

**Opposition To Request For Discretionary Denial  
U.S. Patent No. 9,667,337**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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SAMSUNG ELECTRONICS CO., LTD., and  
SAMSUNG ELECTRONICS AMERICA, INC.,

Petitioners,

v.

MASSIVELY BROADBAND LLC.,

Patent Owner.

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Case No. IPR2026-00033

U.S. Patent No. 9,667,337

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**PETITIONERS' OPPOSITION TO PATENT OWNER'S REQUEST FOR  
DISCRETIONARY DENIAL OF INSTITUTION**

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**TABLE OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>
1001	U.S. Patent 9,667,337 (“337 patent”)
1002	Declaration of Mark Mahon, Ph.D.
1003	Intentionally Omitted
1004	File History of U.S. Patent 9,667,337
1005	U.S. Patent 6,584,080 (“Ganz”)
1006	Intentionally Omitted
1007	U.S. Patent 7,209,523 (“Larrick”)
1008	Patent Cooperation Treaty Patent Application WO 03/058850 (“Engels”)
1009	Intentionally Omitted
1010	Intentionally Omitted
1011	U.S. Patent Application Pub. No. 2004/0160928 (“Perlman”)
1012	U.S. Patent 7,295,556 (“Roese”)
1013	Intentionally Omitted
1014	Patent Owner Preliminary Infringement Contentions, Ex. 5 (September 16, 2025)
1015	Curriculum Vitae of Mark Mahon Ph.D.
1016	Patent Owner Preliminary Infringement Contentions, Ex. 6 (September 16, 2025)
1017-1049	Intentionally Omitted
1050	“NYU Wireless’ Rappaport envisions a 5G, millimeter-wave future,” available at <a href="https://www.fierce-network.com/special-report/nyu-wireless-rappaport-envisions-a-5g-millimeter-wave-future">https://www.fierce-network.com/special-report/nyu-wireless-rappaport-envisions-a-5g-millimeter-wave-future</a>
1051	U.S. District Court Time-to-Trial Statistics for EDTX (Sept. 2025)

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**I. INTRODUCTION**

The Director should deny Patent Owner’s request for discretionary denial in this proceeding (Paper 9) (“Request”) as well as the eleven other IPR proceedings against patents asserted by Patent Owner (the “Challenged Patents”). Each of the relevant factors weigh against denial. *First*, the *Fintiv* factors heavily weigh against denial because trial is scheduled to occur after the projected dates of all twelve of the Final Written Decisions.

*Second*, Patent Owner lacks settled expectations because the ’337 patent is part of a family that includes recently-issued patents—and given the significant overlap between the IPR petitions against this family, it would be an efficient use of Board resources to consider the merits of all of them. In addition, Patent Owner also lacks settled expectations because despite its contentions that the sole inventor on all twelve Challenged Patents, Dr. Rappaport, had collaborated with Petitioners for multiple decades and had made significant contributions to the industry, Dr. Rappaport *never* indicated to Petitioners of any potential infringement of his patents and *never* told any industry standards groups that his patents were related to the accused Wi-Fi, 4G-LTE and 5G standards. Indeed, Dr. Rappaport’s silence weighs heavily against settled expectations, as the only *expectations* here would be that in collaborating with Petitioners, Dr. Rappaport would have put Petitioners on notice of his patents, instead of waiting for Petitioners to commercialize a product he could

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(incorrectly) allege infringes. For the same reasons, Patent Owner's argument that patents related to the '337 patent were cited during prosecution of Samsung patents is not a basis for discretionary denial.

*Third*, Patent Owner has asserted, and Petitioners have challenged, twelve patents belonging to three unrelated families that cover four different technologies. Given the wide scope of the subject matter of the Challenged Patents, the Board is better positioned to adjudicate the validity of these patents.

*Finally*, institution is appropriate to cure the material errors committed by the examiner during prosecution of the '337 patent. Specifically, the examiner allowed the claims over the considered art because they purportedly lacked disclosure of traffic filtering or improvements in wireless network coverage using repeaters. Yet the '337 patent itself acknowledges that repeaters that filtered traffic and improved wireless coverage were well-known in the art. The examiner therefore overlooked a broad swath of prior art that covers such well-known functionality—including the Petition's Ganz and Perlman references that were not presented to the examiner.

