UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITCH INTERACTIVE, INC.,

Petitioner,

v.

RAZDOG HOLDINGS LLC,

Patent Owner.

Case No. IPR2025-00307
Patent No. 9,729,658

PATENT OWNER'S REPLY IN SUPPORT OF REQUEST FOR DISCRETIONARY DENIAL

In accordance with the Board's May 7, 2025 email authorization (Ex.3102), Patent Owner RazDog Holdings LLC ("PO") submits this Reply in Support of its Request for Discretionary Denial to address Petitioner Twitch Interactive, Inc.'s ("Petitioner") "*Sotera* Stipulation" ("Stipulation") (Ex.1070). Petitioner's belated Stipulation—served April 21, 2025, nearly ***3 months after*** issuance of the Notice of Filing Date (Paper 4) and over ***3 weeks after*** PO filed its Discretionary Denial Request (Paper 11)—should be given little weight because it fails to ensure that this IPR serves as a "true alternative" to the parallel district court case. There, Petitioner asserts unpublished system prior art combined with nearly 70 patents and printed publications—including the exact references at issue here—resulting in an almost unthinkable number of invalidity grounds that the Stipulation does not moot. And even if the Stipulation is given some weight, it does not overcome the many other reasons supporting discretionary denial explained in PO's Request for Discretionary Denial. *See* Paper 11. Accordingly, the Acting Director should respectfully deny institution of this proceeding under 35 U.S.C. § 314(a).

I. PETITIONER'S STIPULATION SHOULD BE GIVEN LITTLE WEIGHT AND INSTITUTION SHOULD BE DENIED

According to PTAB guidance, "[w]here the petitioner is relying on corresponding system art in a co-pending proceeding and/or several other invalidity theories, ***a stipulation may not be particularly meaningful because the efficiency gained by any AIA proceeding will be limited***." *See* FAQs for Interim

Processes for PTAB Workload Management, at FAQ No. 14 (published Apr. 25, 2025), https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management (last visited May 9, 2025) (emphasis added). As the Acting Director recently recognized, such stipulations do not ensure that an IPR proceeding would be a "true alternative" to the district court proceeding where unpublished system prior art is asserted in combination with the art used in the IPR. *See Motorola Sol'ns, Inc. v Stellar LLC*, IPR2024-01205, Paper 19 at 3-4 (PTAB March 28, 2025) (Stewart, A.D.). The Stipulation here does not address these concerns and should be given little weight.

A. This IPR Is Not a "True Alternative" to the Parallel Litigation

Petitioner's Stipulation does little, if anything, to ensure this IPR would be a "true alternative" to the co-pending district court case. In Petitioner's invalidity contentions served in the parallel litigation, Petitioner asserts at least 3 different types of system prior art, both "alone or in combination with one or more of the other references disclosed herein." Ex.2004 at 7-12, 23-25. On top of providing exemplary invalidity grounds combining the system art with the exact references relied upon in this IPR (*i.e.*, Darnell and Dasgupta, *see id.*), Petitioner also cites nearly 65 *other* patents and printed publications (*id.* at 4-7) that could also be combined with the system art, resulting in an almost unthinkable number of potential invalidity grounds. Even with the limited Stipulation proffered by

Petitioner here, Petitioner would still claim to retain the ability to rely on all the prior art references at issue in this IPR and a multitude of others in combination with system prior art that they have identified. Moreover, Petitioner also alleges invalidity under 35 U.S.C. §101 (*id.* at 25-33), as well as at least 22 separate grounds for lack of enablement and lack of written description (*id.* at 33-44). Thus, little efficiency will be gained if this IPR is instituted.

