Filed on behalf of: Yangtze Memory Technologies Company, Ltd.

Entered: May 30, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICRON TECHNOLOGY, INC.,
Petitioner,

v.

YANGTZE MEMORY TECHNOLOGIES COMPANY, LTD.,
Patent Owner.

Case IPR2025-00034
Patent 10,879,254

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

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EXHIBIT LIST

Ex.	Description
2001	Micron's Motion to Stay the Case Pending Inter Partes Review and Post Grant Review Proceedings, *Yangtze Memory Technology Company, Ltd. v. Micron Technology, Inc.,* No. 3:23-cv-05792-RFL (N.D. Cal. Jan. 16, 2025), ECF No. 200
2002	Plaintiff/Counterclaim Defendant Yangtze Memory Technologies Company, Ltd.'s and Counterclaim Defendant Yangtze Memory Technologies, Inc.'s Opposition to Micron's Motion to Stay Case Pending Inter Partes Review and Post-Grant Proceedings, *Yangtze Memory Technology Company, Ltd. v. Micron Technology, Inc.,* No. 3:23-cv-05792-RFL (N.D. Cal. Feb. 3, 2025), ECF No. 221
2003	RESERVED
2004	U.S. District Courts–Time Intervals from Filing Date to Beginning Date for Completed Civil Trials, by District, During the 12-Month Period Ending September 30, 2024 (https://www.uscourts.gov/sites/default/files/2025-01/jb_t3_0930.2024.pdf)
2005	Statutory Disclaimer of Claims 1, 5, and 6 of U.S. Patent 10,879,254 Under 37 C.F.R. § 1.321(a) (Filed Feb. 21, 2025)
2006	Curriculum Vitae of Stephen Campbell, Ph.D.
2007	Declaration of Stephen Campbell, Ph.D. ("Campbell")
2008	Micheloni et al., *Inside Solid State Drives (SSDs)* (2nd Ed. 2018), as-filed by Petitioner as Exhibit 1014 in IPR2025-00035.

I. Introduction

Patent Owner Yangtze Memory Technology Company, Ltd. ("YMTC" or "Patent Owner") respectfully requests Director Review of the Board's Institution Decision ("ID" or "Decision") instituting an *inter partes* review of claims 2-4, 7-15, 17, 18, and 20 ("Challenged Claims") of U.S. Patent No. 10,879,254 ("'254 Patent").

The Board erred by relying on conclusory expert testimony to supply a missing claim limitation. None of Petitioner's references disclose the limitation "simultaneously etching the first opening through the stack and a second opening outside of the stack." And the Board found that complex semiconductor manufacturing processes—including etching—are not unusually simple or straightforward, a prerequisite to supplying a missing limitation by relying on knowledge of a person of ordinary skill in the art (POSITA). Yet the Board allowed Petitioner to supply the missing "simultaneously etching" limitation through unsupported expert testimony—this is legal error.

The Board also erred in declining to exercise its discretion to deny institution, even though it described the Petition as "not particularly strong" and found no reasonable likelihood of success in proving obviousness of nine of the fifteen challenged claims. Instituting IPR where the Board found that the Petition established a reasonable likelihood of success for only six of fifteen claims is inefficient and an abuse of discretion. That is particularly true here, where Patent

Owner has disclaimed those six claims on which the Board based its institution decision.

II. Background: Statement of the Case

The Petition challenged claims 1-15, 17-18, and 20 of the '254 Patent alleging obviousness based on Nakajima and the knowledge of a POSITA. Pet. 9. Patent Owner disclaimed claims 1, 5, and 6 of the '254 Patent before the Board reached its Decision. *See* Ex. 2005; ID, 3.

The Board weighed all *Fintiv* factors together and declined to exercise its discretion to deny institution. *See* ID, 7-12; *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (PTAB Mar. 20, 2020) (precedential). The Board found *Fintiv* factors 1-4 do not support discretionary denial and that factor 5 is neutral or slightly in favor of denial. ID, 12. The Board found the sixth *Fintiv* factor weighed in favor of discretionary denial, recognizing that "the merits are not particularly strong" given that nine of the fifteen challenged claims do not warrant institution. ID, 11-12. The Board also noted that the "relative number of insufficiently addressed claims" is "not minimal." *Id.* at 12.

