

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

AMERICAN GNC CORPORATION,  
Patent Owner

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IPR2024-00668  
U.S. Patent No. 6,671,648

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**PATENT OWNER AMERICAN GNC'S  
REQUEST FOR DIRECTOR REVIEW**

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| EX2001                      | Declaration of Corey Johanningmeier in Support of Motion for <i>Pro Hac Vice</i> Admission                                                                               |
| EX2002                      | Brochure, American GNC Corporation                                                                                                                                       |
| EX2003                      | Webpage, AGNC Founder, <i>available at</i> <a href="https://www.americangnc.com/ceo/Founder.htm">https://www.americangnc.com/ceo/Founder.htm</a> (accessed June 6, 2024) |
| EX2004                      | Excerpts from Ching-Fang Lin, “Modern Navigation, Guidance, and Control Processing,” Prentice Hall, 1991                                                                 |
| EX2005                      | Excerpts from Inventor Notebook of Hiram McCall, Feb. 6, 1999 to Dec. 14, 1999                                                                                           |
| EX2006                      | [Reserved]                                                                                                                                                               |
| EX2007                      | Complaint in <i>American GNC Corp. v. Nintendo Co., Ltd., et al.</i> , No. 2:23-cv-00302-TL, D.I. 1 (W.D. Wash. Mar. 3, 2023)                                            |
| EX2008                      | Declaration of Professor Lawrence Larson, Ph.D. under 37 C.F.R. § 1.68 in support of Patent Owner's Preliminary Responses in IPR2024-00667 & -00668.                     |
| EX2009                      | <i>Curriculum Vitae</i> of Professor Larson                                                                                                                              |
| EX2010                      | Marco Cassis, “Intelligent Sensing: Enabling the Next ‘Automation Age,’” ISSCC 2022, Feb. 21, 2022                                                                       |
| EX2011                      | Excerpts from <i>Nintendo Co., Ltd., et. al. v. Polaris PowerLED Techs, LLC</i> , IPR2023-00778, EX1002 (Declaration of R. Jacob Baker, Ph.D., P.E.).                    |
| EX2012                      | Complaint in <i>American GNC Corporation v. OnePlus Technology (Shenzhen) Co., Ltd. et al.</i> , No. 6:20-cv-00171-ADA, D.I. 1 (W.D. Tex. Mar. 4, 2020)                  |
| EX2013                      | Affidavit of Service in <i>American GNC Corporation v. OnePlus Technology (Shenzhen) Co., Ltd. et al.</i> , No. 6:20-cv-00171-ADA, D.I. 19 (W.D. Tex. June 6, 2020)      |
| EX2014                      | STMicroelectronics, Inc.’ Objections to American GNC Corp.’s Subpoena in <i>American GNC Corp. v. Nintendo Co., Ltd., et al.</i> , No. 2:23-cv-00302-TL (W.D. Wash.)     |

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| EX2015                      | [Reserved]                                                                                                                                                       |
| EX2016                      | Joint Claim Chart and Prehearing Statement in <i>American GNC Corp. v. Nintendo Co., Ltd., et al.</i> , No. 2:23-cv-00302-TL, D.I. 41 (W.D. Wash. Mar. 22, 2024) |
| EX2017                      | Order Denying Motion to Dismiss in <i>American GNC Corp. v. Nintendo Co., Ltd., et al.</i> , No. 2:23-cv-00302-TL, D.I. 38 (W.D. Wash. Jan. 10, 2024)            |
| EX2018                      | Transcript of Telephonic Call with Board – October 15, 2024                                                                                                      |
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| EX2020                      | Deposition Transcript of Dr. Darrin Young – December 13, 2024                                                                                                    |
| EX2021                      | Exhibit 6 from Deposition of Dr. Darrin Young – U.S. Patent No. 8,634,924                                                                                        |
| EX2022                      | Exhibit 7 from Deposition of Dr. Darrin Young – Image of Laser Ring Gyroscope                                                                                    |
| EX2023                      | Declaration of Hiram McCall in support of Patent Owner's Response in IPR2023-00697 and -00698                                                                    |
| EX2024                      | Excerpts from Weekly Status Reports of Hiram McCall                                                                                                              |
| EX2025                      | Image of MEMS gyroscope in ST Microelectronics IMU chip from disassembled Nintendo Switch product                                                                |
| EX2026                      | Joint Status Report in <i>American GNC Corp. v. Nintendo Co., Ltd., et al.</i> , No. 2:23-cv-00302-TL, D.I. 56 (W.D. Wash. Sept. 24, 2024)                       |
| EX2027                      | Order Maintaining Stay in <i>American GNC Corp. v. Nintendo Co., Ltd., et al.</i> , No. 2:23-cv-00302-TL, D.I. 57 (W.D. Wash. Sept. 26, 2024)                    |
| EX2028                      | American GNC Hearing Demonstratives                                                                                                                              |

