

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LINKPLAY TECHNOLOGY INC.

Petitioner

v.

SONOS, INC.

Patent Owner

IPR2025-00510

U.S. PATENT NO. 10,541,883

**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. 10,541,883 (“’883 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 ’883 patent are anticipated or rendered obvious under six different Grounds. All elements of the challenged claims are either expressly disclosed or taught by the prior art references. Indeed, the prior art, Rector and Gassho, disclose the exact subject matter which the examiner indicated was the subject matter that rendered the claims allowable. Sonos’s arguments to the contrary concerning the merits of the Petition 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 Rector and Spurgat. 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.

Discretionary denial is also not warranted because of the complexity of the parallel district court litigation in the District of Delaware involving six patents and

the related IPRs 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 initially asserted infringement of nearly every claim in each of the six patents, totaling 141 claims with 20 independent claims, requiring Petitioner to challenge all claims of the three patents pending in the related IPRs including all claims of the '883 patent. In complicated matters like these, involving multiple patents and diverse subject matter, the Director has ruled that the PTAB is a more suited forum to handle such cases.

In addition, the discretionary denial is inappropriate because the parties do not have settled expectations respecting the '883 patent, which Sonos does not dispute. Indeed, the '883 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 '883 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 Petition demonstrates that every element of all challenged claims is disclosed or rendered obvious by not one, but six different prior art grounds. Pet., 2. The six grounds include two anticipation grounds based on two different references under 35 U.S.C. § 102: Rector or Gassho; two single reference obviousness grounds under 35 U.S.C. § 103 each based on Rector or Gassho; and two combination grounds under 35 U.S.C. § 103 with Rector or Gassho each combined with another reference, as outlined below. Pet., 2.

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

Any one of these six grounds presents a sufficiently high likelihood of success, warranting institution.

A. The References Cited in the Petition Disclose the Very Subject Matter the Examiner Indicated During Prosecution as Making the Claims Allowable

The Petition clearly articulates how a single reference (Rector or Gassho), or in combination with another, discloses each and every feature of the challenged claims. Indeed, Rector and Gassho each discloses the very subject matter which the examiner indicated as rendering the claims allowable.

During the original prosecution of the '883 patent, the examiner indicated the claims were allowable due to amendments, which specified that a playback device further performed the function of “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...” EX1002, 115 (emphasis original). But that allowable subject matter was explicitly disclosed by each of Rector and Gassho. Sonos does not even attempt to rebut these showings.

For instance, the Petition shows that Rector discloses element [1.e.2], including the amended language regarding the access point and initial communication path, noted as being allowable subject matter. Specifically, Rector discloses a proximity setup component 10 as a computer with processor and memory (“*computing device*”) and running programs to realize “computerized methods” to control network device 112 (“*application for controlling the playback device*”). Pet., 17-19.; EX1004, [0026], FIG. 4. As in the amended language, Rector provides that the proximity setup component 108 operates on the LAN as it either integrates with gateway component 106 (FIG. 1A) or communicates with 106 “through a network such as network 120” (FIG. 1B). Pet., 19; EX1004, [0007], [0020]; EX1003, ¶134. This local network 120 includes wireless network connections 120.2, “a connection supporting the IEEE 802.11b protocol with encryption enabled,” and gateway component 106 that can be a “router, wireless access point, or residential gateway” (“*a secure wireless local area network (WLAN) defined by an access point*”). EX1004, [0016]-[0017]; EX1003, ¶¶133-34. Rector also discloses that the connection 202 (“*the initial communication path*”) established by proximity setup component 108 “is separate from network 120,” thus “*does not traverse the access point.*” Pet., 19; EX1004, [0018], [0029]; EX1003, ¶135.

Gassho also discloses these same limitations to the access point and initial communication path. Specifically, Gassho discloses that “wireless network group X is constructed by an access point AP1 and stations ST1 and ST2,” thereby constituting a “*WLAN defined by an access point.*” Pet., 51-52; EX1006, [0054]. Gassho further discloses a short distance communication (“*the initial communication path*”) with ST1 (“*computing device*”), as a “direct communication” between ST1 and PS (i.e., one that “*does not traverse the access point,*” AP1). Pet., 51-52; EX1006, [0055]; EX1003, ¶239.

