

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RØDE MICROPHONES, LLC, and
FREEDMAN ELECTRONICS PTY LTD.,

Petitioner

v.

ZAXCOM, INC.,

Patent Owner

IPR2025-00230 (U.S. Patent No. 7,711,443)

IPR2025-00232 (U.S. Patent No. 10,276,207)

MOTION FOR SANCTIONS AND
VACATUR OF INSTITUTION/TERMINATION

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GLOSSARY OF TERMS

TERM	DEFINITION
“902 IPR”	IPR2025-00231 for U.S. Patent No. 7,929,902
“Acquisition”	The Acquisition of Lectrosonics by RØDE on May 5, 2025
“Acquisition Date”	May 5, 2025 – The Date RØDE acquired Lectrosonics
“AIT”	<i>RPX Corp. v. Applications in Internet Time, LLC</i> , IPR2015-01750, Paper 128 (PTAB Oct. 2, 2020)
“Board”	USPTO Patent Trial and Appeal Board
“Board’s Order”	IPR2025-00230, Paper 37 (PTAB Nov. 19, 2025); IPR2025-00232, Paper 36 (PTAB Nov. 19, 2025)
“CTPG”	Consolidated Trial Practice Guide
“Memorandum”	<i>Precedential designation of Corning Optical Communications RF, LLC v. PPC Broadband Inc.</i> , Memorandum, Memorandum from John A. Squires, Dir., U.S.P.T.O., U.S. Dept. of Commerce (Oct. 28, 2025)
“Freedman”	Freedman Electronics Pty Ltd
“IPR”	<i>Inter Partes</i> Review
“Lectrosonics”	Lectrosonics, Inc.
“Lectrosonics Litigation”	<i>Zaxcom, Inc. v. Lectrosonics, Inc.</i> , No. 1:17-cv-03408 (E.D.N.Y June 6, 2017)
“Lectrosonics IPRs”	IPR2018-00972, IPR2018-01130, and IPR2018-01129, collectively
“NDA”	Non-Disclosure Agreement
“Patent Owner or Zaxcom”	Zaxcom, Inc.
“Petitions”	The Petitions filed in IPR2025-00230, and IPR2025-00232, collectively
“Petitioners”	RØDE Microphones, LLC and Freedman Electronics Pty Ltd.in
“POR”	Patent Owner Response
“RPI”	Real Party In Interest
“RØDE”	RØDE Microphones, LLC

Patent Owner submits this Motion for Sanctions and Vacatur of Institution/Termination pursuant to 37 C.F.R. § 42.12, 35 U.S.C. § 312(a), and 37 C.F.R. § 42.8(a)(3). Lectrosonics became an RPI of Petitioners at least as early as its Acquisition Date. Under § 42.8(a)(3), Petitioners were required to update their mandatory notices within 21 days of this change yet have failed to do so. This omission renders the Petitions defective under § 312(a)(2) (failure to identify all RPIs), § 312(a)(4) (failure to provide information required by regulation), related precedent, and the Memorandum, which, as a matter of national security, requires RPI to be correct prior to institution, regardless of whether a time bar or estoppel issue exists. Because the Petitions were non-compliant before institution, the Board lacked authority under § 314(a) to institute these IPRs.

Although 37 C.F.R. § 42.5 allows the Board to excuse a late filing of an updated mandatory notice for good cause or in the interests of justice, these showings cannot be made here. Petitioners ongoing failure to disclose its RPI, combined with repeated misleading statements/misrepresentations concerning its relationship with its RPI and the benefits its RPI stands to gain from these IPRs, reflect bad-faith conduct and an improper attempt to secure strategic advantage. This misconduct has prejudiced Patent Owner, and the Board is tasked by § 42.12 to sanction this misconduct to deter future abuse. Otherwise, there are NO repercussions for Petitioners who knowingly, in bad faith, refuse to update RPI

status in order to gain a strategic advantage in violation of the statutory rules, the Memorandum, and legal precedent.

