

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD. AND NINTENDO
OF AMERICA INC.,
Petitioners,

v.

AMERICAN GNC CORPORATION,
Patent Owner.

Case IPR2024-00667
Patent No. 6,508,122 B1

**AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST OF
FINAL WRITTEN DECISION**

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I. INTRODUCTION

The Request for Director Review of an 83-page Final Written Decision should be denied. PO deeply mischaracterizes the Board’s decision and offers no legitimate reason to expend resources on revisiting the same failed arguments the Board considered and rejected. The Board carefully disposed of each of PO’s arguments, concluding “we do not agree” and “we disagree with Patent Owner” repeatedly. (*E.g.*, FWD, pp.16, 34, 40, 42, 45, 52, 81.) The Board found PO’s secondary considerations submissions so “**very weak**” that it used the phrase nearly 20 times.

After studying in detail the prior art, nearly one hundred exhibits, hundreds of pages of detailed expert analysis, and hearing argument in-person with questioning, the Board issued a well-reasoned Final Written Decision finding two challenged claims (*i.e.*, claims 1 and 3) obvious, each based on two independent grounds. (FWD, p.83 (Mitamura-based ground and Fujiyoshi-based ground).) The decision was correct. PO’s mere disagreement is not sufficient for Director Review.

II. DIRECTOR REVIEW OF FINAL WRITTEN DECISIONS IS SPARINGLY USED FOR LIMITED PURPOSES

Neither PTAB policy nor precedent supports Director Review of this record. Director Review of a Board’s Final Written Decision is “limited to decisions presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.” (<https://www.uspto.gov/patents/ptab/decisions/director-review-process> (§2(B)).)

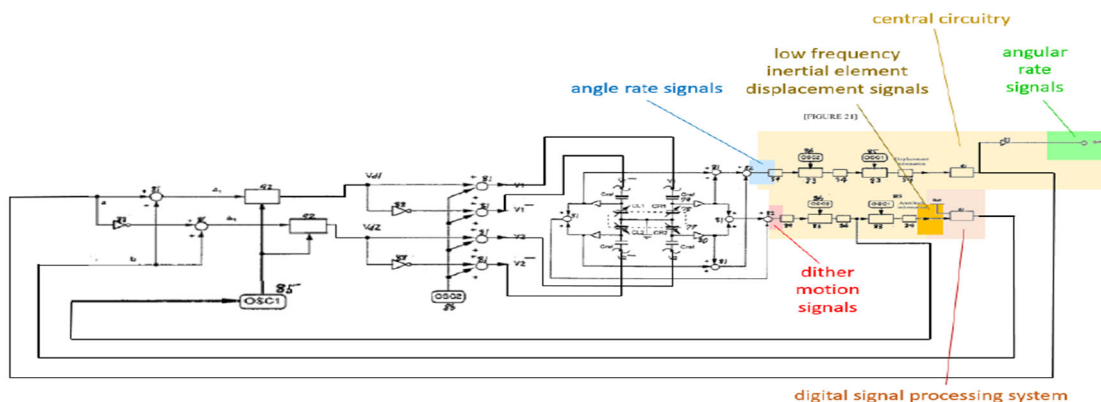
None of these categories apply. PO's disagreement with the Board's detailed analysis is not an abuse of discretion. PO identifies no important issues of law or policy. PO falls woefully short of demonstrating erroneous findings of material fact or law. If every litigant could use Director Review to rehash old ground, then the PTAB would be inundated with requests by every single litigant who lost an issue.

III. THE BOARD CORRECTLY CONCLUDED CLAIM 1 WAS OBVIOUS BASED ON TWO INDEPENDENT GROUNDS

PO's sole challenge of the Board's prior art analysis focuses on the final element of claim 1, reciting: "digital signal processing system *analyzing* said digital low frequency inertial element displacement signals" ('122, 9:51-52 (emphasis added); Request, pp.4-8.) PO calls this element the "analyzing" element.

A. PO's Key Argument Does Not Impact the Mitamura Ground

The Board correctly concluded the challenged claims were obvious in view of the Mitamura-based ground. (FWD, pp.10, 64-78, 83; EX1002, ¶¶ 234-247.) For example, the Final Written Decision reproduced the following annotated figure:



(FWD, p.71.) Claim 1 was obvious based on just two references. (*Id.*, pp.10, 83.)

