

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

SOUNDCLEAR TECHNOLOGIES, LLC,
Patent Owner.

Case No. IPR2025-00344
U.S. Patent No. 9,070,374

**PETITIONER'S SUR-REPLY TO PATENT OWNER'S REPLY ON
DISCRETIONARY DENIAL**

TABLE OF CONTENTS

I.	Settled Expectations Do Not Warrant Discretionary Denial.....	1
II.	Patent Owner’s Clarification Confirms that <i>Fintiv</i> Factor 2 Favors Institution	3

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Amazon.com, Inc. v. Virtamove, Corp.</i> , IPR2025-00561, Paper 11 (July 11, 2025)	1, 2
<i>Cambridge Indus. USA, Inc. v. Applied Optoelec</i> , IPR2025-00443, Paper 8 (Apr. 28, 2025).....	1, 2
<i>Dabico Airport Sols. Inc. v. AXA Power ApS</i> , IPR2025-00408, Paper 2 (Jan. 9, 2025).....	1
<i>Ericsson Inc. v. Procomm</i> , IPR2024-01452, Paper 13 (May 28, 2025).....	1
<i>Globus Medical, Inc. v. Spinelogik, Inc.</i> IPR2025-00226, Paper 8 (June 12, 2025).....	3
<i>Intel Corp. v. Proxense LLC</i> , IPR2025-00327, Paper 7 (Apr. 29, 2025).....	1
IPR2025-00327, Paper 12 (June 26, 2025).....	2
<i>iRhythm Techs., Inc. v. Welch Allyn, Inc.</i> , IPR2025-00363, Paper 10 (PTAB June 6, 2025)	2
<i>Stingray Group Inc. v. Edwin Hernandez-Mondragon</i> , IPR2025-00349, Paper 19 (June 13, 2025).....	3

UPDATED LIST OF EXHIBITS

Exhibit	Description
1001	U.S. Patent No. 9,070,374 to Konishi (“the ’374 patent”)
1002	File History of the ’374 Patent
1003	Declaration of Stuart Lipoff (“Lipoff”)
1004	Curriculum Vitae of Stuart Lipoff
1005	U.S. Patent Application Publication No. US 2008/0167868 A1 to Kanevsky et al., assigned to International Business Machines (“IBM”)
1006	U.S. Patent Appl. Pub. No. 2012/0027219 to Kale et al. (“Kale”)
1007	U.S. Patent Application Publication No. 2011/0026730 to Li et al. (“Li”)
1008	International Telecommunication Union (ITU) Terms and Definitions (“simplex operation”)
1009	J. D. Hoyt and H. Wechsler, “Detection of human speech in structured noise,” Proceedings of ICASSP '94. IEEE International Conference on Acoustics, Speech and Signal Processing, Adelaide, SA, Australia (1994)
1010	Joon-Hyuk Chang, Nam Soo Kim and S. K. Mitra, “Voice activity detection based on multiple statistical models,” in IEEE Transactions on Signal Processing, vol. 54, no. 6, pp. 1965-1976, June 2006
1011	VU Metter, Newton’s Telecom Dictionary (16th ed. 2000)
1012	“The Authoritative Dictionary of IEEE Standards Terms, Seventh Edition,” in IEEE Std 100-2000 , vol., no., pp. 1-1362 (Dec. 11, 2000)
1013	Alex Artaud, Warm up your sound with this tiny well-featured monster, Electronic Musician Magazine, vol. 17, no. 8, pp. 144-146 (August 2001)

Exhibit	Description
1014	[RESERVED]
1015	<i>SoundClear Technologies LLC v. Google LLC</i> , Case No. 2:24-cv-00321, Order Granting Motion to Stay Pending <i>Inter Partes</i> Review (E.D. VA Mar. 31, 2025) (Dkt No. 84) (“Court Order”)
1016	<i>SoundClear Technologies LLC v. Amazon.Com, Inc.</i> , Case No. 2:24-cv-00320, Order Granting Motion to Stay Pending <i>Inter Partes</i> Review (E.D. VA Jul. 1 2025) (Dkt. No. 56)
1017	Patent Assignment Recordation
1018	Andrew Karpan, <i>Amazon And Google Face New Suits Over Japanese Patents</i> , Law360 (Jul. 26, 2024)

I. Settled Expectations Do Not Warrant Discretionary Denial

Patent Owner now argues in its Discretionary Reply (Paper 11, “Reply”) that “settled expectations strongly favor denial” because the patent issued ten years ago. Reply, 1. Patent Owner does not argue, however, that settled expectations outweigh the District Court’s order staying the parallel litigation pending the IPR Proceedings. Nor could it.