Moreover, Petitioner's stipulation is cleverly cabined such that even if this IPR is instituted, but related IPR2025-00308 is not instituted, there will be no meaningful simplification of the issues for the parallel district court case. Under the proffered Stipulation, Petitioner only agrees that "if the PTAB institutes [IPR] in IPR2025-00307" it will "forgo invalidity in district court based on 'any ground that the petitioner raised or reasonably could have raised during that [IPR].'" *See* Ex.1070. But Petitioner's co-pending IPR2025-00308 relies on nearly the exact same grounds using the exact same prior art as in this IPR. *See* IPR2025-00308. Thus, if this IPR is instituted, but IPR2025-00308 is not, Petitioner is not precluded under this Stipulation from asserting the very same grounds of unpatentability it raises in this IPR against the other patent-in-suit in the district court case. Thus, the only way Petitioner's Stipulation could result in any meaningful simplification of the co-pending district court case is if both Petitions are instituted, and even then there is little reason to believe any meaningful simplification would be achieved.

Given the remarkably large number of additional invalidity theories asserted by Petitioner in the litigation and the limited nature of the Stipulation, Petitioner's Stipulation does nothing to ensure this IPR is a "true alternative" to the district court case. *See Motorola*, IPR2024-01205, Paper 19 at 3-4 (stipulation "does not ensure that these IPR proceedings would be a 'true alternative' to the district court proceeding" because invalidity arguments in district court were "more expansive and include combinations of the prior art asserted in these proceeding with unpublished system prior art, which Petitioner's stipulation is not likely to moot"). Thus, Petitioner's Stipulation should be given little, if any, weight.

B. Petitioner's Belated Stipulation Is Not Timely

Petitioner waited until April 21, 2025—nearly three full months after the Notice of Filing Date Accorded issued on January 30, 2025 (Paper 4), over three weeks after Patent Owner's Request for Discretionary Denial was filed on March 28, 2025 (Paper 11), and less than ten days before Patent Owner's Preliminary Response was due on April 30, 2025 (Paper 12)—to offer its purported "*Sotera*" Stipulation. *See* Ex.1070. This Stipulation is not timely. Given the recent guidance rescinding the USPTO Director's June 21, 2022 memorandum, Petitioner had no excuse for waiting until the eleventh hour to offer the Stipulation. At a minimum, Petitioner should have offered the Stipulation soon after the Acting Director issued the "Interim Processes for PTAB Workload Management" Guidance Memorandum

on March 26, 2025. Petitioner's decision to wait nearly 4 more weeks before offering the Stipulation is, in itself, cause to give the Stipulation little weight.

C. The Stipulation Does Not Outweigh the Other Factors Favoring Denial of Institution

According to recent PTAB guidance, although "a timely-filed Sotera stipulation" may be relevant, it "***will not be dispositive by itself***" and will be considered "***as part of [the] holistic analysis under Fintiv***." *See* "Guidance on USPTO's recission of 'Interim Procedure for Discretionary Denials in AIA Post Grant Proceedings with Parallel District Court Litigation'" dated March 24, 2025 at 2-3 (emphasis added). Even assuming Petitioner's Stipulation here was given some weight, the Stipulation is still not "sufficient when weighed against the other factors." *See Cisco Sys., Inc. v. Estech Sys., Inc.*, IPR2021-00333, Paper 12 at 12 (PTAB July 7, 2021) (denying institution despite *Sotera* stipulation, emphasizing advanced litigation stage); *see also* Paper 11 (discussing lack of stay, significant investment in district court case, overlapping issues and parties, and other relevant considerations). Simply put, Petitioner's Stipulation cannot overcome the multitude of other factors weighing in favor of discretionary denial of this IPR.

II. CONCLUSION

Accordingly, Patent Owner respectfully requests that the Acting Director exercise her discretion to deny institution of this IPR under 35 U.S.C. § 314(a).

Dated: May 9, 2025

Respectfully submitted,

/s/ Roger S. Thompson

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PATENT OWNER'S REPLY IN SUPPORT OF REQUEST FOR DISCRETIONARY DENIAL** was served on the date below by email on the following individuals and correspondence addresses of record:

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