**II. THERE ARE NO SETTLED EXPECTATIONS IN THE VALIDITY OF THE '337 PATENT**

**A. Patent Owner Lacks Settled Expectations**

Patent Owner lacks settled expectations because the '194 patent is related to other asserted patents that have only recently been issued, and which Petitioners

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have brought IPR challenges. Patent Owner nevertheless attempts to argue that the named inventor's prior research collaborations with Petitioners creates settled expectations, but as discussed further below, that fact *undermines* Patent Owner's argument: Petitioners reasonably expected to be put on notice of any relevant patents and alleged infringement. Having failed to do so for years, Patent Owner cannot now claim to have settled expectations.

Patent Owner has asserted the '337 patent and related patents U.S. Pat. Nos. 10,797,783 ("'783 patent"), 10,224,999 ("'999 patent), 8,923,754 ("'754 patent"), and 7,676,194 ("'194 patent"). These patents belong to what Patent Owner calls the "Intelligent Wireless Broadband Relay patent family." Request at 6. The '783 patent issued on October 6, 2020 and the '999 patent issued on March 5, 2019. Since the '783 and '999 patents were only recently issued, Patent Owner lacks settled expectations as to their validity. *See Apple Inc. v. Apex Beam Techs. LLC*, IPR2025-00896, Paper 10 at 3 (Sept. 3, 2025).

As for the other three patents, although they were issued earlier, they claim subject matter that is similar to the '783 and '999 patents. As a result, there is significant overlap between the IPR petitions against this family of patents. It would therefore be an efficient use of Board resources to decide the merits of all five petitions, which further weighs against discretionary denial. *Embody, Inc. v. LifeNet Health*, IPR2025-00248, Paper 13 at 3 (Director June 26, 2025) ("Patent Owner has

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not developed strong settled expectations that favor discretionary denial as to the first patent, and it is an efficient use of Board resources to address the related patent.”).

In particular, each of the IPR petitions, including the petition against the ’337 patent, asserts a combination of Ganz and Larrick as rendering obvious at least the independent claims of the Challenged Patents. This is because, as explained in fuller detail below, the Challenged Patents claim well-known repeater functionality that receives transmissions from ultrawideband devices, which the ’337 patent describes as “signals that have an instantaneous or overall occupied bandwidth of 100 MHz or more.” Ex. 1001 at 3:67-4:2. As described in each of the IPR petitions, Ganz discloses said repeater functionality, whereas Larrick discloses a transceiver operating with ultrawideband bandwidth—indeed, Larrick is titled “*Ultra-wideband Receiver and Transmitter*.” Thus, the consistent use of these core references makes analysis of one petition highly informative of the others.

**B. Patent Owner’s First-Time Assertion and Lack of Commercialization Undercut Any Claim of Settled Expectations**

As far as Petitioners are aware, Patent Owner has never “commercialized, asserted, marked, licensed, or otherwise applied in ... petitioner’s particular technology space” any of the twelve Challenged Patents, except through the lawsuit that it filed against Petitioners. *Shenzen Tuozhu Technology Co., Ltd. v. Stratasy*,

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*Inc.*, IPR2025-00438, Paper 10 (Director July 17, 2025). Nor does Patent Owner contend it has ever sent a demand letter to anyone—certainly, Patent Owner did not tell Petitioner prior to the filing of this lawsuit in 2025 that it required a license to the Challenged Patents.

Yet as Patent Owner contends, the sole inventor on all twelve patents, Professor Theodore Rappaport, has “[f]or nearly three decades” “collaborated with [Petitioners] closely.” Request at 2. During this multi-decade collaboration, Prof. Rappaport encouraged Samsung to invest in his research, granting Samsung full access to that research in return. Samsung (along with the industry writ large) made significant, well-publicized investments in the accused technology and prominently participated in the relevant standard-setting efforts. *See* Ex. 1050. But in all that time, despite the parties’ close collaboration on development of the relevant standards, not once did Prof. Rappaport ever raise the possibility or suggestion that Petitioners’ products infringed any of the Challenged Patents.

