

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LINKPLAY TECHNOLOGY INC.,
Petitioner,

v.

SONOS, INC.,
Patent Owner.

Case No. IPR2025-00510
U.S. Patent No. 10,541,883

**PATENT OWNER SONOS, INC.'S REQUEST
FOR DISCRETIONARY DENIAL OF INSTITUTION**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	Section 314(a)	1
B.	Section 325(d).....	5
II.	DISCRETIONARY DENIAL IS WARRANTED UNDER § 314(A)	5
A.	The <i>Fintiv</i> Factors Favor Discretionary Denial	6
1.	Factor 1 Favors Denial: Stay in Delaware Litigation Is Unrealistic—Linkplay’s Intent Not to Seek One Confirms This	7
2.	Factor 2 Favors Denial: Jury Trial Is Set Two Months Before the Projected FWD.....	8
3.	Factor 3 Favors Denial: There Has Been Substantial Investment in the Delaware Litigation	11
a.	The Parties’ and Delaware Court’s Substantial Investment	13
b.	Linkplay’s Lack of Diligence.....	16
4.	Factor 4 Is Neutral (If Not in Favor of Denial): IPR Here Would Not Be a True Alternative to the Delaware Litigation.....	18
5.	Factor 5 Favors Denial: The Parties Overlap	21
6.	Factor 6 Favors Denial: The Merits of Linkplay’s Arguments Are Weak	21
a.	Overview of Linkplay’s Grounds 1-6.....	22
b.	Claim 1 of the ’883 Patent.....	23
c.	Grounds 1-3 Lack Merit Because Rector Does Not Expressly or Inherently Disclose the Claimed “ <i>First Message</i> ”	25
1)	Linkplay’s Bluetooth Theory	27
2)	Linkplay’s Infrared Theory	29
d.	Grounds 4-6 Lack Merit Because the Petition’s Reliance on Different Embodiments of Gassho is Not Supported.....	31

7.	Summary of <i>Fintiv</i> Factors	39
B.	Other Considerations Also Favor Discretionary Denial	39
1.	Linkplay’s Heavy Reliance on Expert Testimony Favors Denial.....	40
2.	The Delaware Court Is Best Positioned to Apply Its Prior Claim Constructions	42
3.	Economic and National Interests Favor Denial	44
4.	Summary of Additional Considerations	45
III.	DISCRETIONARY DENIAL IS WARRANTED UNDER § 325(D)	45
A.	<i>Advanced Bionics</i> , Part 1 – Two of the References Were Previously Presented to the Office and the Other Two References are Substantially Similar and Cumulative.....	47
1.	Rector and Spurgat Were Previously Presented to the Office	47
2.	Gassho and Richenstein Are Substantially Similar and Cumulative.....	49
B.	<i>Advanced Bionics</i> , Part 2 – Linkplay Has Not Demonstrated The Office Materially Erred.....	53
IV.	CONCLUSION	55

TABLE OF AUTHORITIES

Cases

<i>Abiomed, Inc. et al. v. Maquet Cardiovascular, LLC</i> , IPR2017-01204, IPR2017-01205, 2017 WL 4804523, (PTAB Oct. 23, 2017)	36
<i>ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.</i> , 694 F.3d 1312 (Fed. Cir. 2012)	32
<i>Advanced Bionics, LLC v. Med-El Elektromedizinische Geräte GMBH</i> , IPR2019-01469, 2020 WL 740292 (PTAB Feb. 13, 2020)	45, 46, 53
<i>Akamai Techs., Inc. v. Cable & Wireless Internet Servs., Inc.</i> , 344 F.3d 1186 (Fed. Cir. 2003)	25
<i>Apple Inc. et al. v. Memory Integrity, LLC</i> , IPR2015-00159, 2015 WL 4481557 (PTAB July 21, 2015)	26
<i>Arashi Vision (U.S.) LLC d/b/a Insta360 v. GoPro, Inc.</i> , IPR2025-00017, 2025 WL 1223981 (PTAB Apr. 28, 2025)	21
<i>Ariosa Diagnostics v. Verinata Health, Inc.</i> , IPR 2013-00276, IPR2013-00277 2016 WL 8944596, (PTAB Aug. 15, 2016)	36
<i>Arthrex, Inc., v. Medshape, Inc.</i> , IPR2025-00053, 2025 WL 1203664 (PTAB Apr. 25, 2025)	12
<i>Becton, Dickinson and Co. v. B. Braun Melsungen AG</i> , IPR2017- 01586 (PTAB Dec. 15, 2017)	46
<i>CIPLA Limited v. Gilead Sciences, Inc.</i> , IPR2025-00033 (PTAB May 15, 2025)	21
<i>Cisco Sys., Inc. v. Portsmouth Network Corp.</i> , IPR2024-00503, 2024 WL 3678420 (PTAB Aug. 6, 2024)	8
<i>Cont'l Can Co. USA, Inc. v. Monsanto Co.</i> , 948 F.2d 1264 (Fed. Cir. 1991)	26
<i>Cuozzo Speed Techs., LLC v. Lee</i> , 579 U.S. 261 (2016)	5
<i>Dell Inc. v. Universal Connectivity Techs., Inc.</i> , IPR2024-01480, 2025 WL 1195479 (PTAB Apr. 24, 2025)	10
<i>Ecto World, LLC v. Rai Strategic Holdings, Inc.</i> , IPR2024-01280, 2025 WL 1441509 (P.T.A.B. May 19, 2025)	49, 53
<i>Ericsson Inc. and Cellco Partnership d/b/a Verizon Wireless v. Procomm International PTE. Ltd.</i> , IPR2024-01455 (PTAB May 16, 2025)	17

<i>Harmonic Inc. v. Avid Tech., Inc.</i> , 815 F.3d 1356 (Fed. Cir. 2016).....	5
<i>In re Stepan Co.</i> , 868 F.3d 1342 (Fed. Cir. 2017).....	32
<i>Ingenico Inc. v. IOENGINE</i> , 136 F.4th 1354 (Fed. Cir. May 7, 2025)	18, 19
<i>Innolux Corp. v. Phenix Longhorn LLC</i> , IPR2025-00043 (PTAB May 15, 2025)	21
<i>Microsoft Corp. v. Biscotti, Inc.</i> , 878 F.3d 1052 (Fed. Cir. 2017)	31
<i>N. Atl. Imports, LLC v. LoCo-Crazy Good Cookers, Inc.</i> , 23-cv-999, 2024 WL 4827250 (D. Del. Nov. 19, 2024)	7
<i>Nespresso Usa, Inc. v. K-Fee Sys. Gmbh</i> , IPR2021-01222, 2022 WL 212376 (PTAB Jan. 18, 2022)	52, 53, 55
<i>Nokia of Am. Corp., et al. v. Pegasus Wireless Innovation LLC</i> , IPR2025-00036, 2025 WL 1203702 (PTAB Apr. 25, 2025)	12, 17
<i>Nxp Usa, Inc. v. Impinj, Inc.</i> , IPR2021-01556, 2022 WL 1262218 (PTAB Apr. 21, 2022)	8
<i>Orthopedics v. Med.</i> , IPR2023-00894, 2023 WL 8001473 (PTAB Nov. 17, 2023).....	11
<i>Personal Web Techs., LLC v. Apple, Inc.</i> , 848 F.3d 987 (Fed. Cir. 2017)	32, 42
<i>Polaris Indus., Inc. v. Arctic Cat, Inc.</i> , 882 F.3d 1056 (Fed. Cir. 2018).....	32
<i>Samsung Elecs. Am., Inc. v. Collision Commc'ns, Inc.</i> , IPR2025-00011, 2025 WL 1221026 (PTAB Apr. 28, 2025)	21
<i>Samsung Elecs. Co., Ltd. v. Truesight Commc'ns LLC</i> , IPR2025-00123, 2025 WL 1170627 (PTAB Apr. 22, 2025)	12, 17
<i>Sand Revolution II, LLC v. Cont'l Intermodal Group – Trucking LLC</i> , IPR2019-01393 (PTAB June 16, 2020)	20
<i>Sotera Wireless, Inc. v. Masimo Corporation</i> , IPR2020-01019 (PTAB Dec. 1, 2020)	20
<i>Tigo Energy Inc. v. SMA Solar Tech. Am. LLC</i> , 22-cv-915, 2024 WL 1637511 (D. Del. Apr. 16, 2024)	7
<i>TikTok Inc. v. NTech Properties, Inc.</i> , IPR2024-01339, 2025 WL 607860 (PTAB Feb. 25, 2025)	41
<i>Transclean Corp. v. Bridgewood Servs., Inc.</i> , 290 F.3d 1364 (Fed. Cir. 2002).....	25

<i>Xerox Corp. v. Bytemark, Inc.</i> , IPR2022-00624, 2022 WL 3648989 (PTAB. Aug. 24, 2022).....	41
---	----

Statutes

35 U.S.C. § 314(a)	5
--------------------------	---

EXHIBIT LIST

Exhibit	Description
2001 to 2100	RESERVED FOR PRELIMINARY RESPONSE
2101	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 156, Oral Order Scheduling Discovery Hearing
2102	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 174, Oral Order re Discovery Dispute
2103	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 172, Order Granting <i>Pro Hac Vice</i> Motion
2104	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 159, Order Amending Scheduling Order
2105	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 111, Order Denying Linkplay’s Motion
2106	Judge Ranjan’s Practices and Procedures (rev. 3/10/23)
2107	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 45, Rule 16 Conference Transcript
2108	<i>Samsung Electronics Co., Ltd. v. Technical Consumer Products, Inc.</i> , 23-cv-00186 (D. Del.), D.I. 134, Oral Argument Transcript
2109	Linkplay Source Code Reviewer Log
2110	Linkplay’s Initial Invalidity Contentions, served Feb. 27, 2025
2111	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 132, Linkplay’s Answer, Defenses, Counterclaims
2112	March 25, 2025 Email Correspondence
2113	April 1, 2025 Email Correspondence Chain

2114	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 19, Order Re: Judge Ranjan Practices and Procedures
2115	<i>Sonos, Inc. v. Linkplay Technology Inc, et al.</i> , 24-cv-00131 (D. Del.), D.I. 188, Joint Claim Construction Chart
2116	Mendelsohn and Rak, “These Companies Were the Patent Powerhouses of 2024,” IEEE Spectrum (Apr. 23, 2025) <i>available at</i> https://spectrum.ieee.org/patent-power-2025 .
2117	“Issa: China is Stealing America’s Intellectual Property While Benefitting From America’s Laws” (Mar. 9, 2023) <i>available at</i> https://issa.house.gov/media/press-releases/issa-china-stealing-americas-intellectual-property-while-benefitting-americas
2118	“GOP Lawmakers Introduce Bill to Protect US Intellectual Property From CCP” (July 7, 2025) <i>available at</i> https://youngkim.house.gov/2024/07/07/gop-lawmakers-introduce-bill-to-protect-us-intellectual-property-from-ccp/
2119	Chart showing differences between US 2002/0173273 and US 2002/0174243 Spurgat references

I. INTRODUCTION

Pursuant to the March 26, 2025 Memorandum titled “Interim Processes for PTAB Workload Management” (“Workload Memo”), Patent Owner Sonos, Inc. (“Sonos” or “Patent Owner”) respectfully requests that the Director exercise its discretion to deny institution of IPR filed by Petitioner Linkplay Technology Inc. (“Linkplay” or “Petitioner”). Discretionary denial is warranted here under 35 U.S.C. § 314(a) and § 325(d).

