

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: IPR2026-00013

U.S. Patent No. 12,018,906

**CORRECTED PETITIONER'S BRIEF OPPOSING
DISCRETIONARY DENIAL**

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Patent Trial and Appeal Board
US Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

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| 1003 | U.S. Patent Pub. No. 2021/0207916 A1 (“Belykov”) |
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| 1006 | U.S. Patent Pub. No. 2021/0381793 (“Slack”) |
| 1007 | U.S. Patent Pub. No 2015/0285575 (“Sclafani”) |
| 1008 | Declaration of Robert S. Silvers (“Silvers Declaration”) |
| 1009 | <i>Curriculum Vitae</i> of Robert S. Silvers |
| 1010 | National Firearms Act Handbook, ATF, April 2009, available at https://www.atf.gov/firearms/docs/guide/atf-national-firearms-act-handbook-atf-p-53208/download |
| 1011 | Letter dated June 9, 2025 from Brian D. Batt on behalf of Jarvis Arms LLC dba Mission Silencers |
| 1012 | Complaint for Declaratory Judgment of Non-Infringement, <i>Dead Air Armament, LLC d/b/a Dead Air Silencers v. Jarvis Arms LLC d/b/a Mission Silencers</i> , 4:25-CV-00497-BLW-DKG (DID Aug. 29, 2025). |
| 1013 | Memorandum in Support of Defendant’s Unopposed Motion to Stay Proceedings Pending Inter Partes Review |
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This is *exactly* the circumstance in which an IPR promotes efficiencies by addressing the invalidity of a newly issued patent *before* parties investment of resources in an expensive, *but now stayed* district court proceeding. Petitioner respectfully requests that the petition be assessed on the merits.

I. THE PETITION IS NOT BARRED BY § 315(A)

Patent Owner’s primary argument is that 35 U.S.C. §315(a)(1) bars institution of an IPR on the ’906 Patent. What Patent Owner does not tell the Board, however, is that its theory has been considered and rejected.

35 U.S.C. § 315(a)(1) provides that “[a]n inter partes review 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.*” (Emphasis added). Separately, even under Patent Owner’s unsupported theory regarding a counterclaim, 35 U.S.C. § 315(a)(3) notes unequivocally that “A counterclaim challenging the validity of a claim of a patent *does not constitute a civil action challenging the validity of a claim of a patent* for purposes of this subsection.” (Emphasis added).

It cannot be disputed that the civil action that was filed before the IPR petition *did not challenge the validity of any claim of the ’906 patent.* Instead, as Patent Owner acknowledges, the Complaint filed on August 29, 2025, “asserted a single claim at filing for declaratory judgement of patent noninfringement.” DD Br. (Paper

6) at 3. The IPR was filed on October 24, 2025, while Petitioner’s affirmative defense was filed on November 3, 2025. DD Br. At 1 (“Petitioner thereafter asserted invalidity as an affirmative defense to these Counterclaims on November 3, 2025.”). Thus, under a plain reading of the statute, § 315(a)(1) does not apply. *Samsung Elecs. Co. v. BiTMICRO, LLC*, IPR2018-01720, Paper 14 at 28-30 (PTAB Mar. 29, 2019) (quoting *LG Elecs., Inc. v. Straight Path IP Grp., Inc.*, IPR2015- 00196, Paper 56 at 17 (PTAB May 9, 2016)); *see also Ariosa Diagnostics v. Isis Innovation Ltd.*, IPR2012–00022, Paper 166 at 14 (PTAB Sep. 2, 2014) (“A civil action for a declaratory judgment of non-infringement is not a civil action challenging the validity of a patent” and “***asserting an affirmative defense of invalidity*** is treated differently than a counterclaim for invalidity, and thus for the purposes of § 315(a)(1) ***cannot be considered a filing of a civil action for invalidity.***” (emphasis added)).

Apparently aware that the fact pattern of this case renders § 315(a)(1) inapplicable, Patent Owner proposes two alternative theories. First, Patent Owner suggests that “Dead Air knew when filing that validity would become an issue in the Parallel Litigation” and that, as a result, § 315(a)(1) applies. *See* DD Br at 3. As an initial matter, Patent Owner does not identify any evidence to support its factual assertion about what Petitioner “knew” and when it “knew it.” This is just rank conjecture by Patent Owner. Nor does Patent Owner identify any legal support—

either in the form of statutory support, case law, or PTAB opinions—supporting the notion that it can rewrite § 315(a)(1) to include a state of mind exception to the plain language of the statute. Patent Owner’s first argument is borderline frivolous.

