

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MYPORT TECHNOLOGIES, INC.,
Patent Owner.

IPR2025-01465
U.S. Patent No. 10,721,066

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

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I. Introduction

Institution of this IPR is a good use of Office resources because:

- **IPR was previously instituted**: The Board has already held that challenged claims of the '066 patent are likely unpatentable under the Fuller ground presented in this IPR. Because the prior IPR settled before a final decision, validity remains unresolved. Institution here would resolve that uncertainty and provide clarity to the public as to whether the '066 patent is unpatentable.
- **The Examiner materially erred**: Congress designed IPR to correct errors like those made during prosecution of this patent family. Over the span of almost a decade, the Examiner failed to issue a single §§ 102 or 103 rejection during the prosecutions of the '066 patent and its six preceding applications despite an abundance of relevant prior art.
- **Patent Owner's delay and Apple's expectation of nonenforcement**: MyPort has no settled expectations because the '066 patent was in force for under four years due to expiration. In contrast, Apple has settled expectations of nonenforcement because MyPort stayed silent for years after Apple provided notice of noninfringement—and only asserted the '066 patent after it had expired.

▪ **The *Fintiv* factors favor institution:**

Factor	Weight	Reason
1 (stay)	neutral	The outcome of a motion to stay is speculative
2 (trial gap)	against denial	Trial is not yet scheduled and would likely take place long after a FWD.
3 (investment)	against denial	Insignificant investment at early stage.
4 (overlap)	against denial	<i>Sotera</i> plus stipulation
5 (same party)	neutral	Petitioner is defendant
6 (merits)	against denial	Previous trial institution; patentability challenge is strong.

II. The '066 patent claims have been determined likely unpatentable.

The Board’s previous institution decision demonstrates that this IPR is a good candidate for merits review. The Board previously determined that the same ground presented here showed a reasonable likelihood of success. *Samsung Electronics Co., Ltd. v. MyPort, Inc.*, IPR2023-00025, Paper 21 (PTAB Apr. 24, 2023). However, the Board terminated that IPR without issuing a final decision on the merits because the parties settled. *Id.* at Paper 42. Where the Board has already indicated a reasonable likelihood of unpatentability but the patent owner persists in asserting the claims against the public, it is both efficient and equitable for the Board to reach a final determination, thereby providing clarity and certainty to the public. This consideration weighs heavily against discretionary denial. *See Tesla, Inc. v. Intellectual Ventures II LLC*, IPR 2025-00217, Paper 9 (Director June 13, 2025) (weight against denial when similar claims of an ancestor patent were found

unpatentable).

III. Merits review is warranted because the '066 patent and its family members received almost no attention from the Examiner.

The Examiner failed to comply with the MPEP standards for examining a patent. The MPEP states that Examiners “must conduct a thorough and complete search of the prior art. A search is considered thorough when all areas with the highest probability of finding prior art relevant to the invention as it is claimed and described in the specification are identified for search.” MPEP 904.02. But the prosecution record is not indicative of a thorough search. The same examiner examined almost all the patent applications in the '066 patent's family, including all the asserted patents. Ex.1027 (Patent Center bibliography data for the '066 patent and a portion of its family). According to third-party analytics, this examiner has a 95% chance of issuing a patent within 3 years after the first office action and historically issues *less than one office action per patent granted*. Ex.1028. Compared to other examiners, this examiner ranks in the top 5% for ease of allowance and is rated “extremely easy.” *Id.* While these statistics alone do not indicate material error, they provide important context for evaluating the Examiner's actions over the family's prosecution history.