On the merits, the Board described the Petition as "not particularly strong" and largely agreed with Patent Owner's arguments. The Board found no reasonable likelihood of success in proving obviousness of nine of the fifteen challenged claims in the proceeding. *Id.* at 11-12. Still, the Board instituted the Petition based solely

on Petitioner's arguments on claims 3, 4, 9, 10, 18, and 20. *Id.* at 19 (no likelihood of success on claims 2, 11-15, and 17), 22-23 (likelihood of success on claims 3, 4, 9, 10, 18, and 20), 27 (no likelihood of success on claims 7, 8, 14, and 15).

For claims 2, 11-15, and 17, the Board found the Petition did not show a reasonable likelihood of success because Petitioner failed to explain or support reasons to combine Nakajima with a POSITA's knowledge to teach or suggest the "dummy channel" limitation. ID, 19. The Board agreed with Patent Owner that Petitioner's argument is "undercut by its reliance solely on the knowledge of a [POSITA] for teaching dummy channels." *Id.* at 18. The Board also agreed with Patent Owner that such reliance is improper to teach a missing limitation unless it is "unusually simply and the technology particularly straightforward." *Id.* at 18-19. The Board found Petitioner failed to show that "complex semiconductor manufacturing processes," such as those involved in forming a dummy channel like "wet etching, and/or dry etching, such as DRIE [(deep reactive ion etching)]," were simple and straightforward, and determined that Petitioner consequently could not rely on the knowledge of a POSITA to supply a missing limitation in claims 2, 11-15, and 17. *Id.* at 19.

For claims 7, 8, 14, and 15, the Board likewise found that the Petition failed to show a reasonable likelihood of success because it failed to provide a sufficient reason to combine Nakajima with the knowledge of a POSITA. ID, 27. The Board

agreed with Patent Owner that (1) Petitioner's evidence failed to show that "a non-smooth sidewall would have been understood by a [POSITA] as the result of etching in Nakajima" (*id.* at 24), (2) "Petitioner's asserted combination would result in 'large recesses,' not the claimed shallow recesses" (*id.* at 26), and (3) Petitioner's motivation to combine was based on hindsight (*id.* at 26-27).[1]

For claims 3, 4, 9, 10, 18, and 20, the Board found that Petitioner established a reasonable likelihood of success despite finding that Nakajima did not disclose "wherein forming the first opening comprises simultaneously etching the first opening through the stack and a second opening outside of the stack." ID, 19-21. Despite the Board finding that Petitioner could not rely on general POSITA knowledge to supply a missing limitation regarding claims 2, 11-15, and 17 because "complex semiconductor manufacturing processes" like etching a dummy channel were not simple or straightforward (*id.* at 18-19), the Board determined that Petitioner could do so regarding claims 3, 4, 9, 10, 18, and 20. *Id.* at 21-22.

As is publicly available information, Patent Owner disclaimed claims 3, 4, 9, 10, 18, and 20 on May 23, 2025. *See* Statutory Disclaimers per Manual of Patent

[1] The Board's determination that a "shallow recesses" limitation was unusually simple is of no moment because there the Board relied on the mere selection of etch gas, rather than the act of etching at issue. *See* ID, 24-25.

Examining Procedure (MPEP) 1490 (May 23, 2025) and Electronic Fee Payment (May 23, 2025) for U.S. Patent No. 10,879,254, available at https://patentcenter.uspto.gov. Patent Owner's attorney of record submitted Form PTO/SB/43 identifying these claims and that YMTC has 100% ownership in the '254 Patent, and paid the required fee. *Id.*

III. Legal Standard

Requests for Director Review of a Board's institution decision "shall be 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." *See* USPTO, Revised Interim Director Review Process at 2.B (Availability of Director Review: AIA Trial Proceedings) (last modified May 23, 2025). A party seeking Director Review must identify matters that the Board "misapprehended or overlooked" (*id.* at 5.A.iii), which occurs when the Board's decision "(1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact findings; or (4) involves a record that contains no evidence on which the Board could rationally base its decision." *Ultratec, Inc. v. CaptionCall, LLC*, 872 F.3d 1267, 1272 (Fed. Cir. 2017); 37 C.F.R. § 42.71(c)-(d).

