

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SANDISK TECHNOLOGIES, INC. AND
WESTERN DIGITAL TECHNOLOGIES, INC.,
Petitioner,

v.

POLARIS POWERLED TECHNOLOGIES, LLC,
Patent Owner.

IPR2025-00515
U.S. Patent No. 9,183,085

**PETITIONER'S SUR-REPLY BRIEF ON DISCRETIONARY
DENIAL**

I. Introduction.

The Director should *not* exercise discretion to deny. Patent Owner has *no* settled expectations because (i) **Patent Owner acquired the ’085 patent in August 2022**¹ solely for the purpose of litigation—which changes everything with respect to settled expectations; (ii) there is no actual evidence of commercialization, marking, or licensing of the ’085 patent, let alone any such activities before the filing of the IPR petition; and (iii) the ’085 patent had *not* been asserted for over 8 years after its issuance, and the IPR petition was filed within 1 year from its *first* assertion in 2024. Further and very importantly, the District Court in the parallel litigation has found that “[t]his case is still in early stages of litigation,” and stayed the case because of the benefits of PTAB review for the litigation. Ex.1036, 4, 5-6.

II. Polaris has *no* settled expectations.

Polaris repeatedly asserts that “the patent has been licensed in Petitioners’ technology space.” PO Reply, 1, 2. However, Polaris failed to provide any

¹ Polaris asserts ownership “since April 2021” without any supporting evidence, while the assignment record indicates transfer to Polaris in August 2022. Ex.1025, 1. Either way, the IPR petition was filed within 3-4 years from Polaris’ acquisition, and within 1 year of the first assertion.

supporting evidence of such a license, especially *when* the patent was licensed.

There is no public information of recordation of such licenses. There is, however, public information about a lawsuit over these patents between Polaris and Micron² that was filed after the present IPRs were filed, but has since settled. If this is the only license being referenced, it would actually weigh *against* discretionary denial because it happened *after* the filing of the IPR petition. As the Director stated in *Intel-Proxense*:

[P]ersuasive reasons why the Board should review challenged claims several years after their issue date [include as] example, a patent may have been in force for years but may not have been commercialized, asserted, marked, licensed, or otherwise applied in a petitioner's particular technology space, if at all.

IPR2025-00327, Paper 12, 2-3 (P.T.A.B. June 26, 2025).

This example of persuasive reasons applies to the present case: (i) there is no evidence of commercialization, licensing, and marking at all, much less any such activities *before* the filing of the present IPR petitions; and (ii) the first assertion of the '085 patent was over 8 years after its issuance, after Polaris acquired it in 2022, and the IPR petition was filed within 1 year from the *first* assertion in 2024.

² *Micron Tech. Inc et al. v. Polaris PowerLED Techs., LLC*, No. 1-25-cv-00073 (D. Idaho), filed February 7, 2025 and voluntarily dismissed April 4, 2025.

Additionally, Polaris argues that because “SanDisk ... cited [the ’085 patent] in its own applications,” they should have considered challenging it earlier. PO Reply, 1-2. This is incorrect. It was Examiner, not Sandisk, that cited the ’085 patent during the prosecution of applications. Ex.2015, 13; Ex.2016, 2. More importantly, what Polaris does not point out is that Western Digital and Sandisk combined have had over 10,000 U.S. patent issue since 2010. If on average each of these patents have 25 prior art patent citations, that would be over 250,000 citations. Filing IPRs for even 1/100 of these would be untenable, and in the present case, should have no bearing on settled expectations. In fact, and contrary to Polaris’ assertion, it would have been an inefficient use of the PTAB’s resources to challenge these patents back then, because there was no active litigation. *Google et al. v. Mullen*, IPR2025-00227, Paper 13, 4 (“it is an inefficient use of Board resources to review [a] patent that has been dismissed from the litigation.”).

Finally, Polaris’s comparison of the already-vacated previously scheduled trial date and a FWD date “upon denial” is non-sensical, because there would be no projected FWD date with denial. PO Reply, 4.