A. The materially deficient examination of the '066 patent family.

Over **fourteen years** of prosecution spanning **twenty-one issued patents**, the Examiner issued **only five office actions** asserting §§ 102 and 103 rejections

across the '066 patent family. Ex.1029 (the five office actions with §§ 102/103 rejections). Two rejections were under § 102 and three rejections were under § 103. *Id.* Surprisingly, the Examiner reused the same prior art for these rejections, even though some rejections were issued over a decade later. *Id.* For example, the first § 103 rejection was issued in 2006 based on the Cahill and Glass references; the second and third § 103 rejections were issued in 2018 and 2019, again relying on Cahill and Glass. *Id.* at 2, 30, 40. Similarly, the first § 102 rejection was issued in 2007 based on the Ellingson reference, and the second in 2010 also based on Ellingson. *Id.* at 13, 20. Thus, the Examiner only asserted three references across the entire family. The lack of art rejections erroneously signaled to Patent Owner that the claimed concepts were entirely new, improperly encouraging a cascade of continuations. This dynamic culminated in the '066 patent, which the Examiner again allowed without issuing **any** §§ 102 or 103 rejections. Ex.1030, 13-18. The Examiner's complete failure to provide a meaningful examination for the patent family is particularly striking given the abundance of on-point prior art. *See e.g.*, Ex.1005-Ex.1007; Ex.1009-Ex.1017.

B. The materially deficient examination of the '066 patent.

Like most of its family, the '066 patent itself issued without a single prior art rejection. Ex.1030, 13-18. Indeed, the '066 patent issued after Patent Owner addressed a single office action containing statutory and nonstatutory double

patenting rejections. *Id.* The absence of any prior art rejection is especially egregious considering it was **almost a decade** since the Examiner last issued a prior art rejection in the '066 patent's parental line. The scale of the Examiner's material error is illustrated in the figure below, with purple indicating allowance without art rejection:

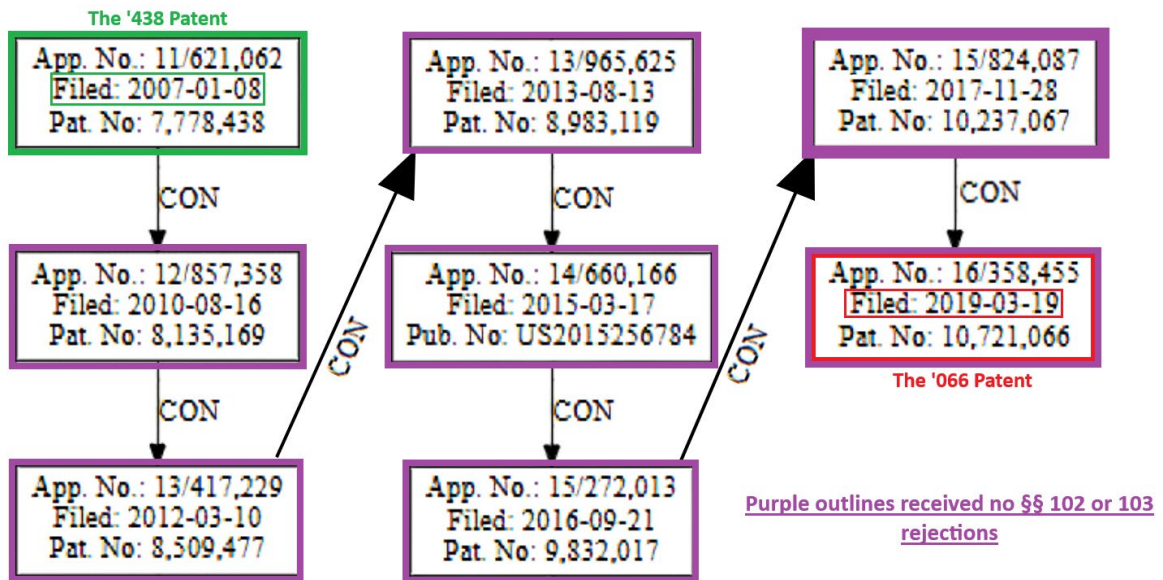


FIG. 1, Part of the '066 Patent's Lineage

As shown, only the '066 patent's great-great-great-great-grand parent, the '438 patent, received a prior art rejection. Ex.1029, 20 (the '438 patent's sole prior art rejection). Given the abundance of prior art now of record and the lack of merits testing for nearly a decade, this represents the most serious form of Examiner material error: rubberstamping. The '066 patent grants an unwarranted monopoly.

Because the Office erred in a manner material to the patentability of the claims, it is an appropriate use of Office resources to review that error.