PO's request fails to identify any basis for reviewing the Mitamura ground. (See Request, pp.3-8 (focusing on other Fujiyoshi-based ground).) Other than a conclusory 'the modification is not expressly taught' in a single reference argument addressed below (*id.*, p.8), PO does not substantively challenge the Mitamura ground. As explained below, PO appears to confuse obviousness with anticipation.

The Request for Director Review should be denied, because review of the separate Fujiyoshi-based ground would be futile since the Board also found the claims obvious in view of the Mitamura ground. (FWD, p.83.)

B. PO Mischaracterizes the Board's Decision for the Fujiyoshi-Based Ground

PO's complaint is entirely misplaced. (Request, pp.3-8.) The Board thoroughly analyzed the Fujiyoshi-based ground and reached the correct conclusion. (FWD, pp.47-53 (devoting seven pages of analysis to the element PO challenges in the Request).) The Board also studied in depth the asserted art. (*Id.*, pp.17-27 (devoting ten pages of analysis to analyzing the prior art).) The Board also heard extensive oral argument on these issues. (*E.g.*, Paper 48, Hr'g. Tr., 13:23-21:20.)

PO misrepresents the Board's decision, incorrectly suggesting that the Final Written Decision has only one paragraph on the supposedly "inventive" feature of the '122 patent, and the Board purportedly identified the "wrong" signals for analysis. (Request, pp.3, 5.) Neither complaint is true.

The Board meticulously studied the prior art, citing numerous passages of

evidence showing the “analyzing” element was met. (*E.g.*, FWD, pp.53 (“Ex. 1002 ¶¶ 179, 181, 185”), 49 (“Ex. 1002 ¶ 184”), 47-53 (citing evidence).) For the claimed “digital low frequency inertial element displacement signals,” which is first identified in claim 1(b), the Board cited “Ex. 1002 ¶ 165” and annotated Figures 6 and 9 of Fujiyoshi. (FWD, p.39.) For the claimed “digital signal processing” and “analyzing” in claim 1(c), the Board correctly observed that “both Fujiyoshi and Townsend concern vibrating gyroscopes and describe similar structures for controlling vibration of the vibrating element and for controlling motion caused by the Coriolis force when a system undergoes angular rotation.” (*Id.*, p.49 (citing “Ex. 1002 ¶ 184” and “Ex. 1003, 19:63-20:34; Ex. 1004, 1-2”).) The Board devoted more than seven pages of analysis to the element PO challenges in the Request. (FWD, pp.47-53 (addressing “analyzing” element), pp.39-41 (addressing “low frequency inertial element displacement signals”).)

Not only did the Board rigorously analyze each element of challenged claim 1, but the Board correctly rejected PO’s baseless argument that a POSITA would have “lack[ed] proficiency in digital signal processing. Patent Owner itself define[d] the person of ordinary skill in the art as **fairly high**.” (FWD, p.50 (emphasis added).)

PO’s POSITA Definition	Petitioner’s POSITA Definition
Master’s Degree in Electrical or Electronics Engineering, and approximately <u>five years</u> of relevant experience in the development of	bachelor’s <u>degree</u> in electrical engineering or similar degree, with <u>two to three years</u> of practical experience designing and/or

PO's POSITA Definition	Petitioner's POSITA Definition
control systems for inertial navigation, MEMS semiconductor processing, and analog circuit design	implementing systems that include sensors for measuring movement, such as acceleration and rotational position

(*Id.*, pp.13-14, 51.) The challenged claim element recites: “digital signal processing system analyzing said digital low frequency inertial element displacement signals.” (’122, 9:51-52.) Citing the evidence, the Board agreed with Petitioner’s expert, Dr. Young, that a POSITA “would have had reason to connect node ‘c’ to a sample-and-hold device, analog converter, buffer, and digital signal processing unit and to connected the digital processing unit’s output in a feedback configuration to node ‘c’ through a digital-to-analog converter.” (FWD, pp.49, 52-53 (“motivated to incorporate digital circuitry based on Townsend’s teachings into the ‘amplitude control circuit 177’ of Fujiyoshi”).) The Board did not have “one” paragraph of analysis, the Board detailed across several pages why PO’s complaints were wrong. (*Id.*, pp.47-53.) Director Review is not justified.