I. ELECTROSONICS IS AN RPI OF PETITIONERS

A. PRE-EXISTING, ESTABLISHED RELATIONSHIP

According to *RPX Corp. v. Applications in Internet Time, LLC*, IPR2015-01750, Paper 128 (PTAB Oct. 2, 2020) (“AIT”) (precedential) (internal citations omitted), analyzing an RPI involves “determining whether the non-party is a clear beneficiary that has a preexisting, established relationship with the petitioner.” The now precedential *Corning Optical Comms. RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (“*Corning*”) decision confirms that *Taylor* factor 2 weighs in favor of finding that a party is an RPI. *Id.* at 17. In the ‘902 IPR, the Board found Lectrosonics *is* a privy of Petitioners, and it had a preexisting, established relationship with Petitioners under *Taylor* factors 2 and 5 (See IPR2025-00230, Ex-2166 at 9; IPR2025-00232, Ex-2069 at 9) based upon the following facts. [REDACTED]

[REDACTED]
[REDACTED]. See IPR2025-00230, Ex-2167; IPR2025-00232, Ex-2070. [REDACTED]

[REDACTED]. See IPR2025-00230, Ex-2168 at 2-3; IPR2025-00232, Ex-2071 at 2-3. [REDACTED]

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Ex-2169 at 1; IPR2025-00232, Ex-2072 at 1. [REDACTED]

[REDACTED]. *See*

IPR2025-00230, Exs-2170, 2171; IPR2025-00232, Exs-2073, 2074. [REDACTED]

[REDACTED] *See* IPR2025-00230, Ex-2172; IPR2025-00232, Ex-2075. [REDACTED]

[REDACTED]. *See*
IPR2025-00230, Exs-2173, 2186; IPR2025-00232, Exs-2076, 2089.

B. OPERATION AS A MERGED ENTITY

Similar to *Corning*, “the boundary lines are sufficiently blurred” between Petitioners and Lectrosonics that “it is difficult for both insiders and outsiders to determine precisely where one ends and another begins.” *Corning* at 6-9 (quoting *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 88 at 11 (PTAB Jan. 6, 2015)). Here, these entities are *so intertwined* that the “merged” group has its own name (i.e., The Freedman Group), management, and employees, and it contracts with third parties. *See* IPR2025-00230, Ex-2165 at 2; IPR2025-00232, Ex-2068 at 2 (“[t]he Freedman Group is not a separately incorporated legal entity”, but a “term that encompasses Freedman and its

controlled entities,” i.e., Lectrosonics). *See also* IPR2025-00230, Ex-2174 and IPR2025-00230, Ex-2077 at 1 (“The Freedman Group Acquires Lectrosonics,” naming Peter Freedman as the “Founder and owner of The Freedman Group” and Damien Wilson as its CEO.); IPR2025-00230, Exs-2181-2184 and IPR2025-00232, Exs-2084-2087 (Linked In Profiles for The Freedman Group personnel); IPR2025-00230, Ex-2162 and IPR2025-00232, Ex-2065 (“The Freedman Group” partners with Audinate to bring Dante technology to RØDE and Lectrosonics... Audinate’s CEO, described ““a broad partnership with the Freedman Group”” and “[s]tandardising on Dante will give ... seamless interoperability between ... RØDE ... [and] Lectrosonics”) (the “Audinate Press Release”). The Freedman Group’s full control of Lectrosonics is evident from this announcement of a major interoperability initiative involving Lectrosonics products that makes no mention of independent Lectrosonics’ management. All downloaded screenshots are authenticated at IPR2025-00230, Ex. 2187 and IPR 2025-00232, Ex. 2090.

Also, a publicly available YouTube Q&A hosted by Gotham Sound, featuring Karl Winkler, Lectrosonics’ EVP of Product Design and Distribution, and Dan Woodall of Lectrosonics, who previously worked “in the Freedman Group ...covering the RØDE brand,” also undermines any claim of corporate separateness. *See* IPR2025-00230, Exs-2164A, 2176A; IPR2025-00232, Exs-2067A, 2079A at 0:53. In the video, Winkler and Woodall explain the acquisition