Accordingly, discretionary denial is improper. *See Anthony Inc. v. ControlTec, LLC*, IPR2025-00559, Paper 12 (Director July 16, 2025) (finding material error overcoming settled expectations when the Examiner fails to issue any prior art rejections despite the existence of relevant prior art).

IV. Patent Owner has no settled expectations arising from the '066 patent.

The Board should find that Patent Owner lacks settled expectations with respect to the '066 patent because it was in force for only 3 years and 2 months. DD Req. 5, 8. The '066 patent issued on July 21, 2020, and expired on September 29, 2023. *Id.* Patent Owner's Request ignores the '066 patent's short time in force and instead cites the total time between the '066 patent's issue date ***and the filing of the Request in 2025.*** *Id.* This is improper as the Director considers a patent's time "in force" when evaluating settled expectations. *Id.* at 5, 7 (quoting *Omnivision Tech., Inc. v. RE Secured Networks LLC*, IPR2025-01019, Paper 14 at 2 (Director Oct. 10, 2025)).

The Director routinely finds that challenged patents that have been in force for less than 6 years counsel against discretionary denial. *E.g., Shenzhen Tuozhu Technology Co. Ltd v. Stratasys, Inc.*, IPR2025-00438, Paper 10 (Director July 17, 2025) (finding lack of strong settled expectations for patents in force for less than

six years). Accordingly, Patent Owner has no settled expectations arising from the '066 patent.

V. Apple has settled expectations of nonenforcement.

The Board should find that Apple, not Patent Owner, developed settled expectations around the '066 patent. Apple did not expect assertion given Patent Owner's long delay in filing suit until after the '066 patent expired. DD Req. 5-8.

Patent Owner admits that Apple informed it on January 12, 2021, that Apple did not believe it infringed the '066 patent. *Id.* at 1. Patent Owner then admits that the '066 patent expired on September 29, 2023. *Id.* at 8. Finally, Patent Owner admits that it asserted the '066 patent against Apple on December 6, 2024. *Id.* at 7. Patent Owner thus waited for almost four years after it received Apple's notice of noninfringement and one year after the '066 patent's expiration to file suit.

Indeed, Apple did not challenge the '066 patent's validity precisely because it informed Patent Owner that it did not infringe its claims and because the '066 patent expired nearly three years later without any further action by Patent Owner. Apple reasonably did not expect enforcement. The Director commonly finds that delinquent assertion after expiration weighs against settled expectations. *See e.g., Apple Inc. v. Ferid Allani*, IPR2025-00856, Paper 11 (Director Sept. 5, 2025); *Google LLC v. Sandpiper CDN, LLC*, IPR2025-00806, Paper 13 (PTAB Sept. 12, 2025).

VI. Patent Owner's other reasons for denial fall short.

Despite Patent Owner's arguments otherwise, (i) the district court has not finally ruled that the '066 patent's claims are invalid under § 101, (ii) the merits of the petition are not weak (as confirmed by the previously instituted IPR), and (iii) the Petition does not improperly rely on expert testimony.

A. The district court has not finally ruled that the '066 patent's claims are invalid under § 101.

Patent Owner argues that the Petition should be discretionarily denied because Apple “successfully moved to dismiss the count asserting the '066 Patent on the basis that all claims are invalid under 35 U.S.C. § 101.” DD Req. 2. But here the court granted the dismissal *without prejudice* and permitted Patent Owner to file a motion for leave to file an amended complaint arguing new facts that the '066 patent is not invalid. *Id.* Patent Owner has since filed such a motion and it is unknown how long the district court will take to decide on the motion or how it will rule. *Id.*

The Board should not discretionarily deny the Petition based on a nonfinal § 101 dismissal granted without prejudice. Patent Owner's reliance on *Hulu* is flawed. DD Req. 2; *Hulu, LLC v. Piranha Media Distribution LLC*, IPR2024-01252, Paper 27 (Director Apr. 17, 2025) (informative). Unlike here, the dismissal judgment in *Hulu* was final and with prejudice. Paper 27 at 2. As such, the Board has distinguished *Hulu* from cases where the § 101 dismissal is not final (as here).

