

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ANTHONY INC.,
Petitioner

v.

CONTROLTEC, LLC,
Patent Owner.

IPR2025-00559
U.S. Patent 7,207,181

PATENT OWNER REQUEST FOR DIRECTOR REVIEW

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PATENT OWNER'S EXHIBIT LIST

Ex.2001	Anthony corporate history webpage, https://www.anthonyintl.com/Aboutus/History.aspx
Ex.2002	U.S. Patent No. 4,261,179 to Dageford
Ex.2003	U.S. Patent No. 5,778,147 to Kim
Ex.2004	Declaration of John “Weeb” Bunch under 37 C.F.R. § 1.68
Ex.2005	Photographs of ControlTec LLC’s AS-20 Anti-Sweat Controller case
Ex.2006	Maintenance fee report for U.S. 7,207,181
Ex.2007	WIPO(PCT) Application No. WO2006093751A2 to Murray
Ex.2008	International Search Report for Application No. WO2006093751A2
Ex.2009	Written Opinion of the International Searching Authority for Application No. WO2006093751A2
Ex.2010	Information Disclosure Statement filed in U.S. Patent Application No. 12/337,981 on March 17, 2009.
Ex.2011	Patent Assignment, Reel 023084, Frame 0117 (assigning U.S. Patent Application No. 12/337,981 to Anthony International).
Ex.2012	Patent Assignment, Reel 027144, Frame 0103 (confirming Anthony International as a DBA of Anthony, Inc. and that U.S. Patent Application No. 12/337,981 was assigned to Anthony Inc.).

