

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**SAMSUNG ELECTRONICS CO. LTD. and SAMSUNG ELECTRONICS
AMERICA, INC.**
Petitioners

v.

VB ASSETS, LLC,
Patent Owner

**IPR2025-00869
U.S. Patent No. 8,886,536**

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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Ex. 2001	Declaration of Andrew J. Ligotti
Ex. 2002	https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf (“Acting Director Memo”)
Ex. 2003	https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management (“FAQs”)
Ex. 2004	<i>VB Assets, LLC v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:24-cv-00828 (E.D. Tex. Oct. 9, 2024), Dkt. 1 (“Complaint”)
Ex. 2005	Prosecution History of U.S. Publication No. 2008/0256574
Ex. 2006	<i>VB Assets, LLC v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:24-cv-00828, Dkt. 22 (E.D. Tex. Jan. 14, 2025) (“Samsung EDTX Litigation Answer”)
Ex. 2007	<i>VB Assets, LLC v. Amazon.com Servs. LLC</i> , No. 1:19-cv-01410-MN, Dkt. 291 (D. Del. Nov. 8, 2023) (“Amazon Delaware Litigation Jury Verdict”)
Ex. 2008	<i>VB Assets, LLC v. Amazon.com Servs. LLC</i> , No. 1:19-cv-01410-MN, Dkt. 352 (D. Del. June 9, 2025) (“Amazon Notice of Appeal”)
Ex. 2009	<i>VB Assets, LLC v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:24-cv-00828, Dkt. 42 (E.D. Tex. Apr. 4, 2025) (“EDTX Litigation Amended Docket Control Order”)
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Ex. 2013	Exhibit G-6, Subject Matter Eligibility Contentions for 536 Patent
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Ex. 2015	Reserved

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Ex. 2019	Samsung Notice of Documents Subpoena to Mavenir Systems, Inc. (May 14, 2025)
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I. INTRODUCTION

VB Assets, LLC (“VB Assets” or “Patent Owner”) respectfully submits this brief requesting that the Board deny institution of the Petition for *inter partes* review (Paper 1 or “Pet.”) filed by Petitioners Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc. (“Petitioners” or “Samsung”) pursuant to §314(a) and the Acting Director’s March 26, 2025 Memorandum¹ titled “Interim Processes for PTAB Workload Management” (hereafter “Director Memo”).

The Petition seeks *inter partes* review (“IPR”) of claims 1-55 (the “Challenged Claims”) of U.S. Patent No. 8,886,536 (the “’536 Patent,” Ex. 1001). The ’536 Patent and five other patents² (collectively, the “VB Assets

¹ See Ex. 2002 (Acting Director Memo)

(<https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf>); Ex. 2003 (“FAQs”) (<https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management>).

² Petitioners filed IPR petitions against all five of these other patents. See IPR Nos. 2025-00866, -00867, -00868, -00870, -00871. Three of the other IPRs were

Patents”) are the subject of the co-pending patent infringement action that VB Assets brought on October 9, 2024 against Samsung in the Eastern District of Texas as Civil Action No. 2:24-cv-00828 (the “EDTX Litigation”).

The Petition and the EDTX Litigation are not the first time that Samsung has encountered and evaluated the VB Assets Patents. Over a decade ago, around September 2012, Samsung expressed interest in licensing or purchasing VB Assets Patents. Ex. 2004 (Complaint), Paragraphs 36-42. In December of that same year, Samsung offered to buy at least U.S. Patent Number 8,073,681—which it now challenges in IPR2025-00866—and license other VB Assets Patents, such as the ’176 Patent,³ which is the parent patent of the ’536 Patent challenged in this proceeding. *Id.* Around 2013, instead of buying or licensing the patents, Samsung entered into a strategic partnership with Patent Owner’s predecessor to develop Samsung’s first voice assistant: S-Voice. *Id.* The partnership continued during the pendency and ultimate issuance of the ’536 Patent in 2014 through 2016. *Id.*

Abruptly, Samsung announced a new, different product on October 18, 2017—its Bixby 2.0 voice assistant—which practices the inventions of the VB

accorded the same filing date as the present IPR, while the remaining two are on a schedule a few weeks behind.