As Patent Owner acknowledges, Prof. Rappaport’s work was widely published in technical papers and textbooks, including publications cited by Petitioners. Nor is it the case that an inventor’s academic publication of his work means, as Patent Owner suggests, that the industry has acquiesced to his work and that Samsung should somehow be precluded from challenging Prof. Rappaport’s patents now. Such an argument would chill industry-academic collaboration,

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forcing companies to shun participation in and contribution to academic research to avoid future preclusion arguments. Thus, as a result of Prof. Rappaport sitting on his patent rights, Petitioners had settled expectations that Prof. Rappaport's published research was prior art that was available for use, that they did not infringe the Challenged Patents, and that Prof. Rappaport would not enforce the Challenged Patents. *Ford Motor Company v. AutoConnect Holdings LLC*, IPR2025-01342, Paper 10 (Director Dec. 4, 2025) (“[A]fter a decade-long and continuous customer-supplier relationship, Petitioner had developed a well-settled expectation that it would not be accused of infringing the challenged patents.”). Accordingly, Petitioner's knowledge of the '337 patent does not support settled expectations of validity. Request at 9-10.

In addition, Patent Owner has asserted that the '337 patent and its related patents are infringed through Petitioner's use of the Wi-Fi 5/6/6E, 4G-LTE and 5G wireless standards. Exs. 1014, 1016. As Patent Owner has made abundantly clear, Prof. Rappaport had significant involvement in the development of the 5G mmWave standard and claims significant contributions “in wireless communications [that] are widely recognized in the industry.” Request at 3-4. Frankly, Prof. Rappaport is a known expert in the field. Yet despite Prof. Rappaport's long involvement in the industry and despite the '337 patent claiming priority to an application filed over two decades ago, he has never claimed that the '337 patent or any patents in its

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family are essential or even related to any of the wireless standards he now accuses of infringement.

**III. EFFICIENCY AND CONSISTENCY STRONGLY WEIGH AGAINST DISCRETIONARY DENIAL**

Patent Owner has asserted, and Petitioner has challenged, twelve patents across three different families directed to vastly different subject matter and technologies. As a result, the Board is a much more suitable venue for reviewing the Challenged Patents. *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 (Director June 13, 2025) (“The large number and vast scope of the patents asserted in the district court litigation (*id.* at 7) weighs against discretionary denial, as the Board is better suited to review a large number of patents involving diverse subject matter.”).

As discussed above, the ’337 patent and four other asserted patents belong to what Patent Owner calls the “Intelligent Wireless Broadband Relay patent family” and claim repeater functionality operating on ultrawideband bandwidth and data rates. Request at 6-7. For this patent family, Patent Owner has accused devices that support Wi-Fi hotspot functionality or provide 5G cellular data connectivity. Exs. 1014, 1016.

Patent Owner has also asserted three patents in what it calls the “Network Monitoring patent family.” Request at 6-7. These patents claim the collection and

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use of information, including location information, of wireless devices. For this patent family, Patent Owner has accused Samsung's Knox Suite, which is enterprise software running on a server that can track the locations of Samsung devices within an enterprise.

Finally, Patent Owner has asserted four patents in what it calls the "Smart Antenna patent family." Request at 6-7. Two of these patents (the '763 and '358 patents) are directed to wireless devices equipped with a single, tunable, multi-band antenna capable of transmission and reception on two or more frequency bands simultaneously, and Patent Owner has accused Samsung smartphones and tablets containing certain Qorvo and/or Qualcomm modules that allegedly support active tuning across multiple frequency bands, or ICs that work in substantially the same way. The other two (the '625 and '548 patents) are directed to sensor-based beamsteering in wireless devices equipped with a steerable antenna configured to transmit/receive mmWave signals in the frequency range of 10-500 GHz, and Patent Owner has accused Samsung 5G smartphones containing certain Qualcomm antenna modules allegedly capable of beam tracking and beamforming to avoid obstructions.