B. Rector Describes A “Playback Device” That Transmits A “First Message”

For certain claim features, the Petition even offers alternative theories to demonstrate how they are disclosed, e.g., via express or inherent disclosure or being suggested as obvious from the perspective of a POSITA. Any one of those theories can independently support unpatentability, further confirming the strong merits in the challenges. However, instead of addressing all the grounds of unpatentability, Sonos chooses to narrowly attack only the alternative inherency theory of just one claim feature, i.e., a “*playback device*” that transmits a “*first message indicating that the playback device is available for setup*” for the Rector grounds. Patent Owner Sono, Inc.’s Request for Discretionary Denial of Institution (“Br.”), 25, 31.

Sonos's arguments that Rector does not disclose the "playback device" transmitting a "first message" are meritless. To the contrary, Rector discloses a "playback device" that transmits a *"first message indicating that the playback device is available for setup."* Specifically, Rector explicitly discloses a network device 112, described as "an audio device that receives data over a network and plays the audio data through loudspeakers" (EX1004, [0021]), *i.e.*, "playback device" joining a network 120 with the help of proximity setup component 108. EX1004, [0018]. The Petition cites Rector's disclosures of this process and the communication between network device 112 and setup component 108. *See, e.g.*, Pet., 14-15. Those cited portions of Rector explicitly describe multiple instances of messages being exchanged between network device 112 and setup component 108.

As an example, in paragraph [0023], Rector discloses that setup component 108 first "detects" device 112 and then "establishes a network connection 202" with device 112.

Proximity ***setup component 108 detects the presence of network device 112.*** In one embodiment, ***Bluetooth technology is used*** by proximity Setup component 108 and network device 112 in order to determine that the network device is in proximity to setup component 108. Upon detecting that network device 112 is in proximity, proximity ***setup component 108 establishes a network connection 202*** with network device 112.

EX1004, [0023] (emphases added). Similarly, in paragraph [0028], Rector describes detecting network device 112 using “Bluetooth mechanisms.” *Id.*, [0028].

Ignoring these explicit disclosures, Sonos asserts that Rector does not discuss “*any message(s) being sent or received* by network device 112 or proximity setup component 108.” Br., 26. Sonos based its arguments entirely on its challenge to an alternative anticipation theory—inherent transmission of the claimed “*first message*” by Rector’s “*playback device*”—by arguing that inherency requires the feature to be *necessarily* present. Br., 27. Merely poking a supposed hole in this theory does not carry the day for Sonos since the Petition establishes that Rector *explicitly* discloses this feature. Moreover, Sonos’s argument is baseless as it is based purely on attorney argument without any technical support.

Worse yet, Sonos never even bothered to address the argument detailed in the Petition that the claims would have been obvious over Rector. *See, e.g.*, Pet., 9-22. In sum, the Petition demonstrates that Rector discloses or at least suggests the claimed “*first message*” for establishing network connections.

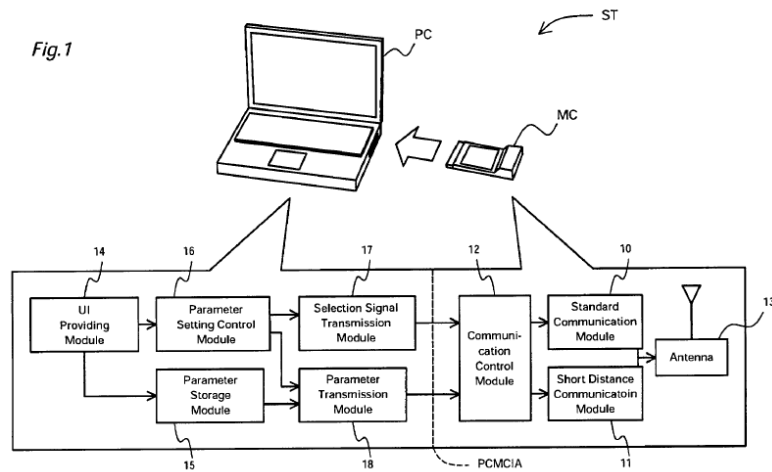
C. Gassho Describes A “Playback Device” That Transmits A “First Message”