The second argument that Patent Owner appears to raise is the notion that Petitioner’s affirmative defense is effectively a “counterclaim in reply” and asserting a counterclaim seeking a declaration of invalidity after the IPR was filed “constitutes an amendment to pleadings effective as of filing.” DD Br. at 3-4. Patent Owner’s argument has been analyzed on a nearly identical fact pattern and was rejected.

In *Epic Games, Inc. v. Acceleration Bay LLC*, the court was asked to reclassify counterclaims-in-reply asserting invalidity as amendments to the complaint which, according to the patent owner (“Acceleration Bay”), would bar an IPR pursuant to § 315(a)(1). 2020 U.S. Dist. LEXIS 58327, at *1 (N.D. Cal. Apr. 1, 2020). “Acceleration Bay argues that Epic Games [the declaratory judgment plaintiff and IPR petitioner] seeks an end-run around rules governing availability of *inter partes* review (‘IPR’) by bringing its patent invalidity claims as counterclaims-in-reply.” *Id.* at *3. In that case, Acceleration Bay argued that “courts have frequently treated counterclaims-in-reply as equivalent to claims asserted in a complaint, making the difference between the two a ‘distinction without difference.’” *Id.* at *5.

In response, Epic Games cited to *Canfield Scientific, Inc. v. Melanoscan, LLC*, IPR2017-02125 Paper 7, 2018 WL 1628565, at *3-4 (PTAB Mar. 30, 2018). In

Canfield, the PTAB rejected the very argument Patent Owner advances here and noted that they did not “persuade us that the statutory language must be interpreted in a manner different from its plain, literal meaning.” *Id.* at *2. The Board continued and noted that “Section 315(a)(3) simply, and, in our view, unambiguously, states that ‘counterclaims,’ whether a ‘counterclaim-in-reply’ or otherwise, are within the scope of the term ‘counterclaim’ recited in § 315(a)(3).” *Id.* . Ultimately, the Board in *Canfield* rejected the argument advanced by Patent Owner and concluded that the “Petition is not barred by 35 U.S.C. § 315(a)(1) and (3).” *Id.* at *3.

Faced with the Board’s ruling in *Canfield* and—as is the case here—a lack of any authority for reading § 315(a)(1) or (3) in the manner proposed by Patent Owner in this proceeding—the Court in *Epic Games* rejected the argument that a counterclaim-in-reply challenging validity filed after an IPR petition related back to the original Complaint. The court noted that, consistent with *Canfield*, “[u]nlike a patent infringement defendant (which cannot bring an IPR more than one year after being sued) or a declaratory judgment plaintiff seeking a judgment of invalidity (which cannot seek an IPR at all), a **declaratory judgment counterclaimant faces no apparent restrictions on seeking an IPR.**” *Epic Games*, 2020 U.S. Dist. LEXIS 58327 at *10 (emphasis added).

Finally, Patent Owner argues that allowing Petitioner to file a counterclaim-in-reply after filing an IPR would “render section 315(a)(1) meaningless and

frustrate Congress' intent" and would "allow such absurd results." As an initial matter, Patent Owner does not point to any legislative history indicating that the unambiguous language of § 315(a) should be rewritten by the Board based on Congressional intent. Disagreeing with the outcome is not a sufficient basis to rewrite a statute. Moreover, the "absurd results" Patent Owner warns of do not exist in this case, as the District Court entered a stay of the case pending final resolution of an IPR on the '906 patent, meaning that there will not be parallel consideration of the validity of that patent in the PTAB and the District Court.

