

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LINKPLAY TECHNOLOGY INC.

Petitioner

v.

SONOS, INC.

Patent Owner

IPR2025-00509

U.S. PATENT NO. 10,853,023

**PETITIONER'S OPPOSITION TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL**

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I. Introduction

Discretionary denial of the instant petition for Inter Partes Review (“IPR”) of U.S. Patent No. 10,853,023 (“’023 patent”) is wholly unwarranted. Petitioner has presented grounds of unpatentability that are strong on the merits. The Petition presents meritorious grounds based on anticipation and obviousness. As explained below and in the Petition, the claims of the ’023 patent are anticipated or rendered obvious by Barbe or Richenstein. All elements of the challenged claims are expressly disclosed in each of the two prior art references independently. Sonos’s arguments to the contrary are merely obfuscations of the prior art teachings.

In addition, during prosecution, the examiner materially erred by overlooking relevant prior art—specifically, the teachings of Barbe and Richenstein. As a result, the claims were allowed without recognition that the purportedly patentable subject matter was already disclosed in these references. It is therefore appropriate for the Office to use its resources to correct this error through inter partes review.

Furthermore, discretionary denial is also not warranted because of the complexity of the parallel district court litigation involving six patents and the related IPR Petitions involving three of these patents that Petitioner has filed, including the instant Petition. The scope of the challenged claims is vast involving diverse devices, methods, and storage media. Sonos has initially asserted

infringement of nearly every claim in each of the six patents, totaling 141 claims with 20 independent claims, forcing Petitioner to challenge all claims of the three patents pending in the related IPRs including all claims of the '023 patent. In complicated matters like these, involving multiple patents and diverse subject matters, the Director has ruled that the PTAB is a more suited forum to handle such cases.

Additionally, discretionary denial is inappropriate because the parties do not have settled expectations respecting the '023 patent, which Sonos does not dispute. Indeed, the '023 patent has not been in force for a significant period to establish any settled expectations. Further, as shown by Sonos's own allegations, Petitioner filed the instant petition barely a little more than a year after learning of the '023 patent.

A holistic analysis of the *Fintiv* factors also does not favor discretionary denial. For example, the actual trial date as shown by time-to-trial statistics is likely to be after the projected date for a final written decision ("FWD"). The investment in the parallel litigation also has not been extensive with the district court unlikely to have issued any substantive order by the institution date. Further, by the institution date, fact discovery would still be ongoing and expert discovery would not have even begun. There will also be no overlap between the issues

raised in this Petition and the parallel litigation as Petitioner has agreed to a broad *Sotera* stipulation.

Finally, as shown below, Sonos's arguments concerning other considerations are baseless and should be rejected.

II. Discretionary Denial Is Not Warranted Because the Merits of the Petition's Grounds for Unpatentability Are Strong

Discretionary denial is unwarranted given the strong merits of the unpatentability grounds set forth in the Petition. The '023 patent claims an unremarkable concept—a playback device that automatically plays audio when that audio is received via a line-in connector. The claims of the '023 patent break this method down into the following steps:

- 1) Play audio (*i.e.*, a second type of media content) [limitation 1.4];
- 2) Detect that the playback device is receiving new audio via a line-in connector (*i.e.*, a first type of media content) [1.5];
- 3) Switch to playing the new audio instead [1.6];
- 4) Detect that it is no longer receiving the new audio [1.7];
- 5) Stop playing the new audio [1.8]; and
- 6) Be ready to repeat steps 1-5 if necessary [1.8]

As discussed below, the Petition describes one embodiment of Barbe, and two separate embodiments of Richenstein, each of which independently anticipates the challenged claims. Sonos's arguments regarding the merits are nothing more

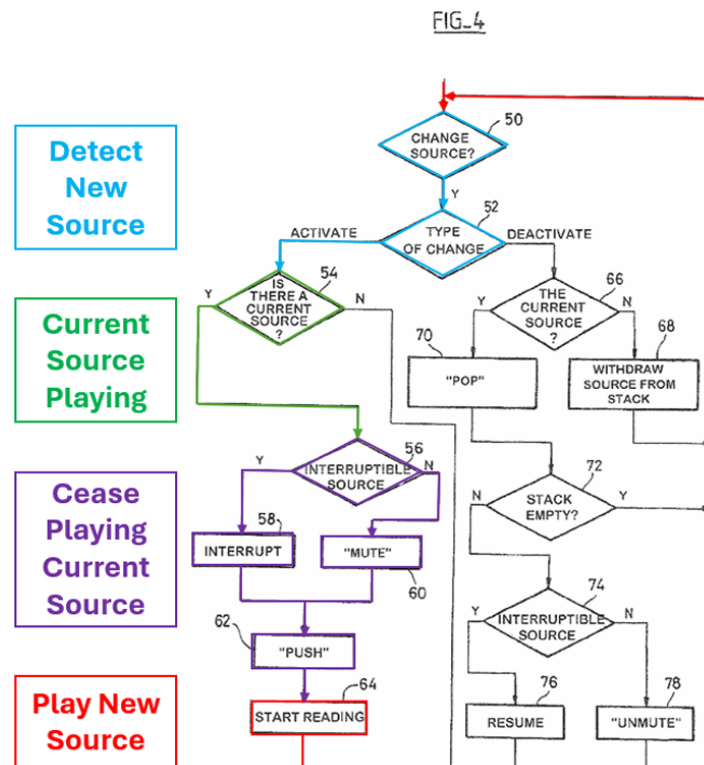
than obfuscations of the prior art's teachings, which establish that the claims of the '023 patent are not patentable.

