

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**DEAD AIR ARMAMENT, LLC D/B/A DEAD AIR SILENCERS,
PETITIONER**

v.

**JARVIS ARMS LLC D/B/A MISSION SILENCERS,
PATENT OWNER**

**CASE No. IPR2026-00013
PATENT 12,018,906**

**PATENT OWNER/RESPONDENT'S BRIEF REQUESTING DISCRETIONARY
DENIAL**

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Patent Owner Jarvis Arms LLC d/b/a/ Mission Silencers (“Jarvis Arms”) submits its Brief Requesting Discretionary Denial of Dead Air Armament, LLC d/b/a Dead Air Silencer’s (“Dead Air”) Petition, Paper No. 16 (“Petition” or “Pet.”) seeking inter partes review (“IPR”) of U.S. Patent No. 12,018,906 (“the ‘906 patent”). This filing is timely and in accordance with the Order of the Board entered October 30, 2025 (Paper No. 3).

I. INTRODUCTION

On August 29, 2025, Petitioner Dead Air filed a civil action in federal court (the “Civil Action” or “Parallel Litigation”) against Jarvis Arms including claims for, *inter alia*, a declaratory judgment of non-infringement of the ‘906 Patent. (Ex. 1012 ¶¶ 22 - 34). Defendant Jarvis Arms interposed counterclaims in its Answer and Counterclaims on October 13, 2025. Ex. 2001. Petitioner thereafter asserted invalidity as an affirmative defense to these Counterclaims on November 3, 2025. Ex. 2002. Nearly two months after filing the Civil Action, Petitioner Dead Air filed its above-captioned IPR Petition before the Board. Dead Air filed the Parallel Action, which now involves invalidity of the ‘906 Patent, in U.S. District Court prior to its Petition. As further asserted below, Patent Owner asserts the Petition should be barred by 35 U.S.C. § 315(a), and the Board should deny institution of *inter partes* review as to all grounds set forth in the Petition.

With respect to the *Fintiv* factors, the Petition should be denied because there is likely to be overlap between the assertions in this IPR and the Parallel Litigation, and because the Petitioner in this IPR is the same as the Plaintiff in the Parallel Litigation. The policies behind *Fintiv*, including reducing the potential for duplicative efforts and inconsistent results, thus favor discretionary denial. There can be no doubt that in filing the Parallel Litigation before this IPR, Petitioner knew it was commencing a case in which validity would become at issue.¹

The Petitioner has failed to meet its burden under 35 U.S.C. § 314(a) and 37 C.F.R. § 42.108(c) of establishing a reasonable likelihood of success that any of the challenged claims would be unpatentable because: (1) the asserted prior art fails to disclose all claim limitations; (2) motivation to combine is deficient; and (3) Petitioner is seeking to apply prior art already considered by the Examiner, including Sclafani, in combination with cumulative art.

The Petition fails to show there is a reasonable likelihood that Dead Air will prevail on any challenged claims.

II. PETITIONER'S ALLEGED GROUNDS

The Petition challenges the claims of the '906 Patent on eight grounds, all but one under § 103, all in view Sclafani combined with Belykov, Sclafani, Noonan, and Muceus.

¹ *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019 (PTAB Mar. 20, 2020).

III. THE PETITION SHOULD BE DENIED UNDER 35 U.S.C. 315(A).

Prior to filing its present Petition, Dead Air filed the Civil Action challenging the validity of the '906 patent, in which Civil Action Dead Air has interposed affirmative defenses for patent invalidity. *Cf.* Exs. 1012 and 2002. Section 315(a)(1) mandates that an IPR “may not be instituted if, before the date on which the petition for such a review is filed, the petitioner or real party in interest filed a civil action challenging the validity of a claim of the patent.”

Dead Air is the plaintiff in this Parallel Litigation and it “filed a civil action” within the meaning of section 315(a) before filing this IPR. A “civil action” simply refers to a claim in federal court instituted by filing a complaint. *See* Fed. R. Civ. P. 2 (“there is one form of action – the civil action”); Fed. R. Civ. P. 3 (“A civil action is commenced by filing a complaint with the court”); *Hallstrom v. Tillamook Cty.*, 493 U.S. 20, 26 (1993) (stating same proposition).