Gassho discloses a “*playback device*” that transmits a “*first message indicating that the playback device is available for setup.*” In fact, Sonos does not dispute that this feature is disclosed, but contends only that there is no anticipation

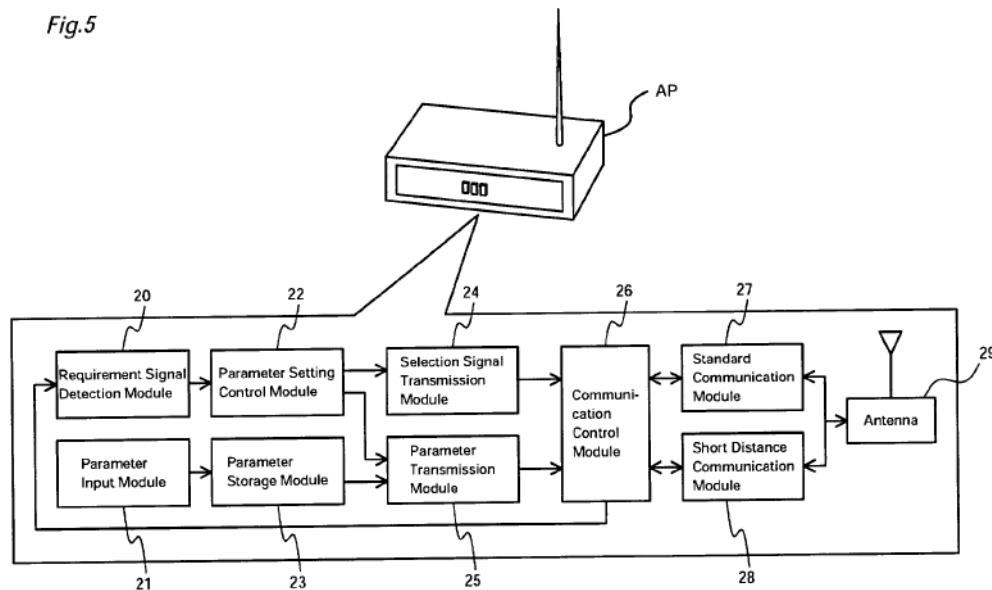
because this disclosure comes from two embodiments disclosed in Gassho. Once again, Sonos's arguments have no merit.

Just like the '883 patent, Gassho addresses the problem of how to connect a wireless device to a wireless network. EX1006, Abstract. Specifically, Gassho provides that by using a short-range communication module as an intermediary, the new wireless device can securely obtain the necessary settings for connecting to the standard communication module. *Id.* Gassho details two embodiments to implement that invention, including a “first embodiment . . . utilizing the Station ST to carry out the settings in” the new wireless device, and the “second embodiment that utilizes an access point to carry out the settings in” the new device. EX1006, [0061]. Sonos does not dispute that Gassho, in these two embodiments, expressly discloses transmitting a “*first message indicating that the playback device is available for setup.*” Br., 31. It only takes issue with these disclosures being allegedly drawn from “two separate and distinct embodiments.” *Id.* Sonos's arguments run afoul of Gassho's explicit teachings that the features of the two embodiments are compatible and that a POSITA would understand that Gassho discloses or at least suggests that the first embodiment can have a printer server PS sending the “setting requirement signal.” EX1006, [0061], [0066], [0068], [0074]-[0075]; EX1003, ¶232.

Specifically, as reproduced below, Fig. 1 of Gassho shows the hardware configurations of the first embodiment while Fig. 5 shows those of the second embodiment. Gassho expressly states that “[t]he same functions as those of the first embodiment discussed above with reference to FIG. 1 are expressed by the same names” in Fig. 5. EX1006, [0063].