For example, in *Garmin*, the Board noted that “[t]he court’s grant of the motion to dismiss was without prejudice and leave was expressly given for Patent Owner to refile its complaint.” *Garmin Int’l, Inc. v. CardiacSense Ltd.*, IPR2025-00195, Paper 10 at 3 n.1 (PTAB May 23, 2025). Here, and like in *Garmin*, the district court has given Patent Owner an opportunity to revive its complaint by filing a motion for leave with an amended complaint. DD Req. 2. Thus, the fate of the ’066 patent’s claims under § 101 is entirely unknown and dependent on the outcome of the motion for leave.

Even if the court were to dismiss the claims with prejudice under § 101, institution here would still be an efficient use of Board resources. Any appeal of the § 101 dismissal would not be finalized until after a final written decision in this IPR. Accordingly, in the event the dismissal is overturned, validity under § 103 would already be adjudicated and there would be no need to resume the district court case, saving party resources.

Further, unlike *Hulu*, this case presents exceptionally strong considerations counseling against discretionary denial. *See generally Hulu*, Paper 10 (not considering other discretionary considerations except the previous invalidity ruling). Taking a holistic view, referral outweighs denial under *Hulu*: (i) the district court’s dismissal is non-final (DD Req. 2); (ii) the Board has already found a reasonable likelihood of unpatentability (*supra* § II); and (iii) the record reflects

systemic, material examiner error over many years (*supra* § III). It is thus a proper use of the Board's resources to protect the integrity and efficiency of the patent system in these circumstances. Consistent with these principles, the Director should deny Patent Owner's request for discretionary denial and refer the Petition for a decision on the merits.

B. The Petition's merits have already been found to be strong.

The Petition's merits are strong and worthy of review, at least because the Fuller ground was previously deemed worthy of institution. *Supra* § II. The Petition additionally presents a new ground that provides further evidence of unpatentability. Patent Owner's arguments do not refute the Petition's strength.

First, Patent Owner alleges that the Petition, in Grounds 1 and 2, fails to “point to a single ‘*data capture device*’” that “captures both location and time information” as required by the claims. DD Req. 9. (*italics added*). This ignores the Petition's analysis. In Ground 1 the Petition likens Spatharis's specialized “applications and/or hardware” to the claimed “*data capture device*” that captures both date and time information. Pet. 25 (referencing Ex.1009 ¶40). For Ground 2, the Petition identifies Fuller's “collateral data input block 400” as the “*data capture device*” that captures both location and time information. *Id.* at 56 (referencing Ex.1005, 5:22-65). In this way, the Petition clearly demonstrates the claimed “*data capture device.*”

Second, saving its most confusing argument for last, Patent Owner contends that the Petition's motivation to combine the Spatharis and Manjunath references is deficient because the motivation allegedly relies only on an analogous art reasoning supplemented with conclusory expert testimony. DD Req. 9-10. Patent Owner overlooked pages 10-13, titled "Reasons to Combine Spatharis and Manjunath" that detail multiple reasons why an ordinary artisan would combine Spatharis and Manjunath. Pet. 10-13. Further, as explained below, the Petition's expert declaration is not conclusory. Rather, it is wholly underpinned by citations to the prior art.

C. The Petition properly relies on expert testimony.

Because the Petition and Dr. Polish's analysis rely on the cited patent references for each and every limitation of the claims, reliance on expert testimony should not be a reason for discretionary denial here. Dr. Polish's opinions are fully supported by the evidence of record. Dr. Polish bases his analysis on evidence in the form of references relied upon in the unpatentability grounds (e.g., Ex.1005, Ex.1006, Ex.1008) and a variety of tertiary references (e.g., Ex.1011-Ex.1026). *See generally*, Ex.1003. Further still, Dr. Polish repeatedly provides technical reasoning to support his statements and understandings of the references. *See generally*, Ex.1003.

Rather than arguing against the substance of the Declaration, Patent Owner

argues that the length of Dr. Polish’s declaration and the number of times the Petition cites to it are somehow indicative of the Declaration being unfocused. DD Req. 11. Institution is favored because the Petition relies on the cited patent references—not merely Dr. Polish’s opinions—for each and every limitation of the claims.

VII. Discretionary denial under *Fintiv* is not warranted.

The *Fintiv* factors, considered as a whole, do not warrant denial. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential). Every factor either favors institution or is neutral.