IV. Argument

The Board abused its discretion by granting institution based on erroneous factual findings and conclusions of law. As explained below, the Board violated

black letter law by relying on conclusory expert testimony to supply a missing limitation. The Board also erred in declining to exercise its discretion to deny institution when it determined that the merits of the Petition "are not particularly strong" (ID, 11), finding that the Petition failed to show a likelihood of success on the merits with regard to nine of the fifteen challenged claims. Respectfully, in committing these errors, the Board misapprehended or overlooked material issues of law to arrive at an erroneous institution decision.

A. The Board's Institution Decision Is Based On Erroneous Factual Findings And Conclusions of Law

Claim 3 of the '254 Patent recites "wherein forming the first opening comprises simultaneously etching the first opening through the stack and a second opening outside of the stack." Claims 4, 9, 10, 18, and 20 include the same limitation through dependency or by recitation. *See* POPR, 18-19. Petitioner asserted that this limitation is (1) disclosed by Nakajima, or (2) obvious over Nakajima it in view of the knowledge of a POSITA. Pet. 9, 41-43. The Board erred by relying on Dr. Lee's conclusory testimony to supply the limitation missing in the prior art.

1. The Prior Art Fails To Teach Or Suggest "Simultaneously Etching" A "First Opening Through The Stack" And A "Second Opening Outside Of The Stack"

None of the prior art discloses "simultaneously etching the first opening through the stack and a second opening outside of the stack" as recited in claim 3.

First, the Board found Nakajima does not disclose the "simultaneously etching" limitation. ID, 21. The Board found Nakajima's H1 holes for C4 contacts relied on by Petitioner (Pet. 41-42) ***are both formed through the stack***, rather than one through the stack and one outside the stack. *Id.* at 20-21; *see id.* at 20 ("We agree with Patent Owner that Petitioner has not shown that Nakajima's disclosure of a single step of creating H1 holes would be understood as resulting from simultaneous etching of a hole through the stack and a hole outside the stack.").

Despite the Board's finding that Nakajima fails to disclose this limitation, the Board improperly credits Dr. Lee's reliance on a different Nakajima disclosure of what the Board calls "simultaneous etching of other stack and non-stack components" (i.e., the CC and C3 components). ID, 22 (citing Ex. 1003 ¶114). But as illustrated below, neither of the contacts CC (in purple below) or C3 (in green below) are formed "through the stack"—they are formed *after* the staircase region.

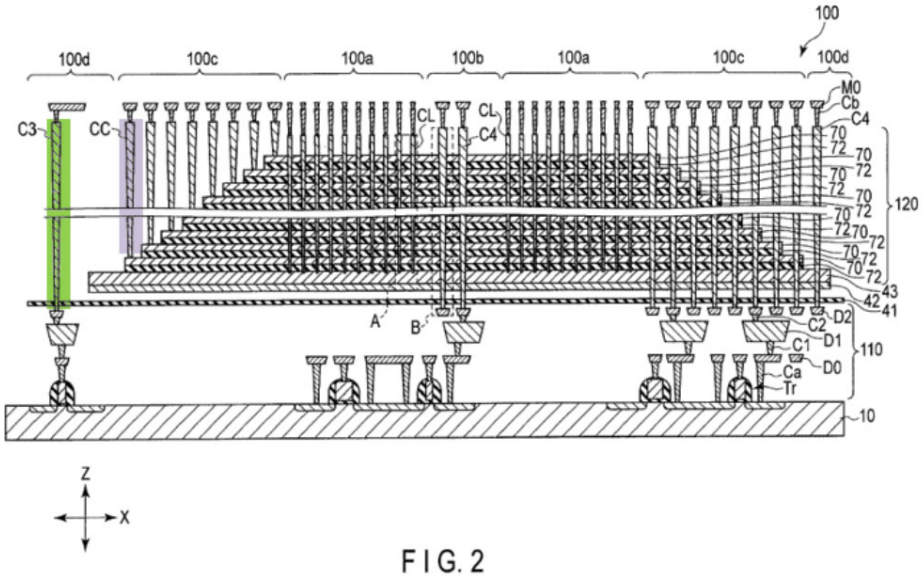

FIG. 2

Nakajima, Fig. 2 (annotated), 17:38-41 (holes for CC reach terrace in staircase region), 16:49-52 (staircase formed before holes for CC); *see* POPR, 22-23; Ex. 2007, ¶¶49-50. And Petitioner relies on C4 contacts—not CC/C3 contacts—to allegedly teach the limitation (which fails as described above). *See* Pet. 41-43.