Patent Owner American GNC Corp. respectfully requests Director Review pursuant to 37 C.F.R. § 42.75 of the Final Written Decision in this proceeding. The Decision makes errors of fact and law, misconstruing and misapplying the claims, as well as improperly relying on unsupported argument and hindsight, while ignoring unrebutted evidence of inventive non-obviousness. The Decision deems American GNC's expired patent obvious over a complex mosaic of references, based on cursory, debunked expert argument—despite twenty-five years of technical success, commercial use, citation, litigation, and licensing of the '648 Patent invention.

**I. The Final Written Decision erroneously overturns long-settled rights in American GNC's foundational MEMS-based IMU invention**

Beginning in 1999, American GNC's inventors pioneered new designs in the emerging field of Microelectromechanical System (MEMS) gyroscopes and inertial measurement units. These inventions allowed the company to beat other esteemed research institutions like Draper Labs and NASA Jet Propulsion Laboratories to be the first to achieve technical viability for a MEMS gyroscope, which was enabling of and used in the *first successful MEMS-based Inertial Measurement Unit* of the challenged claims. EX2023 (McCall Decl.), ¶¶8, 11-14, 21-23. American GNC filed for, and has been issued, 79 patents for its various technological contributions, including the '648 Patent that Nintendo challenged here.

In the ensuing years and decades, American GNC's MEMS-based IMU inventions were productized, and found success in the government (notably DoD and

NASA) and commercial markets. *Id.*, ¶¶15-20; Response, Paper 22, 1-5. They were cited by others in industry numerous times, were broadly licensed, and have been proven foundational in the practical application of MEMS-based inertial measurement units. *Id.*; EX2007, ¶¶16-38.

Today, MEMS-based inertial measurement units are in every phone, navigation device, drone, and are used in many other applications requiring motion tracking or control—such as Nintendo’s infringing Switch consoles and controllers. American GNC’s inventions were important, early, well disclosed, and were granted broad protection by the Office—recognizing that American GNC was first, among many working in the field of MEMS around the turn of the century, to teach and claim patents to these specific inventions.

But after explaining the history and success of its inventions to the Board, American GNC and the surviving inventor of the ’648 Patent have now been told by the panel that their invention was obvious 25 years ago. Paper 52 (“FWD”). This inexplicable result frustrates American GNC’s settled expectations and reliance on rights long-ago granted to it by the Office—and flies in the face of the Director’s policies promoting stability, fairness, and stakeholder confidence in the patent system. The Decision’s finding that the substitution of MEMS gyroscope technology—for laser ring or gimbal gyroscope technology—would have been “routine” 25 years ago, is unsupported and erroneous. And it diminishes the patent’s

important contribution to the MEMS inertial sensing field during its infancy.

Nintendo—and its alleged indemnitor and RPI STMicroelectronics—have achieved an on-demand, litigation motivated invalidation, of what had been, for its entire term, a good, practiced, and licensed patent. Nintendo—first informed of their infringement in April of 2017, see EX2007, ¶¶39-44—brought this challenge 364 days after being served with a lawsuit, and long after the '648 patent had expired. The challenge is not based on another inventor patenting a MEMS-based IMU, but instead on eight disparate references, arranged four different ways. Response, at 4-5.

Nintendo's argument here was that substituting MEMS gyroscopes for laser ring or gimbal gyroscopes—admittedly requiring different design, control circuitry, manufacturing, and assemblies—would have been “routine” or “straightforward” in the year 2000. Response, 5, 7-8, 29-41; Sur-Reply, Paper 38, at 2-4, 9-14. American GNC compiled and presented many sources of rebuttal to this incredible assertion. *Id.*; *see also* Paper 49, Hearing Tr., at 60-62; Sur-Reply at 2-3 (showing examples of the very different gyroscope technologies).