A. Factor 1 is neutral: No evidence regarding a stay.

No motion to stay has been filed, so the Board should not infer the outcome of such a motion. *Sand Revolution II, LLC v. Continental Intermodal Grp. Trucking LLC*, IPR2019-01393, Paper 24 at 7 (PTAB June 16, 2020) (informative). Because the granting of a stay is speculative, this factor is at least neutral.

B. Factor 2 strongly favors institution: trial is not yet scheduled.

Factor 2 strongly favors institution. Due to the early stage of the parallel litigation no trial date has been set, nor has the court issued a scheduling order. DD Req. 13. The expected final written decision date is around March 2027. On the other hand, the median time to jury trial from filing in the District Court of Delaware is 41.8 months. Ex.1031. Even if the parallel litigation was not held up

deciding § 101 validity issues, the expected jury trial date would be about *a year after* the final written decision. *Id.* (expected jury trial date of May 2028 when applying DE median statistics).

Accordingly, factor 2 weighs strongly against denial because no trial date is scheduled and the estimated trial date is a year after the expected final written decision. *Google LLC v. Brodti Inc.*, IPR2025-00472, Paper 19 at 2 (PTAB June 25, 2025) (towards referral when no trial date is scheduled and median time to trial statistics suggest trial would begin significantly after the projected final written decision).

C. Factor 3 weighs against denial: Minimal relevant investment and diligent filing.

Factor 3 weighs against discretionary denial because the co-pending litigation is in its infancy. Investment in the related proceedings has been minimal, as no scheduling order has issued. DD Req. 13. Per *Fintiv*, “[i]f, 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.” *Fintiv*, Paper 11 at 10. In the district court, there is no set date for preliminary claim constructions or the *Markman* hearing. DD Req. 13. The lack of an order addressing a dispute related to the '066 patent thus weighs against discretionary denial.

Because investment in the related proceeding has been minimal, factor 3

weighs strongly against denial.

D. Factor 4 weighs strongly against denial: Petitioner's "Sotera Plus" stipulation.

To mitigate the possibility of overlap with the parallel litigation, Apple filed a broadened *Sotera Plus* stipulation. Paper 6. If the PTAB institutes this proceeding, Apple's stipulation precludes it from pursuing in the parallel litigation:

(i) the specific grounds raised in [petition], (ii) any other grounds that could have reasonably been raised before the PTAB in that instituted proceeding (i.e., any ground that could have reasonably been raised under §§ 102 or 103 on the basis of prior art patents or printed publications), or (iii) any ground based on a combination of system prior art and the references asserted as part of a ground raised in [petition], as reflected in the table summarizing the Statutory Grounds for Challenges on page 7 of the Petition.

Thus, Apple's stipulation negates concerns that any issue before the Board in this proceeding will be relitigated in the parallel proceeding. Factor 4 therefore weighs strongly against discretionary denial. *See, e.g., Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217 Paper 9 at 2 (Director June 13, 2025) (finding that Tesla's broad *Sotera Plus* stipulation "counsel[s] against discretionary denial").

E. Factor 5 is neutral: Petitioner is a defendant in the parallel litigation.

Petitioner Apple is a defendant in the parallel litigation. That is true of most

IPR petitioners, therefore, this factor is neutral. *See HP Inc. v. Slingshot Printing LLC*, IPR2020-01084, Paper 13 at 9 (PTAB Jan. 14, 2021).

F. Factor 6 weighs against denial: The merits of the Petition are particularly strong.

Factor 6 favors institution because the Petition clearly shows that the '066 patent claims only well-known subject matter. As discussed previously, the Board has already found a reasonable likelihood that the '066 patent's claims are unpatentable. *Samsung Electronics Co. v. MyPort, Inc.*, Paper 42, IPR2023-00025 (PTAB Feb 16, 2024). In that IPR, the Board granted institution based, in part, upon the Fuller reference, also applied in the instant Petition. *Id.*

The Petition additionally presents a new ground based on the Spatharis reference (Ex.1009). Like Fuller, Spatharis shows that the concepts recited in the '066 patent were well-known. The '066 patent relates to capturing media such as images, audio, or video and then performing “speech-to-text” and “image recognition” to derive “context tags.” *See* Ex.1001, 5:50-6:2. Spatharis likewise describes a “metadata extraction engine” that “provides analysis” of an “audio/video signal” including “speech to text conversion” of captured digital audio signals, and “visual properties face recognition” of captured digital images to create “tags, annotations, and/or markings.” Ex.1009 ¶¶13, 14, 42.