Thus, the twelve challenged patents are directed to three different families and four different technologies: (1) wireless repeater functionality using ultrawideband bandwidth, (2) the collection and use of location information of devices, (3) tunable antenna-equipped wireless devices configured for multi-band

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operation, and (4) sensor-based beamsteering in wireless devices with steerable antennas operating at high-frequencies.

Patent Owner nevertheless argues that it would be inefficient for the Board to “evaluate all 340 challenged claims across the Asserted Patents,” since Patent Owner claims it will “narrow the case to a small subset of those claims.” Request at 2-3. To the contrary, evaluating all of the challenged claims at once is a far more efficient use of the Board’s resources than resolving challenges to a small number of claims, which will inevitably lead to subsequent proceedings when Patent Owner asserts other claims in subsequent litigations, based on Patent Owner’s vague assertion it will at some point narrow the case to a smaller number of claims. Further, denying institution based on the aggregate volume of petitions (which are entirely the result of Patent Owner’s decision to assert a wide variety of patents in litigation) would merely incentivize patentees to flood the courts with complex litigation involving large numbers of patents. In addition, Patent Owner is currently asserting 131 claims in the parallel litigation, including nearly all independent claims of the twelve Challenged Patents. The claims that Patent Owner is not asserting are almost all short, dependent claims for which the Board will not need to expend much effort to adjudicate. In addition, the District Court involves significantly more prior art than those being raised in the IPR petitions, making it far more likely that the parties will expend less resources resolving the IPR petitions before the Board. Moreover, there

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is significant overlap between the IPR petitions for each family of patents. As already discussed above, the IPR petitions challenging the '337 patent and its related patents all assert the combination of Ganz in view of Larrick. Thus, there are significant efficiencies in instituting the IPR petitions.

**IV. THE EXAMINER ERRED IN ALLOWING THE '337 PATENT**

The examiner erred in allowing the '337 patent by overlooking significant prior art, including applicant admitted prior art. As discussed above, the '337 patent claims wireless repeater functionality operating on ultrawideband bandwidth and data rates. In particular, the '337 patent claims receiving and transmitting a signal using ultrawideband bandwidth of at least 100 MHz and data rate of 100 mbps.

Yet the '337 patent admits that both repeater functionality and ultrawideband were well-known. Specifically, the '337 patent admits that repeaters are “well known in the art, and they have been manufactured for decades in the cellular and PCS industries, and more recently, ... for the IEEE 802.11a/b marketplace [and] for IEEE 802.11g wireless LAN WiFi standard.” Ex. 1001, 3:25-33. The '337 patent describes a prior art “Buffalo Technology ... bridge and repeater product” that includes “security features such as ... MAC address association control,” as well as a device from SMC Networks which has “MAC Address filtering.” *Id.*, 3:31-48.

The '337 patent also admits that ultrawideband was well-known. The '337 patent describes that “[u]ltrawideband technologies are about to become

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mainstream, and are described in” various patent applications and publications. Ex. 1001, 2:10-17. The patent also describes that “[t]he IEEE 802.15.3 standards bodies have been developing Physical (PHY) and MAC layer standards for dynamic channel selection and repeater service for UWB, which falls under the general IEEE 802.15.3 standards body.” Ex. 1001, 2:17-21. In addition, the patent describes that UWB chips capable of 100 megabits per second were already commercially available (*id.*, 3:3-9) and that mesh networking will provide efficient network paths that allow very high data rates across the internet (*id.*, 3:10-14).

Despite this applicant admitted prior art, the ’337 patent merely purports to invent the combination of repeater filtering functionality with ultrawideband. In particular, the ’337 patent claims that the “presently proposed 802.15.3 standard” for ultrawideband “is not adequate to provide one or more of sufficient security, proper traffic filtering, bandwidth provisioning, network management features, or flexibility of networks that can be installed or controlled easily by a consumer.” Ex. 1001, 2:40-47.