Nintendo relied on (contested) assertions from its expert—who said this complex gyroscope technology substitution would be “routine” because both are known, and both are gyroscopes. FWD at 36. He then testified on cross-examination about his own similar project, *begun seven years after the '648 Patent*, that ran for a decade without producing a product. *Id.*; EX2020, 33:2-35:19 (“I

worked on it for about ten years”). The Decision brushes this dramatic inconsistency aside by noting his irrelevant partial excuses. FWD, at 37. It spends more than six pages discounting American GNC’s rebuttal evidence. *Id.*, at 37-43. But as explained below, the Board’s dismissive treatment of this evidence, and the other objective indicia of non-obviousness presented by American GNC, involves legal and factual error, and amounts to abuse of discretion.

And separately, the Decision errs and abuses discretion in wrongly interpreting and applying claim language requiring “angular rate electrical [voltage] signals.” Further, after incorrectly finding that this language does not exclude *indirect* measures of angular rate—the Decision fails to apply or account for claim 4’s “*directly* proportional” requirement that undeniably does exclude them.

## **II. The Decision applies an erroneous claim construction**

Nintendo began this proceeding by contending that no construction was required for the “angular rate electrical signals” of claim 1, the “angular rate voltage signals directly proportional to angular rates of a carrier” of claim 4, or any other non-preamble elements. Petition, Paper 3, at 7. After American GNC pointed out that the signal outputs of *Smith*’s laser ring gyroscopes undisputedly reflect frequency, and are undisputedly not directly proportional to angular rate—the Board interpreted claim 1 to *not require* reflection of or proportionality to angular rate. Institution Decision, Paper 10, at 36. American GNC disagreed, and explained why. Response, Paper 22, at 24-26, 42-44, 48; Sur-Reply, Paper 38, at 7-8, 18-20.

Nintendo replied with argument that the “claims do not require any particular relationship between the angular rate electrical signals and the angular rate.” Reply, 3. To borrow the Decision’s hat analogy, this is like arguing the phrase “red hat” does not require any relationship to the color red. FWD, at fn. 11. A red hat must be red, and angular rate electrical signals must reflect angular rate. Sur-Reply, 8.

The Decision goes further—pulling language from the specification and adding it to the interpreted claims, to conclude that “angular rate electrical signals” are “electrical signals that *reflect a measurement of* angular rate.” FWD, at 17-20. It is not clear from this language alone that the construed claim would cover signals from which angular rate can only be indirectly derived after the fact.

But the Decision further makes clear its intent to improperly expand the interpretation of the claim language—to include signals that *only indirectly* suggest angular rate after further processing. *Id.* at 19 (finding no “requirement that the angular rate electrical signals ‘directly’ measure or reflect angular rate”). It is as if the Decision is saying, using its hat analogy, that a “red hat” needn’t directly be red, but may instead indirectly indicate red:



But just as the black hat in the picture above would not be called a red hat even though one can read the word “red” from looking at it, an “electrical signal”

that requires further derivation and processing to indicate “angular rate” cannot be called an “angular rate electrical signal.” “*Angular rate* electrical signals” from the “*angular rate* detecting units” of an “*angular rate* producer” are just that. The claim language itself unambiguously provides the direct reflection requirement that the Decision purports to look for—and then erroneously reads out. Response, 24-26; Sur-Reply 7-8 (“Not only does claim 1 call these ‘angular rate’ electrical signals, it requires that they come from an ‘angular rate detecting unit.’”).

Claim language “should generally be construed to preserve validity” when possible. *Tate Access Floors, Inc. v. Interface Architectural Resources, Inc.*, 279 F.3d 1357, 1367 (Fed. Cir. 2002). The Decision does the exact opposite, interpreting the claim to read onto the prior art, by imposing a requirement that the language explicitly say “directly” before it could exclude the admittedly different technology of the prior art. FWD, at 17, (“claim 1 does not ... require that they ‘directly’...”), 19 (“We do not discern... any requirement that the angular rate electrical signals ‘directly’ measure or reflect angular rate”).

“Angular rate electrical signals” in the ’648 Patent cannot be properly interpreted or applied to signals from which calculation (e.g., pulse counting) must be done to derive angular rate. The operative interpretation applied by the Board is its assumption that an affirmative limitation is required to exclude indirect derivations like those of *Smith*. FWD, at 17, 19 (discerning no basis to exclude).

The Decision errs in requiring express exclusion language, where the ordinary operation of “angular rate” as a modifying adjective already defines the claim. Errors of claim construction warrant reversal. *See, e.g., PLR Worldwide Sales Ltd., v. FLIP Phone Games Inc.*, IPR2024-00133, 2024 WL 3934712, \*3, Paper 12 at 7 (P.T.A.B. Aug. 22, 2024) (on Director Review).

