

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ANALOG DEVICES, INC.,
Petitioner,

v.
NUMBER 14 B.V.,
Patent Owner.

Case IPR2025-00551
Patent 7,812,665

PATENT OWNER'S
REPLY IN SUPPORT OF DISCRETIONARY DENIAL¹

¹ Authorized on June 23, 2025. Ex-3101.

Patent Owner Number 14 B.V. (Number 14) submits this reply in support of its request for discretionary denial (Paper 6, “DD Req.”). First, Petitioner argues that the trial date occurring after the expected final written decision (“FWD”) “should be dispositive” based on three of the Director’s recent discretionary denial orders. Paper 7 (“DD Opp.”) 1. But this argument contravenes the Director’s conclusion in *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 6, 3 (June 6, 2025). Further, the lead counsel for *Welch Allyn* (Mr. Halverson) is one of Petitioner’s counsel here, so Petitioner was plainly aware of that contrary holding.

In *iRhythm*, one of the challenged patents had “been in force since as early as 2012 and Petitioner was aware of it as early as 2013.” *Id.* The projected FWD was about seven months before the district court trial date (August 2026 versus March 2027), there was “little investment” in the parallel proceeding, and a “high likelihood of a stay” pending the IPR, all of which the Director noted “weigh[ed] against discretionary denial.” *Id.* But the Director concluded that “Petitioner’s awareness of Patent Owner’s applications and failure to seek early review of the patents favors denial and *outweighs* [those] considerations.” *Id.*

The facts here favor discretionary denial even more than those in *iRhythm*. The patents here are at least 1 year older; and the projected FWD date here is only 1 month before the set trial date (instead of 7 in *iRhythm*), lessening the weight of that *Fintiv* factor. Even assuming Petitioner’s proffered “average” time-to-trial date

of March 2027 were accurate, that’s still 1 month closer to the FWD than in *iRhythm*. Moreover, Petitioner’s claim that Number 14 is trying to read “the mind of the judge” (DD Opp. 4) ignores the fact that the trial judge herself told the parties that the scheduled dates will “stick” (DD Req. 14, quoting Ex-2006). And *outweighing* those factors, Petitioner’s subsidiary, co-defendant, and real party-in-interest Maxim wasn’t just *aware* of the patents—it also controlled prosecution strategy, paid maintenance fees, and paid royalties to Number 14 to license those patents since at least 2011 without seeking review. DD Req. 18–20; Ex-2001 § 2.2. Petitioner then waited over 3 more years after its 2021 acquisition of Maxim (Ex-2002, Counterclaim ¶ 8), continuing royalty payments, before filing these petitions.

Additionally, Petitioner misquotes the 2007 License to suggest it “expressly invites a challenge.” DD Opp. 7. Petitioner ignores the remainder of the relevant provision, which discusses revocation only “as a result of actions *of third parties*.” Ex-2001 § 8.2 (emphasis added). So the License does *not* contemplate a challenge by Maxim or its corporate parent. But even if Petitioner’s suggestion were true, it weighs even more in favor of discretionary denial because Maxim and Petitioner *declined that invitation* and instead waited *over 13 years* until “the cost-benefit analysis ha[d] simply changed.” DD Opp. 9 & n.1; *cf. Dabico Airport Solutions Inc. v. AXA Power ApS*, IPR2025-00408, Paper 12, 3 (June 18, 2025) (finding settled expectations of patent in force for 8 years more persuasive than other

discretionary arguments, noting “the longer the patent has been in force, the more settled expectations should be”).

Finally, in *Tessell, Inc. v. Nutianix, Inc.*, IPR2025-00322, Paper 14, 2–3 (June 12, 2025), the inventors “applied for and were issued a patent” only to later “advocate for its unpatentability.” *Id.* The Director concluded these “unfair dealings” outweighed other factors, including a *granted* stay (which is not present here and is unlikely based on the judge’s *words*—not mind reading— notwithstanding Petitioner’s fact-divorced speculation about “statistics”). *Id.* Here, Maxim hired the inventors to develop the technology disclosed in the patents, and Maxim licensed the patents and commercially benefitted from them for over a decade. DD Req. 3–5. Only after Number 14 sued for breach based on an improper royalty calculation did Maxim and Analog raise *any* invalidity challenge. These “unfair dealings” further shift the balance toward discretionary denial.

In sum, the only “about-face” (DD Opp. 10) here is by Petitioner and Maxim—the beneficiaries of the License for over a decade, who concede they only recently “changed” their minds about the validity of the challenged patents. *See* DD Opp. 9 n.1; DD Req. 19 (quoting district court’s observations about prejudice to Number 14). The Director’s recent orders confirm that settled expectations and unfair dealings weigh strongly in favor of discretionary denial, *see iRhythm* at 3; *Dabico* at 3, allowing the district court to resolve all the issues between the parties.

Respectfully submitted,

/Warren Thomas/

Warren J. Thomas (Reg. No. 70,581)

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and agreement of the parties, I certify that on June 24, 2025 a copy of this paper and any accompanying exhibits were served on counsel for the Petitioner by email to:

chris.centurelli@klgates.com;
erik.halverson@klgates.com;
joshua.andrews@klgates.com.

/Meg Cogburn/

Meg Cogburn, Senior Paralegal
Meunier Carlin & Curfman LLC
999 Peachtree St, NE
Suite 1300
Atlanta, GA 30309