Regardless, this argument has been considered by both the Board and the *Epic Games* court and rejected. In *Canfield*, the Board observed:

In other words, Patent Owner appears to be asserting that interpreting the statute in this manner would effectively allow a Petitioner to initiate a civil action concerning a patent, but also later file a petition seeking inter partes review, frustrating one of the goals of these proceedings as being an alternative to district court proceedings. *Id.* We do not deny that Patent Owner's assertions, as a policy matter, have some merit. Nevertheless, we determine that Congress has spoken, using unambiguous language, concerning "a civil action challenging the validity of a claim of the patent," as in § 315(a)(1), and "counterclaim," as in § 315(a)(3). ***In our view, the above-referenced policy considerations do not override the unambiguous statutory language.***

Canfield, 2018 WL 1628565, at *3 (emphasis added). The *Epic Games* court arrived at the same conclusion when faced with the same argument. *Epic Games*, 2020 U.S. Dist. LEXIS 58327 at *10-11. The arguments advanced by Patent Owner have been considered and rejected before, and the outcome should be no different in this

proceeding. *See e.g., Ariosa Diagnostics*, IPR2012–00022, Paper 166 at 14.

II. PATENT OWNER’S § 325(D) ARGUMENTS FAIL

Petitioner has not presented cumulative art or arguments because none of the primary references cited in the petition were before the Examiner. Worse, Patent Owner’s briefing omits or mischaracterizes key claim amendments added during prosecution to overcome prior art. Finally, prosecution of the ’906 patent shows clear Examiner error because the Examiner never identified or considered primary references such as Belykov, Noonan, Slack, or Muceus, and that the Examiner’s post-amendment search failed to capture the newly added claim language, including limitations involving a circumferential channel. The Examiner’s error was further exacerbated by Patent Owner’s undisclosed admission that certain amended features were inherent. *See* Pet. at 28; Ex. 1011 p. 32; Ex. 1008 ¶¶ 152-153.

A. Prong 1: Petitioner has not presented cumulative art or arguments.

None of the primary references, Belykov, Noonan, Slack, or Muceus, were presented to or considered by the Examiner, and the references are not cumulative. Moreover, the combinations were not to presented to or considered by the Examiner. As such, Prong 1 of *Advanced Bionics* is not satisfied. *Advanced Bionics, LLC v. MEDEL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 7-11 (PTAB Feb. 13, 2020) (precedential); *Ecto World, LLC v. RAI Strategic Holdings*,

Inc., IPR2024-01280, Paper 13 at 3-6 (PTAB May 19, 2025) (precedential).

Regardless, Patent Owner explicitly argued to the Office that Marfione and Sclafani lacked “wherein the core comprises a plurality of core apertures on an outer surface that allow gas passing from a projectile and cartridge to pass to a channel between the inner surface of the housing and an outer surface of the core, the channel circumscribes the outer surface of the core and equalizes pressure that begins at the first end of the housing and terminates at the second end of the housing.” EX1002, pp. 103-105. The petition relies on Belykov, Noonan, and Muceus to address this limitation. As such, Belykov, Noonan, and Muceus contribute at least this material difference in disclosure when compared to the references before the Examiner. For this additional reason the cited references are not cumulative and, thus, Prong 1 is not satisfied. *See Advanced Bionics*, Paper 6 at 7- 11.

In reference to Sclafani, Patent Owner inaccurately argues that Sclafani is “Petitioner’s primary reference [...] which is asserted in support of Petitioner’s broadest § 103 arguments.” DD Br. at 7-8. But, Sclafani is only cited in Petitioner’s Grounds 1, 2, and 4 as a secondary reference, with Grounds 3 and 5-8 not including Sclafani. Further, Sclafani is newly combined with Belykov, Noonan, and Slack, which were never previously before the Examiner.

Regardless, Sclafani was cited by the Examiner during prosecution against a subset of the claims and for a specific purpose – namely “the use of a 3d printer to

form a core of a silencer”, which the Examiner then argued would be obvious in combination with Marfione. *See* Office Action dated November 29, 2023; *see* EX1002 pp. 97-98. Sclafani’s relevance to using a 3d printer to form a core of a suppressor (a feature added in issued dependent claim 2) was not disputed by Patent Owner, nor was this teaching part of the newly-added subject matter that was used to overcome Marfione. *See* EX1002, pp. 103-108. For these reasons, Prong 1 fails.

B. Prong 2: Even if Patent Owner was able to satisfy Prong 1, the Office materially erred with respect to Prong 2.

Other than Sclafani, no reference cited in the petition was cited by the Examiner or the Patent Owner. Thus, as evidenced by the petition, the Examiner erred by not addressing how Belykov, Noonan, Slack, or Muceus, disclose and/or render obvious the claims. The grounds presented here warrant review.

