

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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IQE PLC,  
Petitioner

v.

CORNELL RESEARCH FOUNDATION INC.,  
Patent Owner

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Case: IPR2024-00609  
U.S. Patent No. 7,250,360

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**PATENT OWNER'S SUR REPLY TO PETITIONER'S REPLY TO  
PATENT OWNER'S PRELIMINARY RESPONSE**

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**TABLE OF EXHIBITS**

| <b>Exhibit</b> | <b>Description</b>                                                                                                                                                                                                                                              |
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| 2001           | Docket Sheet, Case No. 2:23-cv-00180-JRG-RSP, <i>Akoustis Technologies, Inc. et. al. v. Qorvo, Inc.</i> (E.D. Tex.) (retrieved June 17, 2024)                                                                                                                   |
| 2002           | Docket Sheet, Case No. 2:24-mc-00008-RSP, <i>IQE KC, LLC v. Akoustis Technologies, Inc.</i> (E.D. Tex.) (retrieved June 17, 2024)                                                                                                                               |
| 2003           | Corporate Disclosure Statement (Dkt. 4), Case No. 2:24-mc-00008-RSP, <i>IQE KC, LLC v. Akoustis Technologies, Inc.</i> (E.D. Tex. Feb. 8, 2024) (formerly Case No. 1:24-mc-91053-AK)                                                                            |
| 2004           | Notice of Subpoena and Subpoena to IQE KC, LLC, Case No. 2:23-cv-00180-JRG-RSP, <i>Akoustis Technologies, Inc. et.al. v. Qorvo, Inc.</i> (E.D. Tex. Oct. 17, 2023)                                                                                              |
| 2005           | Qorvo’s Invalidation Contentions Cover Pleading, Case No. 2:23-cv-00180-JRG-RSP, <i>Akoustis Technologies, Inc. et.al. v. Qorvo, Inc.</i> (E.D. Tex. Sept. 14, 2023)                                                                                            |
| 2006           | Joint Claim Construction and Prehearing Statement (Dkt. 81), Case No. 2:23-cv-00180-JRG-RSP, <i>Akoustis Technologies, Inc. et.al. v. Qorvo, Inc.</i> (E.D. Tex. Apr. 30, 2024)                                                                                 |
| 2007           | Petition (Paper 1), IPR2024-00758; <i>Qorvo, Inc. v. Cornell Research Foundation, Inc.</i> (PTAB Apr. 17, 2024)                                                                                                                                                 |
| 2008           | Akoustis’ Original Complaint (Dkt. 1). Case No. 2:23-cv-00180-JRG-RSP, <i>Akoustis Technologies, Inc. et.al. v. Qorvo, Inc.</i> (E.D. Tex. Apr. 20, 2023)                                                                                                       |
| 2009           | James Richard Shealy, Cornell Engineering, <i>available at</i> <a href="https://www.engineering.cornell.edu/faculty-directory/james-richard-shealy">https://www.engineering.cornell.edu/faculty-directory/james-richard-shealy</a> (retrieved on June 13, 2024) |
| 2010           | Declaration of Joseph A. Smart, Ph.D., dated June 14, 2024                                                                                                                                                                                                      |
| 2011           | Smart, Joseph “High Electron Mobility Transistor Structures in the                                                                                                                                                                                              |

