UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

3D Systems Corporation and 3D Systems, Inc.,

Petitioners

v.

Intrepid Automation, Inc.,

Patent Owner.

Case No. IPR 2025-01241
U.S. Patent No. 11,014,301

PETITIONERS' OPPOSITION TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL

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I. INTRODUCTION

Petitioners 3D Systems Corporation and 3D Systems, Inc. (collectively, "3DS") oppose the Request for Discretionary Denial filed by Intrepid Automation, Inc. ("Intrepid") on September 5, 2025 ("Request"). (Paper 9, Request.). Intrepid's Request focuses on only three discretionary doctrines: (1) fairness; (2) settled expectations; and (3) overlap of invalidity issues. However, denial of institution is inappropriate under these doctrines and *inter partes* review would constitute an efficient and otherwise appropriate use of Office resources.

II. FACTUAL BACKGROUND AND RELATED LITIGATION

The Petition and the related Petition concern U.S. Patent No. 11,014,301 ("the '301 Patent") and U.S. Patent No. 11,338,511 ("the '511 Patent"). Intrepid expends an inordinate amount of briefing on the factual background, but only a few key facts are relevant to resolving the Request. First, 3DS filed a complaint, as amended, in 2021 against Intrepid and other individuals which only concerned causes of action related to 3DS's trade secrets (the "Trade Secrets Case"). Ex. 2004. As set forth more fully herein, the Trade Secrets Case does ***not*** involve any dispute of ownership of the technology at issue here. Second, Intrepid filed its Complaint for patent infringement of both patents on December 4, 2024 (the "Patent Case"). Ex. 2007. On July 8, 2025, the Petition was filed in IPR2025-01241 relative to the '301 Patent

and, on July 18, 2025, the Petition was filed in IPR2025-01242 relative to the '511 Patent. Paper 1, Petition. The dates accorded were the filing date for each Petition. On July 28, 2025, 3DS filed its *Sotera* stipulation, which is set forth more fully herein. Ex. 2013, 1028. 3DS moved to stay the Patent Case pending a determination of IPR2025-01241 and -01242, and the court has set a hearing date of November 5, 2025 for 3DS's motion to stay pending IPR. Ex. 2012.

III. DISCRETIONARY DENIAL IS NOT APPROPRIATE

A. Fairness Demands Institution of *Inter Partes* Review of the '301 and '511 Patents.

The Board's discretion under 35 U.S.C. § 314(a) must be exercised in a manner that promotes fair access to administrative review and preserves the integrity of the patent system. As Intrepid acknowledges, "discretion to deny institution is based on a holistic assessment." (Paper 9, Request, p. 8.) Therefore, fairness dictates consideration of the merits of the Petition and the efficiency of the *inter partes* review. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 14 (PTAB Mar. 20, 2020) (finding "the factors considered in the exercise of discretion are part of a balanced assessment of all the relevant circumstances in the case, including the merits"); *Illumina, Inc. v. Natera, Inc.*, IPR2019-01201, Paper 19 at 8 (PTAB Dec. 18, 2019) (instituting when "the strength of the merits outweigh relatively weaker countervailing considerations of efficiency"). Here, it is undisputed the Petition presents compelling grounds of unpatentability. Accordingly, fairness demands

institution of *inter partes* review.

i. The Board Should Disregard Intrepid's Mischaracterizations.

Rather than challenge the merits of the Petition pursuant to the *Fintiv* factors, Intrepid instead apparently argues the existence of two separate lawsuits "over the ownership of the '301 and '511 Patents" outweighs all other holistic concerns, including the merits. Paper 9, Request, p. 8. Essentially, Intrepid's distilled argument is that because of a lawsuit filed in 2021 that allegedly challenges the ownership of the '301 and '511 Patents, 3DS may not assert an inconsistent position here that the patents are invalid, such that fairness dictates discretionary denial.