of Lectrosonics by “The Freedman Group,” repeatedly describing Lectrosonics as part of the “Freedman Group,” in front of a backdrop depicting “Freedman Group”, “RØDE”, and “Lectrosonics” names and logos. *See* IPR2025-00230, Exs-2164B, 2176B; IPR2025-00232, Exs-2067B, 2079B at 6:42. They further detail the companies’ *shared* technology, IP, engineering resources, manufacturing capabilities, and support infrastructure (*Id.* at 7:14, 8:18) including nearly two weeks of joint engineering and roadmap meetings (*Id.* at 5:20) and “synergies” between the companies (*Id.* at 7:25). *See also*, i.e., IPR2025-00230, Ex-2177; IPR2025-00232, Ex-2080 (“RØDE will shift manufacturing of products bound for North and South America from Australia to New Mexico "within 90 days"). Lectrosonics also provided at least one Zaxcom patent invalidity analysis to Petitioners in February 2025. *See* IPR2025-00230, Ex-2165; IPR2025-00232, Ex-2068, both ¶19. Other information may have been exchanged, but Petitioners (in violation of § 42.12(a)(4)) refused to answer ‘902 IPR interrogatories querying whether RØDE has *access to* work product/privileged communications from the Lectrosonics’ Litigation and IPRs.

About the Acquisition Date, Petitioners assumed majority control of Lectrosonics’ Board by replacing three of five Lectrosonics’ board members with the sole (3) Freedman Board Members, allowing Freedman to operate Lectrosonics as a merged entity. *See* IPR2025-00230, Ex-2165 and IPR2025-00232, Ex-2068,

both ¶15-16. While The Freedman Group publicly operates as a single, merged entity, Petitioners continue to argue the opposite to this Board. *See infra* II.

C. EXERCISE OF CONTROL OVER THESE IPRS

Another RPI factor is whether “a non-party exercised *or could have exercised* control over a party’s participation in the proceeding,” CTPG, p. 16. Damien Wilson is a Director of, and holds executive level positions in, Petitioners and Lectrosonics, and states he has “ultimate management responsibility for and knowledge of this IPR proceeding,” yet “Lectrosonics has had no input, influence, direction, or control over any of the IPRs filed by Petitioners either before or after they were filed.” IPR2025-00230, Ex-2165; IPR2025-00232, Ex-2068, both ¶17-18. This is a literal impossibility and, if true, would be a breach of his fiduciary duties considering his *simultaneous* role in controlling the IPRs and acting as Director, Secretary, and Treasurer of Lectrosonics, which positions task him with a duty of care, loyalty, and good faith/oversight, and a fiduciary duty to operate in the best interests of Lectrosonics. *See Weinberger v. Uop*, 457 A.2d 701, 710-11 (Del. 1983) (“...individuals who act in a dual capacity as directors of two corporations, one of whom is parent and the other subsidiary, owe the same duty of good management to both corporations, and in the absence of an independent negotiating structure (see note 7, *supra*), or the directors' total abstention from any participation in the matter, this duty is to be exercised in light of what is best for

both companies.”) Accordingly, Mr. Wilson is legally bound to consider Lectrosonics in his IPR decision-making. Either way, his duties, significant involvement in Lectrosonics, and intimate knowledge of its business, are not “turned off” during his IPR decision-making. And, actual control is not required - it is enough that Lectrosonics *could have* exercised control over Petitioners’ participation in the IPRs through its Director/Secretary/Treasurer.

D. BENEFICIARY OF BOTH IPRS

Zaxcom’s patents have prevented Lectrosonics from selling a wireless transmitter that simultaneously records and transmits audio data (the “Zaxcom Feature”) within the U.S. *See* IPR2025-00230, Ex-2163; IPR2025-00232, Ex-2066. In 2016, Lectrosonics offered a Portable Digital Audio Recorder (the “Accused Product”) that could be coupled to its transmitter to provide the Zaxcom Feature, and Zaxcom responded with the Lectrosonics Litigation. *See* IPR2025-00230, Ex-2178; IPR2025-00232, Ex-2081. The Accused Product was discontinued when Lectrosonics failed to invalidate the Zaxcom patents in the Lectrosonics IPRs. *See* IPR2025-00230, Exs-2185, 2188-2189; IPR2025-00232, Ex-2088, 2091-2092. After the Acquisition, Lectrosonics announced new SMWB/SMDWB firmware that provides the Zaxcom Feature (“Infringing Firmware”) for non-U.S. markets only to avoid Zaxcom’s patents. *See* IPR2025-00230, Exs-2163, 2179; IPR2025-00232, Exs-2066, 2082. If the current IPRs are

successful, Lectrosonics will benefit from the ability to immediately remove the U.S. restriction.