|      |                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | Gallium Arsenide and Gallium Nitride Material Systems by Organometallic Vapor Epitaxy” Dissertation (2006)                                                                                                                                                                                                                                                                                                      |
| 2012 | Cornell University Invention Disclosure (IDS)                                                                                                                                                                                                                                                                                                                                                                   |
| 2013 | Joseph Smart Notebook                                                                                                                                                                                                                                                                                                                                                                                           |
| 2014 | Screenshot of <a href="https://catalog.hathitrust.org/Record/009236785">https://catalog.hathitrust.org/Record/009236785</a> (retrieved on June 13, 2024)                                                                                                                                                                                                                                                        |
| 2015 | Screenshot of <a href="https://catalog.library.cornell.edu/catalog/6035819">https://catalog.library.cornell.edu/catalog/6035819</a> (retrieved on June 13, 2024)                                                                                                                                                                                                                                                |
| 2016 | RF Micro Devices to Outsource Manufacturing of Wafer Starting Material, Qorvo Financial Release (June 5 2012), <i>available at</i> <a href="https://ir.qorvo.com/news-releases/news-release-details/rf-micro-devicesr-outsource-manufacturing-wafer-starting">https://ir.qorvo.com/news-releases/news-release-details/rf-micro-devicesr-outsource-manufacturing-wafer-starting</a> (retrieved on June 13, 2024) |
| 2017 | Merger of RFMD and TriQuint is now Complete, Qorvo emerges as a New Leader in RF Solutions, Qorvo News (January 2, 2015), <i>available at</i> <a href="https://www.qorvo.com/newsroom/news/2015/merger-of-rfmd-and-triquint-is-now-complete">https://www.qorvo.com/newsroom/news/2015/merger-of-rfmd-and-triquint-is-now-complete</a> (retrieved on June 13, 2024)                                              |
| 2018 | Locations, Qorvo, <i>available at</i> <a href="https://www.qorvo.com/about-us/locations">https://www.qorvo.com/about-us/locations</a> (retrieved on June 13, 2024)                                                                                                                                                                                                                                              |
| 2019 | Akoustis’ Response to IQE’s Motion to Quash (Dkt. 19), Case No. 2:24-mc-00008-RSP, <i>IQE KC, LLC v. Akoustis Technologies, Inc.</i> (E.D. Tex. Feb, 22, 2024) (formerly Case No. 1:24-mc-91053-AK)                                                                                                                                                                                                             |
| 2020 | Qorvo’s Motion to Dismiss (Dkt. 24), Case No. 2:23-cv-00180-JRQ-RSP, <i>Akoustis Technologies, Inc. et.al. v. Qorvo, Inc.</i> (E.D. Tex. June 30, 2023)                                                                                                                                                                                                                                                         |
| 2021 | Akoustis’ Motion for Leave to File an Amended Complaint (Dkt. 84), Case No. 2:23-cv-00180-JRG-RSP, <i>Akoustis Technologies, Inc. et.al. v. Qorvo, Inc.</i> (E.D. Tex. May 1, 2024)                                                                                                                                                                                                                             |
| 2022 | Order on Motion to Quash Subpoena (Dkt. 35), Case No. 2:24-mc-00008-RSP, <i>IQE KC, LLC v. Akoustis Technologies, Inc.</i> (E.D.                                                                                                                                                                                                                                                                                |

|      |                                                                                                                                                                                                                                                                                                                       |
|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | Tex. May 22, 2024) (formerly Case No. 1:24-mc-91053-AK)                                                                                                                                                                                                                                                               |
| 2023 | Petitioner’s Contingent Motion for Joinder with IPR2024-00609 (Paper 3), IPR2024-00758; <i>Qorvo, Inc. v. Cornell Research Foundation, Inc.</i> (PTAB Apr. 17, 2024)                                                                                                                                                  |
| 2024 | UPSTO Memorandum Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation (June 21, 2022)                                                                                                                                                                    |
| 2025 | Docket Sheet, Case No. 1:21-cv-1417, <i>Qorvo, Inc. v. Akoustis Technologies, et. al.</i> (D. Del.) (retrieved June 17, 2024)                                                                                                                                                                                         |
| 2026 | Qorvo’s Supplemental Brief in Opposition to Plaintiffs’ Motion for Leave to File an Amended Complaint to Add Cornell University and Cornell Research Foundation, Inc. as co-Plaintiffs (Dkt. 118), Case No. 2:23-cv-00180-JRQ-RSP, <i>Akoustis Technologies, Inc. et.al. v. Qorvo, Inc.</i> (E.D. Tex. July 11, 2024) |
| 2027 | Docket Sheet, Case No. 2:24-mc-00008-RSP, <i>IQE KC, LLC v. Akoustis Technologies, Inc.</i> (E.D. Tex.) (retrieved July 16, 2024)                                                                                                                                                                                     |

## I. INTRODUCTION

Petitioner chastises Patent Owner for alleged “mischaracterizations” and “misrepresentations” related to Petitioner’s role in the district court litigation and the *Fintiv* analysis more generally. *See generally* Reply at 1-3. These charged arguments fail to ignite. For example, Petitioner states that Patent Owner has “intentionally omitted any mention of *Qorvo’s* [*Sotera*] stipulation in its POPR” and attempts to take credit for Qorvo’s *Sotera* stipulation. *See id.* at 1-2, 5 (emphasis added). But Petitioner—as it repeats in its Reply—is not Qorvo. And Petitioner’s attempt now to tie itself to Qorvo is inconsistent with its dubious position that it “did not coordinate” with Qorvo. Reply at 5. Petitioner cannot claim credit for another Qorvo’s *Sotera* stipulation without offering one itself, which it refuses to do. Qorvo’s stipulation is unrelated to this Petition and has no bearing here.