In fact, none of the cases Patent Owner cited involved the key fact here—a parallel litigation stayed pending resolution of the underlying IPR proceeding, and prior to entering a scheduling order. Nor do any of those cases suggest that settled expectations outweigh such stays—let alone the stay of a litigation involving no trial date, minimal investments, and a lack of overlapping issues. *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 2, 75 (Jan. 9, 2025) (no parallel litigation); *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 7, 5-8 (Apr. 29, 2025) (no stay; trial date scheduled); *Ericsson Inc. v. Procomm*, IPR2024-01452, Paper 13, 3-4 (May 28, 2025) (stay denied); *see also* Paper 15, 3 (June 25, 2025) (“inefficiency and settled expectations tip the balance in favor of discretionary denial.”).

The fact that parallel litigations in *Cambridge Indus. USA, Inc. v. Applied Optoelec* and *Amazon.com, Inc. v. Virtamove, Corp.* were stayed does not provide a complete picture. *Cambridge Indus.* was stayed *after* the court entered a

scheduling order and the parties filed opening, responsive, and reply claim construction briefs. IPR2025-00443, Paper 8, 20 (Apr. 28, 2025). And *Amazon* was stayed for reasons unrelated to pending IPRs. IPR2025-00561, Paper 11, 2 (July 11, 2025). So neither case is analogous to the discretionary considerations here.

The facts here also weigh against settled expectations. Whereas the Board has found settled expectations when the petitioner monitored a competitors' portfolio and chose not to challenge a patent for years, *see iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 (PTAB June 6, 2025), the Director has also been clear that "[t]here may be persuasive reasons why the Board should review challenged claims several years after their issuance date." *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 at 2-3. This includes where a patent was "in force for years" but wasn't "commercialized, asserted, marked, licensed, or otherwise applied in a petitioner's particular technology space." *Id.* (finding these "considerations [] weigh against a patent owner's claim of settled expectations and bear[] on the Director's discretion."). The '374 patent presents such a case, as the Patent Owner is a non-practicing entity that only recently acquired and began asserting the patent. Opposition at 1, 5-6; Ex. 1017; *see also* Ex. 1018. Patent Owner does not dispute this fact, and the District Court's Order granting a stay pending IPR confirms it. Ex. 1015, 6 ("it is *undisputed* that SoundClear is a non-practicing entity ('NPE') which ... *does not directly compete* with Google."

(emphasis added)). Indeed, Patent Owner asserted the '374 patent less than eight months after acquiring it in September 2023, and it could not have reasonably developed settled expectations for the patent in that timeframe. Ex. 1017. That the '374 patent was cited during prosecution of a Google patent between 2019-2021 does not retroactively change the settled expectations analysis.

Accordingly, settled expectations do not weigh in favor of discretionary denial or outweigh the other factors favoring institution, as set forth in the Opposition. *See e.g. Stingray Group Inc. v. Edwin Hernandez-Mondragon*, IPR2025-00349, Paper 19, 7 (June 13, 2025) (referring and instituting IPR on seven year old patent); *Globus Medical, Inc. v. Spinelogik, Inc.* IPR2025-00226, Paper 8 (June 12, 2025) (referring petition challenging 8 year old patent to panel).

II. Patent Owner's Clarification Confirms that *Fintiv* Factor 2 Favors Institution

Factor 2 still favors institution because trial cannot precede a Final Written Decision ("FWD"). Ex. 1015, 7-8. Patent Owner appears to cast aside its original representation that trial would occur 9 months before a FWD. Paper 5, 10-13. It now argues that if institution is denied in August, that a trial would commence 5 months thereafter. Reply, 2-3. This hypothetical is inapposite because it doesn't explain how trial would commence *before a FWD*. It is also absurd to assume trial could begin 5 months after the stay is lifted given the early stage of the litigation.

Date: July 22, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **SUR-REPLY TO
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