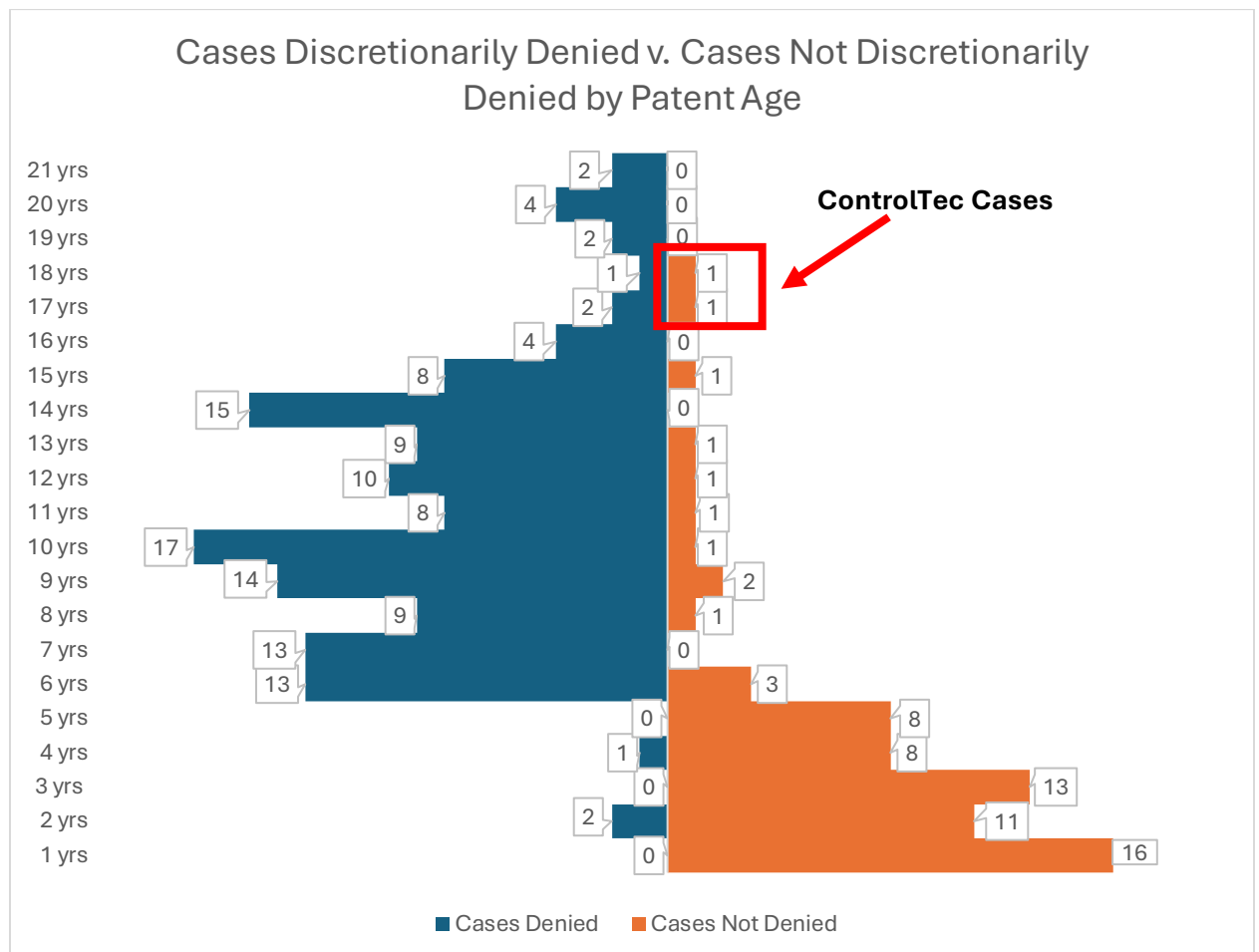
I. Introduction

On July 16, 2025, the Director referred this case to a panel of Board judges for issuance of a decision whether to institute an *inter partes* review trial. On August 25, 2025, the panel issued its decision, instituting an *inter partes* review trial on U.S. Patent 7,207,181 (“the ’181 Patent”). Patent Owner respectfully requests that the Director review these decisions, vacate them, and issue a new Decision on Institution exercising discretion to deny institution of an *inter partes* review trial on the petition filed by Petitioner. The decision to institute an *inter partes* review trial in this case stands as a radical outlier in the context of the Director’s recent approach to discretionary denial. Holding an *inter partes* review trial in this case will be an enormous waste of Board and party resources.

The ’181 Patent, now expired after the date the suit was brought, has been legally valid and enforceable for **18 years**-- the entirety of its statutory lifetime-- creating strong settled expectations. Petitioner cites a reference, Carter, that is not material to the validity of the ’181 Patent. The USPTO considered Carter in a written opinion based on an international search report that it issued in 2007, where it indicated that nearly identical claims to those of the ’181 Patent were patentable and non-obvious in light of Carter. Therefore, Carter cannot be material, and the omission of Carter cannot be a material error. Patent Owner relied on this fact. Therefore, this current Petition should be discretionarily denied.

II. “Strong Settled Expectations”

The Director has repeatedly decided that the time period a patent has been in force can create “settled expectations” or “strong settled expectations.” The Director has used this as a basis to discretionarily deny a large number of cases under the new bifurcated process. Here, “the challenged patents have been in force for approximately eighteen and seventeen years...” IPR2025-00559, Paper 13 at 2. As shown below, and in the attached Appendix, a patent owner is consistently, and almost uniformly, rewarded to have the benefit of “settled expectations” or “strong settled expectations” if a patent has been in force for at least six years:



Accordingly, with the challenged patents having been in force for approximately eighteen and seventeen years, Patent Owner has strong settled expectations that institution be denied on this basis alone. The decision not to exercise discretion in denying the present petition is in ***direct*** conflict ***with all of the cases*** cited under the new bifurcated review scheme. As seen above and in the attached Appendix, the ControlTec cases are unique outliers when looked at against the present backdrop given the length of time they have been in force. By way of example, the ControlTec patents ***have the most years in existence***— not to be discretionarily denied in a petition requesting the same— when compared against ***all cases*** decided under the new bifurcated process. Stated another way, there have only been ***five*** other cases to date where discretionary denial was not granted when a patent has been in existence for at least ***ten years or more***, and the length of time of a patent’s existence was noted in the opinion. All of these cases are distinguished from the present case below:

1. In *Padagis US LLC, v. Neurelis, Inc.*, (“*Padagis*”), IPR2025-00464, 465, 466, which involved three IPRs, the Petitions were referred to the Board primarily because “the challenged patents in IPR2025-00465 and IPR2025-00466 have not been in force for a significant period of time (issued in 2022 and 2023, respectively), and the patent challenged in IPR2025-00464 [having eleven years in force] is part of the same family, thus raising the same priority issue.” IPR2025-

00464, Paper 12, at 3. Unlike *Padagis*, both patents at issue here have been in force for a significant period of time. Also unlike here, the challenged patent in *Padagis* raised similar patentability issues that had been previously found unpatentable by the Board, and which was affirmed by the Court of Appeals for the Federal Circuit. *Id.* at 2.