A. Section 314(a)

As set forth below, *five* of the six *Fintiv* factors and *three* additional relevant considerations clearly *favor* discretionary denial. The *one* remaining *Fintiv* factor is, at best for Linkplay, *neutral*. Thus, the interests of efficiency and integrity of the IPR process strongly call for discretionary denial under Section 314(a).

***Fintiv* Factor 1 Favors Denial:** given at least the facts that (a) Linkplay waited to file this IPR until the last moment resulting in the parallel Delaware Litigation (*Sonos, Inc. v. Linkplay Technology Inc, et al.*, 24-cv-00131 (D. Del.)) to progress significantly, (b) this IPR would not meaningfully simplify the Delaware Litigation, and (c) Sonos and Linkplay are competitors, a stay in the Delaware Litigation is unrealistic under District of Delaware precedent. Moreover, Linkplay has only escalated its district court efforts after filing this IPR demonstrating no intention to even request a stay of the Delaware Litigation.

***Fintiv* Factor 2 Favors Denial:** the Delaware trial is set for August 10, 2026—two months before the expected Final Written Decision (“FWD”) on October 11, 2026. This trial date was recently agreed upon by the parties—after Linkplay’s IPR filing—and fixed by Judge Ranjan, a visiting judge specifically appointed to ease Delaware’s court congestion, who also called for strict adherence to the schedule absent extraordinary circumstances. Moreover, while statistical trial forecasts are rendered irrelevant in view of Judge Ranjan’s strict schedule, even Delaware’s speculative 32-month median time-to-trial projects a trial date of October 1, 2026—still *before* the expected FWD.

***Fintiv* Factor 3 Favors Denial:** Linkplay’s eleventh-hour IPR filing—over one year after Sonos filed its Original Complaint and only one day before the one-year anniversary of Sonos serving the Original Complaint —results in this paper being filed after the District Court for the District of Delaware (the “Delaware Court”) and parties have substantially invested in the Delaware Litigation, and that investment will grow significantly leading up to the expected institution decision. By the October 11, 2025 institution decision deadline, *Markman* briefing and the hearing will be complete. Given Judge Ranjan’s track record of timely *Markman* rulings and stated adherence to the set schedule, a *Markman* order is expected around the institution decision deadline.

***Fintiv* Factor 4 Is, At Best for Linkplay, Neutral:** rather than serving as a

true alternative to the Delaware Litigation, this IPR is a detour that would only create inefficiencies. The Delaware Litigation—spanning six patents, dozens of accused products, 15 affirmative defenses, and 18 counterclaims—raises far broader issues than an IPR can address, even for the '883 Patent alone. Further, the Federal Circuit's recent decision in *Ingenico Inc. v. IOENGINE, LLC* (*infra* §II.A.4) erodes the practical value of Linkplay's *Sotera* stipulation.

***Fintiv* Factor 5 Favors Denial:** the parties are identical in this IPR and the Delaware Litigation.

***Fintiv* Factor 6 Favors Denial:** the Petition is objectively weak on the merits. For instance, despite asserting six separate invalidity grounds premised on four different prior art references, Linkplay acknowledges that the prior art fails to disclose many limitations of the challenged claims. To fill in some gaps, Linkplay relies heavily on the alleged knowledge of a POSITA to argue that the missing limitations are inherent. To fill in other gaps, Linkplay mixes and matches separate and distinct embodiments in the references to shore up the deficiencies. But Linkplay's analysis is flawed – both legally and factually – and does not establish that the missing limitations are anticipated, inherent, or obvious.

Heavy Reliance on Unfocused Expert Testimony Favors Denial: in view of the weakness of Linkplay's prior art references, Linkplay leans heavily on the unfocused and conclusory testimony of Dr. Hartpence, who attempts to backfill

missing claim limitations with legally deficient analysis. If this IPR is instituted, Sonos's own expert's testimony will expose further flaws in Dr. Hartpence's opinions, setting up a complex expert dispute far better suited for resolution in an Article III court.

Delaware Court Applying Its Own Constructions Favors Denial: the Delaware Court previously construed claim terms implicated by this IPR. The Delaware Court is the obvious choice for applying constructions of claim terms that it previously construed and applied to Sonos's patents.

Economic and National Interests Favors Denial: this IPR juxtaposes two parties with fundamentally different views on intellectual property protection: (1) Sonos, an American innovator that has invested heavily in protecting its innovations and building its U.S. patent portfolio and (2) Linkplay, a Chinese entity seeking to misuse and thereby, capitalize on Sonos's 20+ years of innovation. There is a clear economic and national interest in protecting American innovators, like Sonos, by preventing foreign entities from exploiting the legal system through duplicative and unnecessary parallel litigation

In sum, viewed as a whole, the *Fintiv* factors and additional relevant considerations compel a single conclusion: discretionary denial under 35 U.S.C. § 314(a) is necessary to safeguard the efficiency, fairness, and integrity of the IPR process.

B. Section 325(d)

As also set forth below, Section 325(d) strongly favors denying institution of this IPR because two of the four references relied on by Linkplay were previously presented to the Office during prosecution of the '883 Patent, while the other two references are substantially similar and cumulative. And Linkplay has failed to demonstrate that the Office erred in a manner material to the patentability of the challenged claims.

II. DISCRETIONARY DENIAL IS WARRANTED UNDER § 314(A)

The Director should deny institution of IPR under 35 U.S.C. § 314(a). It is well-settled that institution of IPR is discretionary. *See* 35 U.S.C. § 314(a) (“The Director may not authorize an inter partes review to be instituted unless...”); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he PTO is permitted, but never compelled, to institute an IPR proceeding”); *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (“[T]he agency’s decision to deny a petition is a matter committed to the Patent Office’s discretion.”).

The core of the Board’s precedential decision in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB March 20, 2020) (“*Fintiv*”) focuses on whether institution would promote efficiency, fairness, and align with the strength of the unpatentability challenge. *Fintiv*, 5-6. The Director’s Workload Memo lends further support to this approach by accounting for “all relevant considerations,” including,

inter alia, the strength of the unpatentability challenge, the extent of the petition’s reliance on expert testimony, and compelling economic interests, among others. Workload Memo, 2-3. As discussed below, both the *Fintiv* factors and several additional “relevant considerations” weigh decisively in favor of denying institution.

A. The *Fintiv* Factors Favor Discretionary Denial

Fintiv identifies the following non-exclusive six factors for the Director to consider in deciding whether to exercise discretion to deny institution based on parallel proceedings involving the same patent:

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision;
3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. other circumstances that impact the [Director]’s exercise of discretion, including the merits.

Fintiv, 5-6. When the Director evaluates these factors, it is to take “a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review.” *Id.*, 6.

Together, these factors strongly support the Director’s discretion to deny institution.

1. Factor 1 Favors Denial: Stay in Delaware Litigation Is Unrealistic—Linkplay’s Intent Not to Seek One Confirms This

Factor 1 favors denial because a stay would not be warranted in the Delaware Litigation. The Delaware Litigation involves five other patents beyond the ’883 Patent, three of which are not subject to any IPR, has progressed significantly (*see infra* §II.A.3), and would not be simplified by this IPR (*see infra* §II.A.4), and a stay of the Delaware Litigation would prejudice Sonos given that the parties are direct market competitors.

Courts in the District of Delaware routinely deny stay motions under similar circumstances. *See, e.g., N. Atl. Imports, LLC v. LoCo-Crazy Good Cookers, Inc.*, 23-cv-999, 2024 WL 4827250, at *3-4 (D. Del. Nov. 19, 2024) (denying stay motion pending IPR outcome because IPR outcome would simplify only “some portion of the issues for trial” and stay would be prejudicial to Patent Owner given that parties are “direct competitors in the market”); *Tigo Energy Inc. v. SMA Solar Tech. Am. LLC*, 22-cv-915, 2024 WL 1637511, at *2-3 (D. Del. Apr. 16, 2024) (denying stay

motion because fact discovery is substantially underway, claim construction briefing is complete, and parties are direct competitors).

Nevertheless, Linkplay asserts that Factor 1 is “neutral as no stay has been requested or granted.” Pet., 87. But Linkplay’s escalating litigation efforts and complete silence on any stay request tell a different story: Linkplay knows a stay is not realistic. Since filing this IPR, Linkplay has not once suggested a stay—even after multiple hearings before the Delaware Court (*see* Ex.2101, Ex.2102). Instead, Linkplay has doubled down in the Delaware Litigation, initiating multiple discovery dispute hearings before the Court (*see id.*), retaining an additional (third) law firm as outside counsel (Ex.2103), and engaging multiple experts, all reinforcing that it has no intention to seek a stay. *See also infra* §II.A.3.

Factor 1 therefore favors denial.

2. Factor 2 Favors Denial: Jury Trial Is Set Two Months Before the Projected FWD

Factor 2 favors denial because trial in the Delaware Litigation is set for August 10, 2026 (Ex.2104, 2)—two months *before* the projected FWD on October 11, 2026. *See, e.g., Nxp Usa, Inc. v. Impinj, Inc.*, IPR2021-01556, 2022 WL 1262218, at *3 (PTAB Apr. 21, 2022) (finding Factor 2 favored denial because trial date was set two months before FWD deadline); *Cisco Sys., Inc. v. Portsmouth Network Corp.*, IPR2024-00503, 2024 WL 3678420, at *5 (PTAB Aug. 6, 2024) (same).

Linkplay's arguments to the contrary are premised on two incorrect assumptions.

First, Linkplay incorrectly assumed "an FWD in August 2026." Pet., 85 n.5. However, the Notice of Filing Date Accorded to Petition was mailed April 11, 2025 (Paper 6), which means that the FWD is not actually expected until October 11, 2026.