The lynchpin of PO’s other attack on the Fujiyoshi-based ground is “EX1002, ¶177” which the Board cited, and PO now argues the “paragraph is directed to the different ‘feeding back said dither driver signals to said angular rate sensor unit’ language of the claim[.]” (Request, p.5 (emphasis omitted).) PO’s attack is simply mistaken.

PO misleadingly takes a snippet of ¶ 177 of the declaration of Petitioner’s expert, Dr. Young, to speculate that the Board assumed the “excitation control signal”

was the “dither driver signals” and was confused. (Request, pp.5-6 (“the Decision points to ‘the excitation control signal [the dither driver signals]’”).)

But PO leaves out other portions of Dr. Young’s declaration at ¶ 177:

Fujiyoshi discloses that its dither motion control system involves a “feedback loop,” where “the detected output from the capacity detecting circuit **170** [based on the dither motion signals] is supplied to the self-exciting circuit **176**, which generates a self-exciting signal on the basis of the above detected output and further the amplitude control circuit **177** controls in such a manner as to make the amplitude of the vibration constant on the basis of the excitation control signal [the dither driver signals].”

(Exhibit 1002, ¶ 177 (excerpt, brackets in original; citing “Fujiyoshi, 20:2-11”).)

The bracketed “dither driver signals” in Dr. Young’s declaration and in the Final Written Decision was not referring to the “excitation control signal” as PO’s selective editing suggests. The bracketed “dither driver signals” was referring to the longer phrase preceding it. (*Id.*, (“the amplitude control circuit **177** controls in such a manner as to make the amplitude of the vibration constant on the basis of the excitation control signal [the dither driver signals]”).) In other words, the *output* signal of the amplitude control circuit **177** (*i.e.*, the signal “mak[ing] the amplitude of the vibration constant”) is the dither driver signals—which are derived from analyzing the excitation control signal (*i.e.*, the “digital low frequency inertial element displacement signals”). (*Id.*, ¶181 (opining that the “digital signal processing system analyzing” functionality would be located, for example, in

amplitude control circuit **177** in the modified circuit).) This is why the Board correctly understood the testimony to mean that the analysis would be of the “excitation control signal” which is the claimed “digital low frequency inertial element displacement signals,” not dither driver signals. (FWD, p.53 (“We understand this testimony to mean that the modified circuit of Fujiyoshi would analyze the excitation control signal as claimed.”).)

PO’s belief that the Board relied on the analysis of dither driver signals is simply incorrect. The Board correctly analyzed and relied on the evidence showing the claimed “digital low frequency inertial element displacement signals” was satisfied by the prior art. (FWD, pp.39-53; Exhibit 1002, ¶¶ 176-186.) Indeed, when PO tried to make the same argument here to the Board, Petitioner explained: “a POSITA would have been motivated to incorporate digital circuitry based on Townsend’s teachings into the ‘amplitude control circuit **177**’ of Fujiyoshi. This circuit **analyzes an ‘excitation control signal’** derived from ‘capacity detecting circuit **170**’ to ‘control[] in such a manner as to make the amplitude of the vibration constant.’” (Paper 27, Reply, p.11 (citing EX1002, ¶¶177, 181, Pet., pp.37-39) (citations omitted, emphasis added).) As Petitioner explained to the Board: “in the combined circuit, digital circuitry in the amplitude control circuit **177** would have ‘**analyz[ed] said digital low frequency inertial element displacement signals[.]**’” (Paper 27, Reply, pp.11-12 (citing “EX1002, ¶179”).) The Board correctly

understood the prior art. (FWD, pp.39-53; Paper 48, Hr'g. Tr., 13:23-21:20.)

Director Review of the Board's correct decision is unwarranted. PO's mere disagreement with the Board's conclusion for the Fujiyoshi-based ground is not a justification for Director Review of an 83-page Final Written Decision.

C. The Board Correctly Cited Detailed Evidence and Analysis Showing Ample Motivations to Modify the Identified Prior Art

PO appears to have two complaints. (Request, pp.8-11.) Both fail.