However, the use of ultrawideband in a repeater that screens traffic was not what the examiner found novel. During prosecution of the ’337 patent, the examiner rejected the independent claims over Evans and Miao. Ex. 1004, 103-19. The applicant did not dispute the examiner’s findings. Instead, the examiner stated that certain dependent claims would be allowed if turned into independent claims. *Id.*,

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Accordingly, the applicant amended then-claims 45 and 80 into independent form, which became issued claims 1 and 29. Ex. 1004, 83-96. For both claims, the applicant added filtering from undesired sources (limitations 1[h] and 29[h-j]). The applicant also added issued claims 52 and 58, which are Markush claims with the features of issued claims 53-56 and 59-63 and claim that, as a result of the repeater, the devices have one of “a higher data rate,” “a greater coverage distance,” “higher quality of transmission or reception,” “less interference,” and “an improved ability to control its capacity.” *Id.*

Yet each of these limitations were well-known functions of wireless repeaters. The patent itself acknowledges in the background that current repeaters exist with “security features such as ... MAC address association control” and “MAC Address filtering,” *i.e.* filtering of traffic from undesirable sources. *Id.*, 3:28-50. The patent also acknowledges that repeaters were known to improve wireless networks, such as with “WLAN range exclusion.” *Id.*

As a result, despite considering art that describes relaying transmissions which use UWB bandwidth and data rates, the examiner overlooked the significant body of prior art that discloses repeaters that provide filtering of undesirable traffic and repeaters that improve wireless networks (such as by providing higher data rates or coverage distance)—a significant error in view of the fact that the ’337 patent admits

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that such functions were well-known in the art. Such prior art includes Ganz and Perlman, two references raised in the petition, which indisputably describe such functions. *See, e.g.*, Ex. 1005 (Ganz), 11:45-48 (“IP filtering allows for certain data packets to be blocked”); Ex. 1011 (Perlman), ¶59 (“achieves full range coverage in the home without bandwidth loss”).

Ganz and Perlman were not before the examiner. In overlooking this art, the examiner committed material error, and “it is an appropriate use of Office resources to review the[se] potential error[s].” *Taiwan Semiconductor Manufacturing Co. v. Marlin Semiconductor Ltd.*, IPR2025-00847, Paper 11 (Director Sept. 3, 2025); *Tesla, Inc. v. Charge Fusion Techs., LLC*, IPR2025 00153, Paper 11 at 3 (June 12, 2025) (“Petitioner relies on Letendre to teach a ‘slide,’ and Patent Owner does not dispute that Letendre teaches a ‘slider.’”).

**V. THE *FINTIV* FACTORS WEIGH AGAINST DISCRETIONARY DENIAL**

The *Fintiv* factors heavily weigh against denial, including the fact that trial is scheduled to occur after the statutory deadline for the Board’s Final Written Decision in *all twelve* IPR proceedings, as well as Petitioner’s broad stipulation.

**A. Factor 1: The District Court Has Not Indicated Its View on a Stay**

Patent Owner attempts to predict how the District Court might rule on a potential post-institution stay motion. Request at 11-13. However, the Board

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declines to engage in such speculation when the district court has not expressed any position on the matter, instead treating this factor as neutral. *Apple, Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 12 (P.T.A.B. May 13, 2020) (“We decline to infer, based on actions taken in different cases with different facts, how the District Court would rule should a stay be requested by the parties in the parallel case here.”).

Patent Owner concedes that the District Court would likely consider and potentially approve a stay if institution occurs across all twelve petitions. Request at 11, 17; *see also Cobblestone Wireless, LLC v. Cisco Systems, Inc.*, No. 2:23-cv-00454-JRG, 2024 WL 5047854 (E.D. Tex. Dec. 9, 2024) (granting stay following institution of IPR against asserted patent); *Emerging Automotive LLC v. Kia Corp. et al.*, No. 2:23-cv-00437-JRG, Dkt. 301 (E.D. Tex. Jun. 30, 2025) (granting stay following institution of IPRs and *ex parte* reexamination against all asserted patents). Indeed, the District Court has shown a recent willingness to grant stays even close to trial. *Stellar LLC v. Motorola Solutions, Inc. et al.*, No. 4:23-cv-750-SDJ, Dkt. 156 (E.D. Tex. Feb. 24, 2025) (imposing stay two weeks before trial, even while awaiting institution decisions on some asserted patents); *Emerging Automotive LLC v. Kia Corp. et al.*, No. 2:23-cv-00437-JRG, Dkt. 301 (E.D. Tex. Jun. 30, 2025) (approving stay three weeks pre-trial).