In addition, the features added by the Patent Owner to claim 1 in its only Office Action response included features from original claims 8 and 10, which did not previously depend from each other, with new limitations requiring that the “channel circumscribes the outer surface of the core.” EX1002, pp. 103-105, 109; *also compare* EX1002, pp. 37-38. These new features and combinations of features were not properly searched. Comparing the Examiner’s search strategy prior to this amendment (hereafter “First Search”, EX1002, pp. 82-84) to the Examiner’s search strategy following this amendment (hereafter “Second Search”, EX1002, pp. 116-

118), several key aspects of the claims were omitted and not properly searched.

The Examiner's initial search results included lines "L1" to "L9" listed in both the First Search and the Second Search. EX1002, pp. 82-84. In the Second Search, the Examiner added lines "N1" to "N11". EX1002, pp. 116-118. In this subsequent search, the Examiner started (i.e., N1-N3) with classifications identified during the first search (e.g., N1-N3 match L5, L6, and L9), and subsequently conducted a keyword search (i.e., N4-N11). *See* EX1002, pp. 116-118. The keywords focused on the "core" and "housing" but failed to search the newly added language (e.g., "circumscribes"), and the search strings were so narrow that only one of the eight keyword searches turned up more than one result. *See id.*

Worse, and to further undercut the Examiner's examination, Patent Owner has subsequently conceded that certain features of their claimed invention were inherent without disclosing this information as such to the Examiner, including that the channel (e.g., the channel which "circumscribes the outer surface of the core" according to the newly added claim language) was "inherent in the design so as to allow [Petitioner's] core to slide into the housing". *See* Pet., 28; Ex. 1011 p. 32; Ex. 1008 ¶¶ 152-153. Such an admission after allowance makes clear that the Examiner did not have a clear understanding of the claims and, thus was unable to search and/or properly evaluate the claims.

Thus, both the failure of the Examiner's subsequent search and the Patent

Owner's lack of disclosure regarding the inherency of its newly added claim limitation combined to produce significant Examiner error.

III. *FINTIV* WEIGHS AGAINST DISCRETIONARY DENIAL

The Director should decline to exercise discretion under § 314(a) because the district court case is stayed, both sides agree that an IPR would be efficient, and the merits all support institution. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) ("*Fintiv*").

A. Factors 1 and 2 weigh strongly against discretionary denial: The district court has already issued a stay.

There is no dispute that the district court case in which the subject patent is asserted is stayed. DD. Br., 9; *see also* Ex. 2003. An already-existing stay weighs strongly *against* discretionary denial. *See e.g., Amazon.com, Inc., et al. v. SoundClear Technologies LLC*, IPR2025-00673, Paper 11 at 2 (PTAB Aug. 4, 2025); *MIM Software Inc. v. EXINI Diagnostics AB, Inc.*, IPR2025-00827, Paper 12 at 2 (PTAB Aug. 22, 2025). Moreover, because the present stay is in place until the IPR is resolved, there is no risk of inconsistent judgements, which weigh against discretionary denial. Indeed, as well as touting the efficiency of an IPR, this is exactly what Patent Owner told the court when requesting a stay. Ex. 1013, 2.

Despite the stay, Patent Owner asserts that its strong settled expectations favor discretionary denial despite the stay. DD Br., 9-10. Not so. The '906 patent is not

entitled to any settled expectations as it issued roughly sixteen months prior to the filing date of this IPR. *See Valneva Austria GMBH v. Takeda Vaccines, Inc.*, IPR2025-00776, Paper 11 (PTAB Aug. 11, 2025) (patent in force since 2023 does not have settled expectations); *see also Concurrent Ventures, LLC et al. v. Advanced Micro Devices, Inc. et al.*, IPR2025-00223, Paper 12 at 2 (PTAB Aug. 14, 2025) *Apple Inc. v. Apex Beam Techs. LLC*, IPR2025-00896, -0900, -00901, -00907,-00909, -00910, -00911, Paper 10 at 3 (PTAB Sep. 3, 2025); *All. Laundry Sys., LLC v. PayRange LLC*, IPR2025-00950, Paper 11 at 3 (PTAB Sep. 19, 2025) (all finding no settled expectations for a patent issued in 2021).