2. In *Advanced Micro Devices, Inc. et al., v. Concurrent Ventures, LLC*, (“*Advanced Micro Devices*”), IPR2025-00478, the Petition was referred to the Board even though the challenged patent had been in force for ten years. IPR2025-00478, Paper 10 at 2. Unlike here, the challenged patent in *Advanced Micro Devices* was related to parallel district court proceedings between Petitioner and Patent Owner involving other patents that had been referred to the Board based on a lack of settled expectations. *See* IPR2025-00478, Paper 10 at 2 (“[T]he challenged patent issued in 2021, and Patent Owner has not developed strong settled expectations that favor discretionary denial.”); *see* IPR2025-00486, Paper 10 at 2 (“This proceeding presents the same discretionary considerations as those presented in IPR2025-00479.”). Additionally, unlike here, in *Advanced Micro Devices* the patent owner “had not commercialized, marked, licensed, or otherwise applied the challenged patent in Petitioner’s technology space.” *Id.* at 2.

3. In *Activision Blizzard, Inc., v. Milestone Entertainment, LLC*, IPR2025-00708, 711, 712, 713, which involved four related IPRs, discretionary denial of

institution was not granted primarily because the challenged patents in IPR2025-00711, IPR2025-00712, and IPR2025-00713 “have not been in force for a significant period of time (all issued in 2022)” and patent owner “has not developed strong settled expectations that favor discretionary denial.” IPR2025-00708, Paper 13, at 2. Also unlike here, the patent challenged in IPR2025-00708, which “ha[d] been in force for almost 12 years,” “omit[ted] limitations added during prosecution of the parent patent that appear to have been the patent examiner’s reason for allowing the parent patent’s claims.” *Id.* at 2-3.¹ “Under these circumstances, it is an efficient use of Board resources to address the patent challenged in IPR2025-00708 as well.” *Id.*

4. In *Taiwan Semiconductor Manufacturing Company Ltd., et al. v. Marlin Semiconductor Ltd.*, (“*Taiwan Semiconductor*”), one of the patents having 15 years in existence was referred to the Board and not discretionarily denied. *See* IPR2025-00847, Paper 12 at 4. Unlike here, these series of cases involved five IPRS, and four of them were discretionarily denied: “the patents challenged in IPR2025-00848, IPR2025-00864, IPR2025-00865, and IPR2025-00879 have been in force

¹ A very similar factual scenario exists in *Skullcandy, Inc., v. Earin AB*, where the challenged claims do not recite the features that provided for allowance. *See* IPR2025-00690, Paper 9 at 2. There is no such issue with the ’181 Patent.

for seven, nine, nine, and ten years, respectively, creating strong settled expectations for Patent Owner, and Petitioner does not provide persuasive reasoning why an inter partes review is an appropriate use of Board resources.” *Id.* at 2. As such, the bulk of these related proceedings were discretionarily denied based primarily on settled expectations, and only one IPR was referred to the Board. Unlike here, this lone case was referred to the Board based on a purported misapplication of a single reference, which the patent office originally used to deny the application during prosecution, but then allowed the patent after the claims were amended. *Id.* at 3. Here, the cited reference at issue, Carter, was known by the Examiner but never used as a basis to reject the ’181 Patent during prosecution. Additionally, there were settled expectations that Carter did not affect the patentability of the ’181 Patent, since the USPTO’s own international search report² and written opinion³ indicated as much. Also, unlike here, national security issues were present in *Taiwan Semiconductor* and these issues were raised as a basis to refer this case to the Board. It is unclear as to what impact this had on the referral decision because the briefing is sealed. Regardless, this case presents no national security issues.