However, Intrepid misconstrues and conflates the two separate actions related to this Petition. In the first action, the Trade Secrets Case, 3DS filed a complaint, as amended, in 2021 against Intrepid and other individuals alleging seven causes of action: (1) violation of the California Uniform Trade Secrets Act; (2) violation of the Defend Trade Secrets Act; (3) breach of contract; (4) breach of the duty of loyalty; (5) civil conspiracy; (6) violation of the California Business and Professions Code; and (7) unfair competition. (Ex. 2004.) Intrepid itself in the Patent Case explicitly agrees: "[t]he Amended Complaint [in the Trade Secrets Case] did not include a count for declaratory judgment that Intrepid's patents were invalid or unenforceable, nor did it pray for any relief related to the ownership of any Intrepid Patent." Ex. 1029, p. 9, ll. 15-18. Intrepid's arguments that the Trade Secrets Case

concerns patent ownership was either misrepresented to the District Court or falsely set forth in this proceeding.

Rather than acknowledge that patent ownership is only of issue in the Patent Case, Intrepid attempts to recast the Trade Secret Case as the "IP Ownership Case." Paper 9, Request, pp. iii, 4. Tellingly, however, Intrepid previously referred to it as the Trade Secrets Case. Ex. 2010, pp. 6–8. The Board should view Intrepid's semantic game as what it is: purposeful obfuscation. Moreover, Intrepid's argument here is completely inconsistent with what it has stated on the record. *See* Ex. 1029.

Further, in the Patent Case, assuming 3DS's motion for reconsideration is granted in the Trade Secrets Case, Intrepid stated: "the resumed Trade Secret Case will be limited to at most these three purported trade secrets which have no bearing on the validity or infringement of the Asserted Patents." Ex. 2010, p. 7. The causes of action thus remaining in the Trade Secrets Case do not include ownership of the '301 and '511 Patents as so acknowledged by Intrepid in the District Court.

3DS did recently suggest equitable reassignment of the patents as a remedy in the Trade Secrets Case, but 3DS has never alleged a count for ownership, nor sought explicit relief of ownership in that case. When 3DS raised the possibility of equitable reassignment of the parent patent of the '301 and '511 Patents in the Trade Secrets Case, (Ex. 2010, pp. 3–4), that possibility was raised only as a potential, collateral

consequence that was a secondary or tertiary possibility as a form of relief.[1] Further, the possibility of that consequence does not require any actual adjudication of the validity or the ownership of the ’301 and ’511 Patents in the Trade Secrets Case—3DS may be entitled to this equitable relief whether the patents are valid or not. Intrepid cannot avoid the fairness of institution of *inter partes* review by hiding behind its misappropriation of 3DS’s trade secrets in the Trade Secrets Case. In short, it is Intrepid who has asserted inconsistent positions (i.e. ownership is and is not at issue in the Trade Secrets Case) rather than 3DS.

Regarding the second action, the Patent Case, it was filed in December 2024 by Intrepid and it alleges infringement of the ’301 and ’511 Patents. Ex. 2007. This second action is the only true parallel action, because that proceeding involves 3DS’s defense of improper ownership of the ’301 and ’511 Patents. Ex. 2011, p. 20. Therefore, the Patent Case rather than the Trade Secrets Case may adjudicate ownership, but for institution of *inter partes* review. Notably, Intrepid appears to concede the Patent Case is the one and only parallel proceeding as well. Paper 9,

[1] 3DS’s argument was merely this: “If the jury ruling on [Intrepid’s] misappropriation counterclaims in the Trade Secrets case agrees with 3DS that [Intrepid] stole this information from 3DS (regardless of whether 3DS sufficiently identified it as a trade secret as part of its case-in-chief (which is under reconsideration)), that ruling is likely to have severe consequences for [Intrepid’s] purported ownership of the Asserted Patents and, thus, its ability to enforce them against 3DS.” Ex. 2010, p. 4.

