

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD. and SAMSUNG ELECTRONICS
AMERICA, INC.,
Petitioners,

v.

MOBILE DATA TECHNOLOGIES LLC,
Patent Owner

IPR2025-00535
U.S. Patent No. 9,032,039

**PETITIONERS' SUR-REPLY REGARDING
DISCRETIONARY DENIAL**

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Patent Trial and Appeal Board
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1001	U.S. Patent 9,032,039 to Harper et al. (“the ’039 patent”)
1002	Declaration of Henry Houh in Support of Petition for <i>Inter Partes</i> Review of U.S. Patent 9,032,039
1003	Excerpts from Alan Neibauer, <i>How to Do Everything With Yahoo!</i> (2000) (“Neibauer”)
1004	<i>RESERVED</i>
1005	U.S. Patent 7,574,486 to Yin Cheng et al. (“Cheng”)
1006	U.S. Patent 6,434,403 to Michiel R. Ausems et al. (“Ausems”)
1007-1009	<i>RESERVED</i>
1010	U.S. Patent 6,487,583 to Jamey Harvey et al. (“Harvey”)
1011	U.S. Patent Publication 2001/0015759 A1 to Squibbs (“Squibbs”)
1012	Excerpts from Uwe Hansmann et al., <i>Pervasive Computing Handbook</i> (2001) (“Hansmann”)
1013	Excerpts from David Fox & Troy Downing, <i>HTML Web Publisher’s Construction Kit</i> (1995) (“Fox”)
1014-1016	<i>RESERVED</i>
1017	U.S. Patent 6,332,127 to Bandera et al. (“Bandera”)
1018-1020	<i>RESERVED</i>

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1021	Excerpts from <i>Microsoft Computer Dictionary</i> (5th ed 2002)
1022	File history of U.S. Patent 9,032,039 B2
1023	RESERVED
1024	Excerpts of file history of <i>Inter Partes</i> Reexamination of U.S. Patent 8,135,801 B2
1025	Joint Claim Construction Statement, Dkt. 51, <i>Mobile Data Technologies LLC v. Meta Platforms, Inc.</i> , Case No.7:22-cv-00244- ADA-DTG (W.D. Tex. filed September 13, 2023)
1026	Declaration of Sylvia D. Hall-Ellis, Ph.D. (“Hall-Ellis”) from IPR2024-00248
1027	RESERVED
1028	U.S. Patent 8,135,801 to Harper et al. (“the ’801 patent”)
1029	Order Granting <i>Inter Partes</i> Reexamination of U.S. Patent 8,135,801
1030	<i>Meta Platforms, Inc. v Mobile Data Techs. LLC</i> , IPR2024-00248, Paper 26 (PTAB Oct. 2, 2024).
1031	Declaration of June Munford
1032	Excerpt from Webster’s Dictionary of Computer Terms (page 98)
1033	<i>Meta Platforms, Inc. v Mobile Data Techs. LLC</i> , IPR2024-00248, Paper 33 (PTAB Jan. 10, 2025).
1034	Delaware Department of State, Division of Corporations, Entity Page for Mobile Data Technologies LLC, https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx

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1035	First Am. Compl., <i>Mobile Data Techs. LLC v. Samsung Elecs. Am., Inc.</i> , No. 2:24-cv-00435-JRG-RSP, Dkt. No. 25 (E.D. Tex. Oct. 6, 2024)
1036	Patent Assignment Record for US 9,032,039 to Mobile Data Technologies LLC
1037	Patent Assignment Record for US 9,032,039 conveying Security Interest to Chisum
1038	Order Re Def.'s Mot. to Compel Litig. Funding Docs., <i>Entangled Media, LLC v. Dropbox Inc.</i> , No. 23-cv-03264-PCP (VKD), Dkt. No. 254 (N.D. Cal. Apr. 8, 2025)
1039	Order, <i>Electrolysis Prevention Sols. LLC v. Daimler Truck North Am. LLC</i> , No. 3:21-cv-00171-TEJ-WCM, Dkt. No. 147 (W.D.N.C. July 24, 2023)
1040	Complaint, <i>Mobile Data Technologies LLC v. Meta Platforms, Inc.</i> , Case No.7:22-cv-00244-ADA-DTG, Dkt. No. 1 (W.D. Tex. Nov. 23, 2022)
1041	Complaint, <i>Mobile Data Techs. LLC v. Samsung Elecs. Am., Inc.</i> , No. 2:24-cv-00435-JRG-RSP, Dkt. No. 1 (E.D. Tex. June 10, 2024)
1042	Unopposed Mot. for Extension of Time to Move, Answer or Otherwise Respond to Pl.'s Compl. & Waiver of Foreign Service Requirement, <i>Mobile Data Techs. LLC v. Samsung Elecs. Am., Inc.</i> , No. 2:24-cv-00435-JRG-RSP, Dkt. No. 5 (E.D. Tex. June 26, 2024)
1043	U.S. Publication 2002/0060246 to Gobburu
1044	Docket Navigator, Gilstrap Uncontested Motions to Stay Pending IPR, 2014-present, pulled May 26, 2025

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1045	Pl.'s Unopposed Mot. to Stay Proceedings Pending IPR, <i>Mobile Data Technologies LLC v. Meta Platforms, Inc.</i> , Case No.3:24-cv-00896-WHA, Dkt. No. 111 (N.D. Cal. Apr. 18, 2024)
1046	Pacer, List of Calendar Events Set for Judge Gilstrap for 4/1/2026-4/30/2026, pulled June 4, 2025
1047	United States District Court – Judicial Caseload Profile 2019-March 2025
1048	Andrew T. Dufresne et al., Perkins Coie, <i>How Reliable are Trial Dates Relied on by the PTAB in the Fintiv Analysis?</i> , 1600 PTAB & Beyond (Oct. 29, 2021)
1049	Katherine K. Vidal, Under Sec’y of Com. for Intell. Prop. & Dir. of the USPTO, Mem. Re Interim Proc. for Discretionary Denials in AIA Post-Grant Procs. with Parallel Dist. Ct. Litig. (June 21, 2022), <i>rescinded</i> Feb. 28, 2025
1050	Samsung Newsroom, Samsung Members App Puts Galaxy Experts at Your Fingertips (Apr. 8, 2016), https://news.samsung.com/global/samsung-members-app-puts-galaxy-experts-at-your-fingertips
1051	Jennifer Nall, DLA Piper, <i>How Delayed Notice of Date Accorded Mailings May Affect Inter Partes Review</i> (June 3, 2025), https://www.dlapiper.com/en/insights/publications/intellectual-property-news/2025/how-delayed-notice-of-date-accorded-mailings-may-affect-inter-partes-review
1052	H.R. Rep. No. 112-98 (2011)
1053	Unified Patents, FAQ (last visited June 25, 2025), https://www.unifiedpatents.com/faq

I. The Director Should Not Exercise Discretionary Denial Here

The Board previously instituted an IPR challenging the '039 patent, finding a “reasonable likelihood that [Meta] will prevail in demonstrating that claim 19 is unpatentable as obvious in view of Neibauer, Cheng, and Squibbs.” IPR2025-00248, Paper 11, 26. Despite that finding, PO filed a new lawsuit against Petitioners, asserting the '039 patent. Here, discretionary denial would contradict the purpose of the AIA to “improv[e] patent quality and provid[e] a more efficient system for challenging patents that should not have issued.” (EX-1052, 39-40.) PO mischaracterizes Petitioners’ argument as challenging the Director’s discretion on institution. Not so. Petitioners instead explain why the Director should not exercise discretion here, including to avoid awarding PO’s gamesmanship.

II. Petitioners’ Ranking of Petitions and *General Plastics*

Petitioners’ Ranking: PO’s arguments (Reply, 1) are moot for the reasons set forth in Petitioners’ Response (Resp., 16-17). Ultimately, Petitioners defer to the Board and will proceed on whichever set of grounds the Board chooses.

