

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KAHOOT! AS
Petitioner

v.

INTERSTELLAR INC.
Patent Owner

Case No. IPR2025-00696
U.S. Patent No. 10,339,825

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

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I. INTRODUCTION

Patent owner Interstellar Inc. (“Interstellar” or “Patent Owner”) submits this response to the Request for Director Review (“Review Request”) filed by Petitioner Kahoot! AS’s (“Kahoot!” or “Petitioner”) under the Director’s September 2, 2025 email authorization (Exhibit 3101). For the reasons provided below, Patent Owner respectfully requests that the Review Request be denied. The decision denying institution should stand.

The Review Request fails because the Director’s Discretionary Denial was based on a “holistic assessment of all the arguments and evidence presented,” and the “totality of the evidence and arguments the parties have presented,” not just settled expectations. The Review Request additionally fails in its advocacy for a “bright line rule” to be applied to the timing of settled expectations, where one currently does not exist. Moreover, Petitioner improperly repeats rejected arguments from its Discretionary Denial Opposition brief, which deserve no credit.

II. ARGUMENT

The Director has broad discretion whether to institute *inter partes* review. *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (the Director’s “decision to deny a petition is a matter committed to the Patent Office’s discretion”). “The Director is permitted, but never compelled, to institute an IPR. And no petitioner has a right to such institution.” *Mylan Lab ’ys Ltd. v. Janssen*

Pharmaceutica, N.V., 989 F.3d 1375, 1382 (Fed Cir. 2021); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“the PTO is permitted, but never compelled, to institute an IPR”).

The Director’s decision expressly states it was based on a “holistic assessment of all of the evidence and arguments presented” and the “totality of the evidence and arguments the parties have presented.” (Paper 12 at 2). Petitioner’s Review Request ignores that the Director’s decision was based on all the evidence and arguments and “in view of all relevant considerations,”¹ and fails to demonstrate any error in the Director’s consideration of the settled expectations factor.

A. Petitioner’s attempt to confine the Director’s discretion into a bright line “6 years before petition filing rule” goes against the Director’s discretionary powers, guidance, and precedent and should be rejected

Petitioner disagrees with the Director’s finding that U.S. Patent 10,339,825 was in force for over six years, creating strong settled expectations for Patent Owner. To avoid the fact that the patent was indeed in force for six years prior to the Director’s decision, Petitioner advocates for a “rule” that settled expectations only arise if a patent issued six years before the date a petition for *inter partes*

¹ For example, Patent Owner’s Discretionary Denial brief also addressed the weakness of the merits of the petition, undue reliance on expert testimony, and the *Fintiv* factors in addition to settled expectations. (Paper 7).

review is filed. (Paper 13 at 1, 4-5). Petitioner had already made this argument in its Discretionary Denial Opposition brief, unsuccessfully. (Paper 9 at 5-6).

First, this repeated attempt of the Petitioner directly contradicts the Director’s clear statement in *Dabico* that “there is no bright-line rule on when expectations become settled.” *Dabico Airport Solutions Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 3 (Director June 18, 2025). Second, Petitioner’s proposed “bright line rule” is not supported by the Director’s March 26, 2025 Memorandum entitled “Interim Processes for PTAB Workload Management,” any subsequent guidance, or decisions (including the one Petitioner cites). Instead, settled expectations are considered on a case-by-case basis. For example, patent owners have been found by the Director to have “strong settled expectations” in patents that were approximately six years old (and not more than six years old at the time of filing of the petition or even at the time of the decision denying institution). *Yangtze Memory Techs. Co. Ltd. v. Micron Tech., Inc.*, IPR2025-00500, Paper 10 and IPR2-25-00501, Paper 10 (Director Aug. 14, 2025)² (citing *Dabico*, IPR2025-00408, Paper 21 at 2–3); *See also Intel Corp. v. Advanced Cluster Systems, Inc.*, IPR2025-00794, Paper 13 (Director Aug. 14, 2025) (denying