Request, p. 9 (noting the Patent Case is "technically the parallel litigation").[2]

Based on the foregoing, Intrepid's argument suffers from two fatal flaws. *First*, the Trade Secrets Case does not involve an ownership dispute. Intrepid's only citation from the record in the Trade Secrets case, a case that has been ongoing since 2021, regarding 3DS's alleged position on ownership is from a joint submission filed on May 9, 2025, that merely mentions equitable reassignment as a potential form of relief if indeed it is found that Intrepid stole 3DS' valuable trade secrets. Paper 9, Request, p. 11. *Second*, and relatedly, 3DS has not asserted an inconsistent position. It is obfuscation at best or an intentional misrepresentation at worst for Intrepid to allege 3DS "has consistently contended in litigation it initiated and has pursued for over four years that it is the rightful owner of the '301 and '511 Patents." Paper 9, Request, p. 9. Instead, it is Intrepid who is inconsistent. Intrepid's allegations, without any citation to or support from the record other than a 2025 joint filing, warrant serious scrutiny, and upon such scrutiny, Intrepid's mischaracterizations must necessarily be disregarded.

ii. The Tessell *Case is Dissimilar and Does Not Favor Intrepid's Position.*

In furtherance of Intrepid's implication that 3DS has taken an inconsistent

[2] 3DS does not dispute the Trade Secrets Case and the Patent Case both involve the same technology and that the two cases were assigned to the same judge, (Paper 9, Request, p. 9), but the assignment of two cases to the same judge at the district court level, even if for judicial economy, has no bearing on the analysis here.

position, Intrepid avers *Tessell, Inc. v. Nutanix, Inc.*, IPR2025-00322, Paper 14 (Acting Director June 12, 2025), "presents a similar question." Paper 9, Request, pp. 8–9. Contrary to Intrepid's assertion, *Tessell* is not analogous and does not favor discretionary denial in the instant matter. Indeed, *Tessell* presents an inverted situation to the one here. In *Tessell*, four employees of the patent owner invented the relevant patented subject matter. *Tessell*, IPR2025-00322, Paper 14 at 2. Those four employees later went to work for the petitioner and subsequently challenged the patentability of the patent they themselves had invented while working for the patent owner. *Id.* The Board stated it could "consider unfair dealings as a factor when determining whether to exercise discretion to deny institution." *Id.* Ultimately, the Board held it was "not an appropriate use of Office resources where the inventors applied for and were issued a patent, but, as is the case here, now advocate for its unpatentability." *Id.*

That fact pattern is not what has occurred in the instant matter. Here, members of Intrepid first left employment with 3DS in 2017 and stole trade secrets while doing so. *See* Ex. 2002, pp. 8–9, ¶¶ 25, 27. Then, between 2019 and 2020, only after those members had left employment with 3DS, they filed for and were issued the parent patent of the '301 and '511 Patents. *See* Ex. 2002, p. 16, ¶ 70. Unlike in *Tessell*, those members are not challenging the validity of their own invention and currently held patent. Presumably, Intrepid's reliance on *Tessell* is based on the

implication that 3DS has asserted inconsistent positions as to ownership of the patents, the validity of which they now seek to challenge. But again, to reiterate, the Trade Secrets Case does not involve an adjudication of the ownership of the ’301 and ’511 Patents and it is simply false to assert 3DS “has consistently contended in litigation it initiated and has pursued for over four years that it is the rightful owner of the ’301 and ’511 Patents.” Paper 9, Request, p. 9. Therefore, Intrepid’s citation to *Tessell* does nothing to support discretionary denial.

iii. The Irrelevance of the Trade Secrets Case and the Procedural Posture of the Patent Case Warrant **Inter Partes** *Review.*

Separate from the false implications and misrepresentations that 3DS has asserted an inconsistent position as to ownership in this proceeding and related proceedings, Intrepid seemingly argues the two lawsuits will resolve the ownership issue prior to a final decision from *inter partes* review, such that an invalidity challenge should not be allowed here. Specifically, Intrepid avers “the issue of ownership of the ’301 and ’511 Patents will be litigated and likely determined before a jury and/or appellate court during the pendency of this proceeding (if instituted).” Paper 9, Request, p. 10. For the reasons set forth in the preceding sections, resolution of the Trade Secrets Case will not resolve the issue of ownership of the ’301 and ’511 Patents. Thus, the exercise of discretion on the *inter partes* review does not turn on the Trade Secrets Case.