Patent Owner's cites to no evidence to support its allegation of settled expectations and its only cited authority undercuts its position. Specifically, Patent Owner relies on *Kahoot!* but fails to inform the Board that the patent at issue in *Kahoot!*, unlike its patent, had been in force for over six years. *Kahoot! AS v. Interstellar Inc.*, IPR2025-00696, Paper 12 at 2 (July 31, 2025). Patent Owner's recently issued patent is not entitled to settled expectations.

Finally, Patent Owner attempts to find fault in the filing of an affirmative defense. While the filing of the affirmative defense was procedurally proper and imposes no bar as was explained above, Petitioner filed its affirmative defense *after* the filing of this IPR. The filing of an affirmative defense is of no moment to Factor 2, especially in view of the fact that the case has now been stayed.

Regardless, and because the case was still in its pleading stage, no trial date been set prior to the stay. *See* Exhibit 1014. Because Factor 2 considers the proximity of trial date to the Board’s projected statutory deadline and because the district court case is stayed and there was no trial date set, Factor 2 weighs in favor of denying Patent Owner’s request. *Fintiv*, IPR2020-00019, Paper 11 at 6- 9.

Factors 1 and 2 weigh strongly in favor of denying Patent Owner’s request.

B. Factor 3 weighs strongly against discretionary denial: There has been no investment in a district court proceeding.

Factor 3 considers the investment in the parallel proceeding by the court and the parties. *Fintiv*, IPR2020-00019, Paper 11 at 9-12. Here, the District Court case was stayed during the pleading stage. A trial date had not yet been set and no dispositive motions had been filed. *See* Exhibit 1014 (setting a schedule through August 28, 2026 Markman Hearing). Moreover, Petitioner promptly filed its petition less than two months after the filing of the complaint.

Factor 3 therefore weighs against discretionary denial. *Snap, Inc. v. SRK Tech., LLC*, IPR2020-00820, Paper 15 at 11 (PTAB Oct. 21, 2020) (precedential).

C. Factors 4 Weighs Against Denial.

Factor 4 considers the overlap between issues raised in the petition and in the parallel proceeding. *Fintiv*, IPR2020-00019, Paper 11 at 12-13. Here, the district court case is stayed and, if any challenged claims were to survive this IPR, Petitioner

would be statutorily estopped from raising any grounds that were raised or reasonably could have been raised in the petition. 35 U.S.C. § 315(e)(2). Because the district court will not analyze invalidity of the claims while this IPR is pending, a *Sotera* stipulation is not needed.

Regardless, and to avoid any doubt, if this IPR is instituted, Petitioner will not pursue in District Court litigation the grounds asserted in this proceeding, or any other ground that was raised or could have been reasonably raised in an IPR (i.e., any ground that could be raised under §§ 102 or 103 on the basis of prior art patents or printed publications). *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020) (precedential).

Because of the lack of overlap between the IPR and either parallel proceeding, Factor 4 also weighs strongly against discretionary denial

D. Factor 5 Is Neutral.

Factor 5 considers whether the parties are the same. *Fintiv*, IPR2020-00019, Paper 11 at 13-14. Where the parties are the same, the Board has held that this factor is “neutral or, at most, weighing slightly in favor of exercising discretion to deny institution.” *Snap*, IPR2020-00820, Paper 15 at 16. Regardless, this factor does not outweigh the other *Fintiv* factors, which weigh strongly against discretionary denial. *See, e.g., Cisco Sys., Inc. v. WSOU Invs.*, IPR2025-00188, Paper 10 at 17, 23 (PTAB June 13, 2025) (instituting inter partes review even though the same parties were

involved in the proceedings before the Board and the district court).

E. Factor 6 weighs strongly against discretionary denial: The merits of the petition are strong.

The merits of the petition weigh strongly in favor of institution. Patent Owner provides numerous unsubstantiated lists of alleged deficiencies that include misquoted claim language and petition language as well as features not present in the claims and arguments unsupported by any record evidence. These wrong and unsubstantiated arguments cannot form the basis of denial. Regardless, at best, Patent Owner includes three separate lines of argumentation in its brief. Patent Owner's arguments fail for the following reasons.

1. The Challenged Claims are Invalid

Patent Owner asserts the alleged technical advantages of its patented product in items (a)[sic]-(5) at p. 11 and argues certain functional disadvantages of the cited art in items (1)-(6) at p. 12. DD Br. at 11-12. But Patent Owner does not tie these advantages and disadvantages to the language of its claims or the cited art. Unclaimed features cannot form the basis for denial.