A. Ground 1: Barbe anticipates all challenged claims

Figure 4 of Barbe discloses the claimed method. Figure 4 provides “a general flow chart explaining how the method of the invention is implemented.”

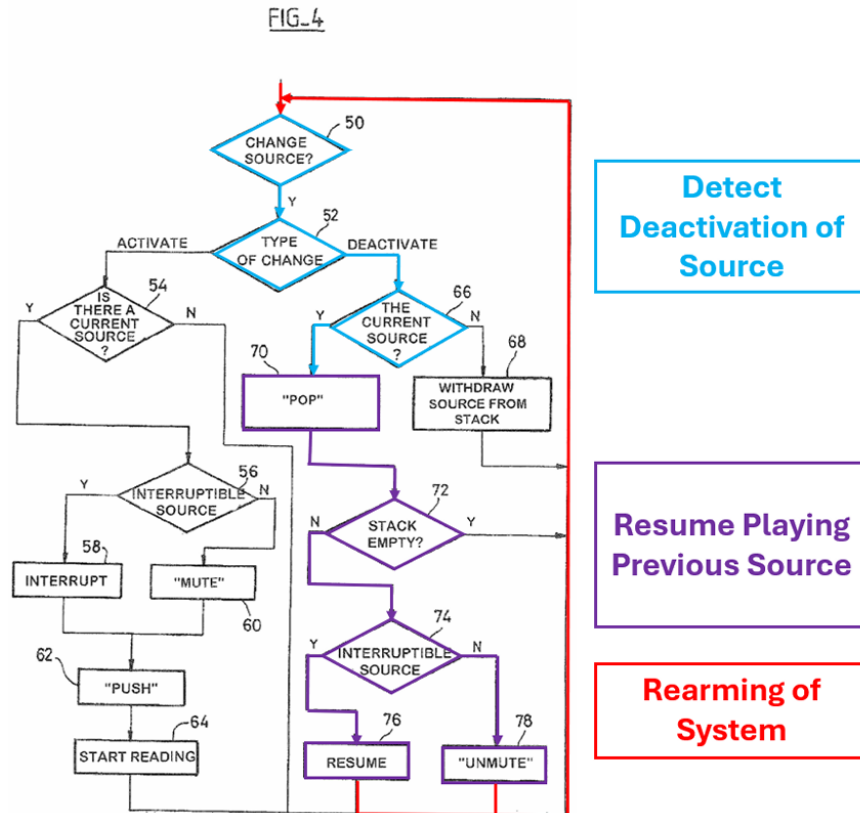
EX1005, [0029]. As annotated below, Figure 4 describes the claimed method:

- 1) Play audio from current source (annotated in **green**) [limitation 1.4];
- 2) Detect that the playback device is receiving new audio via a line-in connector (**blue**) [1.5];
- 3) Switch to playing the new audio instead (**purple and red**) [1.6];



EX1005, Fig. 4 (annotated); *see also* Pet. at 10; EX1003, ¶51.

- 4) Detect that it is no longer receiving the new audio (blue) [1.7];
- 5) Stop playing the new audio (purple) [1.8]; and
- 6) Be ready to repeat steps 1-5 if necessary (red) [1.8]



EX1005, Fig. 4 (annotated); *see also* Pet., 27; EX1003, ¶101.

Sonos's only argument with respect to Ground 1 is that because "Barbe's solution simply switches to the **most recent** source instead of prioritizing a line-in connected source over another source," Barbe's solution does not disclose limitations [1.5], [1.6], and [1.8]. Patent Owner Sonos, Inc.'s Request for

Discretionary Denial of Institution (“Br.”), 25. Sonos is wrong. Barbe discloses prioritizing a line-in input.

Fig. 3 contains an example where the line-in source is prioritized over a Bluetooth source. *See, e.g.*, Pet., 17-18 (“Fig. 3 of Barbe (reproduced below with annotations) shows a scenario of the method where a Bluetooth source (BT) currently being played (step (a)) is paused when activation of a “line” source is detected (step (b))”); EX1003, ¶74. Sonos does not cite or otherwise rebut what is shown in this example. Moreover, Sonos concedes that “Barbe’s solution simply switches to the **most recent** source.” Br., 25. Nothing in Barbe precludes the most recent source from being a line-in source, thereby causing Barbe’s solution to anticipate the claims, as shown in Figure 3.

Instead of grounding its analysis in the claims and the prior art, Sonos relies on a slanted reading of the Petition and accompanying expert declaration. Specifically, Sonos attempts to imply that Barbe does not prioritize inputs, contrasting the Petition’s characterization of the ’023 patent as “recit[ing] automatically switching to a **priority input** when that priority input is detected” with Dr. Hartpence’s testimony that “Barbe proposes a clearly distinguishable ‘automatic switching technique’ ‘**without** making use of some frozen **priority** that is a function of a hierarchy specific to the various sources.’” Br. at 24 (all emphases in original) (citing EX1003, ¶49). This is a sleight of hand argument. Dr.

Hartpence’s declaration states that Barbe does not use a particular type of prioritization (a “*frozen* priority”)—not that Barbe forsakes the idea of prioritization in its entirety. EX1003, ¶49. Indeed, in that same paragraph, Dr. Hartpence testifies that “Barbe accomplishes [automatic switching] by simply giving the highest *priority* to “any source that is beginning to send data....” *Id.* (emphasis added). And Sonos itself concedes that Barbe’s solution prioritizes the most recently activated source. Br., 25 (“Barbe’s solution simply switches to the *most recent* source”).