Second, prior art Tessariol (Ex. 1023) likewise describes two holes that are both formed "through the stack," not the claimed "simultaneously etching" of one opening through the stack and another outside the stack. Ex. 1023, ¶37; *see* POPR, 24; Ex. 2007, ¶51. In particular, as seen below in Figure 9, Petitioner pointed to the dummy-structure openings 56 (in yellow below) and via openings 54 (in green below) that are both formed ***through the stack*** (the red box below):

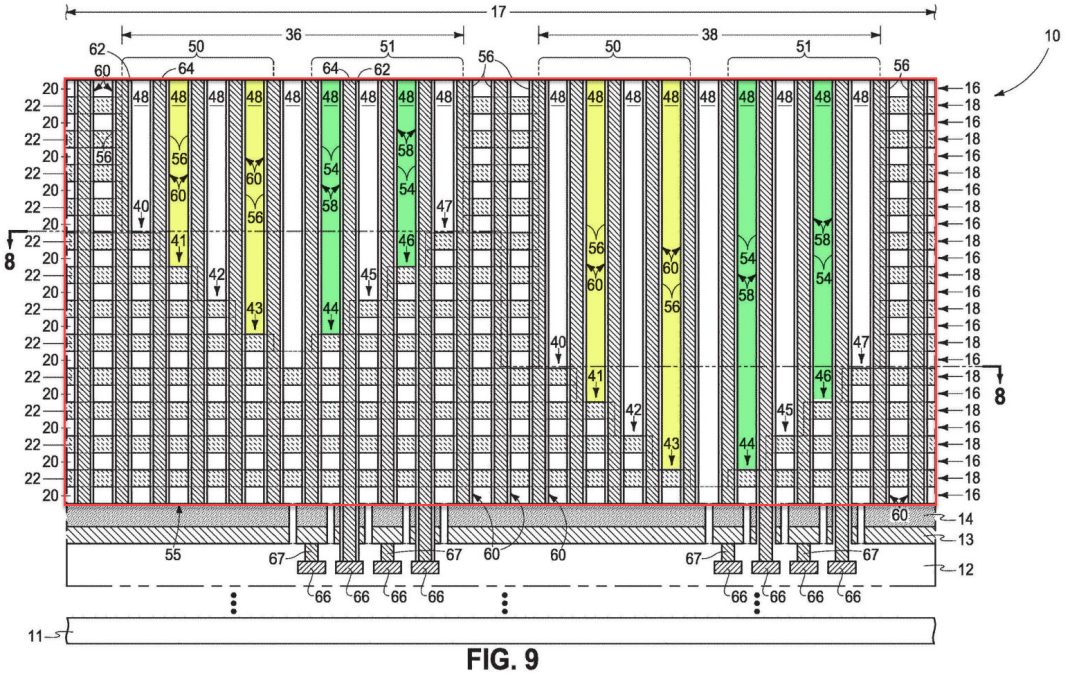

FIG. 9

Ex. 1023, Fig. 9 (annotated); *see* Pet. 43 (citing Ex. 1023, ¶37, Fig. 9); POPR 24. Petitioner admitted as much, stating that Tessariol supports that "it was known and

routine to etch holes at the same time through either the full ***stack*** or only small portions of ***the stack*** because it saves processing time." Pet. 43 (emphases added). Thus, like the Nakajiwa reference, Tessariol does not disclose the "simultaneously etching" limitation because it does not disclose etching a hole through a stack and a second hold outside the stack at the same time, as claimed.

Third, prior art reference Mushiga (Ex. 1010) similarly fails to disclose "simultaneously etching" one opening through the stack and another outside the stack. Petitioner states that "Mushiga discloses forming through-array contacts (588), including the cavities, insulating spacers, and conductive cores, ***at the same time***" (Pet. 43 (citing Ex. 1010, Fig. 5, 10:31-58) (emphasis added)), but Mushiga discloses nothing about the timing of forming the cavities that become structures 588—let alone teach that the cavities are etched "simultaneously" as recited in claim 3. *See* Ex. 2007, ¶52; POPR, 24-25.

The prior art of record does not proffer any teaching or suggestion that this missing limitation should be implemented.