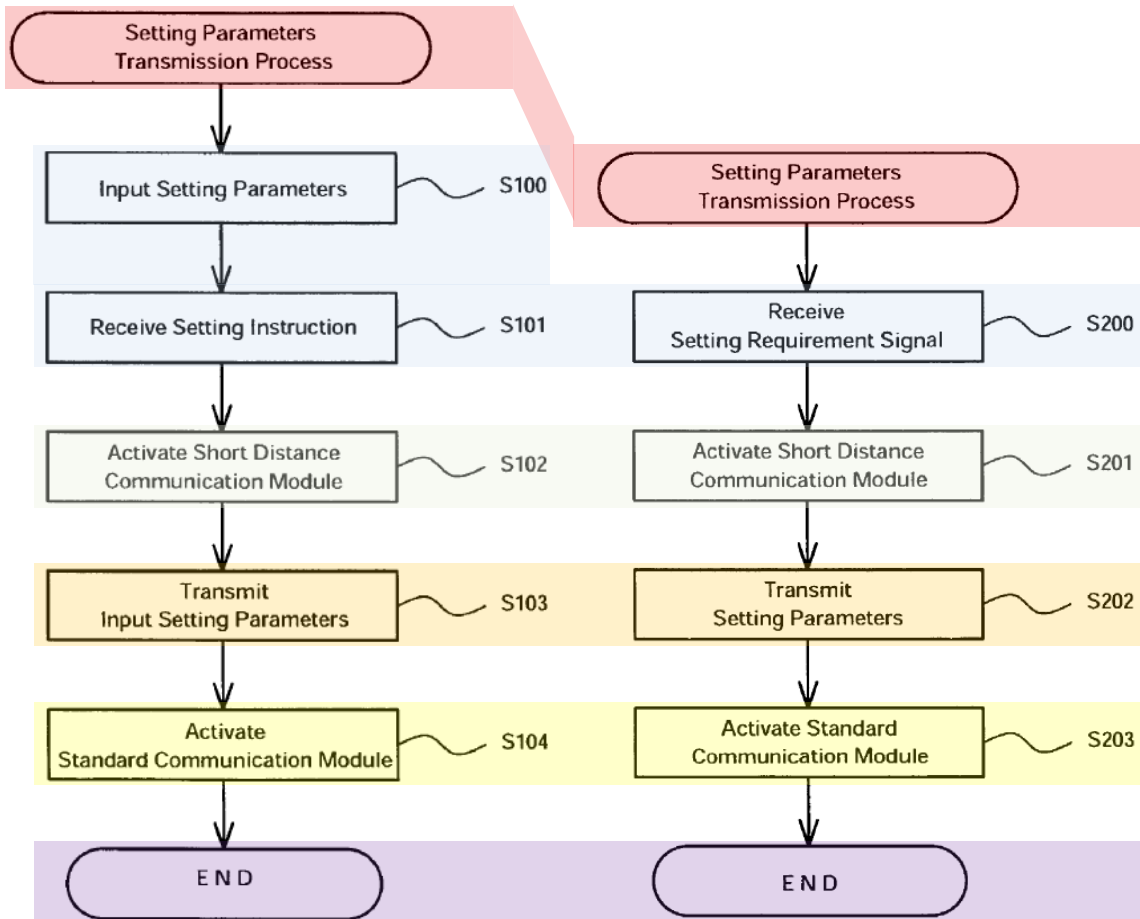


EX1006, FIG. 1.



EX1006, FIG. 5.

Indeed, Gassho's two exemplary embodiments share several key components, including a new wireless device, e.g., a print server PS, including dual-communication modules (short distance communication module and standard communication module), to be connected to a wireless network defined by AP (access point). Accordingly, the respective processes to connect the new wireless device to the wireless network defined by the AP (as illustrated by Figs. 4 and 6 annotated below) are largely identical as well, with steps S102-S104 exactly mirroring steps S201-S204 as shown in green, orange, and yellow.