Petitioners have a mutual interest in Lectrosonics' commercial and financial success. *See* IPR2025-00230, Ex-2165; IPR2025-00232, Ex-2068, both ¶14 (“Lectrosonics’ financial results will be consolidated into the results of its parent, RØDE, whose results will further be consolidated into the results of Freedman.”) As made clear in *AIT*, Paper 128 at 15 (PTAB Oct. 2, 2020) (internal citations omitted), the Board should “probe the extent to which [Lectrosonics]...has an interest in and will benefit from [Petitioners’] actions and inquire whether [Petitioners] can be said to be representing the interest after examining its relationship with [Lectrosonics].” Additionally, “[d]etermining whether a non-party is a “real party in interest” demands a flexible approach that takes into account both equitable and practical considerations.” *Id.* at 2. There is no credible argument that Petitioners are not representing Lectrosonics’ interests, [REDACTED]

[REDACTED]

[REDACTED]. *See* IPR2025-00230, Ex-2167 and IPR2025-00232, Ex-2070 at 3.

II. MISREPRESENTATIONS AND BAD FAITH CONDUCT

“37 C.F.R. § 42.12(a)(2) and (3) is plain that a misleading argument or misrepresentation of fact is sanctionable conduct.” *Patent Quality Assurance, LLC v. VLSI Tech. LLC*, IPR2021-01229, Paper 131 at 45 (PTAB Aug. 3, 2023). *See*

IPR2025-00230; IPR2025-00232
U.S. Patent Nos. 7,711,443 & 10,276,207

also Ventex Co, Ltd. v. Columbia Sportswear N. Am., Inc., IPR2017-00651, Paper 164 (PTAB Apr. 12, 2023) (finding an unnecessary increase in the cost of proceedings by hiding an RPI/privity relationship, and misrepresentation of at least one key fact supported an award of sanctions). Throughout the ‘902 IPR, Petitioners have shown a persistent pattern of misrepresentation and bad faith.

First, Petitioners have asserted: 1) they had “mere status as a corporate parent;” 2) “control of a party to the litigation through stock ownership or corporate officership is not enough to create privity, *absent a showing that the corporate form has been ignored;*” and 3) “Petitioners merely bought stock of Lectrosonics, which continues to exist as a separate corporate entity...” IPR2025-00230, Ex-2175 and IPR2025-00232, Ex-2078 at 6, 8 (internal citations omitted) (emphasis added). Petitioners further state “Lectrosonics was acquired to be a ‘stand-alone’ entity.” IPR2025-00230, Ex-2168 and IPR2025-00232, Ex-2071 at 7.

Second, in the ‘902 IPR, on both 9/2/25 and 9/22/25, in reference to the Board’s finding that Lectrosonics would benefit from the ‘902 IPR, Petitioners argue to the Director that the “Board’s failure to identify any such purported benefit is a material error of fact,” and that “Patent Owner’s argument...that Lectrosonics could add certain features to its products ...is naked speculation.” *Id.* Yet, weeks before, Lectrosonics introduced the Infringing Firmware, which it hid from this Board. Arguing the corporate form has been observed and a lack of IPR

benefit to Lectrosonics in light of the facts in § I.D is at worst, a misrepresentation, and at best a misleading argument.

III. *PROPPANT, LUMENTUM, AND CORNING*

Proppant Express Investments, LLC, et. al v. Oren Techs., LLC clarified the Board's authority to allow a party to amend an RPI listing. "In permitting a petitioner to amend its identification of real parties in interest while maintaining the original filing date, panels of the Board have looked to whether there have been (1) attempts to circumvent the § 315(b) bar or estoppel rules, (2) bad faith by the petitioner, (3) prejudice to the patent owner caused by the delay, or (4) gamesmanship by the petitioner. *See Aerospace Communications Holdings Co. v. Armor All/Step Products Co.*, Case IPR2016-00441, slip op. 3 (PTAB June 28, 2016) (Paper 12)." *Proppant*, IPR2017-01917, Paper 86 at 6-7 (PTAB Feb. 13, 2019). The circumstances here differ sharply from *Proppant*, in which factor (1) weighed against the patent owner because there was no attempt by petitioners to circumvent a § 315(b) bar. By contrast, Petitioners here intentionally avoided listing Lectrosonics as an RPI to sidestep the § 315(b) time bar in the co-pending '902 IPR. The *Proppant* panel also found no prejudice to the patent owner, and patent owner made no arguments of petitioner's bad faith. Here, prejudice and bad faith are undeniable. Patent Owner incurred substantial legal fees defending, taking discovery in, and successfully moving to dismiss the time-barred '902 IPR. Finally,