**B. Factor 2: Trial Is Scheduled After the Final Written Decisions**

As Patent Owner concedes, trial is currently scheduled for May 17, 2027.

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That is well after the April 27, 2027 statutory deadline for the Board’s Final Written Decision in this proceeding. It is also after the statutory deadline for the FWD in the last-filed IPR, May 8, 2027. This factor therefore substantially weighs against denial. *Google LLC v. Cellular South, Inc.*, IPR2025-00875, Paper 10, (Director Oct. 17, 2025) (“[I]t is likely that a final written decision in this proceeding will issue before the district court trial occurs, reducing the risk of duplication of efforts and inconsistent outcomes.”).

Patent Owner cites to a cherry-picked “median 655 days to trial for cases pending being between Jan. 1, 2022 and Oct. 22, 2025 before Judge Gilstrap.” Request at 17. But Patent Owner fails to heed Chief APJ Boalick’s instruction to use “median time-to-trial statistics for civil actions *in the district court.*” March 24, 2025 Guidance on USPTO’s Rescission of Vidal Memo. The Eastern District of Texas’s official time-to-trial statistics show that the most recent median time-to-trial for the district court is 24.5 months, which would place trial sometime in June 2027, after the current trial date. Ex. 1051. Patent Owner’s statistic also fails to consider the significant rise in cases before Judge Gilstrap over the past year.

**C. Factor 3: The Parties’ Limited Investment In The District Court Litigation Weighs Against Discretionary Denial**

This factor significantly weighs against discretionary denial. At the time of the Board’s institution decision, the parallel litigation will still be in its early stages

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with limited investment by the court and parties—including a lack of a *Markman* hearing.

While Patent Owner emphasizes that the parties have exchanged contentions (Request at 18), that is not what the Board considers to be significant investment. More relevant is the fact that the District Court’s *Markman* hearing is scheduled for November 10, 2026, many months after the Board’s date for deciding institution. Ex. 2018 at 4. Indeed, by the institution decision date of April 16, 2026, the parties will not even have begun the process of claim construction by exchanging proposed terms. Fact discovery has only just begun and is not scheduled to be completed until December 28, 2026. Expert discovery will not be completed until February 1, 2027. These dates establish that there has been very little investment in the litigation. *Cf. Coretronic Corp. v. Maxell Ltd.*, IPR2025-00941, Paper 9 (Sept. 26, 2025) (finding meaningful investment where “the parties have participated in a *Markman* hearing, fact discovery was scheduled to close on August 21, 2025, and expert discovery will close soon.”).

The primary reason there has been little progress in the litigation so far, despite Judge Gilstrap’s propensity for aggressive scheduling, is because Petitioner was diligent in bringing these IPR petitions—all twelve petitions covering a wide swath of subject matter were filed between 3 to 5 months after Patent Owner filed its complaint.

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**D. Factor 4: Petitioner’s Broad Stipulation**

Petitioner has filed a broad stipulation that closes the loophole that the Director identified in *Motorola. Motorola Sols.*, IPR2024-01205, Paper 19 at 4 (“Petitioner’s invalidity arguments in the district court are more expansive and include combinations of the prior art asserted in these proceedings with unpublished system prior art, which Petitioner’s stipulation is not likely to moot.”).