To avoid reading Barbe’s solution on the claims of the ’023 patent, Sonos apparently reads the ’023 patent as requiring that priority *always* be given to the line-in source. Br., 25 (distinguishing “switch[ing] to the most recent source” from “prioritizing a line-in connected source over another source, as required by the challenged claims”). However, Sonos points to no limitation which requires that the line-in source *always* be prioritized. The word “priority” does not appear in the claims, let alone a limitation requiring that the line-in source *always* be prioritized.

B. Ground 3: Petitioner identifies two separate embodiments of Richenstein, each of which anticipates all challenged claims

Richenstein actually discloses *two separate embodiments*, each of which anticipates the claimed playback device: (1) the Audio Device 34 of Figure 27, and (2) the Computer 1142 of Figure 26. *See, e.g., Pet.*, 49.

With respect to the Audio Device 34 of Figure 27, Richenstein discloses that it is capable of performing the claimed method:

- 1) Playing “the listener’s selection of one of the stereo channels” [1.4];
- 2) Detecting that “the audio level in the baby monitor channel exceeds a preset level” [1.5];
- 3) “Overrid[ing] the listener’s selection” [1.6];
- 4) Detecting that “a fixed or adjustable time period” has passed during which “the audio level in the baby monitor channel no longer exceeds the preset level” [1.7];
- 5) “automatically return to the stereo channel earlier selected by the listener” [1.8]; and
- 6) Repeating steps 1-5 is necessary [1.8]

EX1004, [0048]. Similar disclosures exist with respect to the Computer 1142 of Figure 26. *See* Pet., 48-56.

Sonos attempts to obfuscate and distort Petitioner’s argument in order to evade this straightforward case of anticipation. Sonos attempts to mix the two *independent* anticipation theories above, presented in the alternative, to fabricate what Sonos calls “a tangled web.” Br., 27-28. With that distorted view, Sonos then contends that Petitioner’s anticipation ground improperly combines disclosures from two embodiments. *Id.* at 28. But there was no combination presented in the

Petition—Sonos is the only one doing the tangling in an attempt to preserve its patent.

Sonos is correct that Petitioner identifies additional playback devices, which are different from the playback device of claim 1. However, this is required by the challenged claims, which reference additional playback devices. For example, dependent claim 3 references a second playback device. Petitioner’s contention is that speaker 1144 or speaker 1146 is the claimed second playback device. *See* Pet. 58-59; EX1003, ¶189.

Finally, with respect to Audio Device 34 and Computer 1142, Sonos argues that Petitioner fails to allege that these devices are configured for “*playing the second type of media content.*” Br. at 30. This is false. Petitioner describes that both the Audio Device 34 and the Computer 1142 “*play the second type of media content*” by transmitting audio data to another apparatus to produce sound, thereby “*playing the second type of media content.*” Pet., 50 (“audio device 34, while sending audio data” and referencing the computer 1142 “transmitting the computer generated audio data”). Such interpretation of “*playing*” is consistent with the Parties’ agreed upon construction of “*playback device*” as a “data network device configured to process and output audio.” EX1046, 1. Accordingly, “sending audio data” (in the case of Audio Device 34) and “transmitting the computer generated

audio data” (in the case of the Computer 1142) constitute “*playing the second type of media content.*”¹

C. Grounds 2 and 4: Petitioner provides robust *prima facie* cases of obviousness for Barbe and Richenstein

Sonos’s arguments related to Grounds 2 and 4 are nearly identical, and they are therefore addressed together.

First, Sonos argues that Petitioner does not address obviousness for any of the independent claims. Br.,26, 31. However, Petitioner advances fulsome arguments for why Barbe and Richenstein each anticipates the independent claims, and “it is well settled that a disclosure that anticipates under § 102 also renders the claim invalid under § 103, for anticipation is the epitome of obviousness.” *Real Time Data, LLC v. Iancu*, 912 F.3d 1368, 1373 (Fed. Cir. 2019) (internal citations omitted).

Sonos argues that Petitioner has not provided an “explanation of how any proposed modification would work and why a POSITA would reasonably expect success in doing so” with respect to the claims 3-6, 10-12, and 16-17. This is false.

¹ Sonos—using only a color-coded table and without further explanation—attempts to identify other limitations purportedly not disclosed by the prior art. This amounts to nothing more than unsupported attorney argument and should be accorded no weight.

Petitioner and its expert provided numerous examples, including referencing various prior art reference and techniques well known in the art. *See, e.g.*, EX1003, ¶¶111 (reasonable expectation of success for ground 2, claims 3, 5-6, 11-12 and 16), 116 (reasonable expectation of success for ground 2, claims 4, 10, and 17), 197 (reasonable expectation of success for ground 4, claims 4, 10, and 17).

Apparently Sonos's argument is that a POSITA, in 2011, did not know how to (1) play music from two speakers simultaneously, (2) use an iPod, or (3) send audio from one loudspeaker to another. These actions are mundane tasks commonly performed by ordinary people, let alone a POSITA with advanced technical knowledge.

