

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CIENA CORPORATION,  
Petitioner,

v.

K.MIZRA LLC,  
Patent Owner.

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Case IPR2025-01362  
Patent 8,782,282

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**PATENT OWNER'S AUTHORIZED RESPONSE TO  
PETITIONER'S REQUEST FOR DIRECTOR REVIEW**

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<b>Exhibit No.</b>	<b>Exhibit Description</b>
<b>2001</b>	USPTO's February 28, 2025 bulletin
<b>2002</b>	APJ Boalick's March 24, 2025 Memorandum
<b>2003</b>	First Amended Complaint (Dkt. 34)
<b>2004</b>	Oct. 21, 2025 Hearing Transcript
<b>2005</b>	Hausman Declaration
<b>2006</b>	Unified Patents <i>Ex Parte</i> Re-examination Request
<b>2007</b>	Re-examination Order
<b>2008</b>	March 26, 2025 Stewart Memorandum
<b>2009</b>	2025-11-06 Printout of Patent Maintenance Fees of US8782282
<b>2010</b>	FAQs for Interim Processes No. 22
<b>2011</b>	NDGA Statistics
<b>2012</b>	Excerpted USPTO Reexam Statistics

## **I. INTRODUCTION**

Pursuant to the authorization granted by the Director’s email on February 9, 2026 (EX3100), Patent Owner K.Mizra LLC (“K.Mizra”) submits this response to Petitioner Ciena Corporation’s (“Ciena”) Request for Director Review (“Req.”). Paper 11.

Director Review of Director Squires’ decision to discretionarily deny institution of IPR on a patent that has been in force for over eleven years and that is currently under reexamination by the Patent Office is not necessary. As detailed herein, Ciena has not shown that the Director’s decision has violated the Administrative Procedure Act (APA), the America Invents Act (AIA), the U.S. Constitution, or any other statutory, regulatory, and policy requirements for institution of IPRs.

## **II. CIENA HAS NOT SHOWN ANY VIOLATIONS OF THE APA, AIA, OR THE U.S. CONSTITUTION**

Ciena does not challenge any legal or factual determination made by the Director. Instead, Ciena contends that the Director’s decision violates the AIA, APA and US Constitution because it allegedly fails to provide any reasons for denying institution. Req. at 2-7. But Ciena’s argument suffers from a fundamental misunderstanding of the laws and policies it alleges were violated.

First, the AIA makes institution a discretionary screening determination entrusted to the Director and expressly insulated from judicial review. Congress did not require findings of fact, a reasoned reviewable opinion, or any particular form of explanation when the Director declines to institute an IPR. Nor could it: imposing such a requirement would directly undermine 35 U.S.C. § 314(d), which makes institution determinations “final and nonappealable.” Unlike 35 U.S.C. § 318(a), which mandates a reasoned final written decision, § 314 governs a discretionary, non-adjudicatory determination whether to commence a proceeding. *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (citing 35 U.S.C. § 314(a)); *see also Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“PTO is permitted, but never compelled, to institute an IPR”). Because that determination is expressly insulated from judicial review, it is not the type of agency action for which the APA requires a review-enabling explanation.

**A. The Director’s Non-Institution Decision is Discretionary and Not Reviewable Under the AIA**

The statutory language of § 314 is clear in that institutions of IPRs are not mandated or granted as a matter of right:

The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition [...] shows that there is a reasonable likelihood that the

petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

35 U.S.C. § 314(a). The statute establishes a necessary condition, i.e., the petition must show a reasonable likelihood to prevail, in order for an IPR to be instituted. Even where such threshold is satisfied, the statute leaves institution to the broad unreviewable discretion of the Director where the petitioner “has no right to an IPR.” *Apple Inc. v. Squires*, 2026 U.S. App. LEXIS 4371, \*19-20 (Fed. Cir. 2026).

Further, Congress expressly made institution decisions non-reviewable: “[t]he determination by the Director whether to institute an inter partes review [...] shall be final and nonappealable.” 35 U.S.C. § 314(d). In accordance with the statute, the Supreme Court has repeatedly held that institution decisions are insulated from review. *Cuozzo*, 579 U.S. at 273; *Thryv, Inc. v. Click-To-Call Technologies, LP*, 140 U.S. 1367 (2020). Here, Ciena’s argument seeks exactly what Congress prohibited—judicial review of the sufficiency of the Director’s institution decision. Therefore, Ciena’s request should be denied.