First, citing *DSS*, PO tries to misrepresent the Board's decision as "brief" and "non-specific." (Request, pp.8-9 (citing *DSS Tech. Mgmt. v. Apple*, 885 F.3d 1367, 1374 (Fed. Cir. 2018)).) The Board's detailed 83-page Final Written Decision is neither "brief" nor "non-specific." (*E.g.*, FWD, pp.40-44, 72-74.)

To the contrary, the Board thoroughly rejected PO's baseless argument that there is no motivation to incorporate digital circuitry into an analog system, citing detailed record evidence. (FWD, pp.39-47, 49-53, 71-75.) For instance, the Board's citations in its Final Written Decision for these issues included: "Ex. 1002 ¶ 184," the annotated "Fujiyoshi's Figure 9 on the left and Townsend's Figure 4 on the right," "Ex. 1000 ¶ 181," "Pet., 39-43 (discussing several reasons a person of ordinary skill would have been motivated to combine Fujiyoshi and Townsend); Paper 27, Reply 5; Ex. 1002 ¶¶ 185-186," "Ex. 1045 ¶¶ 20-30, 61-65," "Ex. 1004, 4-5," "Ex. 1004, 12; Ex. 1045 ¶ 64," "Ex. 1046, 38:10-17, 41:7-21," "Ex. 2023 ¶ 7," "Ex. 1003, 19:63-20:34; Ex. 1004, 1-2; Ex. 1002 ¶ 184," "Ex. 1004, 3," "Ex. 1045 ¶ 43,"

“Ex. 1002 ¶ 177 (quoting Ex. 1003, 20:2-11),” “Ex. 1002 ¶¶ 179, 181, 185,” and more. (FWD, pp.39-53 (Fujiyoshi section); *id.*, pp.71-75 (Mitamura section, citing, *e.g.*, “Ex. 1002 ¶ 237,” FWD, pp.74-78, and stating: “[w]e have addressed above, and find unpersuasive, Patent Owner’s arguments”).) PO’s “one-sentence assertion” criticism is not well-taken. (Request, p.9.)

The Board went through in detail why a POSITA would be motivated to combine Fujiyoshi and Townsend. (FWD, pp.40-44; *see also* pp. 72-74 (discussion of Mitamura and Townsend combination).) The Board rejected the argument that noise reduction was the only motivation to combine and pointed to statements in the references themselves as providing motivations. (*E.g.*, *id.*, p.42 (Townsend).) The Board noted that PO never addressed the other motivations, concluding that “we agree with Petitioner that the record corroborates Dr. Young’s testimony that a person of ordinary skill in the art would have understood the advantages to digitizing circuits.” (*Id.*, p.43.) Finally, the Board analyzed statements from the inventor and PO’s own expert admitting there were advantages to using digital systems, further supporting a motivation to combine. (*Id.*)

Unlike *DSS*, Dr. Young’s expert declaration was not brief or non-specific either. (*E.g.*, Ex. 1002, ¶¶ 163-175, 178-186.) Dr. Young had entire sections labeled “Rationale and Motivation to Combine (Fujiyoshi with Townsend).” (*E.g.*, *id.*, ¶¶ 182-186 (emphasis omitted), ¶¶ 241-247 (“Rationale and Motivation to Combine

(Mitamura with Townsend)”) (emphasis omitted).) There was ample substantial evidence demonstrating motivations to modify the identified prior art as analyzed in detail in the Final Written Decision. (FWD, pp.40-44, 72-74.) The parties also addressed the motivations during the hearing. (E.g., Paper 48, H’rg. Tr. 18:10-20:20.)

Second, PO complains that the Final Written Decision purportedly did not rely on a combination or modification expressly taught in a single reference. (Request, pp.8-11.) PO appears to confuse obviousness with anticipation.

The Final Written Decision detailed precisely how and why the challenged claim limitation was met. (FWD, pp.47-53, 74-77.) The Board spent pages upon pages addressing each of PO’s arguments relating to the “analyzing” requirement, citing the evidence identified above. Neither the Board nor the Petition used “general knowledge” to supply a missing claim limitation. (Request, p.9.) To the contrary, the Board had detailed substantial evidence teaching the “analyzing” element. (E.g., Ex. 1002, ¶¶ 163-186, 228-247.) The Board cited that evidence in its Final Written Decision. (FWD, pp.39-53, 72-75.) Neither of PO’s complaints justify Director Review of the Board’s well-reasoned Final Written Decision.