5. In *Apple Inc., v. Ferid Allani*, (“*Apple*”) IPR2025-00856, 857, the Petition

² International Search Report for Application No. WO2006093751A2 (Ex.2008).

³ Written Opinion of the International Searching Authority for Application No. WO2006093751A2 (Ex.2009).

was referred to the Board even though one of the challenged patents had been in force for thirteen years. IPR2025-00856, Paper 11, at 3. However, in *Apple*, and unlike here, the patent owner did not assert the challenged patents until after they expired, and petitioner did not expect enforcement of the challenged patents because it concluded that it did not require a license to the patent and advised Patent Owner of its position in 2012, roughly eleven years ago. *Id.*

As seen from the above, the decision not to discretionarily deny the Petitions is a complete departure from the framework provided under the other decisions rendered under the new bifurcated process. Moreover, Petitioner has been aware of the '181 Patent for most of its statutory lifetime. Specifically, in 2009— more than fifteen years ago— Petitioner cited the '181 patent as a prior art reference during prosecution of its own patent application no. 12/337,981. Ex.2010, 2 (cite no. 23). Despite knowing of the '181 Patent for well over a decade, Petitioner did nothing, creating an expectation between the parties. On this basis, Patent Owner respectfully requests that the Director reconsider and reverse the decision not to discretionarily deny this Petition.

III. “*Material Error*”

In deciding not to discretionarily deny institution, the Director indicates “Petitioner appears to show a material error by the Office, and it is an appropriate use of Office resources to review the potential error.” IPR2025-00559, Paper 13 at

2. The cited material error is the failure to consider Carter, a reference cited in an international search report⁴ for a PCT application corresponding to the '181 Patent, where the USPTO found Carter had no bearing on the patentability of claims almost identical to that of the '181 Patent. In other words, the USPTO considered Carter and determined that Carter did not render the claims of the '181 Patent anticipated or obvious in 2007. Patent Owner relied on this indication, creating settled expectations of the validity of the '181 Patent in 2007, and now the Director seeks to overturn this 18 year-old settled expectation.

Presently, there does not appear to be a settled definition for “material error” in the context of discretionary denial of *inter partes* review petitions. However, the error must be material in that it must be able to affect the outcome. Here, the error cannot be material because the USPTO already considered Carter in an international search report and written opinion⁵ and found that it did not provide a bar to patentability.

This is in sharp contrast to other cases where the Director has elected not to discretionarily deny an *inter partes* review petition. For example, in *Posco Co., Ltd. v. Arcelormittal*, IPR2025-00370, 371, Paper 10 (Jun. 25, 2025), the Director elected not to exercise her discretion to deny institution because the “claims were

⁴ International Search Report for Application No. WO2006093751A2 (Ex.2008).

⁵ Written Opinion of the International Searching Authority for Application No. WO2006093751A2 (Ex.2009).

‘highly vulnerable to invalidation based on prior art’” based on Petitioner’s success in invalidating all the claims of a closely related patent. *Id.*, at 2-3. Conversely here, there is no history of the claims being invalidated based on the cited prior art. Instead, there is a history of the claims being found to be patentable in light of Carter in an international search report and written opinion that the USPTO issued.

Similarly in *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, 219, 220, 221, 222, 339, Paper 10 (Jun. 13, 2025), the Director found that despite the patent being in force for some time, “[p]etitioner has filed a broad stipulation and asserts that the merits are strong because the Board previously determined there was a reasonable likelihood that similar claims of an ancestor patent were unpatentable in three separate proceedings with respect to some of the challenged patents in these proceedings.” *Id.* at 2. There are no such similar proceedings here.

Even more troubling than the Director declaring the USPTO’s failure to consider Carter as being a “material error,” is that Petitioner never alleged that there was any material error in the Office’s prior consideration of Carter. Rather, the Director came to this conclusion on her own, in effect pre-deciding the effect of not considering Carter. This is different from *Posco* and *Tesla*, because in these cases extensive inquiry had been performed in other proceedings. In *Posco*, the claims of the parent patent had already been invalidated in a previous proceeding. In *Tesla*, an ancestor patent had already been determined to be unpatentable. The

inquiries in these cases were very substantial, in the form of complete *inter partes* reviews. The present scenario is also distinguished from *Taiwan Semiconductor*, since the Patent Owner had settled expectations that Carter did not affect the patentability of the '181 Patent, based on the USPTO's own international search report and written opinion.

