

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners

v.

MOBILE DATA TECHNOLOGIES LLC,

Patent Owner

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

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**PATENT OWNER'S AUTHORIZED RESPONSE TO PETITIONERS'  
REQUEST FOR DIRECTOR REVIEW**

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**EXHIBIT LIST**

| <b>Ex.</b> | <b>Description</b>                                                                                                                                                                      |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2001       | E-mail serving amended infringement contentions in EDTX-Litigation                                                                                                                      |
| 2002       | Comparison between the specifications of the '039 and '801 Patents                                                                                                                      |
| 2003       | Petition for <i>Inter Partes</i> Review in IPR2025-00536 (Jan. 31, 2025)                                                                                                                |
| 2004       | Federal Register / Vol. 89, No. 77 / Friday, April 19, 2024 / Proposed Rules (Pages 28693-28706)                                                                                        |
| 2005       | Return of Service filed in the EDTX-Litigation (June 21, 2024)                                                                                                                          |
| 2006       | E-mail from the Board regarding the 535 and 536 IPR panel assignments (May 2, 2025)                                                                                                     |
| 2007       | Decision Granting Institution of <i>Inter Partes</i> Review in IPR2024-00248 (June 11, 2024)                                                                                            |
| 2008       | E-mail from Erick S. Robinson memorializing the phone conversation with Petitioners' counsel (September 26, 2024)                                                                       |
| 2009       | Comparison of independent claims of the '039 and '5801 Patents                                                                                                                          |
| 2010       | U.S. Patent No. 6,594,347 ("Calder")                                                                                                                                                    |
| 2011       | Examples of verbatim copy-pasting from Meta-MDT-IPRs by Petitioners                                                                                                                     |
| 2012       | U.S. Patent Application No. 2005/0177645 A1 ("Dowling")                                                                                                                                 |
| 2013       | E-mail exchange between Erick S. Robinson and Petitioners' counsel regarding a stay (October 17, 2024)                                                                                  |
| 2014       | E-mail exchange between Erick S. Robinson and Petitioners' counsel regarding a stay (February 19, 2025)                                                                                 |
| 2015       | E-mail exchange between Erick S. Robinson and Petitioners' counsel wherein Petitioners shared their motion to stay with Patent Owner (March 4, 2025)                                    |
| 2016       | Second Amended Docket Control Order in the EDTX-Litigation (December 19, 2024)                                                                                                          |
| 2017       | United States District Courts — National Judicial Caseload Profile (September 30, 2024)                                                                                                 |
| 2018       | E-mail from Petitioners' counsel serving their initial and additional disclosures (October 16, 2024)                                                                                    |
| 2019       | E-mail from Petitioners' counsel serving their invalidity contentions (January 31, 2025)                                                                                                |
| 2020       | E-mail from Petitioners providing materials produced by third-party Microsoft Corporation and Sybase, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (April 25, 2025) |

| <b>Ex.</b> | <b>Description</b>                                                                                                                                                                     |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2021       | E-mail from Petitioners providing materials produced by third-party Casio America, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (March 7, 2025)                    |
| 2022       | E-mail from Petitioners providing materials produced by third-party Sony Electronics, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (February 24, 2025)             |
| 2023       | E-mail from Petitioners providing materials produced by third-party Casio America, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (February 21, 2025)                |
| 2024       | E-mail from Petitioners providing materials produced by third-party Sony Electronics, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (February 11, 2025)             |
| 2025       | E-mail from Petitioners providing materials produced by third-party AT&T Mobility LLC in response to Petitioners' subpoena in the EDTX-Litigation (February 5, 2025)                   |
| 2026       | Patent Owner's Infringement Contentions in the EDTX-Litigation (September 4, 2024)                                                                                                     |
| 2027       | Petitioners' Invalidity Contentions in the EDTX-Litigation (January 31, 2025)                                                                                                          |
| 2028       | E-mail exchange between Homayoon Rafatijo and Petitioners' counsel regarding Petitioners' contacting the Board for filing their proposed <i>Sotera</i> stipulation (April 21-23, 2025) |
| 2029       | E-mail from Petitioners' counsel with a draft of a proposed communication to the Board (April 30, 2025)                                                                                |
| 2030       | E-mail from Petitioners' counsel with sharing with Patent Owner their proposed <i>Sotera</i> stipulation (April 18, 2025)                                                              |
| 2031       | Reserved                                                                                                                                                                               |
| 2032       | Petitioners' proposed <i>Sotera</i> stipulation for '535 and '536 IPRs (April 18, 2025)                                                                                                |
| 2033       | Petitioners' claim chart against '039 Patent based on the Yahoo! System art (January 31, 2025)                                                                                         |
| 2034       | Petition for <i>Inter Partes</i> Review in IPR2024-00248 (Dec. 6, 2023)                                                                                                                |
| 2035       | Summary of verbatim (or nearly verbatim, strikethrough added) matches between the '535 petition to the Houh Declaration (Ex.1002)                                                      |
| 2036       | Petition for Inter Partes Review in IPR2025-00537 (Feb. 3, 2025)                                                                                                                       |
| 2037       | Declaration of Mahdi Eslamimehr for IPR2025-00535 of U.S. Patent No. 9,032,039                                                                                                         |
| 2038       | Petitioners' expert declaration from the '541 IPR                                                                                                                                      |

