent of this copying is illustrated by Table 1 accompanying this brief. (EX2006).[5]

Dr. Almeroth's declaration includes much more than helpful context and instead attempts to fill in gaps in the asserted references and replace generalities with new specific details. The nature and scope of this declaration runs afoul of this Board's guidance regarding expert testimony and weighs in favor of discretionary denial.

Expert testimony is not a substitute for the clear disclosures of patents and printed publications. *See, e.g.,* Consolidated Trial Practice Guide, PTAB, at 34-36

[5] Table 1 compares the text of the sections in the Almeroth Declaration regarding Overview and Motivation to Combine, and the mapping of limitations of Claim 1 to corresponding sections of the petition.

(Nov. 2019). The Board's Interim FAQs about the discretionary denial process expressly stated that "extensive reliance on expert testimony . . . may suggest that the questions are better resolved by an Article III court."[6] The Board has noted that "failure to provide focused expert testimony may weigh against institution." *Id*. Consequently, institution should be denied where a petition improperly relies on expert testimony to fill gaps in cited references. *Xerox Corp. v. Bytemark, Inc*., IPR2022-00624, Paper 9 at 15-16 (PTAB Aug. 24, 2022).

Dr. Almeroth's opinions contravene this guidance from this Board, particularly as they pertain to the base reference, WO 2013/126859 ("Chincholi"). Dr. Almeroth's opinions fill in gaps in the prior art, introduce additional references not asserted in the grounds into the obviousness analysis, and they include conclusory statements with no evidentiary support. XiFi provides examples in the subsections below. These extensive opinions offered by Dr. Almeroth can be tested

[6] *FAQs for Interim Processes for PTAB Workload Management*, USPTO.gov, https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management (last visited September 7, 2025) (superseded by *Interim Director Discretionary Process*, USPTO.gov, https://www.uspto.gov/patents/ptab/interim-director-discretionary-process).

under cross-examination at trial in the district court before the Board is scheduled to issue a final written decision in this matter.

1. Dr. Almeroth Fills in Gaps in the Chincholi Reference.

It is a cardinal principle that the grounds for a petition should speak for themselves. Yet, Chincholi—the primary reference around which Samsung builds its obviousness claim—is missing several key claim elements. Dr. Almeroth attempts to fill in these gaps, largely under the guise of explaining what a person of ordinary skill in the art ("POSITA") "would have recognized" from Chincholi's disclosure.

The most notable example of this gap-filling relates to the '591 patent's recitation of a "Virtual MAC Interface." Although Dr. Almeroth identifies Chincholi's OMMA ("Opportunistic Multiple Media Access Control Aggregation") as allegedly corresponding to the "Virtual MAC Interface," Chincholi does not disclose the OMMA as being virtual; indeed, the word "virtual" does not appear at all in Chincholi. Dr. Almeroth attempts to fill in this missing element by opining that a "POSITA would have recognized that [the function of the OMMA] 'virtualizes' a MAC interface . . .." EX1002 at ¶98; *see also id. at* ¶69 (referring to the OMMA as a "partial virtualization"). Without the *ipse dixit* opinion of Dr. Almeroth injecting the concept of "virtualization" into Chincholi, the obviousness analysis is missing a critical element.

A second example pertains to Dr. Almeroth's treatment of the '591 patent's requirement that the "utilization of the available bandwidth of the [recited]s wireless transceiver *does not prevent* other wireless networking devices from utilizing a range of frequencies corresponding to the remaining portion of the bandwidth availability of the [recited] wireless transceivers . . .." EX1001 at 12:45-51 (emphasis added). Chincholi does not expressly disclose such functionality. Yet, Dr. Almeroth opines that a POSITA would have nonetheless recognized such functionality in Chincholi because the OMMA receives information about the type of radio access technology connected to the network, and one example of such type is referred to as OFDMA. EX1002 at ¶126-127. Dr. Almeroth supplies a detailed explanation about OFDMA, not otherwise disclosed in Chincholi, in an effort to find evidence that Chincholi does not prevent use of remaining portions of a transceiver's bandwidth. Without this explanation, Chincholi by itself lacks disclosure of this claim element.