Patent Owner respectfully submits that the institution of an *inter partes* review trial on this now-expired patent— and over art already considered and found wanting during prosecution— is an abuse of the Director's discretion. Therefore, Patent Owner respectfully requests that the Director discretionarily deny this Petitioner, consistent with the recent articulated framework based on the strong settled expectations of a patent owner.

IV. Conclusion

For all the reasons discussed above— both individually and collectively— Patent Owner respectfully requests that the Director exercise her discretion to deny institution of the petition.

Respectfully submitted,

Dated: September 8, 2025
HAYNES AND BOONE, LLP
2801 N. Harwood St., Suite 2300
Dallas, Texas 75201
Customer No. 27683

/Robert P. Ziemain/
Robert P. Ziemian
Lead Counsel for Patent Owner
Registration No. 57,931

Appendix:

**Cases discretionarily denied based on age of patent in force
under bifurcated process**

Case Citation	Years Patent in Force
Boe Technology Group Co., Ltd., v. Optronix Sciences LLC, IPR2025-00238, 239	12, 12
Intel Corp. v. Proxense LLC, IPR2025-00327, 328, 329	9, 9, 9
Samsung Elecs. Co., Ltd. v. Sinotechnix LLC, IPR2025-00331, 333, 335, 336	16, 15, 13, 14
Google LLC v. Soundclear Techs. LLC, IPR2025-00344, 345	10, 10
Irhythm Technologies, Inc., V Welch Allyn, Inc., IPR2025-00363, 374, 376, 377, 378	7, 10, 10, 13, 13
Kangxi Communication Technologies (Shanghai) Co., Ltd., v. Skyworks Solutions, Inc IPR2025-00372, 373	7, 14
Murata Mfg. Co., Ltd v. Georgia Tech Research Corp., IPR2025-00383, 384	16, 16
Dabico Airport Solutions Inc., v. Axa Power Aps, IPR2025-00408	8
Sig Sauer Inc. v. Lone Star Future Weapons, Inc., IPR2025-00410	11
SAP America, Inc. v. Valtrus Innovations Ltd., IPR2025-00414, 415, 416, 417, 418, 420	19, 21, 18, 21, 20, 20
Caihong Display Devices Co. Ltd. v. Corning, Inc., IPR2025-00439	14
Coretronic Corp. v. Maxell, Ltd., IPR2025-00474, 475, 476, 477	8, 9 12, 15
NXP USA, Inc. v. Redstone Logics LLC, IPR2025-00485	12
GOOGLE LLC, v. VIRTAMOVE, CORP., IPR2025-00487, 488, 489, 490	14, 14, 14, 14
Samsung Elecs. Co. Ltd. v. Four Batons Wireless, LLC, IPR2025-00493, 494, 495, 496	16, 14, 13, 11

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Case Citation	Years Patent in Force
Yangtze Memory Techs. Co., Ltd. v. Micron Tech., Inc., IPR2025-00498, 499, 500, 501	10, 10, 6, 6
Apotex Inc. v. Alkermes Pharma Ireland Ltd., IPR2025-00514	14
Sandisk Techs. Inc. v. Polaris Powerled Techs., LLC, IPR2025-00515, 516, 517	9, 12, 12
Samsung Elecs. Co., Ltd. v. Mobile Data Techs., LLC, IPR2025-00535, 536, 537, 538, 539, 540, 541, 542, 543, 544	10, 10, 10, 10, 10, 10 8, 8, 8, 8
Analog Devices, Inc. v. Number 14 B.V., IPR2025-00550, 551	13, 13
Roche Diabetes Care, Inc. v. Trividia Health, Inc., IPR2025-00553	13
Amazon.Com, Inc. v. Virtamove, Corp., IPR2025-00561, 563, 566	14, 14, 14
Carvana, LLC v. IBM Corp., IPR2025-00564	15
IBM Corp. v. Virtamove, Corp., IPR2025-00591, 599	15, 15
Amgen Inc., v. Bristol-Myers Squibb Company, IPR2025-00601, 602	6, 7
Nvidia Corp. v. Neural AI, LLC, IPR2025-00606, 608	11, 2
T-Mobile USA, Inc. v. Smart RF Inc., IPR2025-00612, 691, 692, 727	14, 8, 19
Samsung Electronics Co. Ltd. v. Os-New Horizon Personal Computing Solutions Ltd, IPR2025-00613	12
Kingston Tech. Co., Inc. v. Vervain, LLC, IPR2025-00614, 616	10
Amazon.Com, Inc. v. Kaifi LLC, IPR2025-00624, 625, 626, 627	14, 10, 15
Gator Bio, Inc. v. Sartorius Bioanalytical Instruments, Inc., IPR2025-00633	11
Oneplus Technology (Shenzhen) Co., Ltd., v. Pantech Corporation, IPR2025-00637	7
Samsung Elecs. Co., Ltd. v. Icashe, Inc., IPR2025-00639, 640, 641, 642, 643, 644, 645	9, 8, 12, 9, 9
Tanklogix, LLC v. Sitepro, Inc., IPR2025-00647, 648, 649	7, 11, 9