³ The ’176 Patent is also challenged in IPR2025-00867.

Assets Patents despite the fact that Samsung knew about but never secured any rights to use the VB Assets Patents in its new product (which it still sells to this day). After the announcement of this infringing product, Samsung rejected efforts to re-open discussions regarding the VB Assets Patents. *Id.* Despite this, Samsung never challenged their validity until now.

Now, almost 11 years after the '536 Patent issued in 2014 and after nearly a decade of silence from Samsung regarding the validity of the VB Assets Patents, Samsung furiously contests the validity of the VB Assets Patents (including the '536 Patent) in the Petition while also doing so in the EDTX Litigation. These challenges come in spite of the fact that the '536 Patent has already withstood multiple challenges before different tribunals, including the PTAB. Indeed, the Board denied institution of *two* IPR petitions filed in 2020 by Amazon to challenge the '536 Patent. (See IPR Nos. 2020-01374, Paper 10; IPR2025-01377, Paper 10 (collectively, the “Prior IPRs”)). The Board also denied institution of an IPR petition filed by Amazon challenging the parent patent of the '536 Patent, the '176 Patent. (See IPR No. 2020-01390, Paper 7). Beyond this, a District of Delaware jury rejected validity challenges to the parent patent of the '536 Patent—the '176 Patent—when it found the patent to be valid and infringed by Amazon, alongside several other VB Assets patents that Petitioners now challenge (see Civil Action No. 1:19-cv-01410, the “Amazon Delaware Litigation”). The '536 Patent was also litigated in the Amazon Delaware

Litigation, but was not evaluated at trial. In view of the settled expectations of the parties given the '536 Patent's nearly 11-year lifespan, Samsung's knowledge of the VB Assets Patents (including the '536 Patent and its parent patent, the '176 Patent) since at least 2011, the considerable resources already spent confirming the validity of the '536 Patent, Petitioners' robust validity challenges in the EDTX Litigation, and the factors discussed below, the Petition should be rejected and institution should be denied.

Denial is also warranted in the interests of efficiency and fairness. Samsung's invalidity arguments in the district court are more expansive and include combinations of the prior art asserted in these proceedings with unpublished system prior art, meaning that the EDTX Litigation is the most suitable venue to evaluate all of Samsung's challenges in view of all the evidence. Denial of this Petition—to allow the parties to focus on Samsung's full validity challenges in the EDTX Litigation—is the most efficient outcome and achieves the AIA's intended efficiency goals better than a half-dozen IPR proceedings that ask the Board to issue final written decisions months after a jury renders a verdict on the VB Assets Patents. Indeed, these combinations will be evaluated in the district court far in advance of any final written decision in these cases. Institution, in short, creates duplicative workloads, adds uncertainty, and risks inconsistent positions.

All told, there are many reasons to deny institution, as an evaluation of the discretionary denial factors confirms: all the Director Memo factors and *Fintiv*⁴ factors weigh in favor of denying institution or are at the very least, neutral.

As highlighted above, the '536 Patent's survival after prior validity challenges confirms Patent Owner's settled expectations that the '536 Patent is valid and enforceable since it has been in force since its issuance in 2014. Samsung's knowledge of the patents since 2011 drives the point home: both parties had settled expectations that weigh against institution. As to the remaining Director Memo factors: (1) the validity of the '536 Patent was already adjudicated at the PTAB and the validity of its parent patent was adjudicated by a District of Delaware judge and jury; (2) the Petition relies extensively on expert testimony to fill gaps in the cited references; and (3) the EDTX Litigation is more efficient because it encompasses all six patents, whereas this IPR would only resolve a subset of Samsung's patentability challenges to the '536 Patent and there would still need to be five other IPR proceedings to achieve just a portion of the validity side of the EDTX Litigation.

