

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SMARTSKY NETWORKS LLC,
Petitioner,

v.

GOGO BUSINESS AVIATION LLC,
Patent Owner.

Case No. IPR2025-00672
U.S. Patent No. 9,954,600

**PATENT OWNER'S REPLY TO
PETITIONER'S REQUEST FOR DISCRETIONARY DENIAL**

In its Opposition to Gogo's Request for Discretionary Denial (Paper 7), Petitioner Smartsky argued that Gogo "has not established strong settled expectations," noting that the '600 Patent "issued in April of 2018." *Id.* at 7.¹ Smartsky then argues that "[d]ecisions pursuant to the Workload Memo have found discretionary denial to be inappropriate for patents with similar timeframes." *Id.* (citing *Zhuhai Cosmx Battery Co., Ltd. v. Ningde Amperex Tech. Ltd.*, IPR2025-00385, Paper 9 at 2 (PTAB July 2, 2025); *Cambridge Industries USA, Inc. v. Applied Optoelectronics, Inc.*, IPR2025-00434, Paper 11 at 2-3 (PTAB June 26, 2025)). These cases support denial.

In *Cambridge Industries*, the Board found that patents issued in 2020 and 2019 "have not been in force for a significant period of time" but, tellingly, found that the "settled expectations" weighed in favor of discretionary denial for USP 10,042,116, which issued on August 7, 2018. IPR2025-00434, Paper 11 at 3 (finding settled expectations for IPR2025-00435, challenging USP 10,042,116). Critically, that patent issued ***more than three months after*** the '600 Patent, challenged here. If "settled expectations" weighed in favor of discretionary denial for the '116 patent, then that factor certainly weighs in favor of denial here.

¹ The Board authorized this Reply on July 16, 2025. *See* Ex. 3001.

Zhubai is similar. In that case, the Director reviewed petitions challenging patents issued in 2024, 2023, and 2021, well after the '600 Patent and after the '116 patent in *Cambridge Industries* for which the Director found settled expectations weighed in favor of discretionary denial. IPR2025-00385, Paper 9 at 2. *Zhubai*, therefore, supports denial as well.

The Director's decision in *Dabico Airport Solutions Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 (PTAB June 18, 2025) is instructive. In that case, the Director found "settled expectations" weighed in favor of denial for USP 9,771,169, which had been in force for "almost eight years." *Id.* at 1. That patent issued on September 26, 2017 and the IPR2025-00408 petition was filed on January 9, 2025. Accordingly, the Director measured the "settled expectations" factor from the date of the discretionary denial decision. Here, Gogo's '600 Patent has now been in force for more than seven years.

In *Dabico*, the Director explained: "in general, the longer the patent has been in force, the more settled expectations should be. This approach aligns with other approaches to settled expectations and incentives, for example, for filing infringement lawsuits." *Id.* at 3 (citing 35 U.S.C. § 286). Given the '600 Patent has been in force since April 2018, expectations are clearly settled and institution should be denied. *See id.* at 2-3; *Cambridge*, IPR2025-00434, Paper 11 at 3; *Zhubai*, IPR2025-00385, Paper 9 at 2.

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Patent Owner's Discretionary Denial Reply

Date: July 21, 2025

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CERTIFICATE OF SERVICE (37 C.F.R. §§ 42.6(E), 42.105(A))

The undersigned hereby certifies that the foregoing document was served in its entirety on July 21, 2025 upon the following parties via Electronic Mail:

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