

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHENZHEN TUOZHU TECHNOLOGY CO., LTD.,
Petitioner,

v.

STRATASYS, INC.,
Patent Owner.

Case IPR2025-00354
Patent 8,747,097

**PETITIONER'S REQUEST FOR
DIRECTOR REVIEW OF JUNE 12, 2025 DECISION
GRANTING PATENT OWNER'S REQUEST FOR DISCRETIONARY
DENIAL AND DENYING INSTITUTION**

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EX1006	Luo et al., <i>The Development of Internet Accessible Rapid Prototyping System</i> , Proceedings of IECON '99: The 25th Annual Conference of the IEEE Industrial Electronics Society (1999)
EX1007	U.S. Patent Pub. No. 2004/0162798 to Mamoto et al. (“Mamoto”)
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I. INTRODUCTION

Petitioner Shenzhen Tuozhu Technology Co., Ltd., respectfully requests a Director Review of the Decision Granting Patent Owner’s Request for Discretionary Denial (Paper 11) and referral of the Petition to the panel. As discussed in § II, *infra*, in response to changes in the application of *Fintiv* that occurred *after* Petitioner filed its Opposition to Patent Owner’s Discretionary Denial Brief, Petitioner elevated to an even “broad[er] stipulation” that includes all restrictions of the stipulation recently endorsed by the Acting Director in *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 at 2 (Jun. 13, 2025) and adds yet further restrictions. Petitioner could not have reasonably foreseen that such a stipulation would have been required in the present case and now that Petitioner is aware of the guidance of the *Tesla* case, Petitioner offers a stipulation that is even stricter than that in *Tesla* .

Petitioner further requests reconsideration of denial of the Petition under the Director’s discretion because, similar to the situation in *Tesla*, the ’097 patent at issue here is part of “complex and diverse” multi-patent litigation spanning multiple patent families and numerous diverse technologies. IPR2025-00217, Paper 9 at 2-3. As explained in more detail in Section III, *infra*, Petitioner has filed IPR petitions challenging nine different patents spanning six patent families covering a wide array of technologies under the general three-dimensional printing umbrella.

The Board is best positioned to evaluate validity of the asserted patents due to the “diverse range of subject matter” along with “[t]he large number and vast scope of the patents asserted in the district court litigation.” *Id.* Indeed, IPR challenges of three of the patents involved in this multi-patent challenge have already been instituted. *See* IPR2025-00257, Paper 9; IPR2025-00311, Paper 9; IPR2025-00321, Paper 10. Institution in the present proceeding is thus warranted so that validity is determined by the tribunal best suited to review a “large number of patents involving diverse subject matter.” *Tesla*, IPR2025-00217, Paper 9 at 2-3.

II. PETITIONER’S ENHANCED TESLA STIPULATION FAVORS REFERRAL TO THE PANEL

Prior to issuance of the Director’s Discretionary Denial Decision in the present proceeding (Paper 11), Petitioner could not have reasonably foreseen that a case with the procedural posture of this proceeding (in which Petitioner submitted a *Sotera* stipulation and median time-to-trial statistics showed a likely jury selection date concurrent with the expected Final Written Decision) would be discretionarily denied under *Fintiv*. Now that Petitioner is aware of the substantial shift in application of the *Fintiv* factors under the new Interim Processes for PTAB Workload Management Memorandum (a change which was not apparent from the Memo itself), Petitioner has made every attempt to more than comply with the new discretionary denial landscape by submitting to Patent Owner a stipulation that is

even more restrictive than that in *Tesla*. Institution is especially warranted that Patent Owner has now added even greater uncertainty to the trial date by seeking to add new products to the suit, including an entirely new printer – Petitioner’s flagship model with many new features – greatly expanding the work and potentially delaying resolution.

A. *Petitioner Could Not Have Reasonably Foreseen a Fundamental Shift in Application of Fintiv*

As discussed in Petitioner’s Opposition brief, should the present Petition be instituted a Final Written Decision (FWD) would be expected only 1.5 months after the currently scheduled jury selection date for the parallel District Court proceeding and substantially concurrently with a likely mid-July jury selection date calculated based on median time-to-trial statistics for Judge Gilstrap. Paper 10, 7-8.