The only true parallel litigation, the Patent Case, will certainly not be resolved

during the pendency of this proceeding once instituted. Significantly, no scheduling order has been entered in the parallel proceeding and this Petition was filed expeditiously following the onset of the Patent Case. Further, according to the National Judicial Caseload Profile, the median time-to-trial in the venue in which the Patent Case sits—i.e. the Southern District of California—was 37.3 months in calendar year 2024 and 38.1 months for the twelve-month period ending on June 30, 2025.[3] *See* Federal Court Management Statistics, United States Courts, https://www.uscourts.gov/data-news/reports/statistical-reports/federal-court-management-statistics (last visited September 29, 2025), Ex. 1030. Accordingly, even if a scheduling order were issued on the date of this filing—which it has not—it would still require over three years to adjudicate the Patent Case. Institution would result in a resolution of the validity of the patents in half that time, if not much less.

Additionally, 3DS is seeking a stay of the Patent Case based on this Petition and the hearing on the stay-motion is scheduled for November 5, 2025. *See* Ex. 2012. Because the parallel proceeding is still in its infancy, the federal district court may grant a stay in the Patent Case. *See Fintiv*, IPR2020-00019, Paper 11 at 10 (noting

[3] In recent guidance, median time-to-trial statistics is an important consideration in the application of *Fintiv*. *See* Scott R. Boalick, Guidance on USPTO's rescission of "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation", USPTO (Mar. 24, 2025), *available at* https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_recission_20250324.pdf.

when "the parallel proceeding is more advanced, a stay may be less likely). When a stay is granted, that "allays concerns about inefficiency and duplication of efforts" and favors institution of *inter partes* review. *See id.* at 6. Based on the foregoing, it will be more efficient and economical to institute *inter partes* review rather than exercise discretionary denial. Therefore, institution of *inter partes* review is warranted and Intrepid's allegations to the contrary are without merit.

B. The Settled Expectations Doctrine is Inapplicable Here.

No basis exists to apply the settled expectations doctrine here. "[T]here is no bright-line rule on when expectations become settled, [but] in general, the longer the patent has been in force, the more settled expectations should be." *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 3 (Acting Director June 18, 2025). According to the Acting Director in an opinion published just a few months ago, which Intrepid itself relies upon, a patent issued approximately three years ago in 2022 is a patent that "has not been in force for a significant amount of time." *Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, IPR2025-00602, IPR2025-00603, Paper 9 at 2 (Acting Director July 24, 2025); *see also Embody, Inc. et al. v. LifeNet Health*, IPR2025-00248, IPR2025-00249, Paper 13 at 2–3 (Acting Director June 26, 2025) (finding "one of the challenged patents has not been in force for a significant period of time (issued in 2022) and the other patent is a parent of the first"). Instead, patents that have been in force for six or seven years have more

of a presumption of settled expectations. *See Amgen*, IPR2025-00601, Paper 9 at 3 (finding separate patents that "have been in force for seven and six years, respectively," create "settled expectations for Patent Owner"). Indeed, the Acting Director has suggested a six-year threshold for presumptive settled expectations, which "aligns with other approaches to settled expectations and incentives, for example, for filing infringement lawsuits." *See Dabico Airport*, IPR2025-00408, Paper 21 at 3 (citing 35 U.S.C. § 286 ("Except as otherwise provided by law, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action.")); *see also Cambridge Indus. USA, Inc. v. Applied Optoelectronics, Inc.*, IPR2025-00434, IPR2025-00436, IPR2025-00437, Paper 11 at 2–3 (Acting Director June 26, 2025) (holding when "most of the challenged patents have not been in force for a significant period of time (issued in 2020, 2019, and 2019)," then "Patent Owner has not developed strong settled expectations that favor discretionary denial").