2. The Board Improperly Relied On Conclusory Expert Testimony To Supply A Missing Limitation

Despite the prior art failing to disclose the "simultaneously etching" limitation, the Board relies on Dr. Lee's conclusory testimony to supply the missing limitation—that is legal error.

First, the Board asserts Petitioner's obvious position is supported by Dr. Lee's interpretation of Nakajima as disclosing "simultaneous etching of other stack and non-stack components" (i.e., CC and C3 components). ID, 22 (citing Ex. 1003, ¶114). The Board also cites Dr. Lee's statement that "it was the norm to form all instances of a contact type at the same time." ID, 22 (citing Ex. 1003, ¶112). But the Board found Nakajima does not disclose the "simultaneously etching" limitation because the two C4 holes ***are both formed through the stack***. ID, 20-21. And, as described above, the "other" C3 and CC components ***are not formed through the stack***. Given Nakajima fails to disclose the missing limitation which requires one hole through the stack and another outside the stack, it is irrelevant whether C4 holes are formed at the same time—the same is true for the C3 and CC components.

Second, the Board points to Dr. Lee's reliance of "evidence in the art of simultaneous etching of dummy and via openings through different numbers of layers of the stack" (i.e., Tessariol), and "simultaneous etching of various vertical channels in various portions of a memory device" (i.e., Mushiga). ID, 22. But as described above, neither Tessariol nor Mushiga disclose "simultaneously etching the first opening through the stack and a second opening outside of the stack," and the Board erred in relying on Dr. Lee's testimony citing Tessariol and Mushiga.

Third, the Board improperly relied on Dr. Lee's unsupported statement that it would have been obvious to alter Nakajima to read on the "simultaneously etching"

limitation because "it would significantly reduce processing time." Ex. 1003, ¶113; ID, 22. To clarify, Dr. Lee alleged that simultaneously forming ***the two C4 holes*** "would significantly reduce processing time." Ex. 1003, ¶¶111-113. The Board found these two C4 holes fail to disclose the limitation because they are both formed ***through the stack*** (ID, 20-21)—that remains true even if they are formed at the same time.[2]

Dr. Lee's conclusory assertions thus lack support in the prior art—which fails to teach the limitation as discussed above—and merely regurgitate the Petitioner's own unsupported statements. *Compare* Pet. 42 *with* Ex. 1003, ¶113; *see TikTok Inc. v. NTech Prop., Inc.*, IPR2024-01339, Paper 9 (PTAB Feb. 25, 2025); *cxLoyalty, Inc. v. Maritz Holdings Inc.*, 986 F.3d 1367, 1378 (Fed. Cir. 2021) ("We do not accord weight to conclusory expert testimony."); *see also* CTPG 36 ("[C]onclusory assertions from a third party about general knowledge in the art cannot, without supporting evidence of record, supply a limitation that is not evidently and indisputably within the common knowledge of those skilled in the art.").

[2] Even if one of the C4 holes were formed outside the stack (which is not the case), simultaneous etching would not save processing time because the CC/C3 holes must be later etched outside the stack. POPR, 22-23; Ex. 2007, ¶¶49-50.

Like the precedential *Xerox* case, the Board erred by relying on Dr. Lee's testimony which "is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight." *See Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (precedential); *see also* 35 U.S.C. § 311(b) (institution can be based "only on the basis of prior art consisting of patents or printed publications"); *Upjohn Co. v. Mova Pharm. Corp.*, 225 F.3d 1306, 1311 (Fed. Cir. 2000) ("Lack of factual support for expert opinion going to factual determinations, however, may render the testimony of little probative value in a validity determination."); 37 C.F.R. § 42.65(a).

Further like *Xerox*, the Board's Decision is "particularly problematic" because Dr. Lee's testimony "is offered not simply to provide a motivation to combine prior-art teachings, but rather to supply a limitation missing from the prior art." *Xerox*, Paper 9 at 16. As described above, no prior art disclosure teaches the limitation "wherein forming the first opening comprises simultaneously etching the first opening through the stack and a second opening outside of the stack," and it was improper to provide it based on Dr. Lee's conclusory testimony.

Moreover, the missing "simultaneously etching" limitation is neither unusually simple nor involves particularly straightforward technology such that the general knowledge of a POSITA could supply it. POPR 24-25; *see Motorola Mobility LLC v. Largan Precision Co.*, IPR2024-00688, Paper 7 at 29 (PTAB Oct.