GP Factor 1: Petitioners have no significant relationship with Meta. The mere inclusion of common grounds between petitions is not a basis for discretionary denial, and PO fails to address Petitioners’ cited decisions. (Resp., 19.) PO newly argues, based on a 2021 filing, Petitioners have a significant relationship with Meta vis-à-vis an alleged membership of both with Unified

Patents. (Reply, 2; EX-2046.) Regardless, Unified Patents “does not discuss details with its members concerning the preparation and prosecution of post-grant review challenges ... including whether Unified will (or will not) file” and “Unified retains sole and absolute discretion” over its post-grant challenges. (EX-1053, 2; *see also Samsung Elecs. Co. Ltd. v. MemoryWeb, LLC*, IPR2022-00222, EX-2121, 42-52 (PTAB Dec. 8, 2023) (declining to find Samsung as RPI in Unified IPR).)

GP Factor 2: PO alleges that Petitioners infringe 19 claims of the '039 patent, far greater than the 5 claims (19-23) challenged in the Meta-MDT-IPR. (EX-2026, 3.) Despite this, PO still argues Petitioners should have joined the Meta-MDT-IPR, simply because Petitioners have challenged two claims not asserted in litigation (totaling 21 claims). (Reply, 2.) This makes little sense. PO would have then needed to file a second petition to address the claims asserted only against PO and Petitioners would have been forced to fight serial challenges. Regardless, PO does not dispute it timed service of the complaint on Petitioners to occur mere weeks before the Meta-MDT-IPR joinder deadline, leaving insufficient time for Petitioners to evaluate PO's claims. (*See Resp.*, 23.)

GP Factor 3: PO asserts Petitioners shifted the prior art asserted and related arguments by adding Ausems to the Neibauer grounds. (Reply, 2.) Petitioners added Ausems as an alternative reference disclosing “*capturing content at a mobile device*” [1A]—a limitation not present in Meta's challenged claims 19-23. (*See*

Pet., 18-19.) Petitioners’ challenge is otherwise the same as Meta’s.

GP Factors 4-5: Petitioners waited to file their parallel petitions against the ’039 patent to address the full range of claim construction positions from the MDT-Meta-Litigation and the Meta-MDT-IPR—which includes PO’s inconsistent positions with respect to “*mobile device*.”¹ (Resp., 24-25.) PO argues Petitioners should have filed their Petition based on the Meta prior art earlier. (Reply, 2-3.) However, Petitioners’ approach is more efficient—by filing two petitions at the same time, PO’s differing claim construction positions and the prior art addressing those constructions are all before the Board for consideration at the same time.

GP Factors 6-7: Petitioners already “recognize[d] that the Board may not have the resources to address two petitions” and, if the Board prefers, are prepared to proceed on only a single set of grounds. (Resp., 16-17.)

III. *Advanced Bionics*

Applying *Becton*, *Dickinson* factors (c), (e), and (f), Petitioners explained in their Response how the Examiner erred in overlooking Neibauer, Cheng, and

¹ Petitioners inadvertently stated that PO’s different constructions for “*application-based information channel*”—instead of “*mobile device*”—justified the filing of two petitions. (See Resp., 27.) While PO did raise a new claim construction for “*application-based information channel*” (see Resp., 26 n.3), Petitioners made clear elsewhere that their parallel petitions address PO’s constructions of “*mobile device*.” (See, e.g., Resp., 14-16, 25-26.)

Squibbs. (*See* Resp., 29-33.) PO’s argument that these references “were raised in a reexam of the great-grandparent of the ‘039 Patent, the ‘5,801 reexam” and that “[t]he Examiner of the ‘039 Patent considered the record of that proceeding” (Reply, 3) fails for two reasons.² First, PO concedes that the ‘5801 patent has “materially different claims and limitations than those of the ‘039 Patent.” (Paper 8, 23.) Second, the Examiner did not substantively analyze the arguments or evidence presented in the ‘5801 reexamination during the ‘039 patent prosecution. Rather, the Examiner marked these materials as only “considered” along with hundreds of Applicant-cited references. (EX-1022, 169-221; Resp., 28 & n.5.)