D. Discretionary denial is not warranted because a material error was committed during patent examination

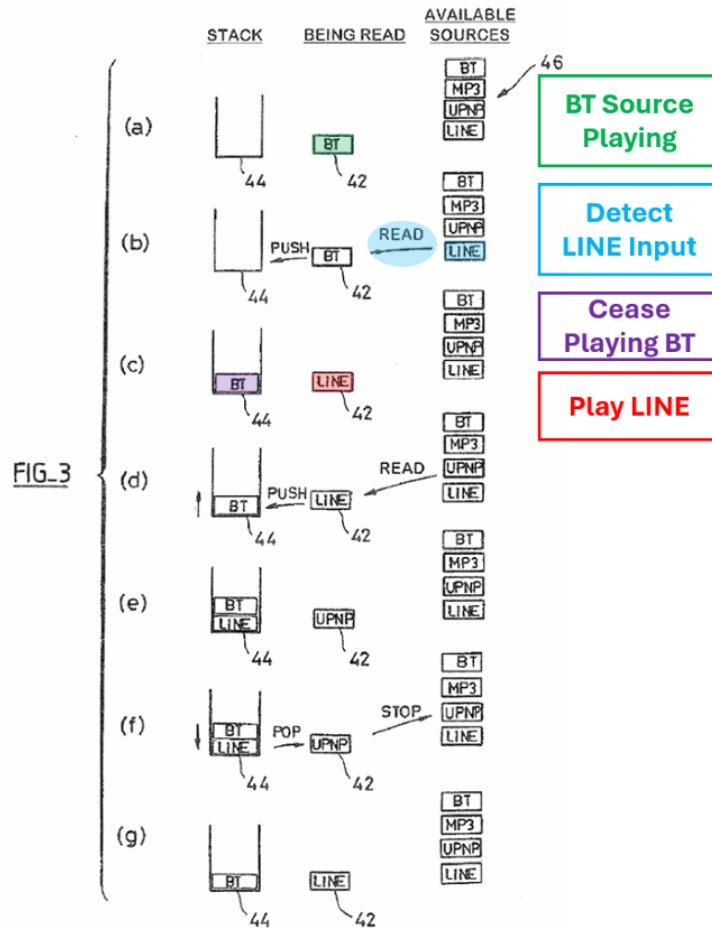
Discretionary denial is also inappropriate because the Petition establishes that the Office committed a material error during examination of the '023 patent. As a result, it would be appropriate for the Office to use its resources to review that material error. *See Microsoft Corp. v. Partec Cluster Competence Center*, IPR2025-00318, Paper 9 at 3 (Director June 12, 2025) (finding that “discretionary denial of institution is not warranted because of Petitioner’s showing of material error during patent examination” and that “it is an appropriate use of Office resources to review the potential error”).

The allowability of the '023 patent hinged on the limitation that the playback device receives the first type of media content “via a line-in connector.”

Specifically, in the first Office Action on the merits during the examination of the application that led to the '023 patent, the examiner rejected then-pending claims 1-20 under, *inter alia*, pre-AIA 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication 2004/0239816, U.S. Patent 7,571,014, and U.S. Patent Publication No. 2006/0029005. *See* EX1002, 308. The examiner and the applicant then engaged in various interviews, resulting in an agreement. *See* EX1002, 20, 123, 131. This led to a Notice of Allowance including an examiner’s amendment adding the phrase “via a line-in connector” to all independent claims. *See* EX1002, 14-17. The Notice of Allowance concluded that “the prior art does not teach or suggest the instant networked audio player(s) comprising ***a dedicated line in connector***” EX1002, 18 (emphasis added).

Had the examiner not overlooked the teachings of pertinent prior art, namely, Barbe and Richenstein, it would not have allowed the '023 patent to issue, at least because each reference expressly discloses the “dedicated line in connector” that led to the allowance. EX1002, 18.

For example, Barbe explicitly discloses performing its method using a line input (annotated in blue below).



EX1005, Fig. 3 (annotated); *see also* Pet., 11-12; EX1003, ¶¶53, 84.

Similarly, Richenstein also discloses performing its auto-switching functionality with various line inputs. For example, Audio Device 34 contains various line inputs (labelled as lines 1-8 in Fig. 1), and the computer 1142 contains a signal input connector 1150. *See* Pet., 52-53; *see also* EX1003, ¶170. Even Sonos’s request for discretionary denial indicates that audio device 34 and computer 1142 contain “a line-in connector.” Br., 31.

Therefore, the examiner overlooked relevant prior art by not having considered Barbe's and Richenstein's teachings, demonstrating that the Office erred in a manner material to the patentability of the claims. *See Microsoft*, IPR2025-00318, Paper 9 at 2-3 (finding that the examiner overlooked pertinent prior art references that were *not* previously before the examiner); *Tesla, Inc. v. Charge Fusion Techs., LLC*, IPR2025-00152, Paper 11 at 2-3 (PTAB June 12, 2025) (Director Review) ("Petitioner persuasively argues that the patent examiner overlooked Letendre's teachings, thus demonstrating that the Office erred in a manner material to the patentability of the claims"). Because the Examiner committed material error by overlooking pertinent prior art teachings during patent prosecution, discretionary denial is inappropriate.

Indeed, in *Microsoft*, although "a scheduled district court trial date [] precedes the date projected for a Board final written decision," the Director held that because the petitioner "appears to show a material error by the Office," "it is an appropriate use of Office resources to review the potential error." IPR2025-00318, Paper 9 at 3. That reasoning applies with equal force here.

III. Discretionary Denial Is Not Warranted Because the Board Is Better Suited to Review Cases Involving Multiple Patents and Complex Technical Subject Matters

The parallel district court litigation involves six patents: U.S. Patent Nos. 7,571,014 ("014 patent"), 9,164,532 ("532 patent"), 9,213,357 ("357 patent"),

10,146,498 (“’498 patent”), 10,541,883 (“’883 patent”), and the ’023 patent.”

These six patents are from three distinct families with the ’023 patent being in a different family from the other five patents.

Petitioner has filed petitions for IPR of three of the six patents, the ’357 patent, ’883 patent, and ’023 patent. The ’023 patent is the subject of the instant Petition filed on February 1, 2025. The ’883 patent is the subject of IPR2025-00510 filed on February 5, 2025. The ’357 patent is the subject of IPR2025-00511 filed on February 4, 2025. Each of the ’357 patent, ’883 patent, and ’023 patent is in a different family. All three IPRs are pending a decision on institution.