**A. The identified signals do not reflect [a measurement of] angular rate**

Again, the effect of the Board’s erroneous interpretation is to read the claims on to the prior art—across an admitted difference in sensor operation. Paper 10 at 35-36 (“We appreciate the differences in the principles of operation that Patent Owner argues exist between laser ring gyros and vibrating inertial mass MEMS gyros”). Neither Nintendo nor the Board dispute that the laser ring gyro output signals identified in *Smith* reflect only a pulse repetition rate or frequency—a different signal characteristic from which angular rate must be calculated or derived. Response, 43-44; FWD, at 25-26 (“pulse conditioning and logic convert the sinusoidal outputs into a *train of pulses* whose *frequency*” relates to angular rate).

The laser ring gyro outputs of *Smith* in Grounds 1 and 2 do not themselves reflect [or reflect a measurement of] angular rate, and as such are not “angular rate electrical signals” according to the plain meaning of the claims. *See, e.g., Sur-Reply*, at 18-20. And for Grounds 3 and 4, the gyroscope outputs of *Tingleff* and *Yamawaki* are never described, and so cannot explicitly (or inherently) teach “angular rate electrical signals” signals as Nintendo argued. *See, e.g., id.* These are the only

references asserted for these elements in the Petition. Nintendo specifically disclaimed relying on *Chan* or *Bernstein* for any specific claim language. Response, at 28; Petition, at 15 (“does not depend on the particular details ...”). Under a correct interpretation and application of the language of claim 1, each of Nintendo’s Grounds must fail. The Decision erred in interpreting and applying the claim language and must be reversed.

**B. The Decision ignores and vitiates the “directly proportional” language of claim 4**

The Decision’s cursory treatment of dependent claim 4, which requires “angular rate voltage signals *directly proportional* to angular rates of a carrier,” is even more inexplicable and incorrect. EX1001. As discussed above, the Decision states that “[w]e do not discern... any requirement that the angular rate electrical signals ‘directly’ measure or reflect angular rate” for claim 1. FWD, at 19. Then it discusses arguments of the parties about claim differentiation of claim 4 (*id.*, at 16), and cites claim differentiation against claim 1 (*id.*, at 18). But then the Decision *does not use or acknowledge* the added “directly proportional to angular rate” requirement of dependent claim 4 when applying the claim to *Smith*—despite *Smith*’s admittedly only indirect signals.

The Decision interprets “angular rate voltage signals” in isolation from the rest of claim 4—to mean the same thing as the “angular rate electrical signals” of claim 1. *Id.*, at 20 (“‘angular rate voltage signals’ means voltage signals that reflect a

measurement of angular rate”). That would make claim 4 read, with the construction inserted: “analog [voltage signals that reflect a measurement of angular rate] ***directly proportional to angular rates*** of a carrier.” *Id.*; Ex1001, 24:36-44 (claim 4). But again, the Decision never mentions the “directly proportional to angular rates” requirement when applying claim 4 to *Smith*. *See* FWD, at 57. Instead, it rests on the “same reasons” as for claim 1. *Id.*, at 57-58.

Through its papers and argument, American GNC drew the Board’s attention to this specific requirement ***of claim 4***—because *Smith* disclosed something different, and the only other references the Petition relied on for this element, *Tingleff* and *Yamawaki*, disclosed nothing about it. Response, 44 (“Because the electrical signal outputs of *Smith*’s ‘laser ring gyros’ are not directly reflective of, or proportional to, the angular rate, they are not ... the “angular rate voltage signals directly proportional to angular rates” of challenged claim 4”), 48 (*Tingleff* “fails to show teaching or suggestion of the ‘angular rate electrical [voltage] signals’ properly interpreted”), 55 (same for *Yamawaki*);<sup>1</sup> Sur-Reply, 7, 18-20. Claim 4 and its

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<sup>1</sup> The Decision’s suggestion that American GNC “forfeited” or “did not advance arguments” for claim 4 on these Grounds is factually incorrect. FWD, at 67. It argued both claims together, using “angular rate electrical ***[voltage]*** signals” alternate language. Response, at 48, 55; Sur-Reply, 7 (“the ‘angular rate voltage signals’ that are ‘directly proportional to angular rates of a carrier’—must reflect angular rate”).

“directly proportional” language was the last thing American GNC highlighted at oral argument. Hearing Tr., Paper 49, at 65-66 (“the plain language of Claim 4 says directly proportional to angular rate, which can’t be met by Smith because it’s directly proportional to frequency, and for the other two references, there is just no disclosure about what that signal is at all, so there’s no teaching”).