unlike the present case, the *Proppant* Board found no evidence of bad faith or gamesmanship because the change in RPI position resulted from an intervening change in law (*AIT*), not from an adverse Board ruling, and the *Proppant* petitioners had achieved some initial success in their RPI position before the *AIT* decision issued. In sum, whereas the *Proppant* patent owner could not satisfy the four-factor test, Patent Owner here has shown for all four factors. *See infra* § V.

Lumentum Holdings, Inc., et. al v. Capella Photonics, Inc., IPR2015-00739, Paper 38 (PTAB Mar. 4, 2016) held that § 312(a) is not jurisdictional and allowed RPI correction under 37 C.F.R. § 42.5(c)(3) because the petitioners acted in good faith and *voluntarily* amended the RPIs. The instant argument is different - the Board lacks authority to permit a late filing under § 42.5 because Petitioners cannot show good cause or the interest of justice. *See infra* § V. This was never considered in *Lumentum*, nor did that Board consider sanctions under § 42.12.

Corning holds that “§ 312(a) must be satisfied before the Director can institute trial,” which the Memorandum confirms. Here, § 312(a) was not satisfied at the time of institution, and the Board should vacate institution and not accept a late update because the Petitioners cannot show good cause/interests of justice. Petitioners argue that *Corning* and the Memorandum do not apply here because the Petitions were correct upon filing. However, § 312(a)(4) requires a petition to provide “information as the Director may require by regulation,” which includes §

42.8(a)(3). Even if the Board disagrees that § 312(a) applies, the national security reasons for strict enforcement of RPI status as set forth by the Examiner in the Memorandum apply equally regardless of whether RPI is wrong at the time of filing, or thereafter but prior to institution. *Id* at 2. Further, sanctions under § 42.12 are appropriate here, and are unaffected by any of the above decisions.

IV. PATENT OWNER DID NOT WAIVE THE RPI ISSUE

In *Corning*, the Petitioner also claimed waiver of the RPI issue, which the Board rejected for reasons that apply here. Notably, the Director has chosen to give *Corning's* waiver analysis precedential status, despite omitting other sections therefrom (i.e., section II.E.1). In *Corning*, patent owner did not raise the RPI issue in its PORs, despite the availability of publicly available RPI information for over a year. However, a *triggering event* caused the patent owner to research RPI further, after which patent owner promptly sought relief from the Board. Here, the announcement of an Audinate agreement with “*The Freedman Group,*” *integration between all of its brands*, and the Memorandum were the triggering events, which were discovered/issued about October 28, 2025, and prompted further research and Patent Owner’s request for a meet and confer with Petitioners *the very next day*. Also similar to *Corning*, Patent Owner relied on Petitioners’ false or misleading statements of RPI facts to the Board in deciding not to raise the issue earlier. Yet, as soon as Patent Owner investigated after the triggering events, it became

apparent that Petitioners' prior statements were inaccurate. Boards, including the *Corning* board, regularly allow delayed RPI motions due to the discovery of new RPI facts or changed law, and have consistently excused delay in RPI motions when new evidence or controlling authority emerges post-institution. *See, i.e., Ventex*, Paper 148 at 7-9 (PTAB Jan. 24 2019) (precedential). Here we have both. And, the Board's directive to sanction under § 42.12 is not waivable.