As to the *Fintiv* factors: (1) there is no request for a stay in the EDTX Litigation and even if there were, a stay is unlikely; (2) the EDTX Litigation is set

⁴ *Apple v. Fintiv, Inc.*, No. IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential).

to go to trial four months before the Board’s deadline to issue a final written decision in this proceeding and more than five months before the IPRs of two other VB Assets Patents; (3) the parties have already invested significant resources in the EDTX Litigation; (4) all of Petitioners’ invalidity theories are simultaneously raised in the EDTX Litigation and the filed stipulation does nothing to allay concerns of gamesmanship; (5) the parties in this proceeding are the same as the parties in the EDTX Litigation; and (6) the merits of Petitioners’ case are weak.

Accordingly, institution should be denied.

II. LEGAL STANDARDS

It is Petitioners’ burden to demonstrate unpatentability by a preponderance of the evidence. The Petition must establish, with particularity, the grounds and evidence that support invalidating the patented claims. 35 U.S.C. §312(a)(3). Petitioners “must ‘specify where each element of the claim is found in the [relied upon] prior art patents.’” *In-Depth Geophysical, Inc. v. ConocoPhillips Co.*, IPR2019-00850, Paper 56, *27 (PTAB Sept. 3, 2020) (quoting 37 C.F.R. § 42.104(b)(4)). Petitioners must demonstrate that the prior art “discloses[] within the four corners of the document . . . all of the limitations claimed,” and that disclosure must be “arranged or combined in the same way as recited in the claim.” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008).

In addition, the Board makes its determination regarding institution based on what the Petition *actually presents* and not what it could have reasonably contained had it been drafted differently. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016) (holding that the Board is *not* “free to adopt arguments on behalf of petitioners that could have been, but were not, raised by the petitioner during [a post-grant proceeding]”). As will be explained further below, this dooms the Petition. The Board cannot “deviate from the grounds in the petition and raise its own” theories of invalidity. *Sirona Dental Sys. GmbH v. Institut Straumann AG*, 892 F.3d 1349, 1356 (Fed. Cir. 2018).

In addition to the underlying failures of the Petition, the Board should deny institution pursuant to discretionary factors committed to the Board’s discretion under §314(b), including the Director Memo factors and *Fintiv*.

The Director Memo identified a non-exhaustive number of factors that may be considered by the Board when evaluating how to apply the Board’s discretion under §314(b) (hereafter, the “Memo Factors”) including (but not limited to):

1. Whether the PTAB or another forum has **already adjudicated** the validity or patentability of the challenged patent claims;
2. Whether there have been **changes in the law** or new judicial precedent issued since issuance of the claims that may affect patentability;

3. The **strength** of the unpatentability challenge (related to *Fintiv* Factor 6, above);
4. The extent of the petition's **reliance on expert testimony**;
5. **Settled expectations** of the parties, such as the length of time the claims have been in force;
6. **Compelling** economic, public health, or national security **interests**; and
7. Any **other considerations** bearing on the Director's discretion.

Director Memo at 2-3. The Board's FAQs further indicate that "[t]he Process Memorandum includes a *non-exhaustive* list of issues that may be raised in discretionary briefing. Parties are encouraged to address *any* fact or circumstance they believe bears on the Director's discretion to institute, including reasons not discussed in current Board precedent or in the Process Memorandum." Ex. 2003 (FAQs), at Q.11 (emphasis added).

Furthermore, the *Fintiv* factors include:

1. Whether the court has granted a **stay** or evidence exists that one may be granted if an IPR is instituted;
2. The **proximity of the court's trial date** to the PTAB's projected statutory deadline for a final written decision;
3. The **investment** in the parallel proceeding by the court and the parties;

4. The **overlap** between issues raised in the petition and those in the parallel proceeding;
5. Whether the petitioner and the defendant in the parallel proceeding are the **same party**; and
6. **Other circumstances** that impact the PTAB's exercise of discretion, **including the merits** of the petition.