| <b>Ex.</b> | <b>Description</b>                                                                                                                         |
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| 2039       | Petitioners' expert declaration from the '537 IPR                                                                                          |
| 2040       | Order of the EDTX court denying Samsung's Motion for Relief from Protective Order                                                          |
| 2041       | Redacted version of Samsung's Motion for Relief from Protective Order filed in the EDTX-Litigation (May 29, 2025)                          |
| 2042       | Patent Owner's and Meta's February 21, 2025 joint email to the Board regarding the settlement of the MDT-Meta-Litigation and Meta-MDT-IPRs |
| 2043       | Reserved                                                                                                                                   |
| 2044       | Reserved                                                                                                                                   |
| 2045       | File History of Ex Parte Reexamination of U.S. Patent 8,793,336                                                                            |
| 2046       | Petitioner's Authorized Reply to Patent Owner's Preliminary Response (IPR2021-00917, Paper 7, Sept. 22, 2021)                              |
| 2047       | Declaration of Kevin Jakel in IPR2021-00917 (May 11, 2021)                                                                                 |
| 2048       | E-mail from Petitioners' counsel re Updated <i>Sotera</i> Stipulation                                                                      |
| 2049       | The timeline of key events showing Petitioners' gamesmanship in changing their <i>Sotera</i> stipulation                                   |

## **I. INTRODUCTION**

A decision to deny institution of an IPR “is a matter committed to the Patent Office’s *discretion*.” *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (citing 35 U.S.C. § 314(a)); *see also Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“PTO is permitted, but never compelled, to institute an IPR”). And Petitioners have failed to show that the Director’s delegate improperly discretionarily denied institution of this case (Paper 16, “Decision”).

First, Petitioners have failed to show that the Decision’s “strong settled expectations” finding was in error. Second, the Decision is consistent with other Board decisions. Third, the Decision’s factual findings regarding the likely time to trial and likelihood of a stay are not erroneous and are supported by the record. And fourth, the Decision does not violate the Due Process Clause of the Fifth Amendment or the Administrative Procedures Act (“APA”). The Decision should stand.

## **II. The Decision Correctly Found PO’s Strong Settled Expectations**

### **A. PO Has Strong Settled Expectations in the ‘039 Patent**

The Decision correctly found that PO has “strong settled expectations” in the ‘039 Patent, which issued in 2015. Decision, 2. There can be no dispute that Petitioners had knowledge of the Asserted Patents family since at least May 2015: U.S. Patent 8,135,801 (“5801 Patent”) was brought to Petitioners’ attention by the Examiner during the prosecution of Petitioners’ U.S. Design Patent 753,156. *See*,

*e.g.*, IPR2025-00537, Paper 13, 1. In *iRhythm*, the Director concluded that “settled expectations favor[ed] denial of institution” where petitioner knew of a family patent but delayed seeking USPTO review. *iRhythm, Inc., v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10, 3 (June 6, 2025). *See also Ericsson Inc. v. Procomm Int’l Pte. Ltd.*, IPR2024-01453, Paper 15, 3 (June 25, 2025) (applying *iRhythm* where the challenged patent was “brought to Petitioner’s attention” by Examiner); *Google LLC v. Soundclear Techs. LLC*, IPR2025-00344, Paper 15, 2-3 (Aug. 4, 2025) (“[C]onsidering that Petitioner had knowledge of the challenged patents as early as 2019 ... Patent Owner’s strong settled expectations tip the balance in favor of discretionary denial.”).