EX1006, Fig. 4 (Annotated)

EX1006, Fig. 6 (Annotated)

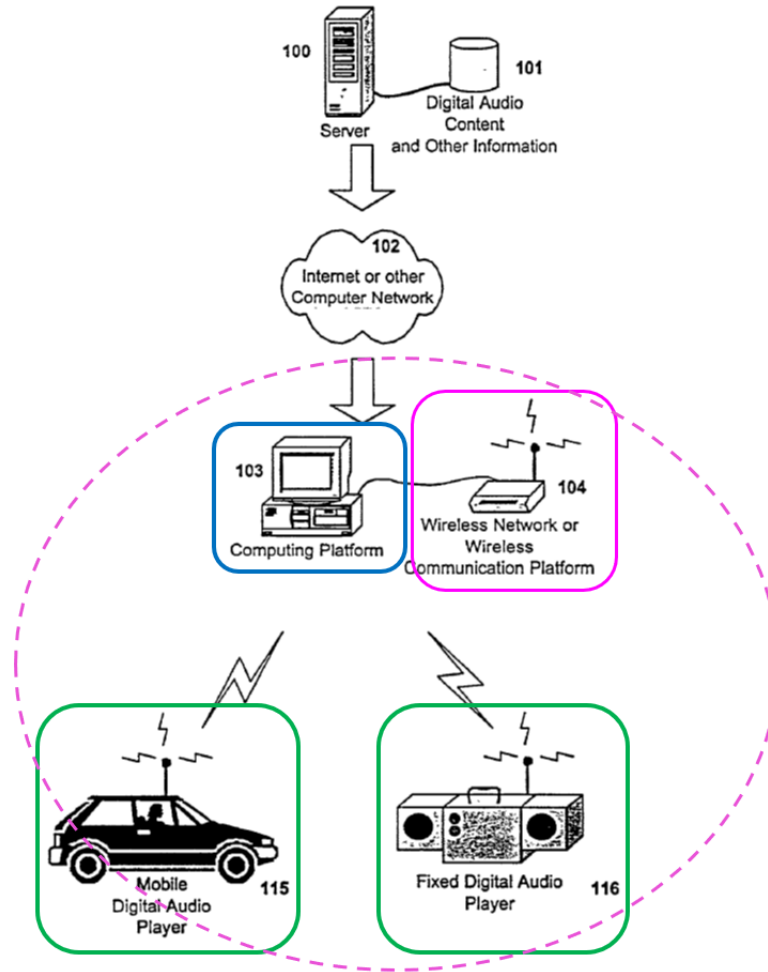
The only difference between the two processes lies in how the new wireless device transmits the initial setting instructions (the “first message”). Gassho discloses that the user can obtain them from an instruction manual (S100-S102 of Fig. 5), or via the wireless communication device sending a “setting requirement signal” that includes the device’s own factory setting parameters (step S200 of Fig. 6). EX1006, [0065]. Gassho expressly teaches that these two mechanisms for transmitting the “first message” can be used interchangeably between the two

embodiments. EX1006, [0066] (describing that the second embodiment could just as well use the initial setting parameter input method of the first embodiment), [0074]-[0075] (describing how the embodiments can be further modified with compatible implementations).

Thus, Gassho's two exemplary embodiments that Sonos characterizes as "separate and distinct" are in fact substantially similar and compatible with each other. In sum, the Petition establishes that Gassho discloses each and every element of the challenged claims.

D. Spurgat Describes A "Computing Device" That "Controls The Audio Playback Device"

Spurgat discloses "a computing device that is installed with an application for controlling the playback device," which is a feature in the amended claim indicated by the examiner in the Notice of Allowance as allowable subject matter. EX1002, 115. Specifically, Spurgat discloses a computing platform 103 ("*computing device*") on a "local wireless network" ("*WLAN*"). Pet., 65-66; EX1007, [0053]-[0057], FIGs. 1, 3-4; EX1003, ¶¶261, 273-77. Spurgat explains that this computing device, *i.e.*, a computer, is "used to control mobile digital audio players 115 and fixed digital audio players 116" ("*installed with an application for controlling the playback device*"). Pet., 66; EX1005, [0036].