PO also asserts that “Petitioners wrongly claim the Board’s earlier institution of an IPR on the ‘039 Patent demonstrates material error.” (Reply, 4.) Petitioners do not rely solely on the Board’s institution decision to demonstrate material error; instead, the Board’s decision simply “confirm[s]” that the Examiner erred for all of the reasons Petitioners identified. (Resp., 30.)

IV. Petitioners’ “*Sotera Plus*” Stipulation

Petitioners have provided an amended “*Sotera Plus*” stipulation as follows:

² PO also argues that a different examiner considered Neibauer during reexamination of the related ‘336 patent. (Reply, 3-4.) This proceeding, occurring more than eight years after issuance of the ‘039 patent, has no bearing on whether the Examiner materially erred during prosecution of the ‘039 patent.

[I]f IPR is instituted in either or both of the petitions on [the '039 patent], [Petitioners] will not pursue in the related district court proceeding combinations of the prior art asserted in the corresponding IPR proceeding(s) with unpublished system prior art for [the '039 patent]. Moreover, Petitioners agree that if IPR is instituted in either or both of the petitions on [the '039 patent], they will not pursue in the related district court litigation any commercial prior art theory that is coextensive with prior art presented to the Board

(EX-2048.)

PO argues that Petitioners' stipulation is untimely. (Paper 12, 1.) However, Petitioners promptly amended their stipulation to address recent guidance in *Tesla, Inc. v. Intell. Ventures II LLC*, where the Director noted that Tesla's "broad stipulation," among other factors, counseled against denial. IPR2025-00217, Paper 9, 2 (PTAB June 13, 2025). Petitioners' *Sotera Plus* stipulation, which extends to "any commercial prior art theory that is coextensive with prior art presented to the Board," **is even broader than Tesla's**, which agreed only to forgo system art in combination with the specific references raised in IPR. *See* IPR2025-00217, Paper 8, 10-11. Moreover, the Board routinely authorizes submissions for parties to address new guidance or developments; this situation is no different.³ *See, e.g., Sun*

³ Notably, Tesla provided its "*Sotera Plus*" stipulation for the first time after PO had already filed its opening discretionary denial brief. *See* IPR2025-00217, Paper 8, 11 n.2. The Director nevertheless considered Tesla's stipulation.

Pharm. Indus. Ltd. v. Novo Nordisk A/S, IPR2024-00107, Paper 16, 2-3 (PTAB May 28, 2024) (authorizing “Petitioner to file an updated *Sotera* stipulation”).

Substantively, PO complains that Petitioners’ *Sotera* Plus stipulation is “unclear” and that Petitioners “still retain the ability to assert invalidity based on the Nokia 9210 and Yahoo! Systems.” (Paper 12, 2.) PO misreads the stipulation. For example, Neibauer describes features of Yahoo! and is coextensive with the Yahoo! system art. If IPR is instituted here, the stipulation provides that Petitioners will not pursue any invalidity theory in litigation based on the Yahoo! system art. PO’s assertion that “Petitioners can still present Yahoo! System-based arguments using different evidence” (Paper 12, 2) is thus wrong. Petitioners’ *Sotera* Plus stipulation eliminates any overlap in prior art between IPR and litigation.

V. PO’s Settlement With Meta

Because PO settled with Meta just before oral argument, it is reasonable to infer that it did so based on the strength of Meta’s arguments on the merits. (Resp. 53.) PO complains that Petitioners’ argument “is mere speculation.” (Reply, 5.) Of course, PO could have addressed this “mere speculation” directly by presenting a copy of the Meta Settlement Agreement to the Director and demonstrating that Petitioners’ inference is, in fact, unreasonable. PO declined to do so. PO’s lack of transparency further supports the reasonable inference that PO settled with Meta to avoid a finding of unpatentability.

Date: June 25, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of Petitioners' Sur-Reply
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