Specifically, Petitioner stipulates that, if this petition is instituted (and not later denied institution or dismissed without a Final Written Decision), Petitioner will not assert in the parallel litigation:

- (1) any grounds of invalidity arising under U.S.C. § 102 or § 103 involving only patent or printed publication prior art that could have reasonably been raised before the Board with respect to U.S. Pat. No. 9,667,337 (the ’337 patent), including the same grounds in the Petition (Paper 1); or
- (2) any grounds of invalidity arising under U.S.C. § 102 or § 103 with respect to the ’337 patent that include U.S. Pat. No. 6,584,080 (“Ganz”), U.S. Pat. No. 7,209,523 (“Larrick”), WO 03/058850 (“Engels”), U.S. Pat. App. Pub. No. 2004/0160928 (“Perlman”), or U.S. Patent 7,295,556 (“Roese”).

This stipulation includes a *Sotera* stipulation as well as a stipulation not to use any of the IPR prior art, even in combination with system art that could not be raised in the IPR. This stipulation therefore removes any overlap between the parallel litigation and this proceeding, and significantly weighs against denial. *Samsung Electronics Co., Ltd. v. Wilus Institute of Standards and Technology Inc.*, IPR2025-00933 *et al.*, Paper 11 (Director Oct. 10, 2025) (“Petitioner has filed a broad

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stipulation that reduces the concern of inconsistent outcomes or significant duplication of efforts.”).

Patent Owner nevertheless argues that Petitioner’s stipulation is “materially narrower” than the stipulation the Office has proposed in its Notice of Proposed Rulemaking. Request at 18. However, Petitioner has already stated it would update its stipulation to be consistent with such proposed rules if and when they are made final. Paper 7, 2 n.1.

**E. Factor 5: Petitioners Being the District Court Defendants Does Not Outweigh the Factors Weighing Against Discretionary Denial**

Petitioner is the defendant in the district court case. This factor does not outweigh the other factors discussed above.

**F. Factor 6: The Merits of the Petition are Strong**

Patent Owner does not dispute the substance of the petition. Instead, Patent Owner argues that Petitioner’s expert “largely repeats the Petition verbatim.” Request at 19-20 (“[P]arrotting of the Petition’s text”). Petitioner cites to no evidence that Dr. Mahon “repeat[ed]” or “parrot[ed]” the Petition—as opposed to the Petition significantly relying on Dr. Mahon’s opinions. Indeed, Dr. Mahon makes clear that he “prepared this declaration” and “provid[ed] certain opinions relating to the patentability of the ’337 patent.” Ex. 1002, 1. Clearly, his declaration reflects his opinions, and the Petition is supported by his opinions.

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Patent Owner argues that the “Board routinely discounts” “parroting of the Petition’s text without technical reasoning.” Request at 20. But the Board does not ignore expert testimony just because it is worded similarly with the petition—expert testimony is discounted only if it lacks reasoning or supporting evidence. *See PLR Worldwide Sales Ltd. v. Flip Phone Games*, IPR2024-00171, Paper 31 at 41 (“Xerox stands for the proposition that a declaration is entitled to little weight when it restates a petition’s unsupported, conclusory assertions without any additional supporting evidence or reasoning. ... [W]e find that the assertions in the Petition are ... not conclusory, thus distinguishing this situation from the one described in *Xerox*.”).

Patent Owner accuses Dr. Mahon of providing “unsupported assertions.” Request at 20. Patent Owner identifies paragraphs 53 and 56 of Dr. Mahon’s declaration, claiming that they fail to provide “any substantiating evidence” that ignoring/filtering data was well-known. But paragraph 53 clearly states that such evidence would be provided later in the declaration, which it was when Dr. Mahon showed where Ganz discloses limitation 1[h] recitation of filtering information. Ex. 1002, ¶120-21. Patent Owner also claims that the *first page* of the petition, which merely provides a short introduction of the petition, fails to “point to any substantiating evidence or testimony” that “transceiver/repeater devices using wide frequency bandwidths was ubiquitous in the prior art.” Request at 20. Of course, the rest of the petition does provide such substantiating evidence, both in the analysis

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of the claims and the discussion of the specification.

**VI. CONCLUSION**

Patent Owner has identified no legitimate basis for the Director to deny institution based on any discretionary factors. Institution should be granted.

**Opposition To Request For Discretionary Denial  
U.S. Patent No. 9,667,337**

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Respectfully submitted,

By           /s/ James Glass            
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