Although Dead Air asserted a single claim at filing for declaratory judgment of patent noninfringement, Dead Air knew when filing that validity would become an issue in the Parallel Litigation and Dead Air has since interposed affirmative defenses in the Civil Action challenging the validity of the '906 Patent, which constitutes an amendment to pleadings effective as of filing. As such, the Board should deny institution of the IPR under 35 U.S.C. § 315(a)(1).

A. Plaintiff/Petitioner Has Commenced Parallel Litigation Involving Validity.

It is irrelevant that Petitioner's invalidity claim was not asserted at the time it filed its initial complaint. *See* Fed. R. Civ. P. 15(a) (relation back of amended pleading to the date of the original pleading). It is also irrelevant that Dead Air has tried to stylize its invalidity claim as an affirmative defense rather than a direct claim in hopes of avoiding an automatic bar under 35 U.S.C. § 315(a)(1). Dead Air's counterclaim in reply should be treated in the same way as if Dead Air had amended its complaint under Fed. R. Civ. P. 15 to add its invalidity claim. No distinction can be drawn between an invalidity claim stylized as an affirmative defense and an invalidity claim made directly. Nothing in the statute or the federal rules limits "a civil action" to only the first pleading filed by the plaintiff. As such, the invalidity claim/defense is treated as an amendment to its complaint. *See Century Pac., Inc. v. Hilton Hotels Corp.*, 528 F. Supp. 2d 206, 213 n. 3 (S.D.N.Y. 2007) ("a reply counterclaim is to be treated as a motion to amend the complaint under Rule 15(a)"); *Southeastern Indus. Tire Co., Inc., v. Duraprene Corp.*, 70 F.R.D. 585, 588 (E.D. Pa. 1976) ("counterclaim in reply [treated] as an amendment to the complaint"); *see also Heath v. Audatex N. Am., Inc.*, 2012 WL 177413, at *3 (E.D. Pa. 2012) (motion for leave to file counterclaim in reply treated as motion to amend complaint) (Ex. 2016); *Baker v. Borg Warner Morse Tec, Inc.*, 2012 WL

195011, at *3 (S.D.W. Va. 2012) (treating motion to file counterclaim in reply as motion to amend the complaint) (Ex. 2017); *Polymer Indus. Prod. Co. v. Bridgestone/Firestone, Inc.*, 211 F.R.D. 312, 315 n. 5 (N.D. Ohio 2002) (“a counterclaim to a counterclaim, or a counter-counterclaim, would be effected by simply amending the complaint”).

Dead Air thus “filed a civil action challenging the validity of a claim of the patent,” and did so “before the date on which the petition [was] filed.” *See* 35 U.S.C. § 315(a)(1). The Petition is barred by 35 U.S.C. § 315(a)(1). The Board lacks jurisdiction to institute or conduct an IPR. *See id.*; *GTNX, Inc. v. Intra, Inc.*, CBM 2014-00072, Paper 20, at 4 (Dec. 10, 2014) (time limits are “a Congressional limitation on the Board’s jurisdiction”), *aff’d*, 789 F.3d 1309 (Fed. Cir. 2015).

Patent Owner asserts that Petitioner’s affirmative defense of invalidity was not a “counterclaim” in “response to an action for patent infringement” but an amendment to the original complaint in the Parallel Litigation filed by Petitioner, and therefore the present Petition falls outside the “counterclaim” exception of 35 U.S.C. § 315(a)(3). A key distinction is that it is Petitioner who chose the Idaho forum before filing the IPR and hailed Patent Owner there, not the Patent Owner.

B. Petitioner’s Affirmative Defense Should Be Construed as a Claim.

Construing “counterclaim” to include Dead Air’s affirmative defense in reply would render section 315(a)(1) meaningless and frustrate Congress’ intent

that an infringer decide between (i) challenging validity in court or (ii) seeking an IPR, in order to avoid harassing the patentee. *See Clio USA, Inc. v. Procter & Gamble Co.*, IPR 2013-00438, Paper 9, 8 (Jan. 9, 2014) (§ 315(a)(1) serves to prevent use of IPR “for harassment or delay”). Congress explicitly articulated these concerns in the context of a predecessor bill to the AIA. *see St. Jude Med., Cardiology Div., Inc. v. Volcano Corp.*, IPR 2013-000258, Paper 29 at 3 (Oct. 16, 2013) (reviewing the legislative history of § 315).