2. Dr. Almeroth Introduces Additional References Not Specified in the Grounds.

Generally, Samsung should not be allowed to rely—including indirectly through expert testimony—on references not asserted as grounds for the Petition. *See Meta Platforms, Inc. et. al. v. Eight kHz, LLC*, IPR2023-01023, Paper 10, at 31 (PTAB January 9, 2024) ("We further note that several of Petitioner's assertions are supported only by VR Book, which is not relied upon as the basis for this

challenge, or Dr. Begault's deposition testimony, which does not qualify as prior art in this proceeding."). Yet Dr. Almeroth relies on several references not asserted in the grounds. In some instances, he does so under the umbrella of what a POSITA would supposedly understand as motivation for improving the basic Chincholi architecture. In other instances, he does so in an attempt to show how his hypothetical combinations could be implemented.

For example, Dr. Almeroth admits that Chincholi's OMMA does not disclose the virtual PHY interface (as required by the claims), resulting in "static (and limited) interfaces." EX1002 at ¶69. Although Dr. Almeroth ultimately looks to grounds-reference Riggert to supply the virtual PHY interface, the motivation for making this combination comes from what he claims was a generalized appreciation for virtualization that supposedly was "well understood and widely used in computing" at the time. *Id*. As support, Dr. Almeroth relies upon the IEEE802.11 standard and U.S. Patent Application 2009/0141691 ("Jain"), which discloses "virtualization of the physical interface for this purpose . . ." EX1002 at ¶¶70, 103. Dr. Almeroth refers to Jain as a mere background reference, ostensibly to avoid running afoul of decisions like *Meta Platforms*, but he relies on the teachings of Jain to supply the idea of the claimed element as the basis for improving Chincholi even before introducing Riggert. Regardless of the proper characterization of Jain, its role in Dr. Almeroth's opinions demonstrates the heavy

degree to which Samsung depends upon expert testimony to piece together its obviousness challenge.

Even assuming that Samsung could use this reference as "background" evidence of the level of skill in the art, Dr. Almeroth's reliance upon them illustrates how dependent the petition is on expert testimony to demonstrate that a POSITA could implement the combinations without technical challenge. XiFi's forthcoming Patent Owner's Preliminary Response will rebut the substance of these alleged combinations; at this threshold, however, Samsung's heavy reliance on expert testimony weighs in favor of a discretionary denial.

3. Dr. Almeroth Makes Conclusory Statements with No Evidentiary Support.

Chincholi's architecture, particularly between the OMMA and the RATs, is very detailed and specific. *See, e.g.*, EX1005 at Figs. 5, 6. Yet Dr. Almeroth provides little discussion as to how a POSITA would implement the elements missing from Chincholi into that architecture. Rather, he resorts to conclusory statements about the exercise being "straightforward" or "easily substituted." *See, e.g.*, EX1002 at ¶ 69 (with regard to Chincholi's lack of a virtual PHY, stating: "A POSITA would have recognized that applying virtualization at the OMMA/transceiver interface—by adding one or more virtual PHY interfaces—would have been a straightforward extension of Chincholi's basic architecture and system design."); *id.* at ¶71 (Riggert's "bondable virtual interface" could serve as

the recited Virtual PHY interface because it "can be used generically and thus easily substituted"); *id.* at ¶73 ("[I]mplementing Riggert's virtualized PHY interfaces into Chincholi would have been straight-forward . . . given that Chincholi already contemplates a virtualization of the MAC function at the OMMA layer.").

This conclusory avoidance of evidentiary support does not provide helpful context for understanding the actual disclosure of references that form the grounds for the Petition. *See In re Magnum Oil Tools Int'l, Ltd.,* 829 F. 3d 1364, 1380 (Fed. Cir. 2016) (explaining that a "petitioner cannot employ mere conclusory statements" but must instead "articulate specific reasoning, based on evidence of record.").

IV. CONCLUSION

For the foregoing reasons, the Director should decline to institute *inter partes* review of the '591 patent.

Dated: September 10, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Patent Owner's Memorandum in Support of Discretionary Denial was served on September 10, 2025, by electronic mail to Petitioners' counsel at the following addresses indicated in Petitioners' Mandatory Notices:

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