

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAP AMERICA, INC.,
Petitioner

v.

VALTRUS INNOVATIONS LTD.,
Patent Owner

Case No. IPR2025-00414
Patent No. 7,152,182

PATENT OWNER PRELIMINARY RESPONSE

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Statutes

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PATENT OWNER’S UPDATED EXHIBIT LIST

No.	Exhibit Description
2001	Memorandum for Interim Processes for PTAB Workload Management, dated March 26, 2025
2002	Memorandum on 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
2003	Order Denying Motion to Stay in <i>Netlist, Inc. v. Samsung Elecs. Co., Ltd.</i> , No. 2:22-cv-293, Dkt. No. 689 (E.D. Tex. Mar. 11, 2024) (Gilstrap, J.)
2004	Executed Summons in <i>Valtrus Innovations Ltd. v. SAP America, Inc. et al.</i> , No. 2:24-cv-00021-JRG, Dkt. No. 10 (E.D. Tex.), served January 17, 2024
2005	Statistics from DocketNavigator for patent cases before Judge Gilstrap of the Eastern District of Texas, for cases filed between January 1, 2020 to March 31, 2025
2006	Federal Court Management Statistics—Profiles, Comparison of Districts Within Circuits, for 12-Month Period Ending December 31, 2024, available at https://www.uscourts.gov/data-table-report-names/federal-court-management-statistics
2007	Notice of Compliance with Service of Patent Owner’s Infringement Contentions in <i>Valtrus Innovations Ltd. v. SAP America, Inc. et al.</i> , No. 2:24-cv-00021-JRG, Dkt. No. 10 (E.D. Tex.), confirming service of infringement contentions on March 11, 2024
2008	Memorandum and Order regarding motion to dismiss, in <i>Valtrus Innovations Ltd. v. SAP America, Inc.</i> , No. 2:24-cv-00021-JRG, Dkt. No. 10 (E.D. Tex. Nov. 8, 2024) (public version)
2009	Seventh Amended Docket Control Order in <i>Koninklijke KPN N.V. v. Telefonaktiebolaget LM Ericsson</i> , No. 2:21-cv-00113-JRG, Dkt. No. 203 (E.D. Tex.)
2010	Order denying stay in <i>Cardware Inc. v. Samsung Elecs. Co.</i> , No. 2:22-cv-00141-JRG, Dkt. No. 64 (E.D. Tex. Feb. 16, 2023)
2011	Patent Owner’s Infringement Contentions, Cover Pleading, served March 11, 2024, in <i>Valtrus Innovations Ltd. v. SAP America, Inc.</i> , No. 2:24-cv-00021-JRG (E.D. Tex.)
2012	Petitioner’s email concerning prior art narrowing, dated April 30, 2025

No.	Exhibit Description
2013	Order consolidating <i>Valtrus Innovations Ltd. v. SAP America, Inc.</i> , No. 2:24-cv-00533-JRG (E.D. Tex.) and <i>Valtrus Innovations Ltd. v. SAP America, Inc.</i> , No. 2:24-cv-00021-JRG (E.D. Tex), dated Feb. 24, 2025
2014	Patent Owner’s email concerning claim narrowing, dated April 10, 2025
2015	Third Amended Docket Control Order in <i>Valtrus Innovations Ltd. v. SAP America, Inc.</i> , No. 2:24-cv-00021-JRG, Dkt. No. 141 (E.D. Tex. Apr. 20, 2025)
2016	Opening Brief in Support of Motion to Dismiss for Lack of Subject-Matter Jurisdiction, Under the First-to-File Rule, Lack of Personal Jurisdiction, and for Failure to State a Claim in <i>SAP Am. Inc. v. Valtrus Innovations, Ltd.</i> , No. 24-cv-756-GBW, Dkt. 14 (D. Del.)
2017	Reply in Support of Motion to Dismiss for Lack of Subject-Matter Jurisdiction, Under the First-to-File Rule, Lack of Personal Jurisdiction, and for Failure to State a Claim in <i>SAP Am. Inc. v. Valtrus Innovations, Ltd.</i> , No. 24-cv-756-GBW, Dkt. 32 (D. Del.)
2018	U.S. Patent No. 5,889,935 to <i>Ofek</i>
2019	Excerpts from Petitioner’s Invalidity Contentions, served May 20, 2024, in <i>Valtrus Innovations Ltd. v. SAP America, Inc. et al.</i> , No. 2:24-cv-00021-JRG (E.D. Tex.)
2020	Exhibit C-5 to Petitioner’s Invalidity Contentions, served May 20, 2024, in <i>Valtrus Innovations Ltd. v. SAP America, Inc.</i> , No. 2:24-cv-00021-JRG (E.D. Tex.)
2021	U.S. Patent No. 6,173,377 to <i>Yanai et al.</i>
2022	[Proposed] Fourth Amended Docket Control Order in <i>Valtrus Innovations Ltd. v. SAP America, Inc.</i> , No. 2:24-cv-00021-JRG, Dkt. No. 147-1 (E.D. Tex. filed Apr. 30, 2025)
2023	Assignment Abstract for U.S. Patent No. 7,152,182
2024	Assignment of Patent Application for U.S. Patent No. 7,152,182 (REEL: 035415 FRAME: 0888)
2025	Assignment Abstract for U.S. Patent App. Pub. No. 2003/0187847 (<i>Lubbers</i>)
2026	Assignment record for U.S. Patent App. Pub. No. 2003/0187847 (REEL: 013026 FRAME: 0262)
2027	Assignment record for U.S. Patent App. Pub. No. 2003/0187847 (REEL: 014628 FRAME: 0103)
2028	Assignment Abstract for U.S. Patent No. 6,601,187 (<i>Sicola</i>)

No.	Exhibit Description
2029	Assignment record for U.S. Patent No. 6,601,187 (REEL: 010720 FRAME: 0830)
2030	Assignment record for U.S. Patent No. 6,601,187 (REEL: 012370 FRAME: 0395)
2031	Assignment record for U.S. Patent No. 6,601,187 (REEL: 015000 FRAME: 0305)
2032	Assignment record for U.S. Patent No. 6,601,187 (REEL: 037079 FRAME: 0001)
2033	John Wilkes Webpage, <i>available at</i> https://john.e-wilkes.com/
2034	LinkedIn Profile for John Wilkes
2035	LinkedIn Profile for Minwen Ji
2036	LinkedIn Profile for Alistair Veitch
2037	Excerpts from Opening Expert Report of Feamster in <i>Valtrus Innovations Ltd. v. SAP America, Inc.</i> , No. 2:24-cv-00021-JRG (E.D. Tex.)

I. INTRODUCTION

On January 14, 2025, Petitioner SAP America, Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1-18 (the “Challenged Claims”) of U.S. Patent No. 7,152,182 (“the ’182 Patent”; EX1001), asserting two Grounds. In Ground 1, Petitioner asserts that claims 1-8 are rendered obvious under 35 U.S.C. §103(a) by the combination of *Lubbers* and *Sicola*. Petition (Paper 1), 20. In Ground 2, Petitioner asserts that claims 9-18 are rendered obvious under 35 U.S.C. §103(a) by the combination of *Lubbers*, *Sicola*, and *Ofek*. *Id.* On February 19, 2025, the Board issued a Notice of Filing Date Accorded for the Petition and set the time for filing Patent Owner’s Preliminary Response. Paper 5.

The Board should deny institution because Petitioner fails to meet its burden of demonstrating a reasonable likelihood of success that its prior art references render obvious any of the Challenged Claims. To do so, the Board need not look any further than the fact that neither *Lubbers* nor *Sicola* qualifies as prior art to the ’182 Patent under the pre-AIA 35 U.S.C. §103(c) common-owner exclusion. In particular, both *Lubbers* and *Sicola* would only be eligible under pre-AIA 35 U.S.C. §102(e) but they were assigned, and under an obligation to be assigned, to the same company as the ’182 Patent (Hewlett-Packard Development Company, L.P.) at the time of the claimed invention in the ’182 Patent. Thus, they are *not* prior art to the ’182 Patent for Petitioner’s Grounds. *See* Pre-AIA 35 U.S.C. §103(c).

Because the references are not prior art, Petitioner has not—and cannot—meet its burden to show a reasonable likelihood of success for any Challenged Claim. *See, e.g., Unified Patents Inc. v. Dynamic Data Techs, LLC*, IPR2019-01085, Paper 12, 9 (PTAB Dec. 3, 2019) (“Petitioner bears the burden, at the institution stage, of demonstrating a reasonable likelihood that a claim is unpatentable, and thus a reasonable likelihood that it will be able to establish at trial by a preponderance of the evidence that [the asserted prior art reference] is not disqualified under 35 U.S.C. §103(c).”). And since Petitioner has failed to meet its burden to show that either *Lubbers* or *Sicola* are prior art to the ’182 Patent, “Petitioner’s arguments and analysis of [*Lubbers* and *Sicola*] are moot[.]” *U.D. Elec. Corp. v. Pulse Elecs., Inc.*, IPR2019-00515, Paper 7, 14 (PTAB Aug. 6, 2019).

But even if both *Lubbers* and *Sicola* qualify as prior art (they do not), the Petition’s Grounds would still fail as the references do not disclose numerous claim limitations, including, among others, “a second redundancy appliance for shadowing the first redundancy appliance wherein the second redundancy appliance assumes the role of the first redundancy appliance” and “a fourth redundancy appliance for shadowing the third redundancy appliance wherein the fourth redundancy appliance

assumes the role of the third redundancy appliance in the event of a fault at the third redundancy appliance.”¹

Accordingly, Petitioner has failed to show a reasonable likelihood of success for any claim and Patent Owner respectfully submits that the Board should deny institution.

II. OVERVIEW BACKGROUND ON THE HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P.’S INVENTIVE ACTIVITY

The ’182 Patent, along with the two main references in Petitioner’s Grounds (*Lubbers* and *Sicola*), arose from research and development activity at Hewlett-Packard Development Company, L.P., and its predecessor and/or related entities. Relevant to the status of *Lubbers* and *Sicola* as potential prior art to the ’182 Patent, as shown in the following table, all three references were assigned to (and/or under

¹ For the exemplary reasons explained herein, the Board need not reach these issues to deny institution on the merits. Nor does the Director need to reach these issues to exercise her discretion to deny institution. *See* Paper 8. Accordingly, while Patent Owner focuses this Patent Owner Preliminary Response on the dispositive Section 103(c) common-owner exclusion issue, to the extent the Board institutes an *inter partes* review proceeding, Patent Owner will explain these (and other) problems during any trial phase.

an assignment obligation to) Hewlett-Packard Development Company, L.P. as of June 6, 2003; and *Lubbers* and *Sicola* both published after the '182 Patent was filed:

Reference	Filed	First Published	Assignee
The '182 Patent (EX1001)	June 6, 2003	Dec. 23, 2004	Hewlett-Packard Development Company, L.P.
<i>Lubbers</i> (EX1005)	Mar. 6, 2003	Oct. 2, 2003	Hewlett-Packard Development Company, L.P.
<i>Sicola</i> (EX1006)	Mar. 31, 2000	July 29, 2003	Hewlett-Packard Development Company, L.P.

A. The Challenged '182 Patent Originated from Hewlett-Packard Development Company, L.P.

The '182 Patent, titled “Data Redundancy System and Method,” was filed on June 6, 2003 as U.S. Patent App. Ser. No. 10/456,053 (“the '053 Application”). EX1001, Cover Page. It issued into a U.S. patent on December 19, 2006. EX1001, Cover Page. The '182 Patent lists three inventors—Minwen Ji, Alistair Veitch, and John Wilkes. EX1001, Cover Page. It also lists as the Assignee, Hewlett-Packard Development Company, L.P. EX1001, Cover Page.

As explained in more detail in Section III.B, as of June 6, 2003 (*i.e.*, the filing date of the application that led to the '182 Patent), all three inventors were under

“obligations to the Hewlett-Packard Company, and its subsidiaries and affiliates,” and, in “furtherance” of those obligations, “have agreed and hereby agree to assign to HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P.” their “entire right, title, and interest, including the right of priority, in, to and under” the application that led to the ’182 Patent:

When recorded please return to: HEWLETT-PACKARD COMPANY Intellectual Property Administrator P. O. Box 272400 Fort Collins, Colorado 80527-2400	PATENT APPLICATION ATTORNEY DOCKET NO. <u>200309044-1</u>
ASSIGNMENT OF PATENT APPLICATION I/We, the undersigned (each) have agreed and hereby agree to assign to HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P., a Texas Limited Partnership having its principal place of business in Houston, Texas, (hereinafter HPDC), in furtherance of my/our obligations to the Hewlett-Packard Company and its subsidiaries and affiliates, and do hereby assign and transfer to HPDC, its successors and assigns, the entire right, title and interest, including the right of priority, in, to and under an application for Letters Patent of the United States entitled: <u>FAULT-TOLERANT DATA REDUNDANCY TECHNIQUE</u>	
Filing date: <u>6/6/03</u>	Application No.: <u>10/456053</u>

EX2024, 2.

B. Petitioner’s *Lubbers* and *Sicola* References Originated from a Hewlett-Packard Development Company, L.P. Predecessor

1. The *Lubbers* Reference

U.S. Patent App. Pub. No. 2003/0187847 (“*Lubbers*”), titled “System and Method for Ensuring Merge Completion in a Storage Area Network,” was filed on March 26, 2002 as U.S. Patent App. Ser. No. 10/106,909 (“the ’909 Application”). EX1005, Cover Page. *Lubbers* first published on October 2, 2003. EX1005, Cover Page.

Lubbers lists seven inventors—Clark Lubbers, Susan Elkington, Randy Hess, Stephen Sicola, James McCarty, Anuja Korgaonkar, and Jason Leveille. EX1005, Cover Page.

As explained in more detail in Section III.B and summarized in the following table, as of June 6, 2003 (*i.e.*, the filing date of the application that led to the '182 Patent), *Lubbers* was assigned to Hewlett-Packard Development Company, L.P. EX2027, 1 (Cover Page), 8 (fourth row, listing *Lubber* by ser. no. 10/106,909), 12 (name change); EX2026, 1-6; EX2025.

Execution Date(s)	Assignment Description	Document
Mar. – June 2002	Assignment from inventors to Compaq Information Technologies Group, L.P. (recorded June 20, 2002)	EX2026, 1-6; EX2025, 1
Oct. 1, 2002	Name Change from Compaq Information Technologies Group, L.P. to Hewlett-Packard Development Company, L.P., including Certificate of Amendment to the Certificate of Limited Partnership showing same (recorded May 12, 2004)	EX2027, 1, 8, 12; EX2025, 1

2. The *Sicola* Reference

U.S. Patent No. 6,601,187 (“*Sicola*”), titled “System for Data Replication Using Redundant Pairs of Storage Controllers, Fibre Channel Fabrics and Links

Therebetween,” was filed on March 31, 2000 as U.S. Patent App. Ser. No. 09/539,745 (“the ’745 Application”). EX1006, Cover Page. *Sicola* first published when it issued on July 29, 2003. EX1006, Cover page. It also lists as the Assignee, Hewlett-Packard Development Company, L.P. EX1006, Cover Page.

Sicola lists five inventors—Stephen Sicola, Susan Elkington, Michael Walker, Paul Guttormson, and Richard Larry. EX1006, Cover Page.

As explained in more detail in Section III.B and summarized in the following table, as of June 6, 2003 (*i.e.*, the filing date of the application that led to the ’182 Patent), *Sicola* was assigned to Hewlett-Packard Development Company, L.P. EX2031, 1 (Cover Page), 77 (eleventh row, listing *Sicola*, U.S. Patent No. 6,601,187), 79 (name change); EX2028, 1-2.

Execution Date(s)	Assignment Description	Document
Mar. 2000	Assignment from inventors to Compaq Computer Corporation (recorded Mar. 31, 2000)	EX2029, 1-5; EX2028, 2
June 20, 2001	Assignment from Compaq Computer Corp. to Compaq Information Technologies Group, L.P. (recorded Dec. 18, 2001 and effective May 31, 2001)	EX2030, 1-7; EX2028, 1-2

Execution Date(s)	Assignment Description	Document
Oct. 1, 2002	Name Change from Compaq Information Technologies Group, L.P. to Hewlett-Packard Development Company, L.P., including Certificate of Amendment to the Certificate of Limited Partnership showing same (recorded Jan. 21, 2004)	EX2031, 1, 77, 79; EX2028, 1

III. ARGUMENT: THE PETITION FAILS TO SHOW A REASONABLE LIKELIHOOD OF SUCCESS FOR ANY CLAIM BECAUSE BOTH GROUNDS RELY ON REFERENCES THAT ARE NOT PRIOR ART TO THE '182 PATENT UNDER THE PRE-AIA SECTION 103(C) COMMON-OWNERSHIP EXCLUSION

The Petition fails because both of Petitioner's Grounds rely on references that are *not prior art to the '182 Patent* due to the common-ownership exclusion under pre-AIA 35 U.S.C. §103(c). In particular, Petitioner's Ground 1 asserts that claims 1-8 of the '182 Patent are obvious under pre-AIA 35 U.S.C. §103(a) over a combination of U.S. Patent App. Pub. No. 2003/0187847 ("*Lubbers*"; EX1005) and U.S. Patent No. 6,601,187 ("*Sicola*"; EX1006); and Ground 2 asserts that claims 9-18 of the '182 Patent are obvious under pre-AIA 35 U.S.C. §103(a) over a combination of *Lubbers*, *Sicola*, and U.S. Patent No. 5,901,327 ("*Ofek*"; EX1007). Petition (Paper 1), 20.

Petitioner's two Grounds are summarized in the following table from the Petition, both of which use *Lubbers* and *Sicola*:

Ground	Claims	Basis for Unpatentability
1	1-8	Obviousness under 35 U.S.C. § 103 by U.S. Patent Publication No. 2003/0187847 (“ <u>Lubbers</u> ”) and U.S. Patent No. 6,601,187 (“ <u>Sicola</u> ”)
2	9-18	Obviousness under 35 U.S.C. § 103 by <u>Lubbers</u> , <u>Sicola</u> , and U.S. Pat. No. 5,901,327 (“ <u>Ofek</u> ”)

Petition (Paper 1), 20 (**blue highlighting added**).

Critically, neither *Lubbers* nor *Sicola* is available as prior art to the ’182 Patent for Petitioner’s Grounds because (i) both *Lubbers* and *Sicola* would only be eligible under pre-AIA §102(e) but (ii) they were assigned, and under an obligation to be assigned, to the same company as the ’182 Patent (Hewlett-Packard Development Company, L.P.) at the time of the claimed invention in the ’182 Patent. *See* Pre-AIA 35 U.S.C. §103(c). This disqualifies them from being pre-AIA §102(e) prior art for Petitioner’s Grounds under the pre-AIA §103(c) common-ownership exclusion.

And where, as here, this issue applies to all grounds, the Board has repeatedly denied institution. *See, e.g., Unified Patents Inc. v. Dynamic Data Techs, LLC*, IPR2019-01085, Paper 12, 9-11 (PTAB Dec. 3, 2019) (denying institution based on “the common ownership exclusion under §103(c)”) (“*Unified Patents*”); *see also U.D. Elec. Corp. v. Pulse Elecs., Inc.*, IPR2019-00515, Paper 7, 14-15 (PTAB Aug. 6, 2019) (“We agree with Patent Owner’s analysis and determine that [the reference] is prior art only under pre-AIA 35 U.S.C. §102(e), was subject to common

ownership as the [challenged] Patent at the time of invention, and cannot be used to preclude patentability under pre-AIA 35 U.S.C. §103 because of section (c) of that statute” where Patent Owner demonstrated that “ownership of the [challenged] Patent and [the reference], based on USPTO assignment records, was common to Pulse Engineering, Inc., at the time of invention.”) (“*U.D. Elec.*”); *Samsung Elecs. Am., Inc. v. Collision Commc’ns*, IPR2024-01500, Paper 14, 18-21 (PTAB Apr. 28, 2025) (“[W]e do not find that Petitioner has a reasonable likelihood of prevailing on its position that [a relied-upon reference] is prior art to the [challenged] patent for purposes of obviousness” because of the Section 103(c) common-ownership exclusion) (“*Collision Commc’ns*”); *Limelight Networks, Inc. v. Akamai Techs., Inc.*, IPR2017-00349, Paper 7, 26-28 (PTAB May 30, 2017) (denying grounds at institution pre-SAS because reference was not sufficiently shown to be available under §103(c)) (“*Limelight*”); *Baker Hughes Oilfield Operations, Inc. v. Smith Int’l, Inc.*, IPR2016-01452, Paper 13, 19 (PTAB Feb. 6, 2017) (same) (“*Baker Hughes*”); *Johnson Safety, Inc. v. Voxx Int’l Corp.*, IPR2016-01074, 8-9 (PTAB Nov. 23, 2016) (same) (“*Johnson Safety*”); *ARRIS Int’l PLC v. Sony Corp.*, IPR2016-00828, Paper 10, 29-30 (PTAB Oct. 7, 2016) (same) (“*ARRIS*”).

Patent Owner explains the fundamental problems below, which demonstrate that Petitioner has not established—and cannot establish—a reasonable likelihood

of success for any claim.² *See, e.g., Unified Patents*, IPR2019-01085, Paper 12, 9 (“Petitioner bears the burden, at the institution stage, of demonstrating a reasonable likelihood that a claim is unpatentable, and thus a reasonable likelihood that it will be able to establish at trial by a preponderance of the evidence that [the reference] is not disqualified under 35 U.S.C. §103(c).”); *see also Global Tel*Link Corp. v. Securus Techs., Inc.*, IPR2014-00824, Paper 36, 10-11, 23 (PTAB Dec. 2, 2015) (“Petitioner ... has not met its burden to demonstrate that [the reference] is not disqualified under §103(c)”) (“*Global Tel*Link*”); *Marvell Semiconductor, Inc. v. Intellectual Ventures I LLC*, IPR2014-00552, Paper 79, 7 (PTAB Nov. 30, 2015) (“Because Webster is the principal reference in all challenges, if Webster is disqualified as prior art under §103(c), those challenges all fail.”).³

² Although neither reference qualifies, Petitioner cannot meet its burden if either *Lubbers* or *Sicola* is not prior art.

³ Given this issue is apparent on the faces and review of the references and the ’182 Patent, it was entirely foreseeable that Patent Owner would explain that the references are not prior art and, thus, no reply (if Petitioner requests leave) is warranted here.

A. Pre-AIA 35 U.S.C. Section 103(c) Law Applies

It is uncontestable that pre-AIA law applies, because the '182 Patent was filed on June 6, 2003 (*i.e.*, before March 16, 2013). *See* America Invents Act (“AIA”), Pub. L. No. 112-29, §3(n), 125 Stat. 284, 293; 37 C.F.R. §1.104(c)(5). Further, pre-AIA Section 103(c) applies to the '182 Patent because it was filed after November 29, 1999, and was pending on December 10, 2004 (the '182 Patent issued on December 19, 2006). 37 C.F.R. §1.104(c)(5); U.S. Pat. & Trademark Office, Manual of Patent Examining Procedure (“MPEP”) §706.02(l)(1)(I) (9th ed. 2014); *see also Riverwood Int’l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1356 n.2 (Fed. Cir. 2003) (noting that Section 103(c) applies to patents—like the '182 Patent—filed on or after November 29, 1999).

Pre-AIA Section 103(c) provides that: “[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.” 35 U.S.C. §103(c)(1).

B. Section 103(c) Disqualifies *Lubbers* and *Sicola* as Prior Art to the '182 Patent

Both *Lubber* and *Sicola* meet the Section 103(c) common-ownership exclusion criteria and thus are not available as prior art to the '182 Patent for Petitioner's Grounds.

First, both *Lubbers* and *Sicola* are "subject matter developed by another person," at least because they share no common inventors with the '182 Patent. EX1001, Cover Page (inventors Ji, Veitch, and Wilkes); EX1005, Cover Page (inventors Lubbers, Elkington, Hess, Sicola, McCarty, Korgaonkar, and Leveille); EX1006, Cover Page (inventors Sicola, Elkington, Walker, Guttormson, and Lary). This is further illustrated in the following table, showing that *Lubbers* and *Sicola* share no common inventors with the '182 Patent:

Reference	Inventors
'182 Patent (EX1001, Cover Page)	(75) Inventors: Minwen Ji , Sunnyvale, CA (US); Alistair Veitch , Mountain View, CA (US); John Wilkes , Palo Alto, CA (US)
<i>Lubbers</i> (EX1005, Cover Page)	(76) Inventors: Clark Lubbers , Colorado Springs, CO (US); Susan Elkington , Colorado Springs, CO (US); Randy Hess , Colorado Springs, CO (US); Stephen J. Sicola , Palmer Lake, CO (US); James McCarty , Colorado Springs, CO (US); Anuja Korgaonkar , Colorado Springs, CO (US); Jason Leveille , Colorado Springs, CO (US)

Reference	Inventors
<i>Sicola</i> (EX1006, Cover Page)	(75) Inventors: Stephen J. Sicola , Monument, CO (US); Susan G. Elkington , Colorado Springs, CO (US); Michael D. Walker , Colorado Springs, CO (US); Paul Guttormson , Colorado Springs, CO (US); Richard F. Lary , Colorado Springs, CO (US)

Second, both *Lubbers* and *Sicola* potentially qualify as prior art *only* under pre-AIA 35 U.S.C. §102(e), because both first published after the '182 Patent was filed on June 6, 2003. *See* Petition (Paper 1), 24, 27. *Lubbers* was filed March 26, 2002, and first published on October 2, 2003. EX1005, Cover Page. *Sicola* was filed March 31, 2000, and did not publish until it was issued on July 29, 2003. EX1006, Cover Page.

<i>Lubbers</i> (EX1005, Cover Page) (blue highlighting added)	(19) United States (12) Patent Application Publication Lubbers et al. (10) Pub. No.: US 2003/0187847 A1 (43) Pub. Date: Oct. 2, 2003
<i>Sicola</i> (EX1006, Cover Page) (blue highlighting added)	(12) United States Patent Sicola et al. (10) Patent No.: US 6,601,187 B1 (45) Date of Patent: Jul. 29, 2003

In other words, the references themselves confirm that they do not qualify under any other prior-art based Section 102 provision—including pre-AIA Section 102(a) or (b)—beyond Section 102(e). Petitioner concedes as much. *See* Petition (Paper 1), 24, 27 (alleging only that the references are prior art under pre-AIA §102(e)).

Third, “at the time the [’182 Patent] invention was made” is its effective filing date, June 6, 2003. *See* Petition (Paper 1), 20 (“the earliest possible effective filing date for the ’182 Patent is June 6, 2003”). The Board has consistently held that the phrase “at the time the invention was made” for purposes of pre-AIA §103(c) refers to “the effective filing date of the patent application” absent a finding of an earlier invention date (which there is not here). *See Corning Inc. v. DSM IP Assets B.V.*, IPR2013-00053, Paper 66, 20 (PTAB May 1, 2014) (finding “that the claimed invention was made on December 30, 1999, the effective filing date of the [challenged] patent” for a pre-AIA 103(c) analysis and rejecting Petitioner’s contention that the “inventors could have made the invention” before that date as “mere speculation with no credible factual support”); *Limelight*, IPR2017-00349, Paper 7, 27 (applying “the earliest possible [effective] filing date” for §103(c)); *Baker Hughes*, IPR2016-01452, Paper 13, 17-18 (“the time of filing of the claimed subject matter in the original parent application that ultimately, through divisional and continuation applications, became the [challenged] patent”); *Johnson Safety*, IPR2016-01074, 8-9 (treating “‘the time the invention was made’ as applied to the claims of the [challenged] patent for purposes of” §103(c) as “its filing date”); *ARRIS*, IPR2016-00828, Paper 10, 30 (“the time the [challenged] patent was filed”); *Global Tel*Link*, IPR2014-00824, Paper 36, 13-15, 17-20 (“at the time of the invention” corresponds to filing date).

Here, both Petitioner and Patent Owner have consistently relied upon the June 6, 2003, filing date to assess the invalidity of the '182 Patent claims and the level of ordinary skill. *See* Petition (Paper 1), 20 (June 6, 2003 is “the earliest possible effective filing date for the '182 Patent”); EX1003 ¶¶33, 36, 42, 53-54 (Petitioner’s IPR expert using June 6, 2003 for obviousness analysis including to determine the level of a person of ordinary skill and whether references qualify as prior art); EX2037, 3 (¶¶30, 32), 4 (¶107), 8 (¶33)⁴ (Petitioner’s district court expert relying on June 6, 2003 for invalidity assertions including to assess the level of a person of ordinary skill “as of the time of the alleged invention” and for purposes of references qualifying as prior art); EX2011, 2 (Patent Owner stating that the '182 Patent is entitled to a priority date of June 6, 2003). In short, there is no evidence or showing (or even any assertion) that the '182 Patent claims are entitled to any date other than the June 6, 2003, filing date for purposes of a pre-AIA Section 103(c) analysis.

This is also consistent with the Federal Circuit’s treatment of the phrase “at the time of the invention” as being the “effective filing date.” *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc) (“the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective

⁴ Citations are to the exhibit page number in the lower right-hand corner.

filing date of the patent application”); *ICU Med., Inc. v. Alaris Med. Sys., Inc.*, 558 F.3d 1368, 1374 (Fed. Cir. 2009) (same and quoting *Phillips*, 415 F.3d at 1313); *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1562 (Fed. Cir. 1991) (“the prima facie date of invention can fairly be held to be the filing date of the application”) (quotation omitted); *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 449 (Fed. Cir. 1986) (equating the “filing date” with “the time of the present invention” in obviousness analysis and noting that “the date of invention [is] presumed to be the filing date of the application until an earlier date is proved”).

Fourth, the assignment records show that *Lubbers*, *Sicola*, and the ’182 Patent were all assigned, or under an obligation to be assigned, to the same entity—Hewlett-Packard Development Company, L.P.—as of June 6, 2003. *See also, e.g.*, MPEP §2146.02 (“The term ‘commonly owned’ is intended to mean that the subject matter which would otherwise [qualify as] pre-AIA 35 U.S.C. §102(e), (f) or (g) prior art to the claimed invention and the claimed invention are entirely or wholly owned by, or under an obligation to assign to, the same person(s) or organization(s)/business entity(ies)”)); *ARRIS*, IPR2016-00828, Paper 10, 30 n.5 (“‘Person’ as used in §103(c)(1) refers to ‘person(s) or organization(s)/business entity(ies)’”) (quoting MPEP §706.02(L)(2)).

Lubbers was owned by Hewlett-Packard Development Company, L.P. as of October 1, 2002. EX2027, 1 (Cover Page), 8 (fourth row, listing *Lubber* by ser. no.

10/106,909),⁵ 12 (name change); EX2026, 1. More particularly, the relevant assignment chain demonstrating this is reflected in the following table:

Execution Date(s)	Assignment Description	Document
Mar. – June 2002	Assignment from inventors to Compaq Information Technologies Group, L.P. (recorded June 20, 2002)	EX2026, 1-6
Oct. 1, 2002	Name Change from Compaq Information Technologies Group, L.P. to Hewlett-Packard Development Company, L.P., including Certificate of Amendment to the Certificate of Limited Partnership showing same (recorded May 12, 2004)	EX2027, 1, 8 (fourth row), 12

These transactions can also be seen from the Assignment abstract of title:

⁵ *Lubbers* was filed with app. ser. no. 10/106,909 and published as U.S. Patent App. Pub. No. 2003/0187847. EX1005, Cover Page.



UNITED STATES
PATENT AND TRADEMARK OFFICE

Assignment abstract of title for Application 10106909

Invention title/Inventor	Patent	Publication	Application	PCT	International registration
SYSTEM AND METHOD FOR ENSURING MERGE COMPLETION IN A STORAGE AREA NETWORK	7032131	20030187847	10106909		
Clark Lubbers, Susan Elkington, Randy Hess, Stephen J. Sicola, James McCarty, Anuja Korgaonkar, Jason Leveille	Apr 18, 2006	Oct 02, 2003	Mar 26, 2002		

Assignments (2 of 2 total)

Assignment 2

Reel/frame	Execution date	Date recorded	Properties	Pages
014628/0103	Oct 01, 2002	May 12, 2004	366	12

Conveyance
CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

Assignors
COMPAQ INFORMATION TECHNOLOGIES GROUP
LP

Correspondent
HEWLETT-PACKARD COMPANY
VALERIE BAKES
P.O. BOX 272400, RECORDS
MANAGER
INTELLECTUAL PROPERTY
ADMINISTRATION
FORT COLLINS, CO 80527-2400

Assignee
HEWLETT-PACKARD DEVELOPMENT COMPANY,
L.P.
20555 SH 249
HOUSTON, TEXAS 77070

Assignment 1

Reel/frame	Execution date	Date recorded	Properties	Pages
013026/0262	Mar 25, 2002	Jun 20, 2002	1	6

Conveyance
ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignors
LUBBERS, CLARK
ELKINGTON, SUSAN
HESS, RANDY
SICOLA, STEPHEN J.
MCCARTY, JAMES
KORGAONKAR, ANUJA
LEVEILLE, JASON

Correspondent
HOGAN & HARTSON LLP
WILLIAM J. KUBIDA
ONE TABOR CENTER
1200 17TH STREET, SUITE 1500
DENVER, CO 80202

Assignee
COMPAQ INFORMATION TECHNOLOGIES GROUP,
L.P.
MS110701
P.O. BOX 692000
HOUSTON, TEXAS 77269

EX2025, 1 (blue highlighting added); see also EX1005, [0008] (identifying assignee as Compaq); Petition (Paper 1), 27 (asserting same in context of *Lubbers* incorporating *Sicola* by reference).

Notably, as of October 1, 2002, the originally assignee, Compaq Information Technologies Group, L.P., had changed its name to Hewlett-Packard Development Company, L.P.:

OCT-09-2002 15:43
OCT 02 '02 12:30 FR HP LEGAL 650 852 8452 TO 915124727747 FILED
In the Office of the
Secretary of State of Texas
OCT 08 2002
Corporations Section

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF LIMITED PARTNERSHIP

Pursuant to the provisions of Section 2.02 of the Texas Revised Limited Partnership Act, the undersigned limited partnership desires to amend its certificate of limited partnership and for that purpose submits the following certificate of amendment.

1. The name of the limited partnership is Compaq Information Technologies Group L.P. (Name shown on records of Secretary of State. If the amendment changes the name of the partnership, state the old names and not the new name.)
2. The certificate of limited partnership is amended as follows: Hewlett-Packard Development Company, L.P.

Dated: October 1, 2002

Compaq Information Technologies
Group L.P.

By: Charles N. Charnas
CPQ Holdings, Inc., General Partner
Charles N. Charnas

EX2027, 12 (blue highlighting added).

And further evidencing that *Lubbers* continued to be assigned to Hewlett-Packard Development Company, L.P. as of June 6, 2003, the name change (effective October 1, 2002) was filed with the Patent Office on May 12, 2004. EX2027, 1. No subsequent assignments have been recorded. EX2027, 1-12; EX2025, 1.

Similarly, *Sicola* was owned by Hewlett-Packard Development Company, L.P. as of October 1, 2002. EX2031, 1 (Cover Page), 77 (eleventh row, listing *Sicola*, U.S. Patent No. 6,601,187), 79 (name change); EX2028, 1-2. More particularly, the relevant assignment chain demonstrating this is reflected in the following table:

Execution Date(s)	Assignment Description	Document
Mar. 2000	Assignment from inventors to Compaq Computer Corporation (recorded Mar. 31, 2000)	EX2029, 1-5
June 20, 2001	Assignment from Compaq Computer Corp. to Compaq Information Technologies Group, L.P. (recorded Dec. 18, 2001 and effective May 31, 2001)	EX2030, 1-7
Oct. 1, 2002	Name Change from Compaq Information Technologies Group, L.P. to Hewlett-Packard Development Company, L.P., including Certificate of Amendment to the Certificate of Limited Partnership showing same (recorded Jan. 21, 2004)	EX2031, 1, 77 (eleventh row), 79

These transactions can also be seen from the Assignment abstract of title:

Assignment 3 Reel/frame 015000/0305		Execution date Oct 01, 2002	Date recorded Jan 21, 2004	Properties 2610	Pages 79
Conveyance CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).					
Assignors COMPAQ INFORMATION TECHNOLOGIES GROUP, LP			Correspondent HEWLETT-PACKARD COMPANY RECORDS MANAGER INTELLECTUAL PROPERTY ADMINISTRATION P.O. BOX 272400 FORT COLLINS, CO 80527-2400		
Assignee HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P. 20555 SH 249 HOUSTON, TEXAS 77070					
Assignment 2 Reel/frame 012370/0395		Execution date Jun 20, 2001	Date recorded Dec 18, 2001	Properties 1	Pages 7
Conveyance ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).					
Assignors COMPAQ COMPUTER CORPORATION			Correspondent CONLEY, ROSE & TAYON, P.C. JONATHAN M. HARRIS P.O. BOX 3267 HOUSTON, TEXAS 77253-3267		
Assignee COMPAQ INFORMATION TECHNOLOGIES GROUP, L.P. 20555 STATE HIGHWAY 249 HOUSTON, TEXAS 77070					
Assignment 1 Reel/frame 010720/0830		Execution date Mar 29, 2000	Date recorded Mar 31, 2000	Properties 1	Pages 5
Conveyance ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).					
Assignors SICOLA, STEPHEN J. ELKINGTON, SUSAN G. WALKER, MICHAEL D. GUTTORMSON, PAUL LARY, RICHARD F.			Correspondent HOGAN & HARTSON LLP WILLIAM J. KUBIDA 1200 17TH STREET, SUITE 1500 ONE TABOR CENTER DENVER, CO 80202		
Assignee COMPAQ COMPUTER CORPORATION M/S 110701 20555 SH 249 HOUSTON, TEXAS 77070					

EX2028, 1-2 (**blue highlighting added**); *see also* EX1005, [0008] (identifying assignee as Compaq for the '745 Application, *i.e.*, *Sicola*); Petition (Paper 1), 27 (asserting same in context of *Lubbers* incorporating *Sicola* by reference).

Just as with *Lubbers*, as of October 1, 2002, the prior assignee for *Sicola*, Compaq Information Technologies Group, L.P., had changed its name to Hewlett-Packard Development Company, L.P.:

In the Office of the Secretary of State of Texas	
OCT 08 2002	
Corporations Section	
CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF LIMITED PARTNERSHIP	
Pursuant to the provisions of Section 2.02 of the Texas Revised Limited Partnership Act, the undersigned limited partnership desires to amend its certificate of limited partnership and for that purpose submits the following certificate of amendment.	
1. The name of the limited partnership is Compaq Information Technologies Group L.P. (Name shown on records of Secretary of State. If the amendment changes the name of the partnership, state the old names and not the new name.) 2. The certificate of limited partnership is amended as follows: Hewlett-Packard Development Company, L.P.	
Dated: October 1, 2002	
Compaq Information Technologies Group L.P.	
By: <u>Charles N. Charnas</u> CPQ Holdings, Inc., General Partner Charles N. Charnas	
*Certificate of amendment should be signed by at least one general partner and each other general partner designated in the certificate as a new general partner.	

EX2031, 79 (blue highlighting added).

Further evidencing that *Sicola* continued to be assigned to Hewlett-Packard Development Company, L.P. as of June 6, 2003, the name change (effective October 1, 2002) was filed with the Patent Office on January 21, 2004, EX2031, 1, 77, 79; EX2028, 1; and remained assigned to Hewlett-Packard Development Company, L.P.

until October 2015, when it was assigned to another HP entity. EX2028, 1; EX2032, 1, 51 (listing *Sicola*), 333-34 (assignment), 670 (Schedule A including *Sicola*). This is additionally supported by the face of *Sicola*, which shows Hewlett-Packard Development Company, L.P. as the “Assignee” when *Sicola* first published on July 29, 2003:

(12) United States Patent Sicola et al.	(10) Patent No.: US 6,601,187 B1 (45) Date of Patent: Jul. 29, 2003
(54) SYSTEM FOR DATA REPLICATION USING REDUNDANT PAIRS OF STORAGE CONTROLLERS, FIBRE CHANNEL FABRICS AND LINKS THEREBETWEEN	5,790,775 A 8/1998 Marks et al. 395/182.07 6,178,521 B1 * 1/2001 Filgate 714/6 6,363,462 B1 * 3/2002 Bergsten 711/162 6,401,170 B1 * 6/2002 Griffith et al. 711/114 6,457,098 B1 * 9/2002 DeKoning et al. 711/114
(75) Inventors: Stephen J. Sicola , Monument, CO (US); Susan G. Elkington , Colorado Springs, CO (US); Michael D. Walker , Colorado Springs, CO (US); Paul Guttormson , Colorado Springs, CO (US); Richard F. Lary , Colorado Springs, CO (US)	OTHER PUBLICATIONS Sicola, Stephen J. et al., U.S. Patent Application, Fault Tolerant Storage Controller Utilizing Tightly Coupled Dual Controller Modules, Ser. No. 08/071,710, filed Jun. 4, 1993, pp. 1–90. * cited by examiner
(73) Assignee: Hewlett-Packard Development Company, L. P. , Houston, TX (US)	Primary Examiner —Robert Beausoliel Assistant Examiner —Christopher McCarthy

EX1006, Cover Page (**blue highlighting added**).

And confirming that neither *Lubbers* nor *Sicola* qualify as prior art under the pre-AIA Section 103(c) common-ownership exclusion, the '182 Patent was assigned, or at least under an obligation be assigned, to the same entity, Hewlett-Packard Development Company, L.P., as of June 6, 2003.

Initially, the assignment records from the '182 Patent inventors to Hewlett-Packard Development Company, L.P. reflect the following:

Execution Date(s)	Assignment Description	Document
June 6, 2003; June 10, 2003	Assignment from inventors to Hewlett-Packard Development Company, L.P.	EX2024, 1-3 (assignment); <i>see also</i> EX2023 (abstract)

While two inventors signed on June 6, 2003, and one inventor signed on June 10, 2003, *see* EX2024, 1-3, the record reflects that each inventor was under an obligation to assign to Hewlett-Packard Development Company, L.P., as of June 6, 2003. For example, the assignment itself demonstrates that the inventors were under an obligation to assign the invention as of June 6, 2003, namely, that the inventors were assigning their invention to Hewlett-Packard Development Company, L.P. “in furtherance of [their] obligations to the Hewlett-Packard Company and its subsidiaries and affiliates”:

When recorded please return to: HEWLETT-PACKARD COMPANY Intellectual Property Administrator P. O. Box 272400 Fort Collins, Colorado 80527-2400	PATENT APPLICATION ATTORNEY DOCKET NO. <u>200309044-1</u> ASSIGNMENT OF PATENT APPLICATION I/We, the undersigned (each) have agreed and hereby agree to assign to HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P., a Texas Limited Partnership having its principal place of business in Houston, Texas, (hereinafter HPDC), in furtherance of my/our obligations to the Hewlett-Packard Company and its subsidiaries and affiliates, and do hereby assign and transfer to HPDC, its successors and assigns, the entire right, title and interest, including the right of priority, in, to and under an application for Letters Patent of the United States entitled: <u>FAULT-TOLERANT DATA REDUNDANCY TECHNIQUE</u> Filing date: <u>6/6/03</u> Application No.: <u>10/456053</u> and the invention(s) and improvement(s) set forth therein, and any and all continuations, continuations-in-part (C-I-P's), divisionals, and renewals of and substitutes for said application for said Letters Patent, and any and all Letters Patent of the United States and of countries foreign thereto which may be granted thereon or therefor; and any reissues, or reexaminations, or extensions of said Letters Patent.
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EX2024, 2 (**blue highlighting added**). This is also consistent with the applicant's treatment during prosecution of Hewlett-Packard Development Company as the correspondence address and prosecuting attorneys for the application leading to the '182 Patent. *See, e.g.*, EX1002, 126-128 (Declaration and Power of Attorney identifying "Hewlett-Packard Development Company"), 194-195 (same); 130-131 (Transmittal), 3 (Issue Fee identifying assignee as "Hewlett-Packard Development Company, L.P."); *see also* EX1001, Cover Page (identifying assignee as Hewlett-Packard Development Company, L.P.). And it is likewise consistent with the fact that the inventors were Hewlett-Packard employees. *See, e.g.*, EX2033, 1-2 (inventor Wilkes' webpage identifying employment at HP during relevant time), 5 (item 33 listing '182 Patent as among his inventions); EX2034, 1-2 (LinkedIn profile for inventor Wilkes identifying employment at HP during relevant time); EX2035, 3 (LinkedIn profile for inventor Ji identifying employment at HP during relevant time); EX2036, 1 (LinkedIn profile for inventor Veitch identifying employment at HP during relevant time).

Logically, the original assignment—which shows an application filing date of June 6, 2003, was signed by two of the inventors on June 6, 2003, and specifies all three inventors' assignment obligations to the company—was provided to the inventors at least by June 6, 2003, and demonstrates that each inventor was under an

obligation to assign as of June 6, 2003 (and two inventors, Ji and Veitch, had actually assigned by that date).

Accordingly, Petitioner has not—and cannot—show a reasonable likelihood of success for any claim because it has not—and cannot—meet its burden to show that both *Lubbers* and *Sicola* qualify as prior art. *See, e.g., Unified Patents*, IPR2019-01085, Paper 12, 9 (denying institution because Petitioner did not meet its “burden, at the institution stage, of demonstrating a reasonable likelihood that a claim is unpatentable, and thus a reasonable likelihood that it will be able to establish at trial by a preponderance of the evidence that [the reference] is not disqualified under 35 U.S.C. §103(c).”); *see also Global Tel*Link*, IPR2014-00824, Paper 36, 10-12, 23 (Petitioner bears the burden of persuasion to show reference qualifies as prior art); *Collision Commc’ns*, IPR2024-01500, Paper 14, 18-21 (Petitioner did not present “a reasonable likelihood of prevailing on its position that [the reference] is prior art to the [challenged] patent for purposes of obviousness” because of the Section 103(c) common-ownership exclusion and thus Petitioner has not “demonstrated a reasonable likelihood of prevailing on any of its assertions that the claims of the [challenged] patent would have been obvious over [the reference] in combination with other references”); *U.D. Elec.*, IPR2019-00515, Paper 7, 14 (finding that “Petitioner’s arguments and analysis of [the reference] are moot” because the reference “is prior art only under pre-AIA 35 U.S.C. §102(e), was subject to common

ownership as the [challenged] Patent at the time of invention, and cannot be used be used to preclude patentability under pre-AIA 35 U.S.C. §103 because of section (c) of that statute.”); *Johnson Control*, IPR2016-01074, Paper 26, 8-9 (“Petitioner has not established a reasonable likelihood that Petitioner would prevail in its challenge to any claim based on any combination including [the reference]” because of Section 103(c) common-ownership exclusion); *Limelight*, IPR2017-00349, Paper 7, 26-28 (same); *Baker Hughes*, IPR2016-01452, Paper 13, 19 (same); *ARRIS*, IPR2016-00828, Paper 10, 29-30 (same).

IV. CONCLUSION

Petitioner has failed to show—and cannot show—that references in both Grounds qualify as prior art to the ’182 Patent because of the pre-AIA Section 103(c) common-ownership exclusion. Patent Owner thus respectfully submits that the Board should deny institution as Petitioner has failed to show a reasonable likelihood of success for any claim.

Dated: May 19, 2025

Respectfully submitted,

/Patrick Colsher/

Patrick Colsher (Reg. No. 74,955)
Counsel for Patent Owner

CERTIFICATE OF COMPLIANCE

I hereby certify that this paper complies with the type-volume limitation of 37 C.F.R. §42.24 (as determined by the Microsoft Word word-processing system used to prepare this paper) because it contains 4639 words, excluding the parts of the paper exempted by 37 C.F.R. §42.24(a).

Dated: May 19, 2025

Respectfully submitted,

/Patrick Colsher/

Patrick Colsher (Reg. No. 74,955)

Counsel for Patent Owner

CERTIFICATE OF SERVICE

I hereby certify that the foregoing PATENT OWNER PRELIMINARY RESPONSE and Exhibits listed on the List of Exhibits that were not previously served in connection Patent Owner's Discretionary Denial Brief, were served on May 19, 2025, via electronic mail upon counsel of record for Petitioner at the following email addresses:

Louis L. Campbell (LLcampbell@winston.com)
Scott M. Border (SBorder@winston.com)
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IPR-SAP-Val@winston.com

Dated: May 19, 2025

/Patrick Colsher/

Patrick Colsher (Reg. No. 74,955)
Counsel for Patent Owner