Second, Linkplay incorrectly assumed that "the Court will likely reschedule the rest of the case, putting trial after... when the FWD is expected." Pet., 86. To the contrary, Judge Ranjan sitting by designation in the District of Delaware recently rescheduled trial for August 10, 2026. Ex.2104, 2.

Moreover, Linkplay's attempts to cast doubt on the certainty of the Delaware Court's actual schedule by pointing to statistical forecasts (i.e., "[t]he median and average time to trial in Delaware for jury trial cases....") are misplaced for multiple reasons. See Pet., 85-86.

To start, the recently-rescheduled August trial date is, without a doubt, a better indicator of the actual trial date than any statistical forecast. Judge Ranjan is a visiting judge from the Western District of Pennsylvania, and according to Judge Ranjan himself, he was "designated to preside over [the Delaware Litigation] from another district, specifically to alleviate concerns about court congestion in Delaware." Ex.2105, 19. Under these unique circumstances, forecasting based on

District of Delaware statistics is much less instructive than looking at the actually-scheduled jury trial date.

Judge Ranjan also left no doubt that he intends to hold the parties accountable as to the schedule, and Linkplay voluntarily ***agreed*** with Sonos on the August 2026 trial date ***after*** Linkplay filed this IPR. *See* Ex.2104, 1; Ex.2106, 5(“Requests to continue the trial date will be granted only in extraordinary circumstances.”); Ex.2107, 10 [37:22-38:3] (“I do try to hold, as a general matter, hold people’s feet to the fire as to the schedule and so that might be something you can also take into account. I like to set the deadlines and try not to move them as best as we can.”); Ex.2108, 28 (“I hate to do it. And I think maybe at our first status conference I mentioned this to counsel, that I don’t like extensions generally.”). Thus, the August trial date should be taken at face value. *See, e.g., Dell Inc. v. Universal Connectivity Techs., Inc.*, IPR2024-01480, 2025 WL 1195479, at *4 (PTAB Apr. 24, 2025) (finding trial date not speculative because district court stated trial date “cannot be changed without an acceptable showing of good cause.”).

Next, Linkplay cites to the Board’s 2022 Interim Procedure and asserts that the Board “valu[es] the time to trial statistics because the actual scheduled trial date is ‘unreliable’ and ‘not by itself a good indicator.’” Pet., 85-86. But the USPTO’s March 24, 2025 memorandum (“Recission Memo”) rescinded the Board’s 2022 Interim Procedure and its guidance.

Finally, even if considering statistical forecasts (i.e., “[t]he median and average time to trial in Delaware for jury trial cases”) were appropriate, Linkplay’s invocation of “average time to trial” is misplaced for Factor 2. *See, e.g., Orthopedics v. Med.*, IPR2023-00894, 2023 WL 8001473, at *13 (PTAB Nov. 17, 2023) (rejecting “average time-to-trial” statistics) (emphasis in original); *see also, e.g.*, 2022 Interim Procedure, 8-9 (considering “median time-to-trial” statistics; not average statistics). Moreover, even if the Director were to consider Delaware’s median time-to-trial (that Linkplay represents is 32 months), the trial date would fall on October 1, 2026,¹ which is still *before* the projected FWD (i.e., October 11, 2026).

For all of these reasons, Factor 2 favors denial.

3. Factor 3 Favors Denial: There Has Been Substantial Investment in the Delaware Litigation

Factor 3 also favors denial because the parties and the Delaware Court have expended—and will continue to expend—significant resources in the Delaware Litigation leading up to the institution decision. This is because Linkplay waited until the eve of its one-year deadline to file this Petition.

The Board routinely finds this factor favors denial when parties have exchanged contentions and the district court has held a *Markman* hearing before the institution decision. *See, e.g.:*

¹ 32 months from February 1, 2024—the filing date of the Original Complaint.

- *Samsung Elecs. Co., Ltd. v. Truesight Commc'ns LLC*, IPR2025-00123, 2025 WL 1170627, at *3 (PTAB Apr. 22, 2025) (finding this factor favors denial because “[t]he parties have exchanged infringement and invalidity contentions and substantially completed document production, and the District Court has held a claim construction hearing.”)
- *Nokia of Am. Corp., et al. v. Pegasus Wireless Innovation LLC*, IPR2025-00036, 2025 WL 1203702, at *6 (PTAB Apr. 25, 2025) (finding this factor favors denial because *Markman* hearing was held, and “the parties have exchanged [preliminary] invalidity contentions”)
- *Arthrex, Inc., v. Medshape, Inc.*, IPR2025-00053, 2025 WL 1203664, at *5 (PTAB Apr. 25, 2025) (finding this factor favors denial even when fact discovery recently opened and no deposition have taken place but parties exchanged infringement and invalidity contentions, claim construction briefing, and held a *Markman* hearing before institution decision).

The Delaware Litigation presents these circumstances—and significantly more. In short, the Delaware Litigation involves six asserted patents, with extensive fact and written discovery already completed, substantial document production closed, and detailed contentions exchanged. By the October 11, 2025 institution decision deadline, *Markman* briefing will be complete, with a hearing scheduled for September 2025. Given Judge Ranjan’s track record of timely *Markman* rulings, a *Markman* order is expected around the institution decision deadline.

Below, Sonos provides further detail regarding the substantial investment in

the Delaware Litigation, as well as Linkplay's lack of diligence in pursuing this IPR.

a. The Parties' and Delaware Court's Substantial Investment

Sonos filed the Delaware Litigation well over a year ago on February 1, 2024. Today, the litigation involves six asserted patents,² approximately ten accused products (along with software apps) directly sold by Linkplay, as well as approximately ten additional accused products (along with software apps) that Linkplay provides to third parties, 15 affirmative defenses, and 18 counterclaims, including counterclaims of noninfringement, invalidity, and unenforceability based on at least lack of standing, equitable estoppel, waiver, inequitable conduct, prosecution laches, unclean hands, and patent misuse. *See, e.g.*, Ex.2111.

Given the breadth of the Delaware Litigation, both parties have poured in substantial resources since its inception, including an extensive amount of fact discovery, written discovery, contention work, and *Markman*-related work.

To start, the deadline for substantial completion of document production has already passed. To date, the parties have produced thousands of documents spanning hundreds of thousands of pages, including Chinese technical documents produced by Linkplay that required Sonos to expend additional resources to translate for

² As previously mentioned, Linkplay has only filed IPRs against three of the asserted patents.

review. Email production is also underway. And Sonos has served and completed numerous document subpoenas on third parties.

Further, Linkplay has produced for inspection well over a million files of source code, and Sonos has so far spent over 500 man-hours reviewing that source code. Ex.2109. Depositions have also begun, and Sonos has served three 30(b)(6) deposition notices on Linkplay, for which depositions are expected to begin in June.

Turning to written discovery, the parties have exchanged multiple rounds of written discovery that began more than a year ago in May 2024. To date, Linkplay has served at least 20 interrogatories and 161 requests for production, while Sonos has served at least 21 interrogatories and 120 requests for production. Both parties have exchanged dozens of written discovery responses and letters, met and conferred on numerous occasions over discovery disputes, and ultimately sought court intervention on numerous occasions.

Moreover, the parties' contention work has been extensive. Sonos has already served initial and supplemental infringement contentions that contain detailed source code traces. For its part, Linkplay has served multiple rounds of its so-called "non-infringement contentions." Linkplay has also served multiple iterations of invalidity contentions. Linkplay's invalidity contentions for the '883 Patent *alone* include an identification of around 100 prior art references (10 of which are charted and another 16 of which relate to alleged prior use, sale, and/or offer for sale), at least 20 different

§ 112 grounds, and at least two other invalidity grounds, including grounds under §§ 101 and 102(f). *See* Ex.2110, 31-35, 47, 131-34, 148-54, 171, 173-76; Ex.2111, 76-77. At Linkplay’s insistence and despite Sonos having no Court-imposed obligation to do so, Sonos also served so-called “validity contentions” in April 2025, spanning over 525 pages of rebuttals to Linkplay’s invalidity contentions.

Turning to *Markman*, to date, the parties have completed many *Markman* deadlines. More significantly, before the institution decision deadline of October 11, 2025, all *Markman* briefing will be completed, and with the *Markman* hearing scheduled for September 4, 2025, there is a strong likelihood that Judge Ranjan’s *Markman* order will issue before, or only shortly after, the institution decision deadline.³

It is also worth noting that, absent Linkplay’s litigation delay tactics, a *Markman* order issuing before the institution decision deadline would have been a near certainty. Linkplay’s strategic conduct is exemplified by its last-minute request to delay all *Markman* deadlines—made two months after its IPR filing and just three

³ To date, Judge Ranjan has only issued two *Markman* orders and both were issued promptly after the *Markman* hearing. In 19-cv-1636 (W.D. Pa.), Judge Ranjan issued his *Markman* order 27 days after the *Markman* hearing, and in 23-cv-186 (D. Del.), Judge Ranjan issued his *Markman* order 29 days after the *Markman* hearing.

days before the parties' first original *Markman* deadline. *See* Ex.2112, Ex.2113, 5-6. Despite Sonos's opposition, the Delaware Court ultimately acquiesced to Linkplay's request and moved the *Markman* deadlines by about one month. Ex.2104.

In sum, the Delaware Litigation has progressed significantly, and as a result, the Delaware Court and the parties have invested substantial resources, which will continue to compound in the coming months ahead of the October institution decision deadline.

b. Linkplay's Lack of Diligence

As noted above, Linkplay waited until the eleventh hour to file its Petition. In particular, Sonos filed the Original Complaint on February 1, 2024 and served it on February 6, 2024. The Original Complaint included a detailed explanation of Linkplay's infringement of the independent claims of the '883 Patent. Sonos's initial infringement contentions were later served on September 27, 2024, which identified additional dependent claims that Linkplay infringes.

In turn, Linkplay filed its Petition on February 5, 2025—a one day before the one-year anniversary of Sonos serving the Original Complaint. Linkplay offered no explanation to justify the eleventh-hour filing. *See* Pet., 81. Instead, Linkplay states “Petitioner filed this Petition only half a month after PO's supplemental contentions, which included an identification of asserted claims.” *Id.* This is greatly misleading.

The “supplemental contentions” Linkplay refers to have nothing to do with the ’883 Patent; instead, they are Sonos’s initial infringement contentions served on January 16, 2025 for a newly-added patent.