Petitioners’ arguments regarding settled expectations fail. **First**, although the ‘039 Patent issued in 2015, Petitioners claim PO has no settled expectations because “PO acquired the patent in April 2022.” Req. 3-4. Petitioners’ argument is legally incorrect: as PO previously explained, an assignee is deemed the effective patentee: “[T]he assignee stands in the shoes or in the place of the patentee, and represents him.” *Wilson v. Rousseau*, 45 U.S. 646, 703 (1846); *see also Prima Tek II, L.L.C. v. A-Roo Co.*, 222 F.3d 1372, 1377 (Fed. Cir. 2000) (“[W]here the patentee makes an assignment of all substantial rights under the patent, the assignee may be deemed the effective ‘patentee.’”).

Petitioners offer no support for their argument that a patent owner who recently acquired the patent does not have settled expectations. To the contrary, in *SAP Am., Inc.*, the Director held that a PO has “strong settled expectations” despite PO having “acquire[d] the challenged patent [in] 2021.” *SAP Am., Inc. v. Valtrus Innov. Ltd.*, IPR2025-00416, Paper 10 (July 10, 2025), Paper 8, 20 (June 9, 2025).

Petitioners’ reliance on *Embodiment* and *Cambridge* is also misplaced. In those cases, unlike here, the challenged patents issued only a few years prior to IPR filing. Req. 3-4; *Embodiment, Inc. v. Lifenet Health*, IPR2025-00248, Paper 13, 2-3 (June 26, 2025) (one patent “has been in force” for 3 years and the other patent is a parent of the first); *Cambridge Indus. v. Applied Optoelectronics, Inc.*, IPR2025-00434, Paper 11, 2-3 (June 26, 2025) (most of patents were in force for five to six years). Indeed, *Cambridge* actually supports the Decision because in *Cambridge* the Director granted discretionary denial on patents that had been in force for more than six years, like the ‘039 Patent. *Cambridge*, IPR2025-00434, Paper 11, 3.

**Second**, Petitioners’ argument that “what matters are PO’s expectations for its 2022 investment, not the prior owner’s expectations between 2015 and the sale” (Req. 4) is unsupported. *Anaheim Gardens*, relied upon by Petitioners, is unavailing at least because it is not a patent case; it addresses regulatory taking under the Fifth Amendment’s “just compensation” clause. *Anaheim Gardens, L.P. v. United States*,

953 F.3d 1344, 1349-50 (Fed. Cir. 2020). Petitioners cite no authority that supports the application of the concept of “investment expectations” in the IPR context.

**Third**, Petitioners’ assertion that the ‘039 Patent was not “in force in any meaningful way before 2022” because the “prior owner never tried to exclude anyone from practicing the patent” is also without merit. Req. 4. The Director has previously rejected this very argument: “Petitioner’s argument that Patent Owner does not have settled expectations because Patent Owner did not previously assert the challenged patent against Petitioner does not defeat Patent Owner’s settled expectations.” *Kahoot! AS v. Interstellar Inc.*, IPR2025-00696, Paper 12, 2 (July 31, 2025); *see also Google LLC*, IPR2025-00344, Paper 15, 2-3 (substantively the same).

Petitioners’ reliance on *Shenzhen* and *Intel* (Req. 4-5) is also misplaced. In *Shenzhen*, the petitioners “never ‘commercialized, asserted, marked, licensed, or otherwise applied’” the challenged patents. *Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.*, IPR2025-00438, Paper 10, 3 (July 17, 2025). To the contrary, here, Petitioners admitted in related IPRs that they “***applied***” and “***commercialized***” the Asserted Patents: “***Unlike Petitioners***, neither PO nor its predecessors ever ***commercialized or applied the claimed technology*** in any way.” *See, e.g.*, IPR2025-00537, Paper 11, 2. Similarly, in *Intel*, the Director granted discretionary denial, where, as here, that the “challenged patents have been in force over nine years,

creating settled expectations, and Petitioner does not provide any persuasive reasoning why an *inter partes* review is an appropriate use of Board resources.” *Intel v. Proxense LLC*, IPR2025-00327, Paper 12, 3 (June 26, 2025).