IV. THE BOARD CORRECTLY FOUND PO’S SECONDARY CONSIDERATIONS SUBMISSIONS “VERY WEAK”

A. The Board Correctly Found that PO Failed to Show the Necessary “Nexus” Between the Claims and the Coremicro IMU

PO’s request seeks to relitigate the same presumption of nexus argument the

Board rejected. (Request, pp.1-3, 11-14; FWD, pp.53-63.) As the Board correctly recognized, the Federal Circuit has stated: “[a] patent claim is not coextensive with a product that includes a ‘critical’ unclaimed feature that is claimed by a different patent and that materially impacts the product’s functionality.” *Fox Factory v. SRAM*, 944 F.3d 1366, 1375 (Fed. Cir. 2019). In such circumstances, there is no presumption of nexus. *Id*; *Campbell Soup Co. v. Gamon Plus*, 10 F.4th 1268, 1277 (Fed. Cir. 2021) (finding no presumption of nexus).

A fundamental problem with PO’s theory was that PO itself argued that claims across different patents (*e.g.*, Patent No. 6,671,648) are “all embodied in [the] coremicro IMU.” (FWD, pp.57-58; EX1048, McCall 16:15-25 (twenty patents).) By arguing the coremicro IMU embodied multiple patents, PO could not show or obtain the presumption of nexus. (FWD, pp.56-58.) As the Board aptly concluded, the PO did not address “where the coremicro IMU product lies on the spectrum of correspondence between the challenged claims of the two patents.” (FWD, p. 58.)

During the hearing and in the Final Written Decision, the Board also expressly noted that PO’s only evidence – testimony from an inventor (Mr. McCall) and high-level marketing material – did not show how or why the coremicro IMU mapped to the challenged ’122 claims. (*E.g.*, FWD, p. 56-57, Paper 48, Hr’g. Tr., 30:4-5 (“he doesn’t go through the claim limitations and map them to any product”); *cf.* Hr’g. Tr., 55:14-15 (“not providing opinions”).) The Board correctly noted that “[s]imply

showing that a patent claim broadly covers the commercial product being asserted as objective evidence of nonobviousness is not enough to show they are coextensive.” (FWD, p. 55.) The Final Written Decision thus concluded that PO “does not demonstrate that the coremicro IMU product is essentially the claimed invention.” (FWD, p.57.) PO’s evidentiary submissions were far from sufficient.

B. Not Only Did PO Fail to Show the Requisite Nexus, the Board Found PO’s Secondary Consideration Evidence “Very Weak”

Even though PO failed to show nexus, the Board thoroughly evaluated PO’s alleged secondary considerations evidence and found it “very weak.” (*E.g.*, FWD, pp.58-62, 76-77.) The Board found PO’s alleged “commercial success” allegations to be unsubstantiated, as PO did not provide any sales data or even explain what “commercially successful meant.” (FWD, p.59.) The Board also rejected PO’s arguments about the alleged failure of others because there was no evidence that the alleged “failures” had any connection to the claimed ’122 alleged inventions. (*Id.*, p.59.) Attorney arguments about licensing were rejected, because no actual licenses were identified or submitted as evidence. (*Id.*, p.60.) Finally, claims of industry acceptance and copying were also found to be “very weak.” (*Id.*, pp.61-62.)

PO provides no valid basis for revisiting these findings. (Request, pp.13-14.) PO’s only complaint is its secondary considerations evidence was supposedly “unrebutted.” (*Id.*) But nothing PO submitted came remotely close to satisfying PO’s burden of production. *E.g.*, *Prometheus Lab ’ys v. Roxane Lab ’ys*, 805 F.3d

1092, 1102 (Fed. Cir. 2015) (finding burden of production not satisfied even where PO submitted detailed sales information); *ZUP v. Nash Mfg.*, 896 F.3d 1365, 1373 (Fed. Cir. 2018) (PO burden not met even where evidence of long-felt need and copying). The Board spent pages analyzing PO’s evidence only to find it “very weak” and of “little probative value.” (FWD, pp.53, 58-62, 76-77.)