**B. The Director’s Non-Institution Decision is Not Reviewable under the APA**

Ciena contends that the Director’s decision to deny institution in this case should be reviewable under the APA. Req. at 2-3. None of the cases Ciena cites to, however, support its argument. For example, Ciena cites to *Cuozzo* arguing that “§ 314(d) does not preclude review of constitutional claims or what the Supreme Court

has termed ‘shenanigans,’ such as situations in which the agency ‘act[s] outside its statutory limits.’” *Id.* (citing *Cuozzo*, 579 U.S. at 274-75). But Ciena ignores the Supreme Court’s explanation for the reasoning underlying such statement which is inapposite in the instant case. In *Cuozzo*, the Court stated that:

we do not categorically preclude review of a final decision where a petition fails to give “sufficient notice” such that there is a due process problem with the entire proceeding, *nor does our interpretation enable the agency to act outside its statutory limits by, for example, canceling a patent claim for “indefiniteness under §112”* in inter partes review [...] Such “shenanigans” may be properly *reviewable in the context of § 319 [i.e., final written decisions]* and under the Administrative Procedure Act [...] By contrast, where a patent holder merely challenges the Patent Office’s “determin[ation] that the information presented in the petition . . . shows that there is a reasonable likelihood” of success “with respect to at least 1 of the claims challenged,” § 314(a), or where a patent holder grounds its claim in a statute closely related to that decision to institute inter partes review, § 314(d) bars judicial review.

*Cuozzo*, 579 U.S. at 275-76 (finding that § 314(d) bars patent owner’s efforts to attack the Patent Office’s determination to institute IPR) (emphasis added). Here, the Director’s decision to discretionarily deny institution of Ciena’s IPR—not a final written decision—was well within his statutory limits. Therefore, Director Squires’ decision does not fall under the exceptions for judicial review articulated in *Cuozzo*.

Similarly, Ciena’s citations to *Pers. Web Techs.* and *Synopsys* (Req. at 3) are also inapposite as those cases relate to review of final written decisions, not institution decisions. *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 989-990 (Fed. Cir. 2017); *Synopsys, Inc. v. Mentor Graphics Corp.*, 814 F.3d 1309, 1322 (Fed. Cir. 2016).

Likewise, Ciena’s reliance on *SAS* is also misplaced. Req. at 2-3. In *SAS*, there was no question as to whether the decision to institute IPR was subject to judicial review. *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 371 (2018). Instead, the issue was whether the Director exceeded his statutory authority by limiting the IPR to fewer than all of the claims that *SAS* challenged. *Id.* There, the Supreme Court’s reversal of the Federal Circuit turned on the fact that *SAS* was entitled to a *final written decision* addressing all of the claims it had challenged. *Id.* Here, Ciena requests review of Director Squires’ decision not to institute, which does not fall under any exceptions for judicial review articulated in *SAS*.

Lastly, Ciena argues that “the APA requires, at a minimum, ‘a brief statement of the grounds for denial’” under 5 U.S.C. § 555(e). Req. at 5. But § 555(e) does not turn an institution denial into a reviewable adjudicatory decision requiring a reasoned opinion. The provision requires only notice of the basis for denial, not an explanation sufficient for appellate review. Here, the decision clearly identified the basis for denial—the Director’s exercise of discretionary authority under 35 U.S.C.

§ 314(a) and review of discretionary considerations. *See* Paper 10 (“[p]ursuant to 35 U.S.C. § 314(a) and § 324(a), after review of discretionary considerations, institution of inter partes review [...] is denied”). Further, Ciena’s misreading of §555(e) to require a detailed merits analysis directly conflicts with the AIA’s § 314(d), which makes institution determinations nonappealable. Ciena cannot and has not shown why a general APA provision would override a specific statute governing IPR institution decisions.

In connection with its § 555(e) argument, Ciena cites the *Tourus Recs.* case (Req. at 5), which is also misplaced. *Tourus* involved the denial of an application for in forma pauperis status in an administrative forfeiture proceeding that affected a claimant’s property rights and was subject to judicial review under the applicable regulation. *Tourus Recs. Inc. v. Drug Enf’t Admin.*, 259 F.3d 731, 735-36 (D.C. Cir. 2001) (stating that “denial of an application for in forma pauperis status [is] one that plainly is not committed to the DEA’s unreviewable discretion” and given that the applicable regulation expressly required satisfactory proof of financial inability to post the bond, “[n]othing suggests that the question of ‘satisfactory proof’ under this regulaton was intended to be determined at the caprice of the agency.”).

An institution decision under 35 U.S.C. § 314, however, is fundamentally different. It is a discretionary determination on whether the agency will initiate a proceeding. An institution decision does not adjudicate Ciena’s property rights and

is expressly insulated from judicial review under § 314(d) as confirmed by the Supreme Court in *Cuozzo* and *Thryv*.

Accordingly, Ciena fails to establish any violation of the APA. Ciena was on notice of the Director’s Memorandum and had an opportunity to fully brief its arguments. *See TQ Delta, LLC v. DISH Network LLC*, 929 F.3d 1350, 1356 (Fed. Cir. 2019) (no APA violation where “the party asserting the APA violation ‘had notice [...] and an opportunity to be heard’”). The fact that Ciena is dissatisfied with the Director’s decision is not a violation of the APA.

