

From: Richard Lin <rlin@bdiplaw.com>

Sent: Monday, March 31, 2025 7:06 PM

To: Trials <Trials@USPTO.GOV>

Cc: PTAB Scott McKeown <SMcKeown-PTAB@WolfGreenfield.com>; McKeown, Scott A.

<Scott.McKeown@WolfGreenfield.com>; PTAB Michael Parsons <[\[PTAB@WolfGreenfield.com\]\(mailto:PTAB@WolfGreenfield.com\)>; PTAB Anant Saraswat <\[ASaraswat-PTAB@WolfGreenfield.com\]\(mailto:ASaraswat-PTAB@WolfGreenfield.com\)>; Jerry Tice](mailto:MParsons-</p></div><div data-bbox=)

<jtice@bdiplaw.com>; Metarail_Google <Metarail_Google@bdiplaw.com>

Subject: RE: IPR2024-01269 & IPR2024-01270-01272

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Honorable Board,

Patent Owner disagrees with Petitioner's assertion that the discretionary denial briefing submitted by Patent Owner earlier today was not authorized under the March 26, 2025 Director Memorandum. As Petitioner notes, the Memorandum states that "if the time for filing discretionary denial briefing as described herein has already elapsed, the patent owner may submit discretionary denial briefing within one month of the date of this memorandum." That is the situation here – the two-month period under the Memorandum for filing a discretionary denial brief has passed, but it is still within one month of the date of the Memorandum.

Given the Director Memorandum was released on March 26, 2025, Patent Owner could not have known that the "extent of the petition's reliance on expert testimony" and the "settled expectations of the parties, such as the length of time the claims have been in force" would be new considerations for discretionary denial. As such, Patent Owner addressed those considerations as contemplated by the Director Memorandum.

Petitioner apparently relies on the preceding sentence in the Memorandum stating that the new procedures are to be implemented in proceedings where "the deadline for the patent owner to file a preliminary response has not yet passed," but Patent Owner understands the subsequent sentence in the Memorandum allowing for discretionary denial briefing to be submitted "within one month of the date of this memorandum" as creating an exception to this rule. In addition, under the Memorandum no meet and confer was required prior to Patent Owner's filing.

Patent Owner therefore requests that Petitioner's request to expunge Patent Owner's discretionary denial briefing be denied. Patent Owner can also make itself available for a call at the Board's convenience should the Board find that a call is necessary.

Respectfully submitted,

Richard Lin, Reg. No. 56,682
Counsel for Patent Owner



Richard C. Lin

Partner

Bunsow De Mory LLP

+1-650-318-6772 o | +1-415-426-4744 f

701 El Camino Real, Redwood City, CA 94063
www.bdiplaw.com | rlin@bdiplaw.com

From: McKeown, Scott A. <Scott.McKeown@WolfGreenfield.com>
Sent: Monday, March 31, 2025 2:30 PM
To: Trials <trials@uspto.gov>
Cc: PTAB Scott McKeown <SMcKeown-PTAB@WolfGreenfield.com>; PTAB Michael Parsons <MParsons-PTAB@WolfGreenfield.com>; PTAB Anant Saraswat <ASaraswat-PTAB@WolfGreenfield.com>; Jerry Tice <jtice@bdiplaw.com>; Richard Lin <rlin@bdiplaw.com>
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[EXTERNAL]

Honorable Board,

An hour ago, Patent Owner filed briefing in the above-captioned proceedings that was neither authorized by the panel nor discussed with Petitioner in a necessary meet-and-confer.

The unauthorized briefing is alleged to be based upon the recent Director Memorandum announcing a temporary bifurcation of discretionary denial briefing for certain IPR filings. However, the plain language of the Memorandum makes clear that these proceedings are excluded since they are months beyond the POPR date. *"The processes described herein will be implemented in IPR and PGR proceedings where **the deadline for the patent owner to file a preliminary response has not yet passed.**"* (Memo at 3). The filings nevertheless allege to be proper because they are "filed within one month" of the memo. But the one-month provision referenced applies only to cases in which the **new two-month bifurcation deadline has passed**, but the **POPR date has not**. "[I]f the time for filing **discretionary denial briefing as described herein** has already elapsed, the patent owner may submit discretionary denial briefing within one month of the date of this memorandum." *Id.*

Petitioner requests that the filings be expunged as plainly unauthorized, and nevertheless baseless. Petitioner does not believe that a call is necessary but will make itself available at the Board's convenience.



Scott McKeown

(Mik-Q-En)

Shareholder

Admitted to Practice: PA, VA & DC

scott.mckeown@wolfgreenfield.com

O: 202.389.6025 | C: 571.395.6662

Wolf, Greenfield & Sacks, P.C.

BOSTON | NEW YORK | WASHINGTON DC

wolfgreenfield.com | [LinkedIn](https://www.linkedin.com/company/wolf-greenfield-sacks)

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