Here, Intrepid alleges the '301 Patent was issued in May 2021 and the '511 Patent was issued in May 2022. Ex. 2007, p. 5, ¶¶ 20–21. Therefore, the three to four years these patents have been in force simply do not amount to a significant amount of time for expectations to have settled. Although Intrepid and the *Amgen* decision suggest there may be "good reasons why a patent owner has strong settled expectations in a patent that has only been in force for three years," Paper 9, Request,

p. 11 (citing *Amgen*, IPR2025-00601, Paper 9 at 2), Intrepid fails to analyze whether the good reasons that *Amgen* identifies are present here. Those good reasons include: "an explanation of how an extraordinary amount of investment, time, and resources dedicated to research, development, trials, and regulatory approval correlates to settled expectations." *Amgen*, IPR2025-00601, Paper 9 at 2. Intrepid has not provided any such explanation, because no such "extraordinary amount of investment, time, and resources" exists here, chiefly because the patents contain many of the trade secrets stolen from 3DS. "In the absence of such information, the Patent Owner [i.e. Intrepid] has not demonstrated that it has developed strong settled expectations that favor discretionary denial for the patent challenged" here. *Id.* at 2–3. If anything, settled expectations should be negated when, like here, a third party misappropriates trade secret information and files a patent on the misappropriated information.

The circumstances Intrepid does assert for its alleged settled expectations are unsupported by any legal authority or precedent as representing an important factor in determining whether settled expectations exist. Paper 9, Request, p. 11. Further, Intrepid doubles down on its misrepresentation that 3DS has "consistently maintained that it has an ownership interest in the '301 and '511 Patents," implying again that 3DS has been challenging ownership of the patents at issue for years on end. *See* Paper 9, Request, p. 11. In support of that inaccurate statement, Intrepid

merely cites to 3DS's Answer and Counterclaims, filed mere weeks ago on August 19, 2025, in the Patent Case. Paper 9, Request, p. 11 (citing Ex. 2011). Intrepid has not and cannot cite to any other item in the record supporting its mischaracterization that 3DS has been challenging ownership for years. It is simply unreasonable to find Intrepid "had settled expectations that 3DS would not challenge the validity of patents that it claim[s] to own," Paper 9, Request, p. 11, when 3DS's claim to ownership was first formally asserted mere weeks ago on August 19, 2025, Ex. 2011. Based on the foregoing, the settled expectations doctrine is inapplicable here.

C. The Hypothetical Existence of a Partial Overlap in the Validity Challenges Does Not Support Denial of *Inter Partes* Review.

Intrepid avers there is an incomplete overlap of 3DS's challenges to validity in this proceeding and in the Patent Case, the parallel proceeding. Paper 9, Request, pp. 11–12. However, Intrepid's argument does not justify denial of *inter partes* review. *Fintiv* provides that "if the petition includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding, this fact has favored denial." *Fintiv*, IPR2020-00019, Paper 11 at 12. In other words, the complete or nearly complete overlap in issues of validity favors denial of *inter partes* review. However, the existence of a *Sotera* stipulation can provide a cure to avoiding denial when there is a complete or nearly complete overlap. *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020). Although not dispositive, a timely-filed *Sotera* stipulation

remains "highly relevant" according to recently issued guidance. Scott R. Boalick, Guidance on USPTO's rescission of "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation", USPTO (Mar. 24, 2025), *available at* https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_recission_20250324.pdf.

Here, it is highly relevant that 3DS has filed a *Sotera* stipulation that it "will not pursue in this litigation any invalidity arguments that were raised or reasonably could have been raised on those instituted claims in the respective petitions now pending before the PTAB." Ex. 2013, p. 3. Intrepid attempts to undermine 3DS's *Sotera* stipulation by highlighting 3DS's counterclaims based on prior art and improper inventorship, which cannot be adjudicated by the Board and are therefore not cured by a *Sotera* stipulation. Paper 9, Request, pp. 12–13. However, Intrepid's argument fails for two reasons.