Next, Patent Owner asserts that no reference, individually or in combination discloses "a continuous circumferential channel extending from the first to the second end of the suppressor". DD Br. at 11-12. But this language is not found in the claims. Patent Owner's actual claim 1 requires "a channel between the inner

surface of the housing and an outer surface of the core” and “the channel circumscribes the outer surface of the core and equalizes pressure that begins at the first end of the housing and terminates at the second end of the housing” (emphasis added). The actual claim language is disclosed by the cited references.

With reference to Fig. 3 of Belykov, Fig. 3b of Noonan, and Fig. 11 of Muceus (e.g., references for Grounds 1-8)¹, an unobstructed channel circumscribing the outer surface of the core (e.g., orange highlight on Pet. pp. 24, 55, 90) and configured to equalize pressure beginning at the first end of the housing (e.g., yellow highlight on Pet. pp. 24, 55, 90) and terminating at the second end of the housing is shown.

Patent Owner further asserts that the cited references do not “in combination disclose the removeable core recited by the ’906 Patent”. DD Br., p. 12. However, contrary to Patent Owner’s statements, each of the cores of the foregoing references is removable. *See* Pet. pp. 19-21, 52-53, 86-87.

Patent Owner finally argues that “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,

¹ Patent Owner submitted an annotated drawing of its alleged claimed channel in its Office Action response, which is shown at Pet. p. 27. The structure of the references corresponds to the structure identified by Patent Owner as its own channel 142.

continuous, or capable of longitudinal pressure equalization” which it describes as a “structural mismatch between the claimed invention and the prior art.” DD Br. p. 12. However, Patent Owner provides no language from the claims or claim construction that include such features. For invalidity, the elements must be arranged as required by the claim, “but this is not an ‘ipsissimis verbis’ test,” i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 832–33 (Fed. Cir. 1990) (citing *Akzo N.V. v. U.S. Int’l Trade Comm’n*, 808 F.2d 1471, 1479 & n.11 (Fed. Cir. 1986)). The cited references clearly depict a channel meeting the elements of independent claim 1. Pet. pp. 21-29, 54-57, and 87-100.

2. Patent Owner Alleges “Global Defects” Without Support And Without Addressing Each Reference

Patent Owner again asserts that “[a]cross every ground no asserted reference discloses a continuous circumferential channel extending from first end to second end”, that the cited references show “disconnected cavities, baffle-interrupted chambers, thread-blocked sections, or segmented voids that cannot support axial flow”, and “none of the combinations provide the functional requirement of equalizing pressure along the suppressor’s length.” DD Br. at 12-13. As shown in the section above, Patent Owner is simply incorrect.

Patent Owner then argues that Belykov’s coaxial-tube assembly, Noonan’s polygonal monocoire, and Scalfani’s modular ring-baffle assemblies are “not

combinable without hindsight reconstruction.” DD Br. p. 13. Next, Patent Owner further argues that Petitioner’s expert ignores physical constraints such as “(1) threaded interface sealing; (2) thermal expansion; (3) pressure-wave propagation; (4) wall blow-off directions, and (4) baffle geometries.” *Id.* Notably absent are (a) any actual discussion of the art or claim language, and (b) any discussion of Muceus or Slack (i.e., only Grounds 1, 2, 4, and 5 involve a combination of two or more of Belykov, Noonan, and Sclafani). Regardless, the petition sets forth clear and comprehensive explanations of the references, their significance, and their combinability.

3. The Cited Art Discloses the Claimed Channel

At Section V(E)(3), Patent Owner asserts that specifically Belykov and Noonan fail to disclose “the claimed channel, and neither can be modified to create one.”² DD Br. p. 13. Each of the Patent Owner’s arguments is incorrect.

Patent Owner asserts that Belykov’s channel “is not continuous along the suppressor length.” DD Br. p. 13. But Patent Owner again misrepresents claim 1 and fails to address the actual claim language, which summarized above in Section

² Patent Owner fails to address Sclafani, Slack, and Muceus and, thus, Grounds 1, 3-4, 6-8 are also un rebutted and unaddressed in this section.