In summary, each *Fintiv* factor is either neutral or weighs against denial.

VIII. Conclusion

For the above reasons, Petitioner respectfully requests that the Director refrain from exercising his discretion to deny this petition and instead consider the merits.

Respectfully submitted,

Date: December 15, 2025

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PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. Patent No. 10,721,066
Ex.1002	Prosecution History of U.S. Patent No. 10,721,066
Ex.1003	Declaration of Dr. Nathaniel Polish under 37 C.F.R. § 1.68
Ex.1004	<i>Curriculum Vitae</i> of Dr. Nathaniel Polish
Ex.1005	U.S. Patent No. 6,833,865 ("Fuller")
Ex.1006	U.S. Patent No. 7,295,752 ("Jain")
Ex.1007	<i>Graphics File Formats: Second Edition</i> , James D. Murray et al. (1996) ("Murray")
Ex.1008	Reserved
Ex.1009	U.S. Pub. No. 2006/0227995 ("Spatharis")
Ex.1010	<i>Introduction to MPEG-7: Multimedia Content Description Interface</i> , B.S. Manjunath et al. (editors) (2002) ("Manjunath")
Ex.1011	U.S. Patent No. 2,618,191 ("Martin")
Ex.1012	U.S. Patent No. 2,983,793 ("Weber")
Ex.1013	U.S. Pub. No. 2001/0015759 ("Squibbs")
Ex.1014	U.S. Pub. No. 2003/0115219 ("Chadwick")
Ex.1015	U.S. Pub. No. 2002/0184244 ("Hsiao")
Ex.1016	U.S. Patent No. 6,961,441 ("Hershey")
Ex.1017	U.S. Patent No. 7,216,232 ("Cox")
Ex.1018	Markman Order, <i>MyPort, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , 2-22-cv-00114 (EDTX)
Ex.1019	U.S. Pub. No. 2005/0169245 ("Hindersson")
Ex.1020	U.S. Patent No. 5,875,233 ("Cox-2")
Ex.1021	<i>The Authoritative Dictionary of IEEE Standards Terms</i> (2000) ("IEEE Dictionary")
Ex.1022	U.K. Pub. No. 2,430,101 ("Bober")
Ex.1023	U.S. Patent No. 7,630,545 ("Cieplinski")
Ex.1024	PCT Pub. No. 2006/076760 ("Yu")

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Ex.1025	U.S. Patent No. 6,930,703 (“Hubel”)
Ex.1026	U.S. Pub. No. 2004/0218080 (“Stavelly”)
Ex. 1027 (New)	Patent Center Bibliographic Data for Part of the '066 Patent's Family
Ex. 1028 (New)	Examiner Sherali Ishrat I Statistics, Patent Bots, (last visited Dec. 1, 2025), https://www.patentbots.com/stats/examiner/2667-SHERALI-ISHRAT .
Ex. 1029 (New)	The Five §§ 102 and 103 Rejections Issued in the '066 Patent’s Family
Ex. 1030 (New)	Non-Final Rejections for the '017, '067, and '066 Patents
Ex. 1031 (New)	Table T-3—U.S. District Courts–Trials Statistical Tables For The Federal Judiciary (June 30, 2025), United States Courts, https://www.uscourts.gov/data-news/data-tables/2025/06/30/statistical-tables-federal-judiciary/t-3 .

CERTIFICATE OF SERVICE

The undersigned certifies, under 37 C.F.R. § 42.6, that service was made on the Patent Owner as detailed below.

Date of service December 15, 2025

Manner of service Electronic Service:
MyPort_IPR_SDTeam@skiermontderby.com

Documents served **Petitioner's Opposition to Patent Owner's Request for Discretionary Denial; Exhibits Ex.1027 – Ex.1031.**

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