Between the February 28, 2025 Recission of the USPTO Directors June 21, 2022 and Director’s Discretionary Denial Decision in the present proceeding, the Board continued to consistently, and without exception, elect to *not exercise* its discretion under 314(a) in circumstances in which (1) the Petitioner had submitted a *Sotera* stipulation, and (2) the time gap between the jury selection date and the expected FWD date was as short as that here. Indeed, during this time frame, the Board routinely instituted IPR in proceedings having a much larger gap between the scheduled jury selection date and expected FWD date at issue here (up to six or

even ***eight months***). See IPR2024-01403, Paper 9 at 36-38 (2.5 month gap, *Sotera* stipulation); IPR2024-01405, Paper 9 at 34-36 (3 month gap, *Sotera* stipulation); IPR2024-00421, Paper 9 (4 month gap, **no** stipulation); IPR2024-00422, Paper 9 (4 month gap, **no** stipulation); IPR2024-01472, Paper 9 at 8-10 (6 month gap, *Sotera* stipulation); IPR2024-01396, Paper 13 at 6-8 (6 month gap, *Sand Revolution* stipulation); IPR2024-01402, Paper 9 at 7-10 (3 month gap, *Sotera* stipulation); IPR2024-01404, Paper 9 at 8-10 (3 month gap, *Sotera* stipulation); IPR2024-01433, Paper 13 at 9-12 (6 month gap, *Sotera* stipulation); IPR2024-01431, Paper 21 at 13-16 (3 month gap, *Sand Revolution* stipulation); IPR2024-01488, Paper 7 (1 month gap, no stipulation); IPR2024-01463, Paper 14 at 13-17 (6 month gap, *Sotera* stipulation); IPR2025-00031, Paper 9 at 10-16 (2 month gap, *Sotera* stipulation); IPR2025-00018, Paper 14 at 10-12 (6 month gap, *Sotera* stipulation); IPR2025-00019, Paper 14 at 10-12 (6 month gap, *Sotera* stipulation); IPR2025-00124, Paper 14 at 9-11 (6 month gap, *Sotera* stipulation); IPR2025-00021, Paper 14 at 9-10 (6 month gap, *Sotera* stipulation); IPR2025-00100, Paper 10 at 27-30 (4 month gap, *Sotera* stipulation); IPR2025-00120, Paper 9 at 6 (***8 month gap***, *Sotera* stipulation); IPR2025-00196, Paper 7 at 10-16 (4 month gap, *Sotera* stipulation); IPR2025-00139, Paper 14 at 11-14 (2.5 month gap, *Sotera* stipulation).

To be clear, prior to Director's Discretionary Denial Decision in the present proceeding, in every single decision issued after Recission of the of the USPTO

Directors June 21, 2022, the Board determined that a *Sotera* stipulation submitted in a case with a time gap as short as that here (1.5 months) would result in no discretionary denial. Given this history of decisions after the Recission and the fact that the precedential status of the *Sotera* decision had not been revoked and remains in effect, Petitioner had no way of knowing that the Director was seeking stricter stipulations in cases with procedural postures analogous to that in the present proceeding. Now that Petitioner is aware of the *Tesla* decision, Petitioner has submitted a stipulation even *stricter* than that in *Tesla* in an effort to fully comply with the directives of the Director.

B. *Petitioner's Stipulation Eliminates Any Possible Overlap with the District Court Proceeding and Thus Favors Institution*

Petitioner has served Patent Owner a stipulation that includes all restrictions from the *Tesla* cases and takes the stipulated restrictions even further. Specifically, Petitioner's stipulation for the '097 Patent states that should the Petition be instituted and the IPR maintained, Petitioner will not pursue in the related litigations:

(i) the specific grounds asserted in IPR2025-00354, (ii) any other ground that was raised or could have been reasonably raised in an IPR (i.e., any ground that could be raised under §§ 102 or 103 on the basis of prior art patent or printed publications), (iii) any ground based on a combination of system prior art (i.e., prior art that is neither a patent or printed publication) and the references that form the basis of any ground raised in IPR2025-00354, or (iv) any ground that could

be raised under §§ 102 or 103 on the basis of system art corresponding to the references that form the basis of any ground raised in IPR2025-00354.