Petitioners’ reliance on *Tesla v. Intell. Ventures* and *Tesla v. Navy* to argue that the “period of dormant existence since the ‘039 patent’s issuance” (Req. 5) fares no better. Both cases turned on “the complex and diverse litigation proceeding”—eleven patents spanning nine different families that “involve a diverse range of subject matter”—not upon the enforcement of the challenged patents. *Tesla, Inc. v. Intell. Ventures II*, IPR2025-00217, Paper 9, 2-3 (June 13, 2025); *Tesla, Inc. v. Navy*, IPR2025-00341, Paper 12, 2-3 (June 13, 2025). Here, the parallel litigation involves patents with similar subject matter and within the same patent family, as Petitioners concede. Req. 10.

**Fourth**, Petitioners’ suggestion that the PTAB’s invalidation of the ‘5801 Patent—the great-great grandparent of the ‘039—somehow further suggests that the ‘039 Patent “is invalid” is unsupported. Req. 5. As an initial matter, this is an improper new argument and should be rejected on that basis alone. *See* USPTO Director Review Process (“The Director will not consider new evidence or new arguments not part of the official record.”). Regardless, Petitioners ignore the undisputed record that confirms that the claims of the ‘039 Patent are materially different from those of the ‘5801 Patent. *See* Ex. 2009; Discretionary Denial brief

(Paper 8, “DD”), 22-24; *Nat’l Steel Car, Ltd. v. Canadian Pacific Ry., Ltd.*, 357 F.3d 1319, 1334 (Fed. Cir. 2004) (“A validity analysis must be conducted on a claim-by-claim basis.”). Moreover, as shown in PO’s Discretionary Denial brief, and not disputed by Petitioners, the same Examiner reviewed both the ‘039 Patent and the ‘5801 Patent and considered the ‘5801 reexamination decision while examining the ‘039 Patent. DD, 23-24. As a result, PO has strong settled expectations of validity.

**Fifth**, Petitioners’ judicial estoppel argument against the Director and the USPTO, based on the USPTO’s intervenor brief in *Celgene*, is unfounded. Req. 6. *Celgene* addressed whether “the retroactive application of IPR proceedings to pre-AIA patents is [] an unconstitutional taking under the Fifth Amendment.” *Celgene Corp. v. Peter*, 931 F.3d 1342, 1362 (Fed. Cir. 2019). *Celgene* had nothing to do with the Director’s discretion to consider a PO’s settled expectations when deciding whether to institute an IPR. Indeed, Congressional directive confirms that the Director, and her designees, enjoy a broad “nonappealable” discretion to determine “whether to institute an inter partes review.” 35 U.S.C. § 314(d). There is no judicial estoppel preventing the Director’s application of settled expectations. Req. 6.

**Sixth**, Petitioners’ assumption that the ‘039 Patent “would have [been invalidated] in the Meta IPR” is nothing more than speculation. Req. 6. IPR institution is not evidence of material error by the Examiner. *See Vital Connect, Inc. v. Bardy Diagnostics, Inc.*, IPR2023-00381, Paper 7, 20 (July 11, 2023). And, as

shown in PO's briefing, the '336 patent, the great-grandparent of the '039 Patent with similar claims, survived *ex parte* reexamination without amendment or cancellation. Paper 11, pp. 3-4. The '336 reexamination was based on Neibauer—the very same reference asserted in the Meta IPR and considered by the Examiner of the '336 and '039 Patents. *Id.* Surviving an *ex parte* reexamination confirms PO's settled expectations.

**B. Petitioners Have No Legitimate Settled Expectations**

Petitioners' brand-new claim that they “had no reason to expect that the '039 Patent posed any threat worthy of a challenge at the Patent Office” is unsupported. Req. 7-8. None of Petitioners' arguments establishes that they had any legitimate settled expectations.

*First*, Petitioners speculate that “the '039 patent would be invalidated if it were ever challenged” and even posit that the “prior owner never tried enforcing it against anyone” because the '5801 Patent was invalidated. Req. 7. The '039 Patent claims are materially different from those of the '5801 Patent and the Examiner considered the '5801 reexamination during prosecution of the '039 Patent. There is no reasonable basis to support this argument.