In the three IPRs at issue, Petitioner is challenging a total of 57 claims with 9 claims being independent. The scope of the claims challenged is vast and diverse involving devices, network interfaces, digital media, and methods. The ’023 patent claims a playback device, a tangible, non-transitory computer-readable media, and a method performed by a playback device such that the device can preempt playing certain type of media content. The ’883 and ’357 patents claim, *inter alia*, different playback devices with a network interface and different methods performed by the device, one involving communication with a network and the other involving algorithms that control multiple devices in different zones to playback synchronously. Since these IPRs involve patents from three distinct families, the claimed inventions have different components and alleged patentable features.

Sonos initially asserted infringement of nearly every claim in each of the six patents, totaling 141 claims with 20 independent claims, forcing Petitioner to challenge all claims of the '357 patent, the '883 patent, and the '023 patent.² Indeed, Sonos itself points out the complexity of the district court litigation, stating that there are 15 affirmative defenses, 18 counterclaims, and numerous invalidity grounds. Br., 18. As a result, the district court will be burdened with managing an array of complex and distinct issues.

In cases like these, involving multiple patents and complicated technical issues, discretionary denial is not warranted because the PTAB is a more suited forum to review such complicated issues. In *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 (PTAB June 13, 2025) (Director Review), although the scheduled trial date preceded the projected FWD date and meaningful investment was made in the parallel litigation, the Director held that “[t]he large number and vast scope of the patents asserted in the district court litigation ...weighs against discretionary denial, as the Board is better suited to review a large number of patents involving diverse subject matter.” *Id.* at 3. *See also Tesla,*

² Sonos initially asserted every claim in the '357 patent, the '883 patent, and the '023 patent. Three months after the Petitions were filed, in May 2025, Sonos reduced the total number of asserted claims to 57.

Inc. v. The United States of America as Represented by the Secretary of the Navy, IPR2025-00341, Paper 12 at 2-3 (PTAB June 13, 2025) (Director Review) (same).

Accordingly, the complexity of the IPRs with multiple patents and diverse claim scope makes the PTAB a more appropriate forum to efficiently resolve the patentability questions.³

IV. Discretionary Denial Is Not Warranted Because the Parties Do Not Have Settled Expectations Respecting the '023 Patent

Sonos did not even attempt to show that the parties had any settled expectations regarding the '023 patent, thereby conceding that such expectations did not exist.

Indeed, the '023 patent, issued in December 2020, has not been in force for long to develop any settled expectations. *See Cambridge Industries USA Inc., v. Applied Optoelectronics, Inc.*, IPR2025-00434, Paper 11 at 2-3 (PTAB June 26, 2025) (Director Review) (finding that because “most of the challenged patents

³ Further, a search on Lex Machina of Judge Ranjan’s cases reveals that His Honor has presided over 19 patent cases, none of which has gone to trial or through the summary judgment motion stage. EX1047. In these cases, Judge Ranjan has not issued a ruling on any issues related to patentability. *Id.* The only two substantive rulings Judge Ranjan has issued in his patent cases are the two *Markman* rulings discussed below.

have not been in force for a significant period of time issued in 2020, 2019, and 2019) ... Patent Owner has not developed strong settled expectations that favor discretionary denial as to at least those patents”); *see also Zhuhai CosMX Battery Co. v. Ningde Ampere Tech. Ltd.*, IPR2025-00385, Paper 9 at 2-3 (PTAB July 2, 2025) (Director Review) (holding that discretionary denial was not warranted where a challenged patent (issued in 2021) has “not been in force for a significant period of time” despite other *Fintiv* factors which favored discretionary denial).

Further, Sonos alleges only that Petitioner was aware of the ’023 patent by December 11, 2023—barely a little more than a year before the filing of this Petition. EX1048, ¶173; EX1049, ¶190; EX1050, ¶217. Sonos’s own allegations demonstrate that this Petition was filed soon after Petitioner learned of the ’023 patent before any settled expectation was reached. Just as in *Zhuhai*, Petitioner’s early challenge to the ’023 patent here tips the balance against discretionary denial. IPR2025-00385, Paper 9 at 2-3.

Since the parties do not have settled expectations regarding the ’023 patent, this fact weighs against discretionary denial.

V. A Holistic Analysis of the *Fintiv* Factors Does Not Favor Discretionary Denial

A. Factor 1: The Court Is Likely to Grant a Stay

Factor 1 is whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted. This factor favors granting institution.

Neither party has yet requested a stay. If the Board grants institution, however, Petitioner will ask for a stay of the parallel litigation as to the patent at issue. The pending litigation involves six patents, three of which are being challenged by the petitioners before the PTAB. An analysis shows that stays pending IPR in District of Delaware cases have been on the rise, reaching as high as 80% of stay requests being granted in 2021. EX1051; *see also* EX1052 (showing that the majority of requests to stay pending IPR were granted in D. Del.); EX1053 (showing 67-94% grant rate for motions to stay pending IPR by Judge Andrews from 2019 to 2024). Further, the District of Delaware has granted partial stays of litigations with respect to patents undergoing IPRs, while continuing the litigation with respect to the other patents. *See, e.g., IBM v. Rakuten, Inc.*, 680 F. Supp. 3d 531, 534-535 (D. Del. 2023) (staying case for 4 of 6 asserted patents due to IPR institutions). Since Judge Ranjan is following Delaware rules and Judge Andrew's "forms and orders" (EX2114), it is likely that a stay or a partial stay involving the patents in instituted IPRs will be granted.