Fintiv at 6. The Board takes a “holistic view” of whether efficiency and integrity of the system are best served by denying or instituting review. *Id.*

III. THE BOARD SHOULD NOT INSTITUTE INTER PARTES REVIEW UNDER §314(A)

A. The Director Memo Factors Weigh Against Institution

1. Settled Expectations Favor Denial

“Settled expectations” is generally directed to the length of time the claims have been in force. This factor weighs heavily in favor of denying institution.

By the time of the institution decision in this proceeding, the '536 Patent will have been in force for about eleven years—since November 11, 2014. Since then, there have been multiple challenges to its validity and none have prevailed (the Prior IPRs and the Amazon Delaware Litigation), confirming Patent Owner's belief and reliance on the '536 Patent being valid and enforceable. This creates settled expectations. *See, e.g., Dabico Airport Solutions Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 2–3 (Director June 18, 2025) (“The challenged patent has been

in force almost eight years, creating settled expectations”); *Samsung Electronics Co., Ltd. et al. v. Cerence Operating Co.*, IPR2025-00458, -00459, -00460, Paper 14 at 2 (Director June 25, 2025) (“[T]he challenged patents issued over 11 years ago Patent Owner’s settled expectations also weigh toward discretionary denial.”); *iRhythm Technologies, Inc. v. Welch Allyn*, IPR2025-00363, -00374, -00376, -00377, -00378, Paper 10 at 3 (Director June 6, 2025) (denying institution where “one of the patents has been in force since as early as 2012”).

Not only this, but Samsung has been aware of the ’536 Patent specifically and the VB Assets Patents generally for years and only now challenges it in an IPR. Samsung knows of the ’536 Patent’s parent patent, the ’176 Patent, at least through negotiations towards purchase or license of the VB Assets Patents in 2012. Ex. 2004 (Complaint) at Paragraph 36. But even before this, the ’176 Patent was cited by the examiner as prior art during prosecution of Samsung’s Pub. No. 2008/0256574 on July 20, 2011. Ex. 2005 (Pub. No. 2008/0256574 Prosecution History). Samsung admits as much. Ex. 2006 (Samsung EDTX Litigation Answer), Paragraph 117 (“Samsung admits that the ’176 patent was referenced during prosecution of U.S. patent application published as US 2008/0256574A1”).

Further still, between Samsung’s first knowledge of the VB Assets Patents—including specifically the ’536 Patent’s parent patent, the ’176 Patent—and now, Samsung developed and released an infringing product. Samsung admits that it

announced a version of the accused product on October 18, 2017—nearly eight years ago but also six years after it knew of the ’176 Patent and three years after the ’536 Patent issued, and Samsung was aware of their relative importance in the voice assistant and natural language understanding industry. But Samsung never challenged the validity of the ’536 Patent or the ’176 Patent during all that time. This again demonstrates settled expectations. *See SIG Sauer, Inc. v Lone Star Future Weapons, Inc.*, IPR2025-00410, Paper 13 at 2 (Director June 26, 2025) (denying institution where the challenged patent “issued over 10 years ago, and Petitioner subsequently developed a competing product without challenging this patent.”).

The settled expectations factor strongly favors denial of institution because the claims of the ’536 Patent have been in force since 2014, survived multiple validity challenges, and Samsung has been aware of the ’536 Patent’s parent patent, the ’176 Patent as early as 2011, and the ’536 Patent since its issuance in 2014, but decided not to challenge it until now. *iRhythm Techs.*, Paper 10 at 3 (“Petitioner’s awareness of Patent Owner’s applications and failure to seek early review of the patents favors denial and outweighs the above-discussed considerations.”); *Apotex Inc. v. Alkermes Pharma Ireland Limited*, IPR2025-00514, Paper 10 at 2 (Director July 2, 2025) (“[T]he challenged patent has been in force for more than 14 years, creating strong settled expectations.”).

2. Prior Adjudication of the '536 Patent and its Parent Patent by the PTAB and Other Forums Favors Denial

This prior adjudication factor is directed to “whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims.” Here, both the PTAB and a district court have previously considered this patent.