Any accused infringer could skirt the prohibition of section 315(a) by filing a declaratory judgment of non-infringement against the patentee, waiting a mere twenty-one days for the patentee to file its compulsory counterclaim for infringement, then filing a counterclaim in reply seeking a declaratory judgment of invalidity, and thereafter filing an IPR. *See Fed. R. Civ. P. 12(a)* (setting twenty-one day period to respond to complaint); *Capo, Inc. v. Dioptics Med. Prods., Inc.*, 387 F.3d 1352, 1356 (Fed. Cir. 2004) (“In an action for declaration of noninfringement, a counterclaim for patent infringement is compulsory and if not made is deemed waived”). Congress did not intend to allow the statutory bar to turn on manipulative pleading, such as *Dead Air’s*, or to allow such absurd results. *In re Ybarra*, 259 B.R. 706, 708 (S.D. Ill. 2007).

IV. THE BOARD SHOULD DENY INSTITUTION UNDER 35 U.S.C. § 325 (d).

Section 325(d) gives the Board express discretion to deny a petition when “the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 at 17-18 (PTAB Dec. 15, 2017).

Applying the applicable factors demonstrates that Petitioner bases its unpatentability arguments on prior art considered by the Patent Office which is cumulative of prior art applied to the challenged claims. Additionally, Petitioner has not identified any material error by the Examiner, and the Board.

A. The Petition Relies on the Same Prior Art Evaluated During Examination.

<u>Key Feature / Teachings</u>	Marfione	Noonan	Belykov	Slack	Muceus
TPMS	✓	✓	✓	✓	✓
Suppressor core with central bore	✓	✓	✓	✓	✓
Concentric baffle structure around core	✓	✓	✓	✓	✓
Variable wall thickness / cell size	✓	✓	✓	✓	✓
3D printed	✓	✓	✓	✓	✓
Fluid communication between and outer portions	✓	✓	✓	✓	✓
Sound suppression	✓	✓	✓	✓	✓

Petitioner's primary reference relied upon in the Petition is Sclafani, which is asserted in support of Petitioner's broadest § 103 arguments. Sclafani was also one of two primary references which the Examiner applied during prosecution.

Although the Examiner did not apply the combination of Sclafani with Belykov, Noonan, Slack and Meceus, these additional references are cumulative of the references already considered by the Examiner during prosecution in the "Notice of References Cited" including Marfione. Ex. 1002, 92.

Sclafani and Marfione were applied during prosecution in rejection of claims 2 – 15 under § 103 and claim 1 under § 102. Marfione was cited and relied upon by the Examiner in rejecting the challenged claims during prosecution under § 103.

The four references cited in the Petition (in addition to Sclafani) recite the same TPMS-based suppressor structures (triply periodic minimal surface structures), with concentric baffle cores, variable wall thickness, and center bores, as disclosed in the Marfione. Their teachings are cumulative, not distinct, as shown by this table above summarizing common teachings.

The Examiner considered Marfione and issued detailed rejections. The prosecution history indicates that the Examiner was aware of and analyzed the specific structural configurations in Marfione, including baffles structure, annular suppressor cores, and variable wall geometries. The applicant amended and overcame these rejections by distinguishing based on non-obvious structural

nuances that are not newly addressed by the IPR references. Thus, there was no error by the USPTO in failing to consider the teachings now presented — those teachings were already considered in substance. The teachings of the new references are not meaningfully different from the art cited in prosecution.

V. THE PETITION SHOULD BE DISCRETIONARILY DENIED UNDER *FINTIV* AND 35 U.S.C. 315(A) AND § 324(d).

Should the Board determine that denial of institution is discretionary instead of mandatory under 35 U.S.C. § 315(a), the *Fintiv* factors favor denial.