B. Factor 2: The Actual Trial Date Is Likely to Occur After the Projected FWD Date

Factor 2 is proximity of the court's trial date to the Board's projected statutory deadline for a final written decision. This factor favors granting institution because the actual trial date will likely take place after the projected FWD date.

Petitioner filed the instant petition on February 1, 2025, but the notice of filing date accorded was not mailed until April 11, 2025—more than 2 months later. As a result, the projected FWD date is October 11, 2026. Although a trial date is tentatively set for August 10, 2026 in the parallel litigation (EX2104), that date is not likely to be held.

As discussed above, the parallel litigation is extremely complex, involving six patents from three different patent families with 57 asserted claims and over 100 alleged infringing products. Given the complexity of the case, the Scheduling Order has already been amended twice with many key dates extended for 30 to 90 days. EX1011; EX2104. For example, deadlines concerning claim construction briefing have been extended twice, totaling 120 days or more. EX1011; EX2104. Fact discovery cut-off was extended 90 days. EX2104. Dates relating to expert discovery, such as due dates for expert reports and close of expert discovery were extended 90 days. EX2104. Importantly, the trial date has already been extended once for more than three months from May 4 to August 10, 2026. *Id.* Since fact discovery is not scheduled to complete until December 23, 2025, and expert discovery has not even begun and is not scheduled to close until February 18,

2026, with case dispositive and Daubert motions to follow, the chance for a further postponement of the trial date is very likely.⁴ *Id.*

Moreover, the trial is currently scheduled for only five days (i.e., about 10 to 13 hours per side), which is the presumptive length of a patent jury trial, but the Scheduling Order makes clear that “[a] final decision on the precise length of trial will not be made before the final pretrial conference.” EX1010, 12 n.7. Given the multitude of patents involved in this case from three different families and the voluminous number of accused products and asserted claims, it is likely that multiple trials will be needed to try all six patents to avoid jury confusion and

⁴ Sonos cites Judge Ranjan’s Practices and Procedures to suggest that Judge Ranjan would postpone a trial date only in “extraordinary circumstances.” Br., 10.

However, Sonos itself admits those procedures do not apply as Judge Ranjan made clear he would utilize the “forms and orders” of Judge Andrews. *Id.*, 36; EX2114. Further, as Sonos recognizes, Judge Ranjan has already agreed to extend the trial by more than 90 days. EX2104. Sonos also failed to mention that Judge Ranjan told the parties that he preferred “the lawyers and the parties can have more flexibility to meet those deadlines.” EX2107, 10 (38:7-8). In an unrelated case cited by Sonos, Judge Ranjan reiterated that he had “no issues with modifying the scheduling order” and that he was “fine extending the schedule.” EX2108, 28.

overload and undue complexity, and to ensure that due process is respected by allowing sufficient time and clarity for each issue to be fairly adjudicated.

For example, in a previous case involving Sonos, Judge Andrews indicated that a five-day trial would be appropriate for only a 2-patent case. EX1054 at 2 (quoting transcript of initial scheduling conference at 25:20-26:2). However, after Sonos insisted keeping 11 patents in the case, Judge Bryson (sitting by designation) ordered to divide them into multiple trials, proceeding first with a five-day bell-weather trial limited to two to three patents (only if two of which were substantially similar). EX1055, 1. Following that practice, it will take at least two trials to try all six asserted patents in this case, and at least the second trial will undoubtedly occur after the projected FWD date.

Further, both the Director and the Board have routinely considered median time-to-trial statistics in determining the likely trial date. *See Amazon.com, Inc. v. NL Giken Inc.*, IPR2025-00250, Paper 14 at 2 (PTAB May 16, 2025) (Director Review) (noting that although the scheduled trial date falls before the projected FWD date, time-to-trial statistics suggest that trial would not actually begin until after the FWD is issued); *Twitch Interactive, Inc. v. Razdog Holdings LLC*, IPR2025-00307, Paper 18 at 2 (PTAB May 16, 2025) (Director Review); *Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.*, IPR2025-00321, Paper 10 at 10 (PTAB June 18, 2025) (finding factor 2 neutral or weighing slightly against discretionary

denial based on time-to-trial statistics showing actual trial date likely to be after projected FWD date despite scheduled trial date being before the projected FWD date).

As of December 31, 2024, the median time from filing to trial for civil cases in the District of Delaware is 32.3 months (EX1056, 2), which has increased to 33 months as of March 31, 2025. EX1057, 2. Using the most updated figure of 33 months, the projected trial date would be November 1, 2026, three weeks after the projected FWD date.

Moreover, Sonos failed to inform the Director that although it filed its original complaint on February 1, 2024 (EX1048), it amended its complaint twice. Sonos filed its First Amended Complaint on April 17, 2024 (EX1049) and did not file its Second Amended Complaint until December 19, 2024—more than ten and a half months after the filing of the original complaint. The Second Amended Complaint added a brand new sixth patent to the litigation. EX1050. Using the date of the Second Amended Complaint as the filing date, the projected trial date would be September 19, 2027, nearly one year after the projected FWD date.

Given that the actual trial date is likely to be after the projected FWD date, this factor favors granting institution.

C. Factor 3: Investment in the District Court Litigation Has Not Been Extensive

Factor 3 is investment in the parallel proceeding by the court and the parties. This factor also favors granting institution.