EX1003 ¶106 – EX1007, FIG. 1 (Annotated).

Sonos ignores Spurgat’s express disclosure of what the examiner indicated as allowable subject matter. Instead, Sonos presents a strawman argument, contending that Spurgat does not disclose every element of the challenged claims—something the Petition never alleges. Rather, Petitioner argues that the challenged claims are obvious over Spurgat in combination with Gassho. The Petition specifically explains how the elements identified by Sonos are disclosed

and rendered obvious by the combination of Spurgat with Gassho. Pet., 60-77.

Such a combination is *strongly* suggested by Spurgat in light of its specific disclosure of a computing platform 103 (“*computing device*”) and its “discovery handler” for adding new devices to the network. Pet., 67; EX1007, [0093], [0107]-[0108], FIGs. 17, 22-23; EX1006, [0054]-[0055], [0065]; EX1003, ¶¶262, 275.

Much like the method of both the ’883 patent and Gassho above, Spurgat provides that the computing device adds new audio devices by exchanging a “broadcast message” (“*first message*”) and corresponding response (“*response*”), just as recited by the ’883 patent claims. Pet., 67; EX1007, [0093], [0107]-[0108], FIGs 17, 22-23; EX1006, [0054]-[0055], [0065]; EX1003, ¶¶262, 275. This specific disclosure of an exemplary process for adding new devices to the network supports the combination outline in Ground 6, where it would indicate both a likelihood of success for Gassho’s method and the obviousness of making such an alteration to Spurgat.

Thus, Ground 6, based on the combination of Spurgat and Gassho, presents a strong case of obviousness, which Sonos fails to even address. In sum, the Petition establishes that the combination of Spurgat and Gassho discloses each and every element of the challenged claims.

II. 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 ’883 patent being in a different family from the other five patents.

Petitioner has filed petitions for IPR of three of the six patents, the ’883 patent, ’357 patent, and ’023 patents. The ’883 patent is the subject of the instant petition filed on February 5, 2025. The ’357 patent is the subject of IPR2025-00511 filed on February 4, 2025. The ’023 patent is the subject of IPR2025-00509 filed on February 1, 2025. Each of the ’883 patent, ’357 patent, and ’023 patents 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.¹ 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

¹ Sonos initially asserted every claim in the '883 patent, the '357 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.

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, 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.²

III. Discretionary Denial Is Not Warranted Because the Parties Do Not Have Settled Expectations Respecting the ’883 Patent

Sonos did not even attempt to show that the parties had any settled expectations regarding the ’883 patent, thereby conceding that such expectations did not exist.

² 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.

Indeed, the '883 patent, issued in January 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 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, 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 '883 patent by December 11, 2023—barely a little more than a year before the filing of this Petition. EX1048, ¶161; EX1049, ¶178; EX1050, ¶205. Sonos’s own allegations demonstrate that this Petition was filed soon after Petitioner learned of the '883 patent before any settled expectation was reached. Just as in *Zhuhai*, Petitioner’s early challenge to the '883 patent here tips the balance against discretionary denial. IPR2025-00385, Paper 9, 2-3.

Since the parties do not have settled expectations regarding the '883 patent, this fact weighs against discretionary denial.

IV. Discretionary Denial is not Warranted Under § 325(d) Because Material Errors Were Committed During Patent Examination

Discretionary denial is inappropriate because the Office committed material errors under § 325(d) during examination of the '883 patent. Rector was cited in an Information Disclosure Statement ("IDS") during prosecution. Another Spurgat reference (2002/0173273), which is substantially similar to the Spurgat reference cited in the instant Petition, was also cited in an IDS. Despite their high relevance, however, these references were not cited or applied by the examiner in any Office Actions. The examiner, therefore, erred materially by overlooking these prior art teachings.³

As demonstrated by the Petition, the claims of the '883 patent are unpatentable in view of Rector, as it 1) anticipates or renders obvious claims 1-8,

³ Sonos's arguments that Gassho and Spurgat are substantially similar to Rector and Richenstein, respectively, are based solely on quoting snippets from the Petition which states that Gassho and Spurgat, like Rector and Richenstein, disclose certain claim limitations of the '883 patent and relate to similar technology. Sonos did not even attempt to compare the disclosures of these references to establish that they have cumulative teachings. Accordingly, Sonos fails to show that Gassho and Richenstein are cumulative or substantially similar to the art of record.