*Second*, a Petitioner does not establish its own settled expectations merely because the “Patent Owner did not previously assert the challenged patent against Petitioner.” *Kahoot! AS*, IPR2025-00696, Paper 12, 2. This is especially true here,

where Petitioners admit that they have “*applied*” and “commercialized” PO’s patents yet claim they had no reason to expect that the ‘039 Patent posed any threat. Req. 7-8.

Neither *Intel* nor *Shenzhen* support Petitioners’ conclusion that “when there is no reason to challenge a patent earlier in its term, the age of the patent should not protect it from review.” Req. 8. In *Intel*, like here, Petitioner did not have its own settled expectations where the patents were “in force over nine years.” *Intel*, IPR2025-00327, Paper 12, 2. And in *Shenzhen*, the Director found that the complexity of the parallel litigation, involving nine patents spanning six families with vast scope, along with the evidence that the challenged patents had not been commercialized or otherwise applied, “tip the balance against discretionary denial,” not Petitioner’s expectations. *Shenzhen*, IPR2025-00438, Paper 10, 2. Here, the parallel litigation involves patents from the same family and with similar subject matter. In addition, unlike *Shenzhen*, here the Petitioners admitted in related IPRs that they “*applied*” and “*commercialized*” the Asserted Patents, as established above.

### **III. This Decision Is Consistent with the Director’s Other Decisions**

Petitioners claim that “the Decision failed to consider factors that have resulted in the rejection of discretionary denial in other proceedings.” Req. 8. Incorrect. The Decision states that “[a]lthough certain arguments are highlighted

above, the determination to exercise discretion to deny institution is ***based on a holistic assessment*** of all of the evidence and arguments presented.” Decision, 2-3.

**The petition lacks merits.** In its Discretionary Denial brief, PO identified many deficiencies of the Petition. DD, 54-60. Petitioners, however, did not address any of PO’s merits arguments. *See* Response. Petitioners only argue that because the Board instituted the Meta IPRs, the Petition therefore “presents strong merits.” Req. 8. Institution of the Meta IPRs, however, is not evidence of “strong merits” at least because PO’s merits arguments responding to the present Petition are ***new arguments not asserted*** in the Meta IPRs. DD, 54-60. In addition, the ‘336 Patent survived *ex parte* reexamination also based on Neibauer. And the Examiner considered Neibauer during the examination of the ‘039 Patent and still allowed the claims.

Petitioners’ attempt to show material error by relying on the Meta IPR institution is also legally flawed, as it would collapse the § 314(a) reasonable-likelihood standard and the material error into one. *Vital Connect*, IPR2023-00381, Paper 7, 20.

Petitioners’ next argument about the Petition’s merits based on the invalidation of the ‘5801 Patent—the great-great-grandparent of the ‘039 Patent—based on Neibauer is also wrong. Req. 9. The claims of the ‘039 Patent are materially

different from those of the ‘5801 Patent and the Examiner of the ‘039 Patent considered the ‘5801 reexamination and its reliance on Neibauer.

Similarly, Petitioners’ reliance on *Intell. Ventures* is unavailing. Req. 9. There, an ancestor patent found unpatentable had “***similar claims.***” *Intell. Ventures*, IPR2025-00217, Paper 9, 2. Here, the ‘039 Patent claims are ***substantially different*** from those in the ‘5801 Patent. *See* Ex. 2009; DD, 22-24. Further, unlike *Intell. Ventures*, the ‘039 Patent’s great grandparent—the ‘336 Patent—survived an *ex parte* reexam, and all Asserted Patents spring from the ‘336 Patent. Paper 11, 3-4.<sup>1</sup>

**The Asserted Patents belong to a single family.** Petitioners concede that “the subject matter is similar across the asserted patents” (Req. 10), yet rely on *Intell. Ventures* to argue that the Board is better suited than the district court to review their validity. Req. 10. As established above, *Intell. Ventures*, which involved eleven patents spanning nine different families with “a diverse range of subject matter,” is inapposite. *Intell. Ventures*, IPR2025-00217, Paper 9, 2-3. Here, the parallel litigation involves patents with similar subject matter and within the same patent family. *See* Req. 10.

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<sup>1</sup> *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464, Paper 12, 2-3 (July 16, 2025) is inapposite as it addresses priority dates, which are not an issue here.

