UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION,
Petitioner

v.

ADVANCED CLUSTER SYSTEMS, INC.,
Patent Owner.

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IPR2025-00794
IPR2025-00795
U.S. Patent No. 10,333,768

PETITIONER'S NOTICE RANKING PETITIONS AND EXPLAINING MATERIAL DIFFERENCES BETWEEN PETITIONS FOR U.S. PATENT NO. 10,333,768

I. INTRODUCTION

Petitioner filed three Petitions challenging claims of U.S. Patent 10,333,768 (the "'768 patent"). Pursuant to the Consolidated Trial Practice Guide November 2019 ("TPG"), Petitioner submits this paper to "identify: (1) a ranking of the Petitions in the order in which it wishes the Board to consider the merits..., and (2) a succinct explanation of the differences between the petitions, why the issues addressed by the differences are material, and why the Board should exercise its discretion to institute additional petitions." TPG, 60.

II. RANKING OF PETITIONS

The '768 Patent has 4 independent claims and a total of 39 claims. Petitioner is challenging all claims over two petitions. The petition for IPR2025-00794 challenges independent claim 1 and all claims depending therefrom. The petition for IPR2025-00795 challenges independent claims 26, 29 and 35 and all claims depending therefrom. The petitions group the claims so that there are different, non-overlapping claim sets. As demonstrated by each petition, the grounds are meritorious and justified.

Per the Board's TPG guidance, Petitioner ranks as follows:

RANK	PETITION	CLAIMS	GROUNDS
1	**IPR2025-00794** (challenges claims 1-25 and 30-34)	Claims 1-25 and 30	35 U.S.C. §103 over Menon in view of Trefethen, RS6000 and POEref
		Claims 31-34	35 U.S.C. §103 over Menon in view of Trefethen, RS6000 and POEref further in view of MPIref
2	**IPR2025-00795** (challenges claims 26-29 and 35-39)	Claims 26, 29, 35-36, 39	35 U.S.C. §103 over Menon in view of Trefethen, RS6000 and POEref
		Claims 27-28 and 37-38	35 U.S.C. §103 over Menon in view of Trefethen, RS6000 and POEref further in view of MPIref

III. EXPLANATION OF MATERIAL DIFFERENCES AND REASONS FOR INSTITUTION OF MULTIPLE PETITIONS

The Board recognized that "there may be circumstances in which more than one petition may be necessary." TPG at 59-60. Those circumstances are present here:

A. The '768 Patent Contains Numerous Lengthy Claims

The textual language of the thirty-nine (39) claims in the '768 patent is 2,899 words, representing 20% of the 14,000 allowable words for a single petition.

The considerable number and length of the challenged claims makes presenting the asserted grounds in a single petition impractical. Thus, institution of two petitions is warranted and consistent with the Board's decisions in other cases. *See*, *e.g.*, *Flex Logix Techs., Inc. v. Venkat Konda*, IPR2020-00261, Paper 22 at 24 (PTAB Aug. 3, 2020) (independent claim more than one column long did not weigh in favor of discretionary denial); *Peloton Interactive, Inc. v. Ifit, Inc.*, IPR2022-00030, Paper 12 at 33-34 (PTAB Apr. 22, 2022) (finding "Petitioner's filing of three petitions to challenge different claims of the '062 patent…promotes efficiency" where the patent "include[s] five independent claims" that "differ[]…in various, potentially significant ways."); *Novartis Gene Therapies v. Genzyme Corporation*, IPR2023-01045, Paper 10 at 3 (PTAB Jan. 17, 2024) (instituting multiple petitions where patent included seven independent claims with differing features and scope).

Petitioner is filing the two petitions concurrently and has not sought "a timing advantage that might otherwise occur were the petitions filed serially," which further supports institution. *Samsung Electronics Col., Ltd. v. Ryan Hardin*, IPR2022-01335, Paper 13, 22-23 (PTAB Feb. 8, 2023) (Institution Decision).

B. Parallel Petitions Have No Overlap.

As shown in the table above, each petition challenges a distinct set of claims. Accordingly, the petitions are materially different.

Further, Patent Owner has served a complaint that declines to constrain the claims that it asserts. Ex.1019, 16 ("at least claim 1 and 35 of the '768 Patent"). Patent Owner's Infringement Contentions assert each independent claim, along with many dependent claims, but "reserves the right to modify, amend, or otherwise supplement" its contentions. Ex.1022, 1, 3. Moreover, Final Infringement Contentions are not due until October 8, 2025. Ex.1020, 4. Given the uncertainty of which claims Patent Owner intends to assert at trial and the eventual one year time bar, Petitioner is placed in the position of challenging all claims.

Nevertheless, as shown in the table above, Petitioner has structured the petitions so that there is no overlap of claims. Thus, Petitioner is not seeking duplicative or repetitive grounds, and the petitions are materially different.

C. Parallel Petitions Would Not Materially Increase Burden on the Board

Because the Petitions challenge each claim only once, while relying on the same combinations of prior art and the same expert declaration, institution of the two petitions would not raise concerns of duplicative time and resources.

Moreover, because the grounds, prior art and expert declaration are the same, consolidation of the two proceedings under 35 U.S.C. § 315(d) would be appropriate and would serve to increase efficiency.

IV. CONCLUSION

Petitioner respectfully submits that the Board should institute trial on the two parallel petitions.

Respectfully submitted,

Dated: March 28, 2025

/Andrew S. Ehmke/
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Registration No. 50,271

CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. § 42.6(e) and 37 C.F.R. § 42.105, service was made on Patent Owner as detailed below.

Date of service	March 28, 2025
Manner of service	FEDERAL EXPRESS
Documents served	Petitioner's Notice Ranking Petitions and Explaining Material Differences Between Petitions for U.S. Patent No. 10,333,768
Persons served	Knobbe, Martens, Olson & Bear, LLP 2040 Main Streeet Fourteenth Floor Irvine, CA 92614

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