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Case Citation	Years Patent in Force
Microsoft Corp. v. Dialect, LLC, IPR2025-00655, 656, 657, 658, 659	15, 12, 9, 13, 8
HS Hyosung Advanced Materials Corp. v. Kolon Industries, Inc., IPR2025-00662, 663, 664	7, 6, 9
Vertiv Corp. v. Valtrus Innovations Ltd., IPR2025-00667, 668, 669	20, 20, 20
Smartsky Networks LLC v. Gogo Business Aviation LLC, IPR2025-00672	7
Taiwan Semiconductor Mfg. Co. Ltd. v. Advanced Integrated Circuit Process LLC, IPR2025-00682, 683	13, 11
Kahoot! AS v. Interstellar Inc., IPR2025-00696	6
Amazon.Com, Inc. v. Audio Pod IP, LLC, IPR2025-00757, 765, 768, 769, 774, 777	7, 11, 7, 11, 9
Microsoft Corp. v. TS-Optics Corp., IPR2025-00767	17
Samsung Elecs. Co., Ltd. v. Genghiscomm Holdings, LLC, IPR2025-00780, 781	8, 6
Intel Corp. v. Advanced Cluster Systems, Inc., IPR2025-00794, 795	6, 6
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Nkt Photonics Inc. And Nkt Photonics A/S, v. Omni Continuum LLC, IPR2025-00839	17
Taiwan Semiconductor Manufacturing Company Ltd. v. Marlin Semiconductor Ltd., IPR2025-00848, 864, 865, 879	7, 9, 9, 10
Jinkosolar Co., Ltd., v. Longi Green Energy Technology Co. Ltd, IPR2025-00859	10
Advanced Micro Devices, Inc., v. Advanced Cluster Systems, Inc, IPR2025-00862, 863	6, 6

**Cases referred to the Board based on age of patent in force
under bifurcated process**

Case Citation	Years Patent in Force
Tesla, Inc., v. Charge Fusion Technologies, LLC, IPR2025-	2, 1