Multiple unsuccessful validity challenges to the VB Assets Patents, including the '536 Patent and its parent patent, the '176 Patent, reinforces denial under this factor. In February 2021, the PTAB denied institution of two IPRs collectively challenging claims 1-55 of the '536 Patent, the exact same claims challenged by Samsung here. *Amazon.com, Inc. v. VB Assets, LLC*, IPR2020-01374, Paper 10 (PTAB Feb. 4, 2021); *Amazon.com, Inc. v. VB Assets, LLC*, IPR2020-01377, Paper 10 (PTAB Feb. 4, 2021). Second, the validity of the '536 Patent and the '176 Patent was challenged in the Amazon Delaware Litigation, and while the validity of the '536 Patent never went to a jury, a jury upheld the validity of its parent patent, the '176 Patent, in November 2023. Ex. 2007 (Amazon Delaware Litigation Jury Verdict). Although only claim 40 of the '176 Patent was presented to the jury, each of the independent claims were asserted and challenged throughout expert discovery, but none were invalidated by the district court. Amazon is currently appealing its failed challenge to the '176 Patent to the Federal Circuit. Ex. 2008.

Thus, prior adjudication weighs strongly against institution. *See Celltrion, Inc. v. Regeneron Pharmaceuticals, Inc.*, IPR2025-00456, Paper 14 at 2 (Director June 25, 2025) (exercising discretion to deny institution when other forums have already adjudicated the validity of the challenged patent claims).

3. Heavy Reliance on Expert Testimony, Including to Fill Gaps in the Prior Art’s Teachings, Favors Denial

The Acting Director also considers the “extent of the petition’s reliance on expert testimony.” The FAQs further explain:

While the Board may consider expert testimony, as a matter of efficiency, extensive reliance on expert testimony and/or reasonable disputes between experts on dispositive issues may suggest that the questions are better resolved in an Article III court. The statute and our reviewing court require that petitions be based on prior art patents and printed publications. As the judges have technical and legal expertise, it is not necessary for an expert to explain every aspect of the prior art. It is most helpful if an expert is providing focused testimony, for example to provide helpful context or to explain terms of art. The failure to provide focused expert testimony may weigh against institution.

Ex. 2003 (FAQs), at Q.21.

This factor favors denial because, as explained herein with respect to *Fintiv* Factor 6 and the Director Memo concerning the merits, Petitioners rely heavily on expert argument, assumptions, and inferences to fill in the gaps of the prior art and allegedly arrive at the claimed invention. Petitioners rely on cursory (but lengthy) expert testimony for every cited claim limitation and every ground, rather than

providing a focused expert declaration addressing the limitations for which expert testimony is necessary. *See generally*, Ex. 1003.

The declaration lacks focus because, for example, it provides only a cursory analysis of the prior art using language that tracks the Petition (*compare* Ex. 1003, Paragraphs 839-840 *with* Petition, 81; Ex. 1003, Paragraph 482 *with* Petition, 47). Worse, however, is that Petitioners' expert fails to provide any meaningful testimony as to how the alleged disclosure of the prior art is to be applied in the proposed combination. In Paragraph 368, for instance, Petitioners' expert testifies that "Jones also discloses" the limitation but does not evaluate whether (or how) a POSITA would be motivated to combine this teaching with the primary reference, O'Neill. *Id.* Petitioners' expert simply alleges that Jones discloses the limitation, and O'Neill discloses the limitation, but never evaluates whether the POSITA would have arrived at the claimed invention as result of the combined teachings of the references, which is the argument presented in Ground 1 of the Petition. This is merely an example, but there is no shortage of similar failings where Petitioners' expert stops short of offering testimony that *would* aid the Board and instead lists separate and disparate disclosures of the prior art without explaining how they would be combined. *See, e.g.*, Ex. 1003, Paragraphs 178-181 (alleging O'Neill and Jones disclose the same limitation separately); 758 (alleging both "O'Neill and Wang associate user requests

with applications”); 839-840 (alleging both Howard and Jones disclose the same limitation separately).