² The dates relevant to Petitioner’s proposed “rule” are: IPR2025-00500 (patent 10,475,737 issued Nov. 12, 2019; IPR petition filed Feb. 12, 2025; Discretionary Denial dated Aug. 14, 2025). IPR2025-00501 (patent 10,373,974 issued Aug. 6, 2019; IPR petition filed Feb. 13, 2025; Discretionary Denial dated Aug. 14, 2025).

institution based on all relevant considerations, including that “the challenged patent has been in force for approximately six years, creating settled expectations for Patent Owner”).³ In certain circumstances, even newer patents can lead to settled expectations, such as those in force for three years. *Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, Paper 9 at 2-3 (Director July 24, 2025) (“there may be good reasons why a patent owner has strong settled expectations in a patent that has only been in force for three years”).

Petitioner conveniently isolates a single decision (*Cambridge*) to support its proposed “rule,” but fails to address that the discretionary determination in each case is based on a holistic assessment of all the facts and circumstances. *See Dabico Airport Solutions Inc. v. AXA Power Aps*, IPR2025-00408, Paper 24 at 4 (TPAB Aug. 21, 2025) (denying request for Director Review stating “Petitioner, however, fails to address that the determination of whether to exercise discretion to deny institution in each case is based on a holistic assessment of all the facts and circumstances”). Petitioner claims that *Cambridge* “involv[ed] identical circumstances,” (Paper 13 at 1-2) but does not actually compare all the circumstances or factors that are considered in addressing discretionary denial (not just settled expectations). In addition, the *Cambridge* decision is silent on the topic

³ The dates relevant to Petitioner’s proposed “rule” are: IPR2025-00794 (patent 10,333,768 issued June 25, 2019; IPR petition filed March 28, 2025; Discretionary Denial dated Aug. 14, 2025).

of calculating time from the filing of an IPR petition and, therefore, does not provide support for Petitioner's argument. *Cambridge Industries USA, Inc. v. Applied Optoelectronics, Inc.*, IPR2025-00436, Paper 11 (June 26, 2025).

Petitioner's argument is an exercise in fact avoidance: the patent did, in fact, issue more than six years before the Director's decision. The Review Request also fails to address additional information provided in Patent Owner's Discretionary Denial brief related to settled expectations including the length of time the patent application was publicly available (nearly 12 years) and Patent Owner's work to develop a business and product based on the patented technology. (Paper 7 at 29-32). Petitioner merely repeats its argument from the Discretionary Denial Opposition, which should be rejected once again.⁴

⁴ In its footnote bridging pages 6-7 of the Review Request, Petitioner alleges that the "six-year rule" is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (Paper 13 at fn. 3). Interestingly, it is Petitioner that has proposed a six-year rule, not the Director. Petitioner's proposal is the one that is contrary to law. The decision whether to institute an IPR is entirely within the Director's discretion. The Director's March 26 Memorandum and subsequent guidance address a holistic approach that considers multiple factors and whether to institute review in general. As seen from the *Amgen* and *Intel* decisions, patents newer than six years may give rise to settled expectations and other considerations may lessen settled expectations relating to patents older than six years. Moreover, Petitioner should not be granted relief based on a footnote referencing four Federal Circuit proceedings, without further discussion.

B. Petitioner's claim that failed arguments regarding settled expectations must have been "overlooked" or "misapprehended" should be rejected

Petitioner claims that its arguments were "overlooked" or "misapprehended" with no support other than it did not prevail on those select arguments. Petitioner reiterates its position from the Discretionary Denial Opposition that it had its own expectations relating to the '825 Patent. (Paper 13 at 3, 5-6 referring to positions made in Paper 9 at 5-8). Petitioner's arguments were considered and rejected with the Director stating that "because Patent Owner did not previously assert the challenged patent against Petitioner does not defeat Patent Owner's settled expectations." (Paper 12 at 2). The Director's decision was "based on the totality of the evidence and arguments the parties have presented." (Paper 12 at 2). Petitioner is not entitled to "analysis or explanation" (Paper 13 at 3) regarding how the Director weighed each and every argument. There is nothing to review or reconsider, and nothing to warrant reversing the Director's decision to deny institution.