This would eliminate all overlap as Petitioner can no longer pursue any “ground that was raised or could have been reasonably raised”; ***any ground that uses any of “the references that form the basis of any ground” raised in the Petition; or any ground based on “system art corresponding to the references that form the basis of any ground raised” in the Petition. Id.***

To be clear, if the Board institutes and maintains the present IPR proceeding, the Knighton, Luo, Anderson, Mamoto, Crampton, Chandhoke, Ridley, Mazumder, Biton, Bakhadyrov, and Bonassar references that form the basis of the Petition grounds cannot be used in any invalidity ground whatsoever in the related litigations. Additionally, if the present IPR proceeding is instituted and not later revoked, systems described in any of Knighton, Luo, Anderson, Mamoto, Crampton, Chandhoke, Ridley, Mazumder, Biton, Bakhadyrov, and Bonassar cannot be used in any invalidity ground whatsoever in the related litigations. The limited district court invalidity grounds that remain are: (1) system art alone that is not described in any references used in the Petition; or, (2) system art that is not described in any references used in the Petition in combination with other prior art never presented in the IPR grounds. *See* EX2007, 113-123. In both of those very limited scenarios, the

district court invalidity grounds will not include any prior art presented in the IPR Petition – not even indirectly since systems described in the presented prior art cannot be used in the district court. As such, this broad stipulation prevents any overlap between the proceedings.

III. THE COMPLEXITY AND DIVERSE TECHNOLOGY SCOPE OF THE ASSERTED PATENTS FAVORS INSTITUTION

Patent Owner’s assertion of a “large number and vast scope of the patents” directed toward “a diverse range of subject matter” in the parallel district court proceeding also favors institution because “the Board is better suited to review” issues of validity, just as was the case in *Tesla, Inc. v. Intellectual Ventures II LLC* IPR2025-00217, Paper 9 at 2-3 (Jun. 13, 2025). In total, Petitioner has filed IPR petitions challenging nine different patents from six different patent families that, while all generally related to three-dimensional printing, span a broad array of claim scopes and specific technologies. The patents asserted by Patent Owner in the parallel District Court proceeding relate to varied areas of technology including software, robotics, video imaging, computer networks, material science, control systems, and various sensor technologies, including:

- Remote control of a networked 3D printer that provides video images of the build process and the corresponding 3D model (U.S. Pat. No. 8,562,324).

- A 3D printer with a heated build platform and a thermally conductive build plate with a non-tape polymer coating (U.S. Pat. No. 9,592,660).
- 3D printer software that prints layers of a purge tower between printing of successive layers of part material and support material to purge a print head when switching from a stand-by mode to an operating mode (U.S. Pat. No. 9,421,713).
- Generating a fabrication profile and machine-ready code based on querying a printer's capabilities and fabricating an object using the profile (U.S. Pat. No. 11,886,774).
- Controlling an extruder of a 3D printer based on sensed and calculated contact force between the extruder and a separate structure (U.S. Pat. No. 10,556,381).
- Controlling a component of a 3D printer while depositing material based on a detected current contact force (U.S. 9,168,698).
- Automatic detection and acquisition of 3D printer build material characteristics for use in determining operational parameters for the 3D printer (U.S. Pat. Nos. 10,569,466 and 11,167,464).
- Using a 3D scanner to determine a status of a 3-D print job and identify flaws in an object being fabricated (U.S. Pat. No. 8,747,097).

The “complex and diverse litigation proceeding” involving a wide array of technologies relating to diverse areas of software, robotics, video imaging, computer networks, material science, control systems, and various sensor technologies spanning nine patents across six distinct patent families favors institution. *Tesla*, IPR2025-00217, Paper 9 at 2-3. As was the case in *Tesla*, “the Board is better suited to review a large number of patents involving diverse subject matter.” *Id.* As such, due to the “diverse range of subject matter” and “[t]he large number and vast scope of the patents asserted in the district court litigation” issues of validity are best determined by the Board. *Id.* Indeed, IPR challenges of three of the patents involved in this multi-patent challenge have already been instituted. *See* IPR2025-00257, Paper 9; IPR2025-00311, Paper 9; IPR2025-00321, Paper 10. Institution in the present proceeding is thus warranted.