28, 2024) (denying institution); *DSS Tech. Mgmt. v. Apple Inc.*, 885 F.3d 1367, 1374 (Fed. Cir. 2018) (rejecting Board's reliance on "common knowledge" to "supply a missing limitation" because wireless communications is not "particularly straightforward" technology). As in *Xerox*, Petitioner never alleged that to be the case here, much less provided adequate support for such an allegation. *See Xerox*, Paper 9 at 16.

On this specific issue, the Board agreed with Patent Owner that the claimed "complex semiconductor manufacturing processes," including "wet etching, and/or dry etching, such as DRIE," are not "unusually simple" and that 3D NAND technology is not "particularly straightforward." *See* ID, 18-19; POPR, 9-10. The Board determined Petitioner could not rely on knowledge of a POSITA to supply a missing limitation of "forming a dummy channel structure extending vertically through the stack" as recited in claims 2, 11-15, and 17, and found these claims did not have a reasonable likelihood of success of being rendered obvious. ID, 19. The Board reached this decision despite Petitioner's reliance on other references (Kai, Kim, and Park) to purportedly "confirm[] the knowledge of a POSITA." *See* Pet. 39.

But the Board reached the opposite conclusion for the ***same argument*** for the "simultaneously etching" limitation. *See* ID, 21-22; *compare* POPR, 9-10 *with id.* at 24-25. That is, the Board erred by finding complex semiconductor manufacturing

processes like "wet etching, and or dry etching" as not "unusually simple" regarding the "dummy channel" limitation of claims 2, 11-15, and 17, but finding the opposite for the "simultaneously etching" limitation of claims 3, 4, 9, 10, 18, and 20. This error enabled Petitioner to manufacture a missing limitation—despite the prior art not disclosing it—based on conclusory expert testimony.

B. The Board Erred In Declining To Exercise Its Discretion To Deny Institution

The Board also erred in declining to exercise its discretion to deny institution. Rather than take "a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review" (*Fintiv*, Paper 11, 6), the Board improperly discounted the weak merits of the Petition. *See* ID, 10, 12.

The Board expressly determined that the Petition's "merits are not particularly strong"—in fact, the Board found that Petitioner failed to show a likelihood of success on the merits with regard to nine of the fifteen challenged claims. ID, 11-12. The weak merits of the Petition support discretionary denial, particularly where the Petitioner improperly relied on expert testimony to substitute for a missing limitation in the prior art as described above. *See, e.g.*, *Dell Inc. v. Universal Connectivity Techs., Inc.*, IPR2024-01480, Paper 12 at 13-14, 22-23 (PTAB Apr. 24, 2025) (exercising discretion to deny institution where the Board found "[t]he merits of Petitioner's challenge are not particularly strong," despite a *Sotera* stipulation); *HP Inc. v. Universal Connectivity Techs., Inc.*, IPR2024-01429, Paper 11 at 6, 16,

20-21, 24-25, 28-29 (PTAB Apr. 16, 2025) (exercising discretion to deny institution where petitioner's unpatentability arguments were "not particularly strong"); Interim Processes for PTAB Workload Management Memo, 2-3 (identifying the "strength of the unpatentability challenge" and "[t]he extent of the petition's reliance on expert testimony" as considerations for discretionary denial).

The Board erred by improperly weighing the *Fintiv* factors and failing to take "a holistic view" supporting denial of institution where merits are weak, as here. In light of its finding that the Petition's "merits are not particularly strong," the Board should have found that the "efficiency and integrity" of the PTAB are best served by denying institution. *See Fintiv*, Paper 11, 6; *Dell*, Paper 12 at 13-14, 22-23 (taking a "holistic view" before exercising discretion to deny institution where only two factors support exercising discretion). This is especially true now that all challenged claims on which the Board based its institution decision have been disclaimed. Moving forward with this proceeding will waste the Board's limited resources and will encourage Petitioners to challenge claims for which there is a low likelihood of success, increasing the burden on the PTAB.

V. Conclusion

Accordingly, the Director should vacate the Board's institution decision.

Respectfully submitted,

Dated: May 30, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 30th day of May, 2025, a true and correct copy of the foregoing **Patent Owner's Request for Director Review** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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