In rearguing its position, Petitioner again mischaracterizes Patent Owner's statements regarding what it knew about Petitioner's offerings in its Discretionary Denial Opposition brief and Review Request. As addressed in Patent Owner's Discretionary Denial brief, in 2015, Patent Owner was aware that Petitioner's individual-based offering differed from the claimed team-based competition.

(Paper 7 at 30-31). Patent Owner only learned recently, however, after observing Petitioner's sales rise from 2020 to 2023 and upon subsequent investigation, that Petitioner had been gradually encroaching into the claimed team-based competitions and other claimed features. (Paper 7 at 31-32). Patent Owner then promptly approached Petitioner to offer to collaborate and/or license the patent. (Paper 7 at 32). Petitioner's suggestion that Patent Owner knew about its infringing activity for a decade is a willful mischaracterization of the timeline provided in the Discretionary Denial brief.

Moreover, Petitioner fails to demonstrate how mere awareness of infringing activity by a patent owner, without clear communication of that awareness to the infringer and an indication that the petitioner's activity did not violate patent rights, would lead to settled expectations of the infringer. Petitioner argues: "Thus, Patent Owner's non-assertion for almost a decade, despite knowledge of the allegedly infringing instrumentality, creates settled expectations for Kahoot! that it has no threat of a lawsuit." (Paper 13 at 6). This logic is flawed because it depends on Patent Owner's knowledge of the allegedly infringing instrumentality for a decade (which Patent Owner did not have). Nowhere does Petitioner allege that Patent Owner communicated such awareness prior to 2024. Indeed, Patent Owner did not have such awareness of infringement prior to 2023/24 (at which point it promptly notified Petitioner).

Petitioner’s reliance on *Intel* is misplaced (even based on the facts as re-written by Petitioner). In *Intel*, the Director denied institution and suggested that the overall analysis of settled expectations can include whether the patent has been “commercialized, asserted, marked, licensed, or otherwise applied in a petitioner’s particular technology space,” but that those considerations merely “bear[] on the Director’s discretion,” not that they mandate a finding of no settled expectations. *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 at 2–3 (Director June 26, 2025)). As Patent Owner explained in its Discretionary Denial brief, it built a business and product based on the patented technology in the online competition space.⁵ (Paper 7 at 29-30).

Petitioner’s mere reiteration of the arguments from its Discretionary Denial Opposition in the Review Request, coupled with gross mischaracterization of the Patent Owner’s Discretionary Denial brief, weigh heavily against the reversal of the Director’s decision.

III. CONCLUSION

The Director’s decision to grant discretionary denial was proper and based on a holistic assessment of all the evidence and arguments presented. For that

⁵ Interestingly, both times Petitioner cites *Intel*, it leaves the word “commercialized” out of the quotation. (Paper 13 at 3, 6).

reason and the others addressed herein, Patent Owner respectfully requests that the Director deny Petitioner's Review Request.

Dated: September 9, 2025

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the foregoing PATENT OWNER'S AUTHORIZED RESPONSE TO PETITIONER'S REQUEST FOR DIRECTOR REVIEW is no more than 15 pages and therefore complies with the limit set forth in 37 C.F.R. § 42.24. The page count does not include the Table of Contents, the Table of Authorities, the Certificate of Compliance, or the Certificate of Service.

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CERTIFICATE OF SERVICE

The undersigned certifies that on September 9, 2025, the foregoing Patent Owner's Authorized Response to Petitioner's Request for Director Review was served via email upon counsel of record for Petitioner as follows:

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