V. THE BOARD CORRECTLY FOUND PO’S REAL-PARTY-IN-INTEREST ARGUMENT UNSUPPORTED

PO argued that the Petition should be deemed time barred under 35 U.S.C. § 315(b), because “STMicroelectronics N.V.” and “STMicroelectronics S.r.l.” were supposedly served with a complaint that undisputedly **did not accuse STMicroelectronics of infringing the challenged ’122 patent**, but did mention the ’122 patent was supposedly infringed by another unrelated party called OnePlus Tech. (Shenzhen) Co. (FWD, pp.11-12, 3; EX1049, ¶13.)

The Board correctly found that: “[t]he record before us is insufficient to demonstrate a relationship between Petitioner and STMicro sufficient to show that STMicro is a real party in interest.” (FWD, p.12.) Federal Circuit authority required PO to produce “*some* evidence that tends to show that a particular third party should be named a real party in interest.” (*Id.*, p.11 (citing *Worlds v. Bungie*, 903 F.3d 1237, 1242 (Fed. Cir. 2018)) (emphasis added by FWD).) PO tendered no such evidence.

Instead, PO sought discovery. (FWD, p.12.) But the Board found that PO “failed to show that STMicro was properly served the 2020 Complaint”. (*Id.*; Paper

49, pp.3-4.) As the Board’s order recognized, PO “agree[d] that the *service attempt in Exhibit 2013 was disputed* in the 2020 Action and ‘then there was at least one or two *attempts* to serve through the Hague after that.’” (Paper 49, p.4 (emphasis added).) The Board found: “**nothing** in the record indicates that STMicro was served in compliance with Rule 4.” (*Id.*, p.5 (emphasis added).)

The Board was correct. PO submitted nothing other than attorney argument. (*Compare* Paper 27, Reply, p.24 n.3 *with* EX1070 (brief, not evidence); EX1071 (unsigned proposed summons); Response, pp.63-64 (brief, not evidence); Request, p.15.) EX1070 shows that STMicroelectronics *disputed* service. (EX1070, p.2.) EX1071 is a request by PO for an amended summons – an act inconsistent with its unsupported allegation that it previously effected service. (EX1071.) The amended summons is irrelevant because PO voluntarily dismissed the lawsuit five days later, without any proof that it was ever served. (EX1073.) PO was the plaintiff who filed the prior lawsuit against STMicro, and as such, it was uniquely positioned to provide evidence of proper service of the complaint. PO offered nothing. Because PO did not provide service evidence, its § 315(b) arguments were properly rejected.

VI. PO’S EVIDENCE WAS SO “WEAK” IT COULD NOT HAVE HAD SETTLED EXPECTATIONS, ESPECIALLY SINCE ANY SUCH EXPECTATIONS ARE NOT A BASIS FOR DIRECTOR REVIEW

The Request begins with a section stating that the FWD overturns “long-settled rights” in PO’s alleged inventions. PO does not directly explain how this

argument supports Director Review of the Final Written Decision. To the extent PO is suggesting a belated argument for discretionary denial of IPR institution, this argument fails because a “request for Director Review of a final decision is not an opportunity to raise issues related to the Board’s decision on institution.” (<https://www.uspto.gov/patents/ptab/decisions/director-review-process> (§2(B).)

Allowing a patent owner to raise “settled expectations” to overturn a lengthy and detailed Final Written Decision would represent a dramatic departure from PTAB policy and precedent, and would waste the substantial resources the Board (and the parties) have already invested in this proceeding – particularly considering that the district court in the pending litigation stayed and vacated all deadlines, including the trial date, in deference to this IPR. (*See* EX2027.) The Board’s detailed decision, based on reviewing nearly one hundred exhibits, should not be disturbed.¹

VII. CONCLUSION

PO’s Request for Director Review should be denied.

¹ Because the ’122 had been expired for nearly three years when it was asserted against Petitioner, any alleged settled expectations of PO would not warrant rescinding IPR institution. *E.g., Google v. Sandpiper CDN*, IPR2025-00806, Paper 13, 2 (P.T.A.B. Sept. 12, 2025); *Apple v. Ferid Allani*, IPR2025-00856, Paper 11, 3 (Director Sept. 5, 2025).

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. Section 42.6, that a complete copy of the attached **AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST OF FINAL WRITTEN DECISION** and related documents, are being served via electronic mail on the 26th day of September, 2025, upon Patent Owner by serving Patent Owner's counsel of record in this proceeding as follows:

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