10-12, and 14-20, and 2) in combination with Richenstein render obvious claims 3, 7-11, 13, and 19. *See, e.g.,* Pet., 2. Indeed, as demonstrated above, Rector (as well as Gassho) discloses the very subject matter that the examiner indicated as making the claims allowable.

Sonos did not even attempt to address the patentability challenges respecting all of these claims as it chose only to rebut an alternative theory under the proffered grounds of unpatentability, namely, that there is *inherent* transmission of the claimed “first message” by Rector’s playback device. But the Petition establishes that Rector expressly *or* inherently discloses this limitation. Pet., 14-16. Moreover, as discussed above, Sonos fails *entirely* to address that that Rector renders obvious the claims of the ’883 patent.

The Petition also establishes that Spurgat in combination with Gassho render obvious claims 1-20. Pet., 60-77 (Ground 6). Sonos did not even attempt to rebut that the combination of these references renders the claims obvious. Instead, Sonos merely tried to attack each reference individually, which is legally improper and insufficient.

Accordingly, because the examiner overlooked prior art teachings that were highly pertinent to the patentability of the claims, discretionary denial under § 325(d) would be inappropriate. *See Microsoft Corp. v. Partec Cluster Competence Center*, IPR2025-00318, Paper 9 at 2-3 (PTAB June 12, 2025) (Director Review)

(finding that discretionary denial of institution is not warranted because petitioner “provides persuasive evidence that the Office erred in a manner material to the patentability of the challenged claims by overlooking the teachings of [prior art references and their combinations]”); *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 [a prior art reference’s] teachings, thus demonstrating that the Office erred in a manner material to the patentability of the claims”).

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.

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 5, 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. EX1037; EX2104. For example, deadlines concerning claim construction briefing have been extended twice, totaling 120 days or more. EX1037; 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.*

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

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.” EX1036, 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 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

clear he would utilize the “forms and orders” of Judge Andrews. *Id.*, 43; 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.

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

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 ’883 patent as an asserted claim in a claim chart and casually added that defendant infringed “one or more of the claims of the ’883

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.”

patent” without providing any additional details. EX1048, ¶¶157-58; EX1049, ¶¶174-75; EX1050, ¶¶201-02. 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.*,

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.

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 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. EX1041. 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., 18. 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. EX1041. 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 challenged claims are anticipated by either Rector or Gassho or, in the alternative, rendered obvious by them. EX1003, ¶¶108-343. He also explains that the challenged claims are obvious over the combination of Spurgat in view of Gassho and that a subset of the challenged claims are obvious over the combination of Rector and Richenstein. EX1003, ¶¶259-343, 186-220. For example, Dr. Hartpence demonstrates that Rector and Gassho each discloses every limitation of claim 1. EX1003, ¶¶108-143, 221-244.

Sonos relies on pure attorney argument to contend that Dr. Hartpence's testimony is conclusory and merely quotes some snippets from Dr. Hartpence's analysis without providing any proper context. Br., 40-42. 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 referred to by Sonos are from a prior litigation where Petitioner is not even a party. The Board is not bound by the claim construction rulings from a district court, let alone rulings from a case where Petitioner is not a party. Further, in the parallel litigation, where Petitioner is a party, the district court has not issued any claim construction ruling.

Moreover, Sonos did not even try to show whether the terms it refers to will need to be construed in this IPR. 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., 8-9. In any event, 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., 44-45. 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 7,374 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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