In truth, Linkplay has no justification for its delay, which favors discretionary denial. *See, e.g., Samsung Elecs. Co., Ltd.*, IPR2025-00123, 2025 WL 1170627, at *3 (PTAB April 22, 2025) (finding this factor favors denial because “Petitioner filed the Petition ten months after Patent Owner filed its complaint in the District Court Litigation and five months after Patent Owner served its infringement contentions.”); *Nokia of Am. Corp.*, IPR2025-00036, 2025 WL 1203702, at *6 (PTAB April 25, 2025) (finding this factor favors denial because “Petitioner did not file the Petition expeditiously.”); *Ericsson Inc. and Cellco Partnership d/b/a Verizon Wireless v. Procomm International PTE. Ltd.*, IPR2024-01455, Paper 15, at *2-3 (PTAB May 16, 2025) (granting discretionary denial, highlighting Petitioner’s failure to sufficiently “explain why it waited nearly a year to file the Petition” and “insufficient evidence the district court is likely to stay its proceeding even if the Board were to institute trial.”).

* * *

In view of the substantial investment by the Delaware Court and parties in the Delaware Litigation, and Linkplay’s lack of diligence in filing this Petition, Factor 3 favors denial.

4. Factor 4 Is Neutral (If Not in Favor of Denial): IPR Here Would Not Be a True Alternative to the Delaware Litigation

This factor is, at best for Linkplay, neutral for several reasons.

First, Linkplay's reliance on several other invalidity theories in the Delaware Litigation severely limits any potential efficiencies gained from this IPR.

As previously mentioned, the Delaware Litigation involves five patents in addition to the '883 Patent, 15 affirmative defenses, and 18 counterclaims. Linkplay's supplemental invalidity contentions for the '883 Patent also identify sixteen alleged prior use, sale, and/or offer for sale grounds, at least 20 different § 112 grounds, and at least two other invalidity grounds, including grounds under §§ 101 and 102(f). *Supra* II.A.3. Thus, carving Linkplay's patent and printed publication prior art grounds from the Delaware Litigation would barely scratch the surface of the broader issues at play, and the Board's FWD—projected two months *after* the Delaware trial—would not serve to mitigate concerns of duplicative efforts and inconsistent outcomes.

Second, the Federal Circuit's recent decision in *Ingenico Inc. v. IOENGINE, LLC* casts significant doubt on how meaningful a *Sotera* stipulation remains to be. 136 F.4th 1354 (Fed. Cir. May 7, 2025).

As background, Linkplay initially offered a *Sand Revolution* stipulation in its Petition. Pet., 87. However, likely in view of the Recission Memo dated March 24,

2025 and the Board’s recent decisions, Linkplay strategically changed course and crafted a *Sotera* stipulation on May 5, 2025 stating:

[Linkplay] agrees that if IPR2025-00510 is instituted, Linkplay will not pursue in the [Delaware Litigation] the following invalidity challenges to U.S. Patent No. 10,541,883 relying on 35 U.S.C. §§ 102, 103: (1) any **ground** raised or that could have been reasonably raised in IPR2025-00510, as well as (2) any **ground** based on corresponding system prior art.

Ex.1045 (emphasis added). As the Recission Memo states, such a stipulation is “highly relevant, but will not be dispositive by itself.” Recission Memo, 2-3.

That said, the Federal Circuit’s recent decision in *Ingenico* raises serious questions as to whether a *Sotera* stipulation like Linkplay’s is “highly relevant” anymore. In *Ingenico*, the Federal Circuit interpreted the word “ground”—found in a *Sotera* stipulation like Linkplay’s—narrowly in the context of IPR estoppel under 35 U.S.C. § 315(e)(2). 136 F.4th at 1365-66. The Federal Circuit made clear that “a ground is **not** the prior art asserted during an IPR” and “IPR estoppel does **not** preclude a petitioner from asserting the **same** prior art raised in an IPR in district court, but rather precludes a petitioner from asserting grounds that were raised or reasonably could have been raised during an IPR.” *Id.* (emphasis added). In other words, the Federal Circuit explained “IPR estoppel does **not** preclude a petitioner from relying **on the same patents and printed publications** as evidence in asserting

a ground that could not be raised during the IPR, such as that the claimed invention was known or used by others, on sale, or in public use.” *Id.*, 1366 (emphasis added).

The Federal Circuit’s interpretation of the word “ground” in connection with IPRs likewise limits the scope of a *Sotera* stipulation. For example, a Petitioner that agrees to a *Sotera* stipulation can lose before the Board in arguing a given prior art publication anticipates challenged claims but get a second bite at the apple by arguing before a district court that the same prior art publication renders the challenged claims obvious in combination with system art (whether related to the publication or not) that was known or used by others, on sale, or in public use, even if that obviousness combination relies almost exclusively on the disclosure of the prior art publication and gap fills with the system art.

This contravenes the *Sotera* Board’s rationale that a stipulation like Linkplay’s here “mitigates any concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions.” *Sotera Wireless, Inc. v. Masimo Corporation*, IPR2020-01019, Paper 12, p.19 (PTAB Dec. 1, 2020). As such, a *Sotera* stipulation in view of the Federal Circuit’s interpretation of the word “ground” no longer ensures that an IPR is a “true alternative” to a district court proceeding. *Id.* (quoting *Sand Revolution II, LLC v. Cont’l Intermodal Group – Trucking LLC*, IPR2019-01393, Paper 24 at *7 (PTAB June 16, 2020)).

Factor 4 is therefore, at best for Linkplay, neutral.

5. Factor 5 Favors Denial: The Parties Overlap

Factor 5 clearly favors denial because the parties involved in this IPR and the Delaware Litigation overlap.

Yet, Linkplay asserts—without any explanation—that “[a]lthough Petitioner is also the defendant in the litigation, **Factor 5** does not warrant denial.” Pet., 82 (emphasis in original). The Board’s recent decisions say otherwise. *See, e.g., Samsung Elecs. Am., Inc. v. Collision Commc’ns, Inc.*, IPR2025-00011, 2025 WL 1221026, at *9 (PTAB Apr. 28, 2025) (agreeing with Patent Owner that “precedential PTAB authority holds that where the petitioner and the defendant in the parallel proceedings are the same party, Factor 5 favors denial.”); *CIPLA Limited v. Gilead Sciences, Inc.*, IPR2025-00033, Paper 22, p. 12 (PTAB May 15, 2025); *Arashi Vision (U.S.) LLC d/b/a Insta360 v. GoPro, Inc.*, IPR2025-00017, 2025 WL 1223981, at *6 (PTAB Apr. 28, 2025).

Thus, Factor 5 favors denial.

6. Factor 6 Favors Denial: The Merits of Linkplay’s Arguments Are Weak

Factor 6 favors denial because Linkplay’s invalidity grounds are objectively weak. *See, e.g., Innolux Corp. v. Phenix Longhorn LLC*, IPR2025-00043, Paper No. 10, p.13 (PTAB May 15, 2025) (finding weakness of petitioner’s arguments “determinative” “for application of [Board’s] discretion overall” to deny institution). Sonos provides a preview of these deficiencies below and Sonos’s forthcoming

Preliminary Patent Owner’s Response (“POPR”) will more fully demonstrate why the Petition fails to show a reasonable likelihood of prevailing on any challenged claim.

The numerous holes in Linkplay’s Petition run deep. For instance, despite asserting six separate invalidity grounds premised on four different prior art references, Linkplay acknowledges that the prior art fails to disclose many limitations of the challenged claims. To fill in some gaps, Linkplay relies heavily on the alleged knowledge of a POSITA to argue that the missing limitations are inherent. To fill in other gaps, Linkplay mixes and matches separate and distinct embodiments in the references to shore up their deficiencies. But Linkplay’s analysis is flawed – both legally and factually – and does not establish that the missing limitations are anticipated, inherent, or obvious. Specific examples of these shortcomings are provided below.

a. Overview of Linkplay’s Grounds 1-6

Linkplay’s Petition advances six grounds:

Ground	Claims	Basis	References
1	1-8, 10-12, 14-20	§ 102	Rector
2	1-8, 10-12, 14-20	§ 103	Rector
3	3, 7-11, 13, 19	§ 103	Rector in view of Richenstein
4	1-8, 12, 14-20	§ 102	Gassho
5	1-8, 12, 14-20	§ 103	Gassho
6	1-20	§ 103	Spurgat in view of Gassho

Pet., 2. Claims 1, 14, and 20 are independent and Claims 2-13 and 15-19 are dependent. As shown, Grounds 1-2 allege anticipation or obviousness based on Rector, Ground 3 alleges obviousness based on Rector in view of Richenstein, Grounds 4-5 allege anticipation or obviousness based on Gassho, and Ground 6 alleges obviousness based on Spurgat in view of Gassho.

Notably, Ground 3, which only challenges certain dependent claims, relies on Rector (as set forth in Grounds 1-2) for the independent claims. Thus, if Grounds 1-2 fail because Rector does not anticipate or render obvious the independent claims, Ground 3 also fails.

b. Claim 1 of the '883 Patent

The discussion below regarding the shortcomings of Grounds 1-6 refers to certain limitations of independent Claim 1 of the '883 Patent and the corresponding limitations of independent Claims 14 and 20. To help guide this discussion, asserted Claim 1 is reproduced below with the addition of brackets to identify claim limitations according to the naming convention used by Linkplay in the Petition:

[1.P] A playback device comprising:

[1.a] a network interface that is configured to provide an interconnection with at least one data network;

[1.b] at least one processor;

[1.c] a non-transitory computer-readable medium; and

[1.d] program instructions stored on the non-transitory computer-readable medium that, when executed by the at least one processor, cause the playback device to perform functions comprising:

[1.e.1] detecting a triggering event that causes the playback device to enter a setup mode in which the playback device transmits at least a first message indicating that the playback device is available for setup;

[1.e.2] while in the setup mode, receiving a response to the first message that facilitates establishing an initial communication path with a computing device that is installed with an application for controlling the playback device, wherein the computing device is operating on a secure wireless local area network (WLAN) that is defined by an access point, wherein the initial communication path with the computing device does not traverse the access point;

[1.e.3] receiving, from the computing device via the initial communication path, at least a second message containing network configuration parameters for the secure WLAN, wherein the network configuration parameters comprise an identifier of the secure WLAN and a security key for the secure WLAN;

[1.e.4] using the network configuration parameters to connect to the secure WLAN that is defined by the access point; and

[1.e.5] transitioning from communicating with the computing device via the initial communication path to communicating with the computing device via the secure WLAN that is defined by the access point.