Contrary to Sonos's arguments, investment by the parties and the Court on the pending litigation has not been extensive. By the projected date for the institution decision, fact discovery would still be ongoing, expert discovery *would not have even begun*, and the parties would not have provided their *final* infringement and invalidity contentions. EX2104. Plaintiff's Final Infringement Contentions are not due until October 31, 2025. *Id.* And Defendant's Final Invalidity Contentions are not due until December 5, 2025, nearly two months after the projected institution date. *Id.* More importantly, expert discovery is not even scheduled to begin until December 9, 2025, when opening expert reports are due. *Id.* Cf. *NeoGenomics Labs, Inc. v. Natera, Inc.*, IPR2025-00455, Paper 13 at 2 (PTAB June 12, 2025) (stating that discretionary denial was favored because "fact discovery was complete, expert discovery was already underway, *final* invalidity and infringement contentions had been exchanged, and the district court had issued a *Markman* order").

Moreover, the Court in the parallel litigation has not issued a single substantive order in the case. Further, very little work has been done on issues relating to patentability other than the exchange of *preliminary* invalidity

contentions. *See Google LLC v. Sonos, Inc.*, IPR2021-01563, Paper 14 at 12 (PTAB April 12, 2022) (finding the investment-in-parallel proceeding factor to be effectively neutral even though substantial amount of work have already been completed because no substantive orders have been entered and the completed work in the district court did not overlap with the unpatentability issues in the IPR proceeding).

Additionally, contrary to Sonos's argument, by the projected institution date, it is unlikely that the Court would have issued a ruling on claim construction. A hearing on claim construction is not scheduled until September 4, 2025, merely a little more than a month before the projected institution date. EX2104. The scope of the claim construction disputes is vast, with the parties briefing claim construction issues on 10 different terms spanning six patents. EX1046 (proposing 22 terms to brief); EX1058 (order setting ten terms to brief).

Given the complexity of the case and the scope of the disputes, the Court is likely to take two months or more to render a ruling on claim construction. Thus, by the projected institution date, it is highly likely that the Court would not have issued any substantive order related to the patent. This weighs against denial. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 9-10 (PTAB Mar. 20, 2020) ("If at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising

discretion to deny institution.”); *Nikon Corp. v. Optimum Imaging Techs., LLC*, IPR2024-01374, Paper 19 at 18 (PTAB Apr. 29, 2025) (same).

Sonos refers to Judge Ranjan’s two prior *Markman* rulings, which were issued 27 and 29 days after their respective *Markman* hearing. Br., 15 n.3. Sonos failed to inform the Director, however, that the complexity and scope of the issues addressed in these rulings paled in comparison to those of the claim construction disputes in the pending litigation. In 19-cv-1636 (W.D. Pa.), only three disputed terms from a single patent were construed in the ruling. EX1059, 25. And in 23-cv-186 (D. Del.), only four disputed terms from two patents were construed, with three of the disputed terms construed as having “[p]lain and ordinary meaning.” EX1060, 2. In stark contrast, in the parallel litigation, the parties are offering competing constructions on *ten disputed terms from six patents*. EX1046 (proposing 22 terms to brief); EX1058 (order setting ten terms to brief). The likelihood that Judge Ranjan will have issued the claim construction ruling by the projected institution date is extremely small.⁵

⁵ Sonos claims that Judge Ranjan has a “track record of timely *Markman* rulings.” Br., 12. But given that Judge Ranjan has issued only two such rulings—a fact Sonos itself acknowledges—that hardly amounts to a “track record.”

Sonos’s argument that Petitioner lacked diligence in filing the instant petition is wholly without merit. Once again, Sonos failed to inform the Director of all the pertinent facts. As discussed above, Sonos amended its complaint twice and did not file its Second Amended Complaint until December 19, 2024, less than two months prior to the filing of the instant petition. In all three complaints, Sonos identified only claim 1 of the ’023 patent as an asserted claim in a claim chart and casually added that defendant infringed “one or more of the claims of the ’023 patent” without providing any additional details. EX1048, ¶¶170-172; EX1049, ¶¶187-189; EX1050, ¶¶214-216. Indeed, Sonos did not identify the asserted claims until September 27, 2024—almost 6 months after the filing of its original complaint. EX1061. Petitioner acted promptly and worked diligently to file the instant petition merely four months (with Thanksgiving and Christmas holidays in between) after Sonos’s identification of its asserted claims. *See Savant Techs. LLC v. Feit Elec. Co.*, IPR2025-00260, Paper 16 at 3 (PTAB June 12, 2025) (stating that petitioner “acted diligently” in filing the petition less than three months after learning of the asserted claims); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 9-10 (PTAB Mar. 20, 2020) (“[I]t is often reasonable for a petitioner to wait to file its petition until it learns which claims are being asserted against it in the parallel proceeding.”).

Indeed, during this four-month period, the parties were still in discussion about Sonos having to supplement its infringement contentions, and Sonos in fact did supplement its infringement contentions on January 16, 2025.⁶ *See, e.g.*, EX1062; EX1063. Moreover, Petitioner filed this Petition two months before it received Sonos’s “validity contentions,” (Br., 15) demonstrating that Petitioner acted diligently in filing this Petition. *See Nikon Corp. v. Optimum Imaging Techs., LLC*, IPR2024-01374, Paper 19 at 19 (PTAB Apr. 29, 2025) (finding petitioner acted diligently by filing its petition “approximately two months before Patent Owner served its invalidity contentions”); *Google LLC v. Sonos, Inc.*, IPR2021-01563, Paper 14 at 12 (PTAB April 12, 2022) (noting the argument that “Petitioner did not engage in inexcusable delay, because it filed [the petition] before Patent Owner responded to Petitioner’s invalidity contentions”).

D. Factor 4: There Will Be No Overlap of Issues Between the IPR and the District Court Litigation

Factor 4 is the overlap between issues raised in the petition and in the parallel proceeding. This factor strongly favors granting institution as there will be

⁶ While the January 16, 2025 supplementation ended up not adjusting the asserted claims (total number of asserted claims remained at 141), Petitioner was under the impression that it could have modified the asserted claims until served with the January 16, 2025 supplementation.

no overlap between issues raised in this Petition and the parallel litigation.