The Decision erred by failing to mention or address this “directly proportional” requirement of claim 4. There would be no way to acknowledge the “directly proportional” language, and still maintain that the claim has no directly reflecting requirement. Avoiding this argument instead, by dismissing claim 4 for the “same reasons” as claim 1 (FWD, at 57-58, 68), or by asserting incorrectly that American GNC didn’t make an argument (*id.*, at 69), was an abuse of discretion.

Claim 4 cannot fall for the “same reasons” as claim 1, because it adds different language—that precisely states the “directly proportional” requirement the Board professed to be unable to discern for claim 1. *Id.* at 17, 19 (“We do not discern ... any requirement that the angular rate electrical signals ‘directly’ measure or reflect angular rate”); EX1001, (claim 4: “signals directly proportional to angular rates”).

In addition, because the Decision never discusses this “directly proportional” language of claim 4, there is ***no finding*** that this element was taught in *Smith*, in *Tingleff*, or in *Yamawaki* (which the Decision does not separately analyze). FWD, at 57-58, 68-69. The Decision is in error, and must be reversed.

### **III. The Decision’s dismissal of unrebutted non-obviousness evidence is error**

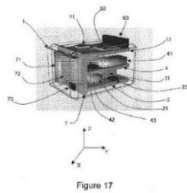
From the outset of this proceeding, American GNC presented substantial evidence and testimony showing non-obviousness as a matter of objective fact. *See, e.g.*, Response, at 1-5, 37-39; EX2023 (McCall Decl.), ¶¶7-12 (technical success where others failed), 19-20 (commercial interest and success); 21-23 (lack of success by others); EX2007, ¶¶16-38; Sur-Reply, at 4-5, 9-14, 14-18; Paper 49, at 28-32, 34-35, 37-38, 46, 55, 60-61; EX1048 (McCall Tr.), 37:18-38:16 (licensing). Neither Nintendo nor the Decision countered these facts with rebuttal evidence.

#### **A. The Decision erroneously ignored unrebutted evidence of nexus to American GNC’s coremicro IMU product**

American GNC presented corroborated and unrebutted testimony that the inventions of claim 1 of the ’648 Patent—were developed for and embodied in its coremicro IMU product. *See, e.g.*, Response, at 3, 13-14 (“The inventions of the ’648 patent allowed continued development and commercialization—appearing in American GNC’s own coremicro® IMU products and in the products of others”);<sup>2</sup> EX2023, ¶¶15-20; EX2005 (“uMEMS IMU” and “Miniature MEMS IMU”); EX2024; EX2002; Sur-Reply, at 15-16; EX1001 17:37-42 (“the micro IMU of the present invention”), 23:42-24:21 (claim 1), Fig 17 (diagram of coremicro IMU):

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<sup>2</sup> The Decision’s suggestion (page 48) that American GNC failed to raise this argument in Response is demonstrably incorrect. *Id.*



Because the '648 Patent describes the “micro IMU” product, American GNC included a chart comparing claim 1 to that product description. Sur-Reply, at 15-16.

The coremicro IMU product “is the invention disclosed and claimed” in the '648 Patent. *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988). Nintendo failed to rebut the resulting presumption—with evidence rather than argument as required. *Polaris Indus, Inc. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1072 (Fed. Cir. 2018). “When the patentee has presented undisputed evidence that its product is the invention disclosed in the challenged claims, it is error for the Board to find to the contrary without further explanation.” *PPC Broadband, Inc. v. Corning Optical Comm’s RF, LLC*, 815 F.3d 734, 747 (Fed. Cir. 2016); *Polaris*, 882 F.3d at 1073. But that is what the Decision does, suggesting—without any evidence or reason to doubt American GNC’s evidence—that maybe the “micro IMU” product described and diagramed in the patent isn’t the coremicro IMU product, or that various corroborating facts don’t prove on their own Mr. McCall’s unchallenged direct statement that “the '648 Patent” ... “was successfully implemented in American GNC’s coremicro IMU product.” FWD, at 48-49.

The '648 Patent claims a MEMS IMU with MEMS gyroscopes, also employing digital processing. EX1001, (claim 1: “angular rate producer,” with

conversion to “digital angular increments”). American GNC used the MEMS gyroscopes of its ’122 Patent as the claimed MEMS gyroscopes in the core micro IMU product embodying the ’648 Patent. IPR2024-00667, EX1001 (’122 Patent), 2:31-34 (“The present invention enables the core micro IMU”). There is no critical unclaimed feature precluding a finding of nexus here. *See* FWD, at 49-50.