Ex.1001, Claim 1.

c. Grounds 1-3 Lack Merit Because Rector Does Not Expressly or Inherently Disclose the Claimed “*First Message*”

As one example of Linkplay trying to patch the cracks in the Petition’s anticipation analysis, there is no dispute that Rector does not expressly disclose a “*playback device*”⁴ that transmits a “*first message indicating that the playback device is available for setup,*” as required by limitation [1.e.1] of independent Claim 1 and the corresponding limitations of independent Claims 14 and 20. *See* Pet., 14-16; *see also id.*, 59, 60. Linkplay advances only a single argument to fill this gap—namely, that Rector inherently discloses the claimed “*first message.*” *Id.* But Linkplay has not established that the “*first message*” is ***necessarily*** present in Rector, as inherent anticipation demands. *See, e.g., Akamai Techs., Inc. v. Cable & Wireless Internet Servs., Inc.*, 344 F.3d 1186, 1192 (Fed. Cir. 2003) (“A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possibly present.”); *Transclean Corp. v. Bridgewood Servs., Inc.*, 290 F.3d 1364, 1373 (Fed. Cir. 2002) (same).

Inherency is a high bar that “may not be established by probabilities or possibilities” and “[t]he mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Cont’l Can Co. USA, Inc. v. Monsanto Co.*, 948

⁴ For clarity, claim language is in italics and within quotation marks throughout.

F.2d 1264, 1269 (Fed. Cir. 1991) (internal quotation marks and citations omitted); *see also Apple Inc. et al. v. Memory Integrity, LLC*, IPR2015-00159, 2015 WL 4481557, at *4 (PTAB July 21, 2015) (rejecting IPR Petitioner’s inherency argument where “[expert’s] testimony on this point is conclusory and is insufficient to show inherency” as it “does not sufficiently exclude other possible means of programming processors in [the prior art]--as required for inherency.”). Linkplay has not hurdled this bar.

In addressing the “*first message*” of limitation [1.e.1], Linkplay points to paragraphs [0022], [0023], and [0028] of Rector, which, according to Linkplay, disclose a network device 112 (the alleged “*playback device*”) and a proximity setup component 108 (the alleged “*computing device*”) establishing a Bluetooth or infrared network connection 202. *See* Pet., 14-16. However, these paragraphs of Rector do not discuss any message(s) being sent or received by network device 112 or proximity setup component 108.

Acknowledging this deficiency, Linkplay attempts to use the doctrine of inherency to supply the missing “*first message*” based on alleged knowledge of a POSITA (Ex.1003; “Declaration of Dr. Bruce Hartpence”), as evidenced by disclosure in other references that are not part of Grounds 1-3, namely, “Specification of the Bluetooth System: Covered Core Package version: 1.2” (Ex.1009; “Bluetooth Specification”) and “Infrared Data Association: Plug and Play

Extensions to Link Management Protocol Version 1.1” (Ex.1010; “Infrared Plug and Play Protocol”). *See* Pet., 15-16 (citing Ex.1003, ¶¶120-27; Ex.1009, 111, 127; Ex.1010, 5, 9). Specifically, Linkplay asserts:

[R]egardless of which protocol is used for connection 202, a POSITA would have understood that network device 12 ***has to*** send an inquiry request (Bluetooth) or a “status” message (infra-red) (each “*first message*”) to the proximity setup component 108 to indicate network device 112 “*is available for setup.*”

Pet., 15-16 (emphasis added). But Linkplay’s inherency argument fails because Linkplay has not established that Rector’s network device 112 ***necessarily*** transmits a Bluetooth “inquiry request” or an infrared “‘status’ message” (each an alleged “*first message*”) indicating that the network device 112 is available for setup.

1) Linkplay’s Bluetooth Theory

With respect to Bluetooth and the purported inherent Bluetooth “inquiry request” (alleged “*first message*”), Linkplay relies on disclosure in the Bluetooth Specification that describes an “inquiry procedure” for discovery between a Bluetooth “inquiring device” that sends “inquiry requests” and a Bluetooth “discoverable device” that listens for “inquiry requests” and sends “responses”:

Bluetooth devices use the inquiry procedure to discover nearby devices, or to be discovered by devices in their locality. The inquiry procedure is asymmetrical. A Bluetooth device that tries to find other nearby devices is known as an inquiring device and actively sends inquiry

requests. Bluetooth devices that are available to be found are known as discoverable devices and listen for these inquiry requests and send responses. The inquiry procedure uses a special physical channel for the inquiry requests and responses.

Ex.1009, 127. But even if Rector's network device 112 and proximity setup component 108 necessarily used this "inquiry procedure," which Linkplay has not established, such a use would not *necessarily* require Rector's network device 112 to be a Bluetooth "inquiring device" that sends "inquiry requests," as Linkplay asserts. Instead, that's just how Linkplay chose to map this Bluetooth inquiry procedure to try to recreate limitation [1.e.1] of Sonos's Claim 1 with impermissible hindsight. It is equally possible that network device 112 of Rector could instead be a Bluetooth "discoverable device" that listens for "inquiry requests" and sends "responses." Ex.1009, 127. But Linkplay improperly ignores this possibility because it does not fit Linkplay's invalidity theory for limitations [1.e.1]-[1.e.2]. And this alternative possibility certainly destroys any potential for inherency here.

For at least these reasons, Linkplay's inherency argument fails because Linkplay has not established that Rector's network device 112 *necessarily* transmits a Bluetooth "inquiry request" indicating that network device 112 is available for setup.

2) Linkplay's Infrared Theory

Linkplay's theory based on infrared and the purported inherent infrared “‘status’ message” (alleged “*first message*”) suffers from the same malady. Linkplay relies on disclosure in the “Infrared Data Association: Plug and Play Extensions to Link Management Protocol Version 1.1” (Ex.1010; “Infrared Plug and Play Protocol”) that describes a “status” attribute of an infrared “PnP device” that is “convey[ed]” to an infrared “host” device during discovery:

Status

This is a bit field that is used by a device to convey status to the host at discovery time. This is the only mechanism defined to acquire this type of device status. Therefore, in order for a host to determine if a PnP device's status has changed the host must request the IAS PnP Class information.

Ex.1010, 9 (emphasis in original). But, like Linkplay's reliance on the Bluetooth Specification, Linkplay's reliance on the Infrared Plug and Play Protocol is flawed for several reasons.

To start, the Infrared Plug and Play Protocol “focuses on Plug and Play [(PnP)] issues pertaining to host and peripheral inter-operability” where “an IR peripheral is logically a part of the host (as far as the user is concerned).” *Id.*, 2; *see also id.*, 2-3 (confirming that the Infrared Plug and Play Protocol does not address the scenario where there is “[c]ommunication between two hosts” as “Plug and Play issues between two hosts will be addressed at a later time.”). However, nothing in Rector

teaches or suggests that network device 112 and/or proximity setup component 108 are infrared “Plug and Play” devices where one device would operate as a “peripheral” and the other a “host,” let alone where the “peripheral is logically a part of the host.” For this reason alone, Linkplay’s inherency argument fails because Linkplay has not even established that the Infrared Plug and Play Protocol is applicable to Rector’s system.

Moreover, even if network device 112 and proximity setup component 108 of Rector were “Plug and Play” devices that operated in accordance with the Infrared Plug and Play Protocol (which they are not), the discovery process in the Infrared Plug and Play Protocol does not require Rector’s network device 112 to be an infrared “peripheral” device that sends a “‘status’ message,” as Linkplay asserts. Again, that’s just how Linkplay chose to map this infrared discovery process to attempt to recreate limitation [1.e.1] of Sonos’s claim 1. It is equally possible that Rector’s network device 112 could instead be an infrared “host” device that receives the “status” of an infrared “peripheral” device and sends “request[s]” for such status information to determine if the status has changed (Ex.1010, 9), but Linkplay improperly ignores this possibility as well because it would dismantle Linkplay’s invalidity theory for limitations [1.e.1]-[1.e.2]. Thus, for this additional reason, Linkplay’s inherency argument fails because, even if the Infrared Plug and Play Protocol did apply to Rector’s system (which it does not), Linkplay has not

established that Rector’s network device 112 *necessarily* transmits an infrared “‘status’ message” indicating that network device 112 is available for setup.

In sum, Linkplay’s inherent infrared argument fails to meet the high bar required for inherency for at least two independent reasons: (1) it relies on a specialized infrared “Plug and Play” protocol that is inapplicable to Rector’s system, and (2) even within that protocol, the outcome Linkplay asserts is not guaranteed.

d. Grounds 4-6 Lack Merit Because the Petition’s Reliance on Different Embodiments of Gassho is Not Supported

To fill in the missing gaps for Grounds 4-5, Linkplay relies on two separate and distinct embodiments of Gassho to argue that Gassho anticipates or renders obvious a “*playback device*” that transmits a “*first message indicating that the playback device is available for setup,*” as required by limitation [1.e.1] of independent Claim 1 and the corresponding limitations of independent Claims 14 and 20. *See* Pet., 47 (emphases added); *see also id.*, 42, 59, 60. But Linkplay’s attempt to combine these two separate and distinct embodiments is impermissible because Gassho does not disclose that these two embodiments can be combined in the manner proposed by Linkplay. *See Microsoft Corp. v. Biscotti, Inc.*, 878 F.3d 1052, 1063 (Fed. Cir. 2017) (explaining that “anticipation is not proven by multiple, distinct teachings that the artisan might somehow combine to achieve the claimed invention.”) (internal quotation marks and citation omitted). Linkplay also fails to

provide a sufficient obviousness analysis to support the proposed combination. As required under Federal Circuit law:

Whether a rejection is based on combining disclosures from multiple references, combining multiple embodiments from a single reference, or selecting from large lists of elements in a single reference, there must be a motivation to make the combination and a reasonable expectation that such a combination would be successful, otherwise a skilled artisan would not arrive at the claimed combination.

In re Stepan Co., 868 F.3d 1342, 1346 n.1 (Fed. Cir. 2017); *see also Polaris Indus., Inc. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1068 (Fed. Cir. 2018) (vacating obviousness determination where “the Board focused on what a skilled artisan would have been able to do, rather than what a skilled artisan would have been motivated to do at the time of the invention”); *Personal Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017) (vacating obviousness determination where “the Board nowhere clearly explained, or cited evidence showing, how the combination of the two references was supposed to work”); *ActiveVideo Networks, Inc. v. Verizon Commc’ns, Inc.*, 694 F.3d 1312, 1328 (Fed. Cir. 2012) (finding evidence insufficient to support obviousness where “[i]t also fails to explain why a person of ordinary skill in the art would have combined elements from specific references *in the way the claimed invention does.*”) (emphasis in original).