### **III. CIENA HAS NOT SHOWN ANY VIOLATIONS OF STATUTORY, REGULATORY, AND POLICY REQUIREMENTS GOVERNING INSTITUTION OF IPR PROCEEDINGS**

Ciena contends that the Director’s decision violates 35 U.S.C. § 6, which requires IPRs to be heard by at least 3 members of the PTAB. Req. at 7-11. Ciena’s argument rests on the incorrect premise that a *petition* for inter partes review is itself an “inter partes review” within the meaning of 35 U.S.C. § 6(c). It is not. Under § 314, an inter partes review exists only after the Director authorizes institution. § 6(c) governs how an instituted proceeding is adjudicated—it must be “heard” by a three-member panel. A discretionary denial occurs before any proceeding exists and therefore falls within § 314(a), which assigns the institution decision to the Director, not a three-member panel. Ciena’s improper reading § 6(c) to require a panel at the

institution stage ignores § 314(a)'s grant of authority to the Director and the statute's separation between authorization and adjudication.

Petitioner's reliance on 37 C.F.R. §§42.4 and 42.108 is misplaced. Req. at 7-9. While those regulations describe the Board's exercise of authority delegated by the Director; they do not divest the Director of the statutory authority Congress expressly granted in 35 U.S.C. § 314(a) to decide institution of IPRs. Indeed, § 6(c)'s three-member panel requirement applies only *after* an inter partes review is instituted and heard. A discretionary denial as in the instant case occurs *before* any proceeding exists and therefore falls within the Director's statutory gatekeeping role.

Although the Director can delegate his authority to the Board, nothing in those regulations prohibit the Director from personally issuing institution decisions. Ciena's interpretation of the regulations would otherwise conflict with § 314(a) and with the supervisory authority recognized in *Arthrex*. *See United States v. Arthrex*, 594 U.S. 1, 25 (2021); *see also Apple Inc.*, 2026 U.S. App. LEXIS 4371 at \*16-17 ("The Director, who is the statutory decisionmaker on the matter, always could make the non-institution (or institution) decision personally, whether or not the Board has made an initial decision") [...] The Director's [...] 'discretionary power' to institute is fully preserved).

Contrary to Ciena's argument (Req. at 11), *Arthrex* did nothing to limit role of the Director to an appellate reviewer of Board institution decisions. It held that

the Director must have supervisory authority over the Board's decision-making because the Board exercises executive power. *Id.* at 27. Consistent with both the Constitution and 35 U.S.C. § 314(a), the Director may personally decide whether to institute review. Nothing in *Arthrex* requires a three-member panel to issue an institution decision before the Director acts.

**IV. CIENA HAS NOT SHOWN THAT THE DIRECTOR'S DECISION VIOLATES THE FEE-SETTING PROVISION OF 35 U.S.C. § 311**

Ciena's fee-setting argument has no basis in the AIA. 35 U.S.C. § 311 permits a party to file a petition requesting inter partes review upon payment of a filing fee. It does not entitle the petitioner to a particular level of adjudication or specifically to consideration by a three-member panel. The USPTO's economic assumptions regarding average judge time that Ciena cites (Req. at 12) were used in rulemaking to set aggregate program fees, but do not create enforceable rights in any individual proceeding. The statute expressly assigns the institution decision to the Director under § 314(a) and contemplates that many petitions will be denied without trial. Payment of a filing fee merely secures the opportunity to request agency action, not a guarantee that the agency will institute review or convene a panel. Therefore, any challenge to the fee structure is not appropriate grounds for Director Review.

**V. THE DIRECTOR’S DECISION DOES NOT IMPLICATE NEW RULES THAT REQUIRE NOTICE AND COMMENT RULEMAKING**

Ciena characterizes the Director’s October 17, 2025 Memorandum including discretionary denial considerations as promulgating “new rules.” Req. at 13-15. It does not. A legislative rule binds future decision-makers and alters legal rights or obligations. 5 U.S.C. § 551(4); *National Mining Ass’n v. McCarthy*, 758 F.3d 243, 251–52 (D.C. Cir. 2014); *Chrysler Corp. v. Brown*, 441 U.S. 281, 301-302 (1979). The Memorandum does neither. § 314(a) commits the institution decision to the Director’s discretion, and the memorandum merely identifies considerations that may inform that discretionary determination, including reliance interests and settled expectations. It does not mandate denial when any factor is present, does not amend the patentability standards, and does not create estoppel or such legal consequences. Agencies routinely articulate factors to guide discretionary determinations, and thus, the APA’s notice-and-comment rulemaking requirement for binding regulations does not apply to the Director’s guidelines and instructions such as those here in the October 2025 Memorandum. *See Apple Inc.*, 2026 U.S. App. LEXIS at \*14-21.

**VI. CONCLUSION**

For the at least the foregoing reasons, Ciena’s Request for Director Review and request to vacate the Director’s decision should be denied.

Respectfully Submitted,

Dated: February 17, 2026

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(Case No. IPR2025-01362)

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**CERTIFICATE OF SERVICE**

As authorized by Patent Owner's Mandatory Notice, I hereby certify that on February 17, 2026, a copy of this document has been served in its entirety by electronic mail on Petitioner's lead and backup counsel.

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