**Petitioners’ stipulation was untimely and ineffective.** Petitioners complain the Decision made no mention of Petitioners’ eleventh-hour stipulation. Req. 10, Ex.2048. But the timeliness and effectiveness of the stipulation was discussed extensively by both parties in the briefing. Papers 12, 15. And the Decision consistently noted that “[a]lthough certain arguments are highlighted above, the determination to exercise discretion to deny institution is *based on a holistic assessment of all of the evidence and arguments presented.*” Decision, 2-3.

#### **IV. The Decision’s Factual Findings Regarding the Likely Time to Trial and Likelihood of a Stay are Supported by the Record**

Petitioners fail to establish the Decision’s findings on the trial date and the likelihood of stay of trial court proceedings are wrong. Req. 11.

**There is no dispute that the trial will happen before the FWD date.** The parallel litigation is set for trial in April 2026. The Director has recently held that when “the district court judge has indicated an intention to maintain the current trial schedule and only delay the trial schedule under extraordinary circumstances,” the scheduled trial date should control. *Linkplay Technology Inc. et al. vs Sonos, Inc.*, IPR2025-00509, Paper 10, 2 (July 31, 2025). Here, Judge Gilstrap’s Docket Control Order states that “The jury selection is ‘a deadline that cannot be changed without an acceptable showing of good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.’” DD, 36. Thus, under *Linkplay*, the scheduled trial date controls.

In addition, the median time-to-trial statistics are not dispositive because the trial date was agreed to by the parties and has not changed. *See Linkplay*, IPR2025-00509, Paper 10, 2 (recognizing that even when “time-to-trial statistics suggest” a trial later than the FWD date, the parties’ agreed trial date should control). But even considering the median time-to-trial statistics, Petitioners admit that the trial date would still be before the FWD. Req. 11-12.

**A stay of the litigation is unlikely.** Petitioners’ new argument about the likelihood of a stay is at odds with Petitioners’ own Response. There, Petitioners stated that “no litigation stay has been requested and *no objective evidence exists regarding whether a stay in the litigation will be granted.*” Compare Req. 13 with Response, 36. Petitioners’ contention that a stay is certain “[i]f PO does not oppose a motion to stay” is irrelevant. Req. 13. PO has previously informed Petitioners that PO will oppose any request for a stay (DD, 33), and as of the date of this brief, Petitioners have not yet sought a stay.

#### **V. Discretionary Denial Does Not Violate the Due Process Clause or the APA**

Petitioners argue that the Decision violates the Due Process Clause of the Fifth Amendment and the APA. Req. 13-15. This argument is unnecessary to preserve the record as there are no appeals from institution decisions. 35 U.S.C. §314(a). The argument also fails in view of the Director’s prior decisions. *See, e.g., iRhythm, Inc., v. Welch Allyn, Inc.*, IPR2025-00363, Paper 11 (July 3, 2025) (arguing the decision

violated the Due Process Clause and the APA); Paper 13 (Aug. 5, 2025) (denying request for Director review).

PO's Discretionary Denial brief argued several bases for denial other than those set forth in the Director's March 2025 Memorandum. *See, e.g.*, DD, 12-18 (*General Plastic* framework), 19-29 (*Advanced Bionics* framework), 32-38 (*Fintiv* factors 1-3), 46-61 (*Fintiv* factors 5-6). Petitioners do not contend that these further grounds present any Constitutional infirmity.

In any case, Petitioners have not established a Due Process violation because Petitioners have not been deprived of any rights. The decision whether to institute an IPR is within the Director's unreviewable discretion and a petitioner has no right to such institution. 35 U.S.C. § 314(d); *Cuozzo*, 579 U.S. at 273; *Mylan Labs. Ltd. v. Janssen Pharma., N.V.*, 989 F.3d 1375, 1382 (Fed. Cir. 2021).

Petitioners have also failed to establish any violation of the APA. Petitioners were on notice of the March 2025 Memorandum, had an opportunity to brief their arguments, and did so extensively. *See TQ Delta, LLC v. DISH Network LLC*, 929 F.3d 1350, 1356 (Fed. Cir. 2019) (no APA violation where "the party asserting the APA violation 'had notice...and an opportunity to be heard'"). That Petitioners are dissatisfied with the Decision does not violate the APA.

## **VI. CONCLUSION**

The Request should be denied.

Date: August 15, 2025

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2025, I caused a true and correct copy of the foregoing Patent Owner's Authorized Response to Petitioners' Request for Director Review to be served via electronic mail upon the following attorneys of record for the Petitioners:

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