IV. PATENT OWNER HAS NO SETTLED EXPECTATIONS THAT FAVOR DISCRETIONARY DENIAL

Patent Owner’s lack of marking with respect to the ’097 Patent and the fact that the ’097 Patent had never previously been asserted and that Petitioner was unaware of any potential infringement with respect to the ’097 Patent prior to the filing of the all additionally favor against discretionary denial. For example, Stratasys has taken the position that it “does not intend to rely on the assertion that its own products or other instrumentalities practice the claimed invention.” When pressed for discovery

into its practicing products and served with Bambu's *Artic Cat* letter, Stratasys failed to present any evidence that it met its marking obligations with respect to the '097 Patent. As the Acting Director recently explained, when a patent has not "been commercialized, asserted, marked, licensed, or otherwise applied in a petitioner's particular technology space" such factors weigh against a patent owner's claim of settled expectations." *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12, pp. 2-3. Stratasys's lack of commercialization, marking, and the fact that the '097 Patent (nor any other patents in the multi-patent litigation) has never previously been asserted also favors against discretionary denial. *Id.*

Moreover, only recently has Patent Owner elected to become litigious (in 2024). This is the first suit involving the '097 patent. And Petitioner had received no pre-suit notice of alleged infringement of the '097 patent, nor had Petitioner had any reason to believe the '097 patent covered their products. It is also notable that the flagship 3D printer of Petitioner's subsidiary company launched on Kickstarter in May 2022.¹ Petitioner could not have known to challenge the '097 patent sooner.

V. THE EXAMINER'S ERROR DURING PROSECUTION FAVOR'S REFERRAL TO THE PANEL

As recently expressed by the Acting Director in *Microsoft Corp. v. Partec Cluster Competence Center GMBH*, when, as here "the Office erred [during

¹ See <https://www.3dprintingjournal.com/p/05-31-2022-bambu-lab-x1-debuted-on>

prosecution] in a manner material to the patentability of the challenged claims by overlooking the teachings” of more pertinent prior art that discloses the claim features thought to be missing from the prior, such a “showing of material error during patent examination...it is an appropriate use of Office resources to review the potential error.” IPR2025-00318, Paper 9 at 2-3 (PTAB June 12, 2025). Here, in a situation highly similar to that in *Microsoft*, Petitioner demonstrated that although Anderson had been cited by the Examiner during prosecution, the Examiner erred by not identifying the highly pertinent Knighton or Luo references or considering them in combination with Anderson. Paper 10, 35-40. Indeed, both Knighton and Bonassar were never before the Examiner during prosecution and both references independently disclose precisely the feature thought to be missing from the prior art during prosecution: “a three-dimensional scanner configured to capture three-dimensional information from an object being fabricated within the build volume during a print job executing on the three-dimensional printer.” Paper 10, 18-19, 35-40; EX1002, 85-94, 103-105; Pet., 5-8, 21; EX1005, 2:31-40, 3:39-53, 4:27-67, Abstract. For example, Knighton expressly discloses “a three dimensional scanner 130 is provided within the housing 100 to *scan the object 114 during fabrication.*” EX1005, 2:31-40, *see also* Abstract, 2:53-3:53; Pet., 21. Knighton goes on to state that the scanner, “may use laser ranging to create the three dimensional model *of the work in process* 114.” EX1005, 3:37-40; Pet., 21. In *Microsoft*, such an error during

Examination was deemed to favor referral to the panel, even absent the strict stipulation offered by Petitioner in the present case and the wide range of complex technologies at issue in the parallel District Court proceeding here. IPR2025-00318, Paper 9 at 2-3. Petitioner requests nothing more than equal treatment to the petitioner in *Microsoft*.

VI. THE DIRECTOR'S DISCRETIONARY DENIAL DECISIONS IS CONTRARY TO THE TEXT OF 35 U.S.C. § 314(c)

As discussed in Petitioner's Opposition to Discretionary Denial Brief, 35 U.S.C. § 314(c) states: "The Director *shall* notify the petitioner and patent owner, in writing, of the Director's *determination under subsection (a)*." Paper 10, 40-42. , That is, § 314(c) requires that, at the institution stage, the Board must provide the "determination under subsection (a)." The only determination described in subsection (a) is whether "the information presented in the petition...shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314. The failure of the Director Discretionary Decision thus violates 35 U.S.C. § 314. *See* Paper 10, 40-42.

VII. THE DIRECTORS RETROACTIVE APPLICATION OF NEW DISCRETIONARY DENIAL RULES IS IMPROPER

The Director's rescission of binding rules without notice and application of that rule change to an already pending IPR Petition violates the APA and the United States Constitution's due-process protections. At the time the Petition was filed, the

June 21, 2022, USPTO Director memo was still in effect. This memo stated that the Board “will not discretionarily deny institution of an IPR ... in view of parallel district court litigation where a petitioner stipulates not to pursue in a parallel district court proceeding the same grounds as in the petition or any grounds that could have reasonably been raised in the petition”—a so-called *Sotera* stipulation. The Director stated that this rule—which was phrased in absolute terms (“will not”) and admitted of no exceptions—was “issued under the Director’s authority to issue binding agency guidance.” *Apple Inc. v. Vidal*, 63 F.4th 1, 9 (Fed. Cir. 2023). The APA requires all rules to be adopted through notice-and-comment procedures, save for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.” 5 U.S.C. § 553(b). Regardless of how the agency characterizes it, an agency pronouncement is a “binding,” substantive rule if it “effect[s] a change in existing law or policy or ... affect[s] individual rights and obligations.” *Coal. for Common Sense in Gov’t Procurement v. Sec’y of Veterans Affs.*, 464 F.3d 1306, 1317 (Fed. Cir. 2006). As such, the Rescission of an absolute rule that the Director deemed as “binding” requires notice-and-comment rulemaking. *Gen. Elec. Co. v. EPA*, 290 F.3d at 383 (D.C. Cir. 2002) (“[A]n agency pronouncement will be considered binding as a practical matter if it either appears on its face to be binding, or is applied by the agency in a way that indicates it is binding.”).

Furthermore, whether the Rescission is properly characterized as a binding, substantive rule (that the USPTO was prohibited from adopting absent notice-and-comment rulemaking) or mere guidance, the Rescission should not be applied retroactively to petitioners that already filed IPR petitions in reliance on established rules. Such retroactive application is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” and therefore must be “h[e]ld unlawful and set aside.” 5 U.S.C. § 706(2)(A). Unlike policy statements, only substantive rules may ever be applied retroactively, and even they “will not be construed to have retroactive effect unless their language requires this result.” *Id.* at 208 (“Retroactivity is not favored in the law.”); see also *Kirwa v. U.S. Dep’t of Def.* (*Kirwa I*), 285 F. Supp. 3d 21, 41 (D.D.C. 2017).

Such retroactive application also violates the due process guarantees of the Constitution. In the June 2022 Memo, the Director restricted her own discretion. That restriction vested Petitioner with a legitimate entitlement to have its filed IPR petitions considered on the merits upon presenting a *Sotera* stipulation, without the potential for discretionary denial based on parallel litigation. As such, discretionary denial of the present petition based on retractive application of the Recission has deprived Petitioner of the due process guaranteed under the Constitution. *Kirwa I*, 285 F. Supp. 3d at 41 (quoting *De Niz Robles v. Lynch*, 803 F.3d 1165, 1171–72 (10th Cir. 2015) (Gorsuch, J.)).

Additionally, under the change-in-position doctrine, agencies may not change their existing policies unless “they provide a reasoned explanation for the change, display awareness that they are changing position, and consider serious reliance interests.” *FDA v. Wages & White Lion Invs., L.L.C.*, 145 S. Ct. 898, 917 (2025) (cleaned up). Even if the June 2022 Memo were considered to be non-binding, Memo provided (in unqualified terms) that “the PTAB will not discretionarily deny institution of an IPR ... in view of parallel district court litigation where a petitioner” presents a *Sotera* stipulation. Discretionary denial of the Petition here, where Petitioner has provided a *Sotera* stipulation (prior to the stricter stipulation discussed in § IV.D, *supra*), based on the parallel litigation would be a clear change in position. The Rescission cannot reasonably be applied to parties that prepared and filed petitions at considerable expense, presented *Sotera* stipulations, and altered their litigation strategies in accordance with those stipulations, all in reliance on the June 2022 Memo and before the Rescission. *See Am. Bar Ass’n v. U.S. Dep’t of Educ.*, 370 F. Supp. 3d 1, 33 (D.D.C. 2019) (granting summary judgment for plaintiffs claiming that application of changed standards to deny relief was arbitrary and capricious under 5 U.S.C. § 706(2)).

VIII. CONCLUSION

For the reasons discussed above, Petitioner respectfully requests a Director Review of the denial (Paper 11) and referral of the Petition to the panel.

Respectfully submitted,

Dated: July 11, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(1) and 42.6(e)(4)(iii), the undersigned certifies that on July 11, 2025, a complete and entire copy of this Petitioner's Request for Director Review of June 12, 2025 Decision Granting Patent Owner's Request for Discretionary Denial and Denying Institution, is provided via email to the Patent Owner via electronic mail on Patent Owner's lead and backup counsel listed below at the following email address:

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