Respectfully submitted,

Date: July 3, 2025

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PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. Patent No. 9,183,085 (“the ’085 patent”)
Ex.1002	Prosecution History of U.S. App. No. 13/477,600 (issued as ’085 patent) (“’600 App”)
Ex.1003	Declaration of Dr. Lara Dolecek (“Dolecek Decl.”)
Ex.1004	CV of Dr. Lara Dolecek
Ex.1005	U.S. Pub. 2014/0136927 to Li, et al.
Ex.1006	U.S. 9,037,951 to Cideciyan, et al.
Ex.1007	U.S. Patent No. 8,176,360 to Frost et al.
Ex.1008	U.S. 2008/0222490 to Leung et al.
Ex.1009	Solid-State Drive (SSD) Requirements and Endurance Test Method, JESD218, JEDEC STANDARD, September 2010
Ex.1010	U.S. 7,823,043 to Lasser
Ex.1011	U.S. 8,042,029 to Alrod et al.
Ex.1012	Performance Impact and Interplay of SSD Parallelism through Advanced Commands, Allocation Strategy and Data Granularity, Hu et al., ICS ’11: Proceedings of the international conference on Supercomputing, pp. 96 – 107 (https://doi.org/10.1145/1995896.1995912), May 31, 2011
Ex.1013	FTL Design Exploration in Reconfigurable High-Performance SSD for Server Applications, ICS '09: Proceedings of the 23rd international conference on Supercomputing, pp. 338 – 349 (https://doi.org/10.1145/1542275.1542324), June 8, 2009
Ex.1014	Flash Management – Why and How?, A Detailed Overview of Flash Management Techniques, SMART Modular Technologies, 2009

Petitioner's Sur-Reply Brief on Discretionary Denial
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Ex.1015	Complaint, <i>Polaris PowerLED Technologies, LLC v. Western Digital Corporation et al.</i> 2:24-cv-02864 (C.D. CA)
Ex.1016	District Court Trial Statistics
Ex.1017	Director Vidal Memorandum re: Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation, June 22, 2022
Ex.1018	Solid State Drives 101, Cactus Technologies, available at https://www.cactus-tech.com/wp-content/uploads/2019/04/Solid-State-Drives-101-EBook.pdf
Ex.1019	Product Code Schemes for Error Correction in MLC NAND Flash Memories, Yang et al., December 29, 2011, available at: https://ieeexplore.ieee.org/document/6118315 .
Ex.1020	Error Control Coding Fundamentals and Applications, Lin et. al, 1983
Ex.1021	Scheduling and Case Management Order, <i>Polaris PowerLED Technologies, LLC v. Western Digital Corporation et al.</i> 2:24-cv-02864 (C.D. CA)
Ex.1022	Notice of Sotera Stipulations, <i>Polaris PowerLED Technologies, LLC v. Western Digital Corporation et al.</i> 2:24-cv-02864 (C.D. CA)
Ex.1023	"PTAB Judges Told To Get Ready For Layoffs," Law 360 (March 21, 2025). https://www.law360.com/articles/2314328/ptab-judges-told-to-get-ready-for-layoffs
Ex.1024	FAQs for Interim Processes for PTAB Workload Management, available at https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management (retrieved May 13, 2025).
Ex.1025	'085 Patent Assignment Recordation
Ex.1026	Plaintiff's Disclosure of Asserted Claims and Infringement Contentions, <i>Polaris PowerLED Technologies, LLC v. Western Digital Corporation et al.</i> 2:24-cv-02864 (C.D. CA)

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	(Served October 2, 2024)
Ex.1027-1035	RESERVED
Ex.1036	Order Granting Defendants' Motion to Stay, <i>Polaris PowerLED Technologies, LLC v. Western Digital Corporation et al.</i> 2:24-cv-02864 (C.D. CA) (issued June 23, 2025)
Ex.1037	Complaint, <i>Polaris PowerLED Technologies, LLC v. Western Digital Corporation et al.</i> 1:24-cv-00101 (W.D. TX)
Ex.1038	Western Digital Form 10-K, available at https://investor.wdc.com/static-files/e12da3e5-85f0-4176-968b-0dbf4a40dd0c
Ex.1039	RESERVED
Ex.1040	"Chief Patent Board Judge Waves Off Workforce Attrition Concerns," Bloomberg Law, May 7, 2025.
Ex.1041	"An Assessment of the Impact of the Inter Partes Review Process under the Patent Trial and Appeal Board on the US Economy," The Perryman Group, available at https://www.perrymangroup.com/publications/report/2021/9/23/an-assessment-of-the-potential-impact-of-expanding-inter-partes-review-ipr-under-the-america-invents-act-on-the-us-economy/

CERTIFICATE OF SERVICE

The undersigned certifies, under 37 C.F.R. § 42.6, that service was made on the Patent Owner as detailed below.

Date of service July 3, 2025

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Documents served **Petitioner's Sur-Reply Brief on Discretionary Denial.**

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