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00152, 153	
Micron Technology, Inc., v. Yangtze Memory Technologies Company, Ltd, IPR2025-00190, 191, 228, 244,245, PGR2025-00021	1, 4
Resmed Corp., v. Cleveland Medical Devices, Inc, IPR2025-00246, 247	1, 1
Embody, Inc. And Zimmer Biomet Holdings, Inc., v. Lifenet Health, IPR2025-00248, 249	3
Berkshire Hathaway Energy Company v. Birchtech Corp., IPR2025-00274, 278, 280, 281	5, 5, 6, 6
Ajinomoto Co., Inc., v. Abtis Co., Ltd., IPR2025-00283	1
Imperative Care, Inc., v. Inari Medical, Inc., IPR2025-00289	2
Zhuhai Cosmx Battery Co., Ltd., v. Ningde Ampere Technology Limited, IPR2025-00385, 389, 405, 431, 432	4, 1, 2, 2, 2
Shenzhen Tuozhu Technology Co., Ltd, v. Stratasys, Inc., IPR2025-00438, 531, 532, 585, 611	5, 5, 4, 1, 1
Charles River Laboratories, Inc., v. Seikagaku Corporation, IPR2025-00440	3
Eunsung Global Corp., v. Hydrafacial LLC., IPR2025-00445, 452, 453	1, 3, 8
Padagis Us LLC, v. Neurelis, Inc., IPR2025-00464, 465, 466	2, 3, 11
Google LLC, v. Brodti Inc., IPR2025-00472	3
Advanced Micro Devices, Inc. v. Concurrent Ventures, LLC, IPR2025-00478, 479, 486	4, 5, 10
Conjupro Biotherapeutics, Inc., v. Ipsen Biopharm Ltd., IPR2025-00505	3
Shenzhen Root Technology Co., Ltd., v. Willow Blossom Holdco Limited, IPR2025-00554, 560	2, 2
Røde Microphones, LLC v. Zaxcom, Inc., IPR2025-00557	1
Anthony Inc., v. Controltec, LLC, IPR2025-00559, 636	17, 18
Amazon.Com, Inc. v. Soundclear Technologies LLC, IPR2025-00565, 673	4, 3
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Amgen Inc., v. Bristol-Myers Squibb Company, IPR2025-00603	3
Xencor, Inc., v. Merus N.V., IPR2025-00604, 605	1, 9
Microsoft Corporation, v. Edge Networking Systems, LLC, IPR2025-00617, 618, 619	4, 2, 5
Mim Software Inc., v. Progenics Pharmaceuticals, Inc., IPR2025-	5, 3, 1

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Revvo Technologies, Inc., v. Tire Stickers LLC, IPR2025-00631	4
Revvo Technologies, Inc., v. Cerebrum Sensor Technologies Inc., IPR2025-00632	2
Tanklogix, LLC v. Sitepro, Inc., IPR2025-00650, 651, 652, 653	6, 4, 3, 2
Cspc Megalith Biopharmaceutical Co., Ltd., v. Shanghai Miracogen Inc., IPR2025-00685	5
Skullcandy, Inc., v. Earin Ab, IPR2025-00690	9
Activision Blizzard, Inc., v. Milestone Entertainment, LLC, IPR2025-00708, 711, 712, 713	3, 3, 3, 12
Alpinestars S.P.A. And Alpinestars Usa Inc., v. Dainese S.P.A., IPR2025-00750	1
Google LLC, V.Withrow Networks Inc., IPR2025-00775	5
Valneva Austria Gmbh, v. Takeda Vaccines, Inc., IPR2025-00776	2
Intas Pharmaceuticals Ltd, v. Atossa Therapeutics, Inc., IPR2025-00799	3
Taiwan Semiconductor Manufacturing Company Ltd. v. Marlin Semiconductor Ltd., IPR2025-00847	15
Apple Inc., v. Ferid Allani, IPR2025-00856, 857	13

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), Patent Owner hereby certifies, in accordance with and reliance on the word count provided by the word-processing system used to prepare Patent Owner Request for Director Review, that the number of words in this paper is 2,197. Pursuant to 37 C.F.R. § 42.24(d), this word count excludes the table of contents, table of authorities, mandatory notices under § 42.8, certificate of service, certificate of word count, appendix of exhibits, and any claim listing.

Dated: September 8, 2025

/Robert P. Ziemian/
Robert P. Ziemian
Lead Counsel for Patent Owner
Registration No. 57,931

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that a true and correct copy of the foregoing was served on the Petitioner as detailed below:

<i>Date of service</i>	September 8, 2025
<i>Manner of service</i>	Electronic Email: IPR43789-0259IP1@fr.com ; PTABInbound@fr.com
<i>Documents served</i>	Patent Owner Request for Director Review
<i>Persons Served</i>	Kenneth W. Darby Jr. Kenneth Hoover Christopher Dillon (Pending <i>Pro Hac Vice</i>) Fish & Richardson P.C. 60 South Sixth Street, Suite 3200 Minneapolis, MN 55402

/Robert P. Ziemian/
Robert P. Ziemian
Lead Counsel for Patent Owner
Registration No. 57,931