First, and viewed in a light most favorable Intrepid, it is speculative how much overlap there will or will not be as a result of 3DS's asserted counterclaims. Those counterclaims were filed recently on August 19, 2025. Ex. 2011, p. 62–65. No discovery has occurred on these counterclaims and even Intrepid concedes "the Patent Case . . . is still at an early stage." Paper 9, Request, p. 9. The decision in *Dell, Inc. v. Universal Connectivity Tech. Inc.*, IPR2024-01428, Paper 12 (PTAB April 7,

2025), is instructive here. In *Dell*, the petitioner filed a *Sotera* stipulation that "expressly reserved the right to challenge invalidity at the district court based on the same references relied upon here in combination with 'any system, product, or public knowledge or use that embodies' any of the identified prior art patents or printed publications." *Id.* at 8. The Board "acknowledge[d] [the] Patent Owner's concern about lack of overlap stemming from Petitioner's reservation of rights in its *Sotera* stipulation," but noted its "evaluation at this juncture is based on the facts before us, not on how Petitioner *might* challenge the validity of the patent at trial." *Id.* (emphasis in original). The implication is clear: the Board should not deny institution of *inter partes* review based on speculation of what might occur at a future district court trial. Again, at best for Intrepid, it is speculative there will be sufficient evidence uncovered in discovery supporting those counterclaims and that 3DS's counterclaims will be subject to pretrial dismissal, such that there will be a potentially incomplete overlap of the issues of invalidity across the proceedings.

The speculative or hypothetical nature of the partial overlap of the validity claims in the parallel proceedings is important, because it must be counterbalanced with an analysis of the investment in the parallel proceeding. *Fintiv*, IPR2020-00019, Paper 11 at 9–10 ("If, at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising discretion to deny institution . . . ."). In a decision cited by Intrepid, the

Acting Director found when there was a potentially incomplete overlap of the validity claims, a filed *Sotera* stipulation still "mitigate[d] some concern of duplication between the parallel proceeding and this proceeding," but that the stipulation ultimately did "not outweigh the substantial investment in the district court proceeding." *Motorola Solutions, Inc. v. Stellar, LLC*, IPR2024-01205, Paper 19 at 4 (Acting Director Mar. 28, 2025). In contrast, the lack of meaningful investment in the Patent Case, given the lack of any scheduling order or discovery having occurred on the counterclaims, underscores the relevance of the *Sotera* stipulation here and the strong weight it must be afforded at this very early stage.

Second, 3DS's *Sotera* stipulation effectively addresses the speculative nature of Intrepid's position. After all, 3DS's *Sotera* stipulation avoids even the possibility of a partial overlap of the challenges to invalidity: 3DS has stipulated to asserting any and all invalidity arguments that can be raised or reasonably could have been raised in front of the Board, and for all invalidity arguments that are not available for review by the Board, 3DS has reserved its right to assert those arguments in the parallel proceeding. Ex. 2013, p. 3. The result is that there will be materially different grounds and arguments as to invalidity under *inter partes* review and at the district court level. When "the petition includes materially different grounds, arguments, and/or evidence than those presented in the district court, this fact has tended to weigh against exercising discretion to deny institution." *Fintiv*, IPR2020-00019,

Paper 11 at 12–13. Thus, Intrepid's attack on the effectiveness of the *Sotera* stipulation exposes it to institution of *inter partes* review, given the issues of validity being challenged between the two proceedings are materially different.

Intrepid is left to resort to another potential specter: that of taking "two bites of the apple," to adopt the metaphor Intrepid uses. Paper 9, Request, p. 13. While having two bites at the same apple might be a concern, it is one the federal district court is perfectly capable of addressing. Courts routinely gatekeep these issues. Therefore, Intrepid's assertion of this hypothetical pitfall does not warrant denial of *inter partes* review, especially in light of the other *Fintiv* factors discussed above that strongly favor institution. Based on the foregoing, the hypothetical overlap factor does not warrant denial of *inter partes* review.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PETITIONERS' OPPOSITION TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL, was served on October 6, 2025, by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) and via electronic mail upon counsel of record for the Patent Owner as follows:

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