A. *Fintiv* Factors 1 and 2: Stay of the Proceedings and Trial Date.

The Petitioner/Plaintiff in the present action commenced the Parallel Litigation for declaratory judgment of non-infringement on August 29, 2025, and then stipulated to stay on October 31, 2025, which was entered by the Court on November 6, 2025. Ex. 2003. Only after stipulating to the stay, did the Petitioner/Plaintiff then interpose an affirmative defense for patent invalidity. Ex. 2002. Petitioner waited until after stipulating to the stay to interpose a claim/defense which would have weighed against institution of the IPR and against Defendant's decision to seek a stay in view of the absence of invalidity claims.

The Director has found that a Patent Owner's strong settled expectations alone favor discretionary denial even where, as here, the underlying district court litigation has been stayed pending the PTAB's decision on institution. *See, e.g.,*

Kahoot! AS v. Interstellar Inc., IPR2025-00696, Paper 26, 2 (July 31, 2025) (denying institution despite “the parallel district court proceeding ... stayed.”).

B. *Fintiv* Factor 3: Investment in the Parallel Proceeding.

Fintiv Factor 3 “consider[s] the amount and type of work already completed in the parallel litigation.” *Fintiv* at 9. This includes investment by both “the court and the parties” and is measured “at the time of the institution decision.” A “countervailing consideration,” however, is whether “Petitioner acted diligently” in filing its petition (which, in this case, was filed after the Civil Action). *Fintiv* at 11.

C. *Fintiv* Factor 4: There is Overlap Between the Cases.

Fintiv Factor 4 concerns the extent to which arguments and evidence before the district court and the PTAB will overlap. The *Fintiv* panel observed that where a “petition includes the same or substantially the same claims, grounds, arguments, and evidence” as presented in the district court litigation, “concerns of inefficiency and the possibility of conflicting decisions [are] particularly strong.” *Fintiv* at 12.

Plaintiff has asserted in the Parallel Litigation that, “[t]he claims of the Asserted Patent are invalid for failure to comply with the requirements of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103, 112, and/or 116.” *See* Ex. 2002, 6 - 7. Plaintiff is making § 103 invalidity assertions in the Parallel Litigation just as it is in the IPR Petition, creating overlap

between the Petition and Parallel Litigation. Additionally, no stipulations, such as a *Sotera* stipulation, have been reached.

D. *Fintiv* Factor 5: The Petitioner and Plaintiff in the Parallel Litigation Are the Same Party.

The Petitioner is the same party which commenced the Parallel Litigation now involving invalidity claims asserted in the Parallel Litigation. *See* Ex. 1012.

E. *Fintiv* Factor 6: The Merits of the Petition Favor Denial.

35 U.S.C. § 314(a) provides that an IPR may not be instituted unless the petition “shows there is a reasonable likelihood that the petitioner would prevail with respect to at least one of the claims challenged in the petition.” This provision provides the PTAB with complete discretion to deny institution. *See, e.g., Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2140 (2016).

1. No Claim of the ‘906 Patent is Invalid.

The ‘906 Patent achieves: (a) controlled longitudinal gas movement; (2) reduction of pressure spikes; (3) improved blowback reduction; (4) predictable heat distribution; and (5) modular disassembly while maintaining channel continuity.

This is not disclosed, taught or suggested in the prior art. No asserted reference — individually or combined — discloses a continuous circumferential

channel extending from the first to the second end of the suppressor, nor do they in combination disclose the removeable core recited by the '906 Patent.

In every reference cited: (1) Baffles interrupt flow; (2) Endcaps block or seal joints; (3) Stepped interfaces disrupt axial continuity; (4) Apertures vent into discrete chambers, not channels; (5) Housing geometries preclude circumferential flow; and (6) Threaded joints create sealed or partially sealed regions.

Thus, Petitioner's theory collapses under any correct claim construction. Across all eight grounds, the Petition relies on the same fundamental misinterpretation: Petitioner equates any annular space, offset, incidental machining clearance, or discrete expansion chamber in the prior art with the claimed "channel" — even when those structures are not circumferential, continuous, or capable of longitudinal pressure equalization. This is not merely a subtle technical disagreement: it is a categorical structural mismatch between the claimed invention and the prior art.