In addressing the “*first message*” of limitation [1.e.1], Linkplay admits that it relies on the combination of two separate and distinct embodiments of Gassho:

Gassho discloses that a radio print server (PS) for setup is “in an initial factory state,” and ST1 needs to be set to the initial settings of the PS to “enable direct communication between the station ST1 and the radio print server PS.” EX1006, [0054]-[0055]; EX1003, ¶232. As to how these initial settings are received by ST1, Gassho discloses that the user can obtain them from an instruction manual (*in the first embodiment*), or the wireless communication device sends a “setting requirement signal” that includes the device’s own factory setting parameters (*in the second embodiment*). EX1006, [0065], FIG. 6 (step S200). This setting requirement signal is a “request signal that requires the setting parameters,” thus indicating that the wireless communication device is available for setup and thus constitutes the “*first message*.” EX1003, ¶232.

Pet., 47 (emphases added); *see also* Pet., 42 (“Gassho provides *two embodiments*: a *first embodiment* In the *second embodiment*, ...”). However, as support for this combination of separate and distinct embodiments, Linkplay offers only a single conclusory sentence: “Gassho suggests the features of the two embodiments are compatible and a POSITA would understand that Gassho discloses or at least suggests that the first embodiment can have PS send the ‘setting requirement signal.’” Pet., 47-48. But Linkplay is wrong.

While Gassho does reference the first embodiment when describing the second embodiment, Gassho does not teach (or even suggest) that the “setting requirement signal” of the second embodiment can be used with the first

embodiment. *See* Ex.1006, [0066] (“The parameter input module 21 inputs the setting parameters in the access point AP. The setting parameters may be input from the station ST by radio, as in the case of the first embodiment.”), [0068] (“The following describes a process of transmitting the setting parameters, which is executed by the access point AP. In this embodiment, the setting parameters are transmitted to a station. Here the station may be the station ST or the radio print server PS discussed in the first embodiment ...”). Instead, Gassho clearly explains that the “setting requirement signal” is only used in connection with the second embodiment, which utilizes an access point AP to carry out the settings in another wireless communication device (e.g., station ST), and not with the first embodiment, which utilizes a station ST1 to carry out the settings in another wireless communication device (e.g., print server PS). *Compare* Ex.1006, [0060]-[0072], FIG. 4 (describing second embodiment) *with* [0038]-[0059], FIG. 6 (describing first embodiment). It is undisputable that the access point AP of the second embodiment is a completely different type of device with different capabilities than the station ST1 of the first embodiment.

Moreover, Linkplay’s attempt to use the “setting requirement signal” of the second embodiment with the first embodiment is nonsensical. As Gassho explains, in the first embodiment, the station ST1 and the print server PS cannot communicate until *after* a user manually sets the network settings in the station ST to match the

initial factory network settings in the print server PS (as indicated by steps S100 and S101 of FIG. 4; in blue above). *See* Ex.1006, [0055] (“In order to establish communication at least between the Station ST1 and the radio print server PS, the user sets the radio channel of the station ST1 to the channel 14, specifies the ADHOC mode for the communication mode, and selects the non-use setting of the WEP. These settings are identical with the setting in the radio print server PS and enable direct communication between the station ST1 and the radio print server PS.”); *see also id.*, [0054] (explaining how the station ST1 and print server PS initially have different network settings); FIG.4. Thus, the print server PS of the first embodiment would not even be able to send a “setting requirement signal” to the station ST1 with the print server PS’s initial factory network settings until *after* the station ST1 already has the print server PS’s initial factory network settings. But this doesn’t make sense as there would be no need for the print server PS to send such a “setting requirement signal” to the station ST1 at that point because the station ST1 would already have the print server PS’s initial factory network settings.

To the extent Linkplay is relying on some sort of obvious combination of the first and second embodiments of Gassho, the single conclusory sentence in the Petition—“Gassho suggests the features of the two embodiments are compatible and a POSITA would understand that Gassho discloses or at least suggests that the first embodiment can have PS send the ‘setting requirement signal’” (Pet., 47-48)—fails

because it does not explain how or why a POSITA would combine the admittedly different embodiments of Gassho, as required by the Federal Circuit law set forth above. The Board has also found such sparse arguments for combining different embodiments insufficient. *See, e.g., Abiomed, Inc. et al. v. Maquet Cardiovascular, LLC*, IPR2017-01204, IPR2017-01205, 2017 WL 4804523, *4 (PTAB Oct. 23, 2017) (denying institution where Petitioner “fails to provide a sufficient rationale to combine the teachings of Aboul-Hosn’s different embodiments” and “fails to explain sufficiently *why* one skilled in the art would have found it obvious to combine those teachings.”) (emphasis in original); *Ariosa Diagnostics v. Verinata Health, Inc.*, IPR 2013-00276, IPR2013-00277 2016 WL 8944596, *10 (PTAB Aug. 15, 2016) (finding that Petitioner failed to prove obviousness where “virtually no effort is made to explain how or where the references differ from the challenged claims, how one of ordinary skill in the art would go about combining their disparate elements, or what modifications one of ordinary skill in the art would necessarily have made in order to combine the disparate elements.”) (citation omitted).

Lastly, with respect to Ground 6 based on Spurgat in view of Gassho, while Linkplay discusses Spurgat in relation to limitations [1.e.1]-[1.e.5], Linkplay never actually asserts that Spurgat teaches or suggests the specific requirements of these limitations, including the claimed “*first message indicating that the playback device is available for setup*” of limitation [1.e.1]. *See* Pet., 64-69. Nor could Linkplay

make such an assertion because, unlike limitations [1.e.1]-[1.e.5], Spurgat does not concern the setup of a “*playback device*” to operate on a secure WLAN. See Ex.1007; Ex.1001, Claim 1. Instead, with respect to the specific requirements of limitations [1.e.1]-[1.e.5] of independent Claim 1 and the corresponding limitations of independent Claims 14 and 20, the Petition relies solely on Gassho: “Gassho discloses or suggests all the recited features for reasons explained in Grounds 4-5.” Pet., 64, 77. Thus, Ground 6 fails for at least the same reasons set forth above for Grounds 4-5, namely, that Linkplay’s attempt to combine two distinct embodiments of Gassho to arrive at the “*first message*” of limitation [1.e.1] is flawed because Gassho does not disclose that the two distinct embodiments can be combined in the manner proposed by Linkplay, and Linkplay fails to provide a sufficient obviousness analysis to support the proposed combination, as required under Federal Circuit law.

To the extent Linkplay tries to pivot and argue that Spurgat does somehow teach or suggest the specific requirements of limitations [1.e.1]-[1.e.5], including the claimed “*first message indicating that the playback device is available for setup*” of limitation [1.e.1], such an argument would not only lack any support in the Petition, but it would also lack merit and be contrary to the Petition’s characterization of Spurgat.

With respect to the “*first message*” of limitation [1.e.1], Linkplay states that Spurgat discloses:

[A]n audio player discovery process where Spurgat's "discovery handler sends a broadcast for players message" and then receives "a message response from the mobile digital audio players," (similar to the "*first message*" and "*response*" exchange using IP broadcast disclosed by Gassho), and finally adds the new device on a list of players among which playlist and content synchronization are performed.

Pet., 66-67. But this "discovery process" in Spurgat for adding "digital audio players" to a "list" for "playlist continuation" and "content synchronization" concerns the discovery of "digital audio players" 115, 116 that are *already* set up and operating on "wireless network or wireless communication platform" 104. See Ex.1007, [0093]; see also, *id.*, [0034], FIG. 1. Spurgat's "discovery process" does not concern the actual setup of digital audio players 115, 116 to operate on wireless network or wireless communication platform 104. Thus, the "broadcast for players message" in Spurgat does not teach or suggest the claimed "*first message indicating that the playback device is available for setup*" of limitation [1.e.1], which is sent by the "*playback device*" before it connects to the secure WLAN in limitation [1.e.4]. Ex.1001, Claim 1.

That the "broadcast for players message" in Spurgat does not teach or suggest the claimed "*first message*" is also confirmed by Linkplay's own words, as it describes Spurgat's "broadcast for players message" as only being "*similar*" to the alleged "*first message*" of Gassho, not the same as the alleged "*first message*." Pet., 66-67 (emphasis added).

* * *

Thus, for at least these reasons, the Petition fails to establish a reasonable likelihood of success that any of Grounds 1-6 invalidate the challenged claims.

7. Summary of *Fintiv* Factors

In summary, *Fintiv* factors 1, 2, 3, 5, and 6 favor denial, some of which weigh heavily toward denial, and factor 4 is, at best for Linkplay, neutral. Thus, when considered holistically, the *Fintiv* factors strongly favor denial.

B. Other Considerations Also Favor Discretionary Denial

The Workload Memo identifies additional considerations that the Director may consider for discretionary denial, including:

1. Whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims;
2. Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability;
3. The strength of the unpatentability challenge;
4. The extent of the petition's reliance on expert testimony;
5. Settled expectations of the parties, such as the length of time the claims have been in force;
6. Compelling economic, public health, or national security interests; and
7. Any other considerations bearing on the Director's discretion.

Workload Memo, 2.

As explained below, several of these considerations further favor denial.

1. Linkplay's Heavy Reliance on Expert Testimony Favors Denial

As noted above, “[t]he extent of the petition’s reliance on expert testimony” is a consideration set forth in the Workload Memo. Since that memo issued, the USPTO further explained the importance of “focused” expert testimony:

[E]xtensive reliance on expert testimony and/or reasonable disputes between experts on dispositive issues may suggest that the questions are better resolved in an Article III court... As the judges have technical and legal expertise, it is not necessary for an expert to explain every aspect of the prior art. It is most helpful if an expert is providing *focused* testimony, for example to provide helpful context or to explain terms of art. The failure to provide *focused* expert testimony may weigh against institution.

FAQs for Interim Processes for PTAB Workload Management, at #21 (published Apr. 25, 2025), <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management> (“FAQ #21”) (emphasis added).

This consideration favors discretionary denial here for several reasons.

First, Linkplay relies extensively on the unfocused testimony of Dr. Hartpence. This testimony consists of 347 paragraphs spanning nearly 169 pages and lacks the hallmarks of offering helpful context or explanation about terms of art. *See* Ex.1003.

Second, if instituted, this IPR will inevitably present “reasonable disputes between experts on dispositive issues” that are “better resolved in an Article III

court.” FAQ #21. Indeed, Sonos’s forthcoming POPR will identify several flaws in the Petition (and by extension, Dr. Hartpence’s opinions), and if the Director institutes IPR, Sonos’s own expert plans to address the flaws in Dr. Hartpence’s analysis that doom the Petition.