With respect to the *Fintiv* analysis more generally, Petitioner only guesses regarding the trial date moving and understates its role in the district court case. To date, there is no indication the trial date will move. If it did move, trial would still occur before the statutory deadline for the Final Written Decision here. There is also support for Patent Owner’s position on Petitioner’s role in the litigation. Petitioner asserts the same prior art references for the underlying litigation’s asserted claims, and Petitioner has involved itself in the underlying case through its efforts to fight a subpoena in an case overseen by the same magistrate as the underlying litigation.

## II. ARGUMENT

### A. Qorvo's *Sotera* stipulation should not be credited to Petitioner.

There are two pending Petitions against the '360 Patent: IPR2024-00609 (this case) and IPR2024-00758 (the "Qorvo IPR"). The Qorvo IPR petitioner has sought joinder with these proceedings. *See Qorvo, Inc., v. Cornell Research Foundation, Inc.*, IPR2024-00758, Paper 3. In the Qorvo IPR, Qorvo offered a *Sotera* stipulation (Reply at 1-3, 5) but Petitioner itself repeatedly distanced itself from Qorvo. *See generally* Reply. And Petitioner cannot claim the benefits of a *Sotera* stipulation without actually offering one (or even explaining why it refuses to do so).

### B. Petitioner's *Fintiv* Arguments Are Not Persuasive.

#### 1. Factor 2: there is no indication that the trial date will shift.

Based on its reading of events to date in the EDTX Litigation (a reading it does not say it generated without the help of Qorvo, but which conveniently tracks Qorvo's own misleading version of events), Petitioner suggests that the trial date will shift. Reply at 2-3. But Petitioner puts forth no date that it thinks the trial date will shift to, and Petitioner has not put forward any evidence that the trial date (set for January 2025) will shift eight months such that it extends beyond the statutory deadline for the Final Written Decision here (now set for September 2025). In fact, even if the EDTX court sides with Qorvo, Qorvo is only requesting a six-month extension, which is still two months before the deadline for the Final Written

Decision here. *See* Ex. 2026 (Qorvo’s Supplemental Brief in Opposition to Motion for Leave to Add Cornell) (“Should the Court grant the motion for leave to join Cornell, Qorvo respectfully requests a six-month extension of the remaining deadlines.”). The Board has previously found similar arguments unconvincing. *See, e.g., Cisco Systems, Inc. v. Oyster Optics, LLC*, IPR2021-00319, Paper 9 at 11-12 (PTAB June 8, 2021) (“We are cognizant that other trials are scheduled to take place on November 1, 2021 and there have been trial postponements in the Eastern District of Texas, including the litigation involving Infinera, but Petitioner *has not argued that any delay of trial would extend past the statutory deadline for a final written decision in this case*” (emphasis added)). Particularly here, where the claim construction hearing is scheduled to take place on July 24, 2024 and there is no indication from the EDTX that any subsequent proceedings may be delayed, the Board should hold that factor 2 supports denial.

**2. Factor 3: there has been significant investment in both the district court case and the motion to quash proceedings.**

Petitioner argues that Patent Owner misstates the roles of the parties here to the EDTX Litigation and belittles the investment in that case. Reply at 3-4. Not only has there been significant investment in the EDTX Litigation itself (Preliminary Response at 27-28 (noting July 2024 *Markman* hearing and September 2024 close of fact discovery)), but Petitioner disregards the investment by Petitioner, Patent

Owner, Qorvo, the District of Massachusetts court, and now the Eastern District of Texas court that are directly related to Petitioner's actions denying relevant discovery. *See, e.g.*, Ex. 2027 (Updated Docket Sheet for *IQE KC, LLC v. Akoustis Technologies, Inc.*) (showing May 24, 2024 transfer from Massachusetts to EDTX and June 24, June 26, and July 12 hearings in EDTX related to Petitioner's subsidiary's motion to quash). Petitioner is not a disinterested party in the underlying litigation and by its own actions has driven significant investment by numerous parties in two district courts.