2. There are Global Defects Across All Eight of Petitioner's Grounds.

Across every ground no asserted reference discloses a continuous circumferential channel extending from first end to second end. Rather, they show disconnected cavities, baffle-interrupted chambers, thread-blocked sections, or

segmented voids that cannot support axial flow. None of the combinations provide the functional requirement of equalizing pressure along the suppressor's length.

Belykov's coaxial-tube assembly, Noonan's polygonal monocoire, and Sclafani's modular ring-baffle assemblies are not combinable without hindsight reconstruction. Petitioner's expert ignores actual physical constraints such as: (1) threaded interface sealing; (2) thermal expansion; (3) pressure-wave propagation; (4) wall blow-off directions, and (4) baffle geometries.

3. Belykov, Noonan and the Other Art Fails to Disclose or Suggest the Claimed Channel.

Petitioner asserts that the combination of Belykov and Noonan teaches: (1) a removable core; (2) apertures in the core; (3) a channel between core and housing, and (4) pressure equalization. Patent Owner disagrees. Neither reference discloses the claimed channel, and neither can be modified to create one. Belykov's suppressor consists of: a central through tube, positioned inside a surrounding housing, creating an annular gap, which Petitioner identifies as the claimed "channel." But Belykov's annulus is NOT the claimed channel because it is not continuous along the suppressor length.

The annulus taught by Belykov is repeatedly interrupted by: baffles, welded joints, spacers, support elements, and areas where the tube and housing touch. It is not circumferential as in many regions, its support ribs and baffle surfaces create

non-circumferential contact, eliminating annular continuity. It cannot perform axial pressure equalization because pressure in Belykov expands into isolated chambers, not a continuous path. The structure is a classic multi-chamber suppressor, not a channel-based equalization device. The annular space shown is segmented by baffle attachment points, which create mechanical and gas-flow discontinuities. These discontinuities prevent gas from traveling longitudinally along the entire suppressor. Therefore, no continuous circumferential channel exists.

Noonan does not disclose a channel of any type and is further removed from the claim. Noonan's monocore uses baffles and side vents, but gas moves into discrete radial cavities, not an axial channel. The apertures in Noonan feed into isolated pockets, not a circumferential channel with longitudinal equalization.

The POSITA would recognize that Noonan's vented chambers behave in the opposite way from the claimed channel. They trap, slow, and redirect gas within individual chambers, rather than equalizing it along the length.

Noonan's baffle design blocks axial continuity, forming discrete pressure regions. These are not connected. Therefore, Noonan cannot equalize pressure along the entire suppressor length.

Even if one were to combine the two references, Noonan's baffle surfaces would block Belykov's annulus, Noonan's side apertures would vent into closed chambers while Belykov's support structures would interfere with Noonan's

monocore. The references' diameters, interfaces, and assembly methods are incompatible. When one reference blocks the functionality of another, the combination is nonobvious.

4. Petitioner's Motivations to Combine are Conclusory and Unsupported.

Petitioner asserts that the references could be combined "to improve suppressor performance" and "provide removable cores." These are precisely the kinds of hindsight-driven rationales that the Federal Circuit has repeatedly rejected.

Each of the grounds therefore fails as a matter of law. The prior art is structurally incompatible. Petitioner's motivations-to-combine are boilerplate.

VI. CONCLUSION

For at least the foregoing reasons, Dead Air fails to establish the IPR should be instituted and the IPR should be barred under 35 U.S.C. § 315(a)(1) or discretionarily denied.

Respectfully Submitted this the 30th day of December, 2025.

/steven rinehart/
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CERTIFICATION OF LENGTH AND PAGE COUNT

Under provisions of 37 CFR § 42.24, the undersigned hereby certifies that the word count for the foregoing Request for Discretionary Denial total 4,885 words and less than 20 pages.

Dated this the 30th day of December, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, pursuant to 37 C.F.R. § 42.8, copies of the foregoing PATENT OWNER’S REQUEST FOR DISCRETIONARY DENIAL including this certificate are being caused to be served in their entirety via electronic mail on Petitioner’s counsel through the electronic filing system of the PTAB as well as via email on lead and backup counsel of record for Petitioner as follows:

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