V. SANCTIONS AND REMEDIES

If Lectrosonics is held an RPI, Petitioners believe they should *then* be allowed to file late mandatory notices under §§ 42.8(a)(3) and 42.5(b). Petitioners cannot show the good cause required for this relief, which is limited to situations involving clerical error. Boards have consistently held that good cause cannot arise when the party: did not act with diligence, created the problem itself, ignored statutory duties, prejudiced the other party; had conduct that degrades the fairness of the proceeding; or knowingly or strategically made the omission. All of these conditions exist here. *See, e.g., Valeo N. Am., Inc., et. Al v. Magna Elecs., Inc.*, IPR2014-00220, Paper 41 (PTAB Jan. 8, 2015) (Board excused a late-filed updated mandatory notice under § 42.5, because the Patent Owner did not articulate how they suffered any prejudice). *See also Dynaenergetics Europe GmbH and Dynaenergetics US, Inc. v. Qinetiq, Ltd.*, PGR2023-00003, Paper 8 (PTAB Apr. 13, 2023) (Board declined to dismiss a petition where the error was clerical, promptly

corrected, and did not prejudice the Patent Owner, establishing good cause to maintain the original filing date); *Proppant Express Investments, et. al v. Oren Techs.*, IPR2017-02103, Paper 22 at 3 (PTAB April 13, 2018) (internal citations omitted) (“Whether good cause exists turns on the diligence of the moving party.”); *see also Nuna Baby Essentials v. Britax Child Safety, Inc.*, IPR2018-01683, Paper 11 at 6 (PTAB Dec. 18, 2018) (“lack of prejudice does not demonstrate good cause for excusing a late filing, particularly when opportunity has been provided already to correct the error or mistake.”); *Fasteners For Retail, Inc. v. RTC Industries, Inc.*, IPR2018-00742, Paper 32 at 5 (PTAB Nov. 15, 2018) (The Board declining to give the petitioner an opportunity to amend because doing so “would be unfair to the Patent Owner and would encourage gamesmanship by allowing petitioners to refrain from naming all RPIs until if and after such unnamed RPI is the cause for denying institution.”); *Atlanta Gas*, Paper 39 at 6-7 (PTAB Dec. 6, 2016) (finding the petitioner prejudiced the patent owner through its failure to identify RPIs, which forced patent owner to take action “to ensure that estoppel provisions would be correctly applied”).

Patent Owner has suffered prejudice (see *supra* § III), and the failure to list the RPI was not clerical, but a knowing decision made despite the affirmation of Lectrosonics’ privy status. *See* IPR2025-00230, Ex-2180; IPR2025-00232, Ex-2083. Petitioners’ own conduct is the source of the RPI omission defect (see *supra*

§ I), and its failure to list this RPI was gamesmanship, resulting in a second attempt at an IPR for the ‘902 Patent, in an attempt to evade the estoppel provisions of 37 C.F.R. § 42.8 and 35 U.S.C. § 312. Petitioners have acted in bad faith to hide Lectrosonics’ RPI status by advancing misleading arguments/misrepresentations in the ‘902 IPR in violation of §§ 42.12(a)(2),(3), and(5). Under § 42.12(a)(1), the Board may impose sanctions for “Failure to comply with an applicable rule or order in the proceeding,” such as § 42.8(a)(3). Petitioners’ misconduct is sanctionable under § 42.12, as they have abused the IPR process in violation of § 42.12(a)(6), harassed Patent Owner, and caused unnecessary delay and cost. §§ 42.12(b)(6) and (8) authorizes sanctions such as IPR termination and attorney’s fees and costs for investigating, briefing, and litigating the undisclosed RPI/privity issue. *See Atlanta Gas*, Paper 39 at 4–9 (PTAB Dec. 6, 2016).

37 C.F.R. § 42.5, *Corning*, and the Memorandum deny the ability to update mandatory notices absent a sufficient reason to do so. Allowing amendment after months of concealment would reward non-compliance, frustrate the Memorandum requiring strict enforcement of RPI disclosure prior to institution, damage the integrity of IPR proceedings, and invite future abuse. Dismissal and fees, by contrast, enforces the statute, sets a standard for avoiding bad faith and gamesmanship, preserves confidence in the fairness of the AIA trial system, and upholds the Memorandum and its concern for our national security.

Dated: November 28, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 37 C.F.R. § 42.6(e) and with the agreement of counsel for Petitioner, a true and correct copy of the Motion for Sanctions and Vacatur of Institution/termination is being served electronically on November 28, 2025, to the e-mail addresses shown below:

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