Petitioner has agreed to a broad *Sotera* stipulation stating that if this IPR were instituted, it will not pursue in the parallel litigation (1) any ground raised or that could have been reasonably raised in this IPR, as well as (2) any ground based on corresponding system prior art. EX1024. This *broad* stipulation ensures that the IPR proceeding would be a true alternative to the district proceeding and mitigate any concern of duplication between the district court case and this proceeding. *See Tesla*, IPR2025-00217, Paper 9 at 2; *Tesla*, IPR2025-00341, Paper 12 at 2.

Sonos mistakenly argues that “the Federal Circuit’s recent decision in *Ingenico Inc. v. IOENGINE, LLC* casts significant doubt on how meaningful a *Sotera* stipulation remains to be.” Br., 19. Sonos cites no support for its position. On the contrary, since the *Ingenico* decision, the Director and the Board have continued to maintain that a *Sotera* stipulation is highly relevant in the *Fintiv* analysis. *See, e.g., Google LLC v. Mullen Indus. LLC*, IPR2025-00021, Paper 14 at 10 (PTAB May 14, 2025); *Tesla*, IPR2025-00217, Paper 9 at 2; *Tesla*, IPR2025-00341, Paper 12 at 2.

Further, *Ingenico* merely held that IPR estoppel does not preclude a petitioner from asserting in a district court litigation a ground that could not be raised in an IPR proceeding, such as that a claimed invention was known or used by others, on sale, or in public use. *Ingenico v. IOENGINE, LLC*, 136 F.4th 1354,

1366 (Fed. Cir. 2025). Hence, the *Ingenico* court held that the petitioner was not precluded from raising a ground based on system prior art with related printed publications. *Id.* Here, Petitioner's stipulation expressly states that it will not pursue in the parallel litigation any ground based on corresponding system prior art. EX1024. Thus, any concern raised by *Ingenico* has no relevance here.

E. Factor 5: The Parties Are Not Identical

Factor 5 is whether the petitioner and the defendant in the parallel proceeding are the same party. The parties in the litigation and the instant IPR are not identical. Linkplay Technology, Inc., Nanjing is a party to the litigation but not a party in this IPR.

F. Factor 6: The Merits of the Petition Are Strong

Factor 6 is other circumstances that impact the Director's exercise of discretion, including the merits. As discussed above, the merits of the Petition's grounds for unpatentability are strong. Thus, this factor strongly favors granting institution.

VI. Sonos's Arguments Concerning Other Considerations Should Be Rejected

Sonos's arguments concerning other considerations are wholly without merit. First, Sonos argues that Petitioner's reliance on expert testimony favors denial. To the contrary, Dr. Hartpence's expert declaration demonstrates that the merits of Petitioner's grounds for unpatentability are strong, thereby warranting

granting institution. *See generally* EX1003. Dr. Hartpence describes in detail the prior art and explains how the claims are anticipated by either Barbe or Richenstein or, in the alternative, rendered obvious by them. EX1003, ¶¶61-219. For example, Dr. Hartpence demonstrates that Barbe and Richenstein each discloses every limitation of claim 1—which Sonos does not even dispute. EX1003, ¶¶62-102, 140-180. Instead, Sonos merely quoted some snippets from Dr. Hartpence’s obviousness analysis without providing any proper context. Br., 34-35. Indeed, Sonos fails to show that Petitioner used the expert declaration to fill any gaps in the prior art. *See iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 at 2 (PTAB June 6, 2025) (stating that patent owner’s failure to show that the petitioner was “using its expert to fill gaps in the prior art” weighs against discretionary denial).

Sonos’s argument that the Delaware Court is best positioned to apply its prior claim constructions makes little sense. The claim constructions Sonos referred to are not even constructions of the terms of the ’023 patent, but those of U.S. Patent No. 8,938,312 (“’312 patent”), which issued from the great-great-grandparent application of the ’023 patent and was asserted in a litigation where Petitioner was not even a party.

Further, as the Petition states, because the prior art “discloses embodiments indisputably within the claims’ scope, the Board need not construe the claims’

outer bounds, and all claim terms should be construed according to their plain and ordinary meaning.” Pet., 7. In addition, Dr. Hartpence considered the prior constructions of the ’312 patent and confirmed that the prior art discloses the relevant limitations under those constructions—a notion Sonos did not even dispute. *Id.*, 8.

In any event, the Board is not bound by the claim construction rulings from a district court on a patent not at issue in this IPR. Moreover, to the extent necessary, the Board is well equipped, and has the necessary expertise, to construe any disputed terms that may arise in this IPR.

Finally, appealing to xenophobic fears, Sonos alleges that economic and national interests favor denial mainly because “Linkplay is a Chinese company.” Br., 39. Petitioner, Linkplay Technology Inc., however, is an American company incorporated in California.

Respectfully submitted,

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CERTIFICATION UNDER 37 C.F.R. § 42.24(d)

The undersigned certifies that the foregoing Petitioner's Opposition to Patent Owner's Request for Discretionary Denial complies with the type volume limits in 37 C.F.R. § 42.24(b)(1). According to the utilized word-processing system's word count, this paper—excluding the caption, table of contents, table of exhibits, table of authorities, certificate of word count, and certificate of service—contains 6,737 words.

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Petitioner's Opposition to Patent Owner's Request for Discretionary Denial and Exhibits 1046-1063 were served on July 11, 2025, via electronic mail, as agreed to by counsel, upon the following counsel for Patent Owner:

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