Third, instead of using expert testimony for helpful context or explaining terms of art, Linkplay uses Dr. Hartpence’s testimony as a crutch to supply limitations missing from its relied-on references and patch up clear shortcomings of its obviousness positions. *See, e.g.*, Pet., 15 (“POSITA would know that for network device 112 to be detected using Bluetooth as explicitly specified by Rector, it necessarily needs to be powered on to send inquiries or pages A POSITA would understand network device 112 being bought into proximity and powered on for a secure network connection, as disclosed by Rector, to be necessary under the Bluetooth standards to cause the device to enter a setup mode.”), 16-18, 24-29, 45-51, 55-58, 70, 72-75. Yet, Dr. Hartpence’s testimony is largely conclusory and merely echoes Linkplay’s Petition, which renders it unhelpful.⁵ *E.g., compare* Pet.,

⁵ *See, e.g., TikTok Inc. v. NTech Properties, Inc.*, IPR2024-01339, 2025 WL 607860, at *7 (PTAB Feb. 25, 2025) (affording “conclusory” expert testimony “little or no weight”); *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, 2022 WL 3648989, at *7 (PTAB. Aug. 24, 2022) (precedential).

9-31, *with* Ex.1003, ¶108-185.

Moreover, as with the Petition, Dr. Hartpence’s conclusory analysis (*see, e.g.*, Ex.1003, ¶120, 127, 146, 147, 154, 158, 161, 162, 173, 187, 207, 208, 211, 212, 217, 218, 232, 245, 263, 308, 313, 331, 335, 343) is legally deficient at least because it fails to explain in sufficient detail **how** any proposed modification is supposed to work. *See Personal Web Techs., LLC v. Apple Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017) (“[A] clear, evidence-supported account of the contemplated workings of the combination is a **prerequisite** to adequately explaining and supporting a conclusion that a relevant skilled artisan would have been motivated to make the combination and reasonably expect success in doing so.”) (emphases added).

Thus, in sum, Linkplay’s extensive reliance on unfocused expert testimony favors denial. The Board’s resources would be better allocated to other petitions more grounded in the substance of the prior art.

2. The Delaware Court Is Best Positioned to Apply Its Prior Claim Constructions

The Board is entitled to consider “[a]ny other considerations bearing on the Director’s discretion.” Workload Memo, 2. An additional consideration that weighs in favor of denial is that the Delaware Court is the best forum to apply its own claim constructions that the Board would otherwise have to apply here.

In this respect, at least two terms found in the challenged claims of the ’883 Patent were construed by the Delaware Court in *Sonos, Inc. v. D&M Holdings, Inc.*,

1:14-cv-01330-RGA (D. Del.) (“D&M Litigation”) in connection with other Sonos patents, namely, the terms “*playback device*” and “*network interface*.” While Linkplay does not acknowledge the constructions for these terms by the Delaware Court in the D&M Litigation, Linkplay does acknowledge that these terms, among others, were construed in connection with the related U.S. Patent No. 10,439,896 by the International Trade Commission (ITC) in Inv. No. 337-TA-1191, and Linkplay purports to apply these constructions throughout the Petition. *See* Pet., 9 n. 3.

However, the Delaware Court is the obvious choice for applying constructions of claim terms that it previously construed and applied to Sonos’s patents in the D&M Litigation, which ultimately ended in a jury verdict in favor of Sonos. This holds particularly true given that Judge Ranjan made clear that he intends to utilize the “forms and orders” of Judge Andrews (Ex.2114), who issued the *Markman* Order in the D&M Litigation. *See* Ex.1006. Further, the “*playback device*” and “*network interface*” terms found in the challenged claims that were previously construed by the Delaware Court are found in other of the patents asserted against Linkplay aside from the ’883 Patent. Having the Delaware Court oversee the application of its constructions in connection with the ’883 Patent, as well as the other asserted patents, will help mitigate potential inconsistencies that may result in the Board analyzing the Delaware Court’s claim constructions.

3. Economic and National Interests Favor Denial

The Board can consider “[c]ompelling economic, public health, or national security interests.” Workload Memo, 2. Economic and general national interests favor denial here.

In this respect, Sonos is an American success story. Founded in 2002 in Santa Barbara, Sonos essentially created the modern-day “multiroom” market and has been routinely lauded for the technological innovations it has created along the way. Sonos has diligently protected that innovation and amassed a U.S. patent portfolio that is ranked amongst the most powerful in consumer electronics. *See* Ex.2116, 3 (ranking Sonos’s patent portfolio #6 in consumer electronics).

Linkplay is a Chinese company (*see* Pet., 73) that is piggybacking off of two decades’ worth of innovation that Sonos has invested tremendously in. By doing so, Linkplay is able to undercut Sonos’s prices and erode sales that would otherwise go to Sonos, thereby undermining the economics of Sonos continuing to invest in innovation and grow its U.S. patent portfolio. This is a common trend among Chinese companies vis-à-vis an American innovator. *See, e.g.*, Ex.2117 (Chairman of Subcommittee on Courts, Intellectual Property, and the Internet stating, “[t]o put it simply: China is stealing what is ours while at the same time availing themselves of the legal and regulatory protections – and ownership of intellectual property – that America created in the name of respect for the rule of law.”); Ex.2118 (“The

C[hinese] C[ommunist] P[arty] seeks to damage or destroy the value of the IP of U.S. businesses, thereby inflicting economic harm to the U.S., while simultaneously enabling Chinese firms to profit from the theft of that IP.”) Denying institution would prevent foreign entities, like Linkplay, from exploiting the American legal system through duplicative and unnecessary parallel litigation.

4. Summary of Additional Considerations

In sum, at least three additional considerations weigh in favor of denial.

III. DISCRETIONARY DENIAL IS WARRANTED UNDER § 325(D)

35 U.S.C. § 325(d) provides that the Director may deny institution when “the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). The Board’s *Advanced Bionics* decision provides a two-part framework for evaluating whether denial under Section 325(d) is warranted: (1) whether the same or substantially the same prior art or argument was previously presented to the Office; and (2) if the first part is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims. *Advanced Bionics, LLC v. Med-El Elektromedizinische Geräte GMBH*, IPR2019-01469, 2020 WL 740292, at *3 (PTAB Feb. 13, 2020). The *Advanced Bionics* framework “reflects a commitment to defer to previous Office evaluations of the evidence of record unless material error is shown.” *Id.*

The Board also explained that *Becton Dickinson* provides useful factors in applying the *Advanced Bionics* framework. The *Becton Dickinson* factors are:

- (a) the similarities and material differences between the asserted art and the prior art involved during examination;
- (b) the cumulative nature of the asserted art and the prior art evaluated during examination;
- (c) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection;
- (d) the extent of the overlap between the arguments made during examination and the manner in which Petitioner relies on the prior art or Patent Owner distinguishes the prior art;
- (e) whether Petitioner has pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art; and
- (f) the extent to which additional evidence and facts presented in the Petition warrant reconsideration of the prior art or arguments.

Becton, Dickinson and Co. v. B. Braun Melsungen AG, IPR2017- 01586, Paper 8 at 17 (PTAB Dec. 15, 2017).

The Board further explained that *Becton Dickinson* factors (a), (b), and (d) provide insight into whether the same or substantially the same art or arguments were previously presented to the Office (i.e., the first part of the *Advanced Bionics* framework), and *Becton Dickinson* factors (c), (e), and (f) provide insight into whether the petitioner has shown the Office materially erred (i.e., the second part of the *Advanced Bionics* framework). *Advanced Bionics*, 2020 WL 740292, at *4.

A. *Advanced Bionics*, Part 1 – Two of the References Were Previously Presented to the Office and the Other Two References are Substantially Similar and Cumulative

1. Rector and Spurgat Were Previously Presented to the Office

As described above, Linkplay's Petition asserts six different grounds based on four different references. More specifically, Grounds 1-2 allege anticipation or obviousness based on Rector, Ground 3 alleges obviousness based on Rector in view of Richenstein, Grounds 4-5 allege anticipation or obviousness based on Gassho, and Ground 6 alleges obviousness based on Spurgat in view of Gassho. But Rector, the lead primary reference in Linkplay's Petition, and Spurgat, another primary reference, were previously considered by the Office during prosecution after being presented by Sonos on an IDS, as confirmed by the fact that these references are cited on the face of the '883 Patent:

2002/0165721	A1	11/2002	Chang et al.
2002/0165921	A1	11/2002	Sapieyevski
2002/0168938	A1	11/2002	Chang
2002/0173273	A1	11/2002	Spurgat et al.]
2002/0177411	A1	11/2002	Yajima et al.
2002/0181355	A1	12/2002	Shikunami et al.
2002/0184310	A1	12/2002	Traversat et al.
2002/0188762	A1	12/2002	Tomassetti et al.
.....			
2003/0200001	A1	10/2003	Goddard et al.
2003/0204273	A1	10/2003	Dinker et al.
2003/0204509	A1	10/2003	Dinker et al.
2003/0210796	A1	11/2003	McCarty et al.
2003/0212802	A1	11/2003	Rector et al.
2003/0219007	A1	11/2003	Barrack et al.
2003/0227478	A1	12/2003	Chatfield
2003/0229900	A1	12/2003	Reisman

Ex.1001, 6; *see also* Ex.1002, 328 (considering Spurgat), 243 (considering Rector). Not only did the Examiner correctly allow the '883 Patent over Rector and Spurgat, the Office did not even think these references were close enough to warrant a rejection.

Recognizing that this presents an issue under Section 325(d), Linkplay misleadingly suggests that only applications “related to” Spurgat and Rector were submitted on an IDS during prosecution. Pet., 78. To be clear, the *same* Rector reference asserted in the Petition was submitted on an IDS during prosecution. *Compare* Ex.1001, 6 *with* Pet., 2 (listing same Rector publication numbers). And the Spurgat reference asserted in the Petition (2002/0174243) is virtually identical to the Spurgat reference that was submitted on an IDS during prosecution (2002/0173273). In this respect, other than their Abstracts, Cross-Reference to Related Applications paragraphs, Field of Invention paragraphs, and Summary of the Inventions paragraphs, the remainder of their disclosures and figures are the same (minus a few formatting and spelling differences). *See* Ex.2119 (comparing the two Spurgat references). Thus, for all intents and purposes, the same (or, at least, substantially the same) Spurgat reference asserted in the Petition was previously presented to and considered by the Office.