Mr. McCall both invented the ’648 Patent and prototyped it in the core micro IMU. *See, e.g.*, EX2023, ¶¶15-20. His testimony is corroborated by his notebooks and reports, other documents, and the patent itself. It was an abuse of discretion for the Board to conclude otherwise without evidence disputing these unrebutted facts. *PPC Broadband*, 815 F.3d at 747. American GNC was entitled to a presumption of nexus for its non-obviousness evidence here.

**B. The Decision’s weighing of five categories of American GNC’s unrebutted evidence as “weak” improperly shifted the burden of proof and abused discretion**

After discussing nexus, the Decision goes through five categories of non-obviousness evidence, concluding that each was, in the panel’s opinion, “very weak.” FWD, at 50-54. Nintendo did not provide rebuttal evidence to American GNC’s non-obviousness evidence. Instead, this portion of the Decision is *the panel’s* argument as to why it needn’t credit otherwise unchallenged evidence.

This is a further abuse of discretion. It is not for the panel to find “ways to discount this evidence” of non-obviousness when Petitioner offers no rebuttal to the evidence. *See, e.g., PPC Broadband, Inc. v. Iancu*, 739 Fed. Appx. 615, 625-626

(Fed. Cir. 2018) (“Rather than treat this evidentiary failure for what it was ... it placed the burden on [Patent Owner] to show more. That was error”). “Unrebutted evidence” of objective non-obviousness must be given some weight—and a “blanket dismissal of it” is error. *Id.* at 627.

The unrebutted evidence established, e.g., that Draper Labs, JPL, and Analog Devices were trying to make a viable MEMS gyroscope to use in a complete MEMS IMU, and American GNC succeeded first, *because of the claimed invention*. See, e.g., EX2023, ¶¶7-14 (“the primary achievement reflected in the ’122 and ’648 Patents and related products related to the rate-integrating silicon MEMS gyroscope and its incorporation into a complete IMU”), 15-18 (“excellent results, with initial drift of ‘less than .1 deg.hr.’”), 21-23. The Decision calls this of “little probative value,” and then invokes caselaw calling others’ failure and copying “‘virtually irrefutable’ evidence of nonobviousness.” FWD, at 52; *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1285 (Fed. Cir. 2000) (“the most probative and cogent evidence”). All good evidence is “self-serving” for the party offering it. The Board’s dismissive treatment of this unrebutted evidence abuses discretion.

#### **IV. The Decision incorrectly ignores evidence in avoidance of a Real-Party-in-Interest dispute**

Early in the proceedings, American GNC identified STMicroelectronics entities, previously co-defendants in a lawsuit asserting the ’648 Patent, as unnamed RPIs here. American GNC sought to file a Motion for Discovery—which was

authorized six months later. EX2018; Motion, Paper 41, at 1. American GNC raised an issue of first impression concerning treatment of co-defendants under the time-bar statute, and sought discovery into agreements and communications between Nintendo and the alleged RPIs. *See, e.g.*, Sur-Reply, at 21-24.

The Decision, and accompanying Order denying American GNC's Motion, avoids these issues by finding no evidence of Rule 4 service of the Complaint triggering the time bar. FWD, at 9; Order, Paper 51, at 4-5. But the record contains evidence that the Complaint was served, including in accordance with the Hague Convention. Paper 51, at 4; Paper 49, at 23-25; EX1070; EX1071; Response, at 63-64. Hague Convention service is one of the service methods permitted by Rule 4. Fed. R. Civ. Proc. 4(f)(1); *Dutrisac v. STMicroelectronics, Inc.*, 2024 WL 3646949, \*8 (N.D. Cal. Aug. 2, 2024). The Board erred in its avoidance of the RPI discovery and analysis—because Rule 4(f)(1) service was shown to have occurred.

## **V. Conclusion**

For over 25 years, the '648 Patent taught good and foundational MEMS IMU inventions, that were commercialized, practiced, then licensed. Now it is retroactively deemed obvious, because an accused infringer's paid expert said that substituting MEMs gyro technology was easy at the time—although not for him. EX2020, 33:2-35:19 (“I worked on it for about ten years”). Each of the Decision's errors and abuses of discretion warrants reversal, and dismissal of this proceeding.

Dated: September 19, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Petitioner has consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on September 19, 2025, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

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