III(E)(1). Belykov nonetheless discloses a channel under even Patent Owner's interpretation. For example and in Fig. 3, Belykov discloses an unobstructed channel circumscribing the outer surface of the core (orange highlight shown in Pet. p. 24) and configured to equalize pressure beginning at the first end of the housing (yellow shown in Pet. p. 24) and terminating at the second end of the housing.

Patent Owner alleges that various structures and features interrupt the annular region, create non-circumferential contact, expands into isolated chambers, lack equalization, create mechanical and gas-flow discontinuities, and the like. DD Br. at 13-14. No clarity or explanation of these assertions is provided by Patent Owner; however, in either event, no structure of Belykov, including the baffles (referred to as "sound impact walls" 33, 53, 57 by Belykov) inside the core 5, interrupt Belykov's annular region. As shown Fig. 3 and detailed in the petition at pages 9-29, Belykov discloses the claimed channel, and Belykov in view of Sclafani render obvious independent claim 1 as well as claims 2-5 and 9-11. Pet. pp. 9-29. Further still, Patent Owner's own claims 10 and 11, which Petitioner challenges using Noonan and Belykov in Ground 5, require baffles, which further undercuts Patent Owner's argument that the presence of a baffles is fatal to Belykov.

Regarding Noonan, Patent Owner argues simply that Noonan "does not disclose a channel of any type" and "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.” DD Br. p. 14. Patent Owner is incorrect. With reference to Fig. 3b of Noonan, Noonan shows and describes open, unobstructed flow paths throughout the device, with no indication of any radial cavities, isolated pockets, continuity blocking, though these features are also not precluded by Patent Owner’s claims. Pet. pp. 54-55 (citing EX1004 4:27-35, Fig. 3a; EX1008 ¶ 227). As established in the petition at pages 54-57, Noonan discloses claim 1’s channel and equalization recitations. Patent Owner’s argument again is thus without merit.

Patent Owner further argues that “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.” DD Br. p. 14. As can be seen in Noonan Fig. 3b, there are no baffles blocking axial continuity and all regions of the device are fluidically connected. *See* Pet. p. 55.

Patent Owner concludes arguing against the combination of Noonan and Belykov but without citing to the language of the dependent claims against which Noonan and Belykov are combined in the petition. Regardless, Patent Owner’s arguments do not rebut the specific points raised in the petition, and the references are readily combinable for the reasons set forth in Grounds 2 and 5 of the petition. Pet. pp. 39-47, 68-74.

4. There Is Clear Motivation to Combine the References of Each of Grounds 1-8

Patent Owner vaguely attempts to distil Petitioner's many pages of motivation to combine analysis into an argument that "Petitioner asserts that the references could be combined 'to improve suppressor performance' and 'provide removable cores' and that such assertions are hindsight. DD Br. p. 15 (internal quotations original). Confusingly, the quotes provided by Patent Owner ("to improve suppressor performance" and "provide removable cores") are not found in the petition. Regardless, Petitioner's rationales include ample supporting evidence without impermissible hindsight that need not be fully repeated here.

Therefore, Factor 6 weighs against discretionary denial in the present IPR.

IV. CONCLUSION

Petitioner opposes Patent Owner's Request for Discretionary Denial.

Dated: January 30, 2026

By: / Christopher TL Douglas /
Christopher TL Douglas
Reg. No. 56,950
ALSTON & BIRD LLP
Vantage South End
1120 S. Tryon Street, Suite 300
Charlotte, NC 28203
Phone: 704.444.1119
Email:
christopher.douglas@alston.com

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §42.6(e), the undersigned hereby certifies that a true and correct copy of the above-captioned **CORRECTED PETITIONER’S BRIEF OPPOSING DISCRETIONARY DENIAL** was served in its entirety on January 30, 2026 via filing through the Patent Trial and Appeal Case Tracking System (P-TACTS) and electronic mail on the following counsel of record for Patent Owner:

Steven Rinehart
steve@utahpatentattorneys.com

Kessler Baker
kbaker@beardstclair.com

With a copy sent to the following addresses listed in Patent Owner’s mandatory notices (Paper 5, 1-2):

stevenrinehart13@gmail.com
ljarvis@beardstclair.com

Date: January 30, 2026

By: / Christopher TL Douglas /
Christopher TL Douglas