Because Spurgat and Rector were submitted on an IDS during prosecution and considered by the Office, the first part of the *Advanced Bionics* framework is

satisfied for these references. *See, e.g., Ecto World, LLC v. Rai Strategic Holdings, Inc.*, IPR2024-01280, 2025 WL 1441509, at *2 (P.T.A.B. May 19, 2025) (“Challenging the claims using the same prior art that was previously presented on an IDS is sufficient to satisfy the first part of the *Advanced Bionics* framework.”).

2. Gassho and Richenstein Are Substantially Similar and Cumulative

Although Richenstein and Gassho were not previously presented to the Office, the Board additionally considers (a) the similarities between the asserted art and the prior art evaluated during examination and (b) the cumulative nature of the asserted art and the prior art evaluated during examination. *See Becton Dickinson* factors (a), (b). Under *Becton Dickinson* factors (a) and (b), Gassho and Richenstein are both substantially similar and cumulative of the Rector and Spurgat references that were previously presented to the Office.

Linkplay itself ***repeatedly*** asserts that Gassho (Grounds 4-6) is substantially similar and cumulative of the previously-presented Rector (Grounds 1-2) and Spurgat (Ground 6) references. *See, e.g., Pet.*, 41 (“Like Rector, Gassho also provides a ***nearly identical*** solution as claimed in the ’883 patent”), 66-67 (“Spurgat also discloses an audio player discovery process where Spurgat’s ‘discovery handler sends a broadcast for players message’ and then receives ‘a message response from the mobile digital audio players,’ (***similar*** to the ‘first message’ and ‘response’ exchange using IP broadcast disclosed by Gassho”), 67

(“Spurgat and Gassho are *analogous* art, in the *same* field of endeavor as the ’883 patent, which relates to connecting and controlling wireless communication devices on a local wireless network. Both Spurgat and Gassho are pertinent to the purported problem addressed by the ’883 patent: securely discovering and configuring devices for communications on a wireless network.”) (citations omitted), 70 (“A POSITA would have found it obvious for the digital audio players disclosed in Spurgat to send a *similar* acknowledge message after receiving the content of network configuration parameters, as taught in Gassho.”).

Moreover, Linkplay’s characterization of Gassho as substantially similar and cumulative of the previously-presented Rector and Spurgat references is further confirmed by Linkplay’s mapping of Rector, Spurgat, and Gassho to the challenged claims, which evinces Linkplay’s reliance on Rector, Spurgat, and Gassho for substantially the same limitations. In this regard, Grounds 1-2 based on the previously-presented Rector challenge Claims 1-8, 10-12, and 14-20, while Grounds 4-5 based on Gassho challenge nearly the same set of claims, namely, Claims 1-8, 12, and 14-20. Notably, Grounds 4-5 based on Gassho do not challenge any claims that are not already challenged in Grounds 1-2 based on the previously-presented Rector. And Ground 6 based on Spurgat in view of Gassho challenges Claims 1-20, which encompasses all of the claims challenged in Grounds 1-2 and Grounds 4-5.

Likewise, Linkplay’s characterization and application of Richenstein (Gound

3) and the previously-presented Spurgat (Ground 6) demonstrate that these two references have substantially similar and cumulative disclosures, according to Linkplay. For instance, Linkplay characterizes both Richenstein and the previously-presented Spurgat as being directed to synchronization and control of playback devices with wireless communication capabilities. *See, e.g.,* Pet.. 32 (stating that “Richenstein provides devices, methods, and systems for playing synchronized audio on a network of audio devices” and “discloses various networked audio devices with wireless capabilities ...”), 60 (stating that “Spurgat is directed to a digital playback device that ‘is configured to enable wireless communication among other digital playback devices and/or a computing platform to allow synchronization and control’”). And Linkplay maps Richenstein and the previously-presented Spurgat against the same limitations of Claims 3, 7-11 13, and 19. *See* Pet., 36-41 (applying Richenstein to Claims 3, 7-11 13, and 19), 70-77 (applying Spurgat to Claims 3, 7-11 13, and 19). While Linkplay also asserts the previously-presented Spurgat against other challenged claims, that is irrelevant because Richenstein is only asserted against Claims 3, 7-11 13, and 19, which suggests that, according to Linkplay, Richenstein does not provide any relevant disclosure beyond what is already allegedly disclosed in the previously-presented Spurgat.

Moreover, Linkplay's Petition fails to identify any material difference between (1) Gassho and the previously-presented Rector and Spurgat references, and (2) Richenstein and the previously-presented Spurgat reference.

Accordingly, based on Linkplay's own characterization and application of the prior art, both Gassho and Richenstein are substantially the same and cumulative of the Rector and Spurgat references that were previously presented to the Office. The first part of the *Advanced Bionics* framework is therefore satisfied. *See, e.g., Nespresso Usa, Inc. v. K-Fee Sys. GmbH*, IPR2021-01222, 2022 WL 212376, at *6 (PTAB Jan. 18, 2022) (finding uncited reference substantially similar and cumulative of reference previously presented in an IDS).

Further supporting this conclusion is that Linkplay advances Richenstein only in connection with a subset of challenged dependent claims. Trial in this IPR necessarily would require the Board to assess whether the challenged independent claims are unpatentable in view of the primary reference, Rector, before Richenstein would even come into play in connection with a subset of challenged dependent claims. In this respect, Richenstein "does not change the calculus regarding whether the same or substantially the same prior art previously was presented to the Office." *Id.* This is the same factual scenario presented in *Nespresso*, where the Board previously found that a secondary reference advanced solely in connection with a

subset of challenged dependent claims constitutes substantially the same reference previously presented to the Office. *See id.*, *6-7.

B. *Advanced Bionics*, Part 2 – Linkplay Has Not Demonstrated The Office Materially Erred

Because the first part of the *Advanced Bionics* framework is satisfied, Linkplay has the added burden to demonstrate that the Examiner erred in a manner material to the patentability of challenged claims. Specifically, Linkplay “must explain, with reference to *Becton Dickinson* factors (c), (e), and (f), how the Examiner erred in overlooking the prior art.” *Ecto World*, 2025 WL 1441509, at *2. Importantly, “[i]f reasonable minds can disagree regarding the purported treatment of the art or arguments” by the Examiner, then “it cannot be said that the Office erred in a manner material to patentability.” *Advanced Bionics*, 2020 WL 740292, at *3. Linkplay failed to satisfy this burden in its Petition.

Linkplay’s Petition advances a bare allegation that, “to the extent that Rector and certain disclosures of Spurgat were before the Office during prosecution, the Examiner materially erred by overlooking or not appreciating their relevance to the challenged claims, as described herein.” Pet., 78-79. This conclusory allegation, however, is insufficient to establish material examiner error. *See, e.g., Nespresso*, 2022 WL 212376, at *11 (“To the extent Petitioner argues that the relative strength of the grounds stated in the Petition, standing alone, supports a finding of material examiner error, that argument is not developed adequately and, therefore, is

unpersuasive on this record.”). Moreover, Linkplay’s allegation is particularly unpersuasive given that Rector and Spurgat fail to teach or suggest numerous limitations of the ’883 Patent claims, including, for example, the “*first message*” of limitation [1.e.1], as explained above. And given that Linkplay treats both Gassho and Richenstein as substantially the same and cumulative of the previously-presented Rector and Spurgat references, even if Gassho and Richenstein had been presented to the Office during prosecution of the ’883 Patent, the Office would have allowed the challenged claims to issue for at least the same reasons the Office allowed the challenged claims to issue over Rector and Spurgat. For example, Gassho and Richenstein also fail to disclose the claimed “*first message*.”

Further, even if Richenstein had been presented to the Office during prosecution, the Office could not have erred in a manner material to patentability because Linkplay does not assert Richenstein against any of the challenged independent claims, but rather only asserts Richenstein as a secondary reference in combination with Rector to address the ***additional limitations*** of challenged ***dependent*** claims 3, 7-11, 13, and 19. Pet., 31-41. In other words, the Office still would have allowed the challenged claims over the combination of Rector and Richenstein because the Office already allowed the challenged independent claims over Rector and, according to Linkplay, Richenstein is only relevant to certain additional limitations of the challenged dependent claims.

For the above reasons, Linkplay failed to establish that the Examiner erred in a manner material to patentability under the second part of the *Advanced Bionics* framework. Discretionary denial under § 325(d) is therefore warranted. *See, e.g., Nespresso*, 2022 WL 212376, at *11-12.

IV. CONCLUSION

Sonos respectfully submits that discretionary denial is warranted here. Given Linkplay's unexcused delay in filing its Petition, many of the *Fintiv* factors favor denial under Section 314(a), and the Petition's weak merits leave no doubt that denial is proper. Yet, even more considerations beyond *Fintiv* are present here that weigh strongly in favor of denial. Denial is also warranted under Section 325(d) because two of the four references relied on by Linkplay were previously presented to the Office during prosecution, while the other two references are substantially similar and cumulative. And Linkplay has failed to demonstrate that the Office erred in a manner material to the patentability of the challenged claims.

Respectfully submitted,

LEE, SULLIVAN, SHEA & SMITH LLP

Dated: June 11, 2025

/John Dan Smith III/

John Dan Smith III, Reg. No. 66,743

LEE SULLIVAN SHEA & SMITH LLP

656 West Randolph Street, Suite 5W

Chicago, IL 60661

(312) 754-9602

smith@ls3ip.com

Counsel for Patent Owner Sonos, Inc.

CERTIFICATE OF WORD COUNT

The undersigned certifies that the foregoing PATENT OWNER’S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION 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, certificate of word count, and certificate of service—contains 12,305 words.

Dated: June 11, 2025

By: /John Dan Smith III/

John Dan Smith III, Reg. No. 66,743
LEE SULLIVAN SHEA & SMITH LLP
656 West Randolph Street, Suite 5W
Chicago, IL 60661
(312) 754-9602
smith@ls3ip.com

Counsel for Patent Owner Sonos, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby confirms that the foregoing Request for Discretionary Denial of Institution was served on June 11, 2025 via email directed to counsel of record for the Patent Owner at the following:

Gang (Gavin) Ye
gavin.ye@bayes.law

Andrew L. Ramos
andrew.ramos@bayes.law

Jiayu (Mandy) Song
mandy.song@bayes.law

Linkplay-Sonos-IPR@bayes.law

/John Dan Smith III/

John Dan Smith III, Reg. No. 66,743
LEE SULLIVAN SHEA & SMITH LLP
656 West Randolph Street, Suite 5W
Chicago, IL 60661
(312) 754-9602
smith@ls3ip.com