Elsewhere, Petitioners’ expert fills gaps in the prior art, such as to address the fact that “Franco does not explicitly [sic] ‘determining a reinterpretation of the second language utterance’” despite alleging Franco discloses claim [13C]’s limitation “processing the third natural language utterance to determine a reinterpretation of the second natural language utterance.” Ex. 1003, Paragraph 552. Petitioners’ expert also attempts to fill gaps as to O’Neill to meet the “obtaining interpretations” limitation (Claims [1H]/[32H], [1I]/[32L]), alleging that “[a] POSITA would understand that when ‘each service agent scores the parse’ . . . each of the service agents (i.e., the domain agents) is interpreting the natural language utterance” Ex. 1003, Paragraph 214; *see also* Section III.B.6.a, *infra*. Petitioners’ expert also gap-fills Wang’s “return policy” example with the allegation that “[a] POSITA would understand that such functionality would be implemented by accessing two different applications” but does not cite to a disclosure in Wang for support, instead relying on a separate reference not asserted in this ground. *See* Ex. 1003, Paragraph 744 (citing Ex. 1013).

Patent Owner, in its POPR, will explain why Petitioners’ arguments, assumptions, and inferences are incorrect and do not meet the claim limitations. Regardless, and because of the extensiveness of the Petitioners’ reliance on the

extensive testimony of their expert to establish the claimed invention, this dispute is better suited to resolution in an Article III district court, and this factor favors denial of institution. Ex. 2003 (FAQs), at Q.21.

4. Other Factors Favor Denial

The Acting Director has also indicated that she will consider any other factors when evaluating whether to apply discretionary denial. This last factor favors denial because institution would create the exact inefficiencies that Acting Director's interim guidance is designed to protect against.

The EDTX Litigation involves six patents in a single unified district court proceeding brought on October 9, 2024. Ex. 2004 (Complaint). However, Samsung waited until May 2025 to then file (to date) six IPR petitions⁵ challenging all six patents in an attempt to avoid or delay a single streamlined district court trial, which would frustrate the intended efficiencies of the AIA. Taken together with Samsung's longstanding knowledge of the patent even as it developed a competing product (*see* Section III.A.1, *supra*), its IPR challenges should be denied.

In essence, Petitioners attempt to convert a single district court proceeding into *the same* district court proceeding, *plus* six separate IPR trials (involving invalidity determinations by potentially up to 18 factfinders, not including the

⁵ See IPR Nos. 2025-00866, -00867, -00868, -00869, -00870, -00871.

district court).⁶ Petitioners' IPRs create the duplicative workloads, inefficiency, and potential for inconsistent results that the Acting Director's interim guidance is designed to prevent. *See, e.g., Comcast Cable Communications, LLC d/b/a Xfinity v. Entropic Communications, LLC*, IPR2025-00183, -00184, -00185, Paper 11 at 3 (Director June 25, 2025) ("The presence of multiple parallel proceedings and avoidance of duplicative workloads and inconsistent outcomes favor discretionary denial."). A single Article III proceeding has the strong potential to be the fastest and most efficient resolution of the Parties' many disputes, which favors denial of institution.

⁶ Even further, the '536 Patent and a subset of the VB Assets patents are also part of another district court litigation involving Patent Owner and Apple (*VB Assets LLC v. Apple, Inc.*, No. 1:24-cv-01368-MN (D. Del.)). Because there are multiple ongoing district court proceedings, discretionary denial reduces the chances of duplicative workloads and inconsistent outcomes. *Comcast Cable Communications, LLC d/b/a Xfinity v. Entropic Communications, LLC*, IPR2025-00183, -00184, -00185, Paper 11 at 3 (June 25, 2025).

B. The *Fintiv* Factors Weigh Against Institution

1. *Fintiv* Factor 1: The District Court Has Already Stated It Will Not Issue a Stay In Similar Circumstances, Which Favors Denial

***Fintiv* Factor 1** favors denial of institution because of the co-pending EDTX Litigation.

First, Patent Owner has not requested a stay in the EDTX Litigation pending institution of this IPR (or the *five other* co-pending IPR petitions of the VB Assets Patents), and even if a stay were requested, the evidence shows that it is unlikely to be granted. Petitioners present no evidence in their Petition that they have requested a stay or that a stay is likely. When petitioners present no evidence that a stay is likely in parallel proceedings, the Board has found *Fintiv* Factor 1 to favor discretionary denial. *See Luxshare Precision Industry v. Amphenol Corp.*, IPR2022-00132, Paper 10 at 9 (PTAB May 3, 2022). The Court in the Eastern District of Texas is on record that it “has a consistent practice of denying motions to stay when the PTAB has yet to institute post-grant proceedings” as to all patents at issue. *Force MOS Tech. Co., Ltd. v. ASUSTeK Computer, Inc.*, Case No. 2:22-cv-000460, ECF No. 74, (E.D. Tex. April 10, 2024) (citations omitted). The district court will, therefore, not stay the underlying action while institution decisions remain pending in any IPR proceeding.

As applied to the EDTX Litigation, a motion for a stay would not be ripe until institution is decided in the last of Samsung's six IPR challenges. Furthermore, Samsung would need to prevail on institution of *all six IPR petitions* for there to be any chance of a stay in the district court proceeding—an unlikely outcome (particularly in view of the weak merits). The high likelihood of an eventual district court trial on at least one patent claim weighs against the likelihood of the EDTX Litigation being stayed and therefore strongly favors denial. *See, e.g., MyPort, Inc. v. Samsung Electronics Co., Ltd.*, Case No. 2:22-cv-00114, ECF No. 73 (June 13, 2023) (denying request for stay when final written decision in pending IPRs were scheduled to issue two months after trial, even though the Court had not yet held a Markman hearing, in view of the parties substantial investment in the case and the plaintiff's interest in timely vindication of its patent rights).

Thus, *Fintiv* Factor 1 weighs heavily against institution because of the EDTX Litigation.

2. *Fintiv* Factor 2: Any Final Written Decision Will Occur After the District Court's Scheduled Jury Trial Date, and Decisions in Other IPRs Would Occur Even Later

***Fintiv* Factor 2** weighs heavily against institution.

In the EDTX Litigation, trial is scheduled for July 6, 2026. Ex. 2009 (EDTX Litigation Amended Docket Control Order). Trial on the VB Assets Patents will therefore be complete *more than four months before* the November 20, 2026, the

statutory deadline for the Board to issue a final written decision in this IPR (assuming the Board's institution decision is dated November 20, 2025) and ***more than five months*** before the last final written decision is expected by December 10, 2026. Ex. 2009 (EDTX Litigation Amended Docket Control Order); Ex. 2010 (Notice According Filing Date in IPR2025-00870).

The currently scheduled district court trial date of July 6, 2026, is both conservative and achievable in view of median time to jury trial statistics. The median time to jury trial in patent cases filed before Judge Gilstrap after January 1, 2020 (which is a conservative estimate because it includes many cases delayed due to the Covid-19 epidemic) is just 20.6 months after the filing of the original district court complaint. Ex. 2011 (Docket Navigator Statistics). Applying that median time to trial to the date VB Assets filed its complaint, October 9, 2024, suggests an expected trial date in mid-to-late June of 2026. If anything, these statistics indicate that the trial date set in the EDTX Litigation is generous.

Thus, when considering either the scheduled jury trial date or the district court's median time-to-trial statistics, Samsung's six petitions challenging the VB Assets Patents will result in final written decisions (assuming they are all instituted), until the very end of 2026. This will be more than five months after the jury issues its verdict and almost six months after the median time-to-trial in cases filed after January 1, 2020.

The Director has denied institution in view of smaller gaps between the final written decisions and trial. *See, e.g., Samsung Electronics Co., Ltd. et al. v. Mobile Data Techs., LLC*, IPR2025-00535, -00536, Paper 16 at 2 (Director July 10, 2025) (finding this factor weighed in favor of discretionary denial and denying institution where the final written decision date (