**3. Factor 4: Petitioner fails to consider its impact on the underlying district court litigation.**

Petitioner ignores the majority of Patent Owner's arguments with respect to Factor 4 and instead attempts to point to Qorvo's *Sotera* stipulation as somehow showing that Petitioner's actions will not overlap with the EDTX Litigation. Reply at 4-5. This is simply not true. Petitioner is offering art that is identical to Qorvo's art for the asserted claims in the EDTX Litigation. And Petitioner does so without a *Sotera* stipulation. Moreover, it is unclear whether Qorvo would even be bound by its stipulation if it is joined in this proceeding.

**4. Factor 5: Petitioner is substantially involved in the district court litigation with Patent Owner.**

Petitioner suggests that it (and Patent Owner) are not involved in the EDTX Litigation (Reply at 5), but that is simply not the case. As Petitioner notes, Akoustis

(the plaintiff in the EDTX Litigation) has sought leave to bring Patent Owner into that case as a party (after securing Patent Owner's agreement)—something Qorvo originally wanted but now apparently regrets asking for. That motion is pending before the court. Moreover, it is indisputable that Petitioner (through its subsidiary) has been involved in discovery efforts in EDTX stemming from a subpoena issued out of the EDTX Litigation related to Petitioner's possession of materials relevant to (at least) infringement. Ex. 2027 (Updated Docket Sheet for *IQE KC, LLC v. Akoustis Technologies, Inc.*). Finally, Petitioner cannot credibly suggest that it has not coordinated with Qorvo, including in the EDTX Litigation and related subpoena enforcement action pending in the EDTX. Time and again Petitioner's positions have overlapped with those espoused by Qorvo (*e.g.*, overlapping invalidity references, arguments about Akoustis' alleged delay, and the basis for a delayed trial date in the EDTX Litigation).

### **III. CONCLUSION**

Petitioner's Reply does not alter the *Fintiv* analysis as articulated in Patent Owner's Preliminary Response. The Board should deny institution under *Fintiv*.

Dated: July 16, 2024

Respectfully submitted,

/s/ John B. Campbell

John B. Campbell  
Reg. No. 54,665  
[jcampbell@mckoolsmith.com](mailto:jcampbell@mckoolsmith.com)  
McKool Smith, P.C.  
303 Colorado Street, Suite 2100  
Austin, Texas 78701  
Telephone: (512) 692-8700  
Facsimile: (512) 692-8744

James E. Quigley  
Reg. No. 78,596  
[jquigley@mckoolsmith.com](mailto:jquigley@mckoolsmith.com)  
McKool Smith, P.C.  
303 Colorado Street, Suite 2100  
Austin, Texas 78701  
Telephone: (512) 692-8700  
Facsimile: (512) 692-8744

George Fishback  
Reg. No. 76,345  
[gfishback@mckoolsmith.com](mailto:gfishback@mckoolsmith.com)  
McKool Smith, P.C.  
303 Colorado Street, Suite 2100  
Austin, Texas 78701  
Telephone: (512) 692-8700  
Facsimile: (512) 692-8744

*Counsel for Patent Owner, Cornell  
Research Foundation Inc.*

**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that the foregoing **PATENT OWNER'S  
SUR REPLY TO PETITIONER'S REPLY TO PATENT OWNER'S  
PRELIMINARY RESPONSE** has been served on Petitioner via email on the  
following counsel of record for Petitioner:

Ryan Richardson  
[Rrichardson-ptab@sternekessler.com](mailto:Rrichardson-ptab@sternekessler.com)  
Grahm Phero  
[Gphero-ptab@sternekessler.com](mailto:Gphero-ptab@sternekessler.com)  
Brian Burke  
[Bburke-ptab@sternekessler.com](mailto:Bburke-ptab@sternekessler.com)  
[PTAB@sternekessler.com](mailto:PTAB@sternekessler.com)

Dated: July 16, 2024.

By: /s/ John B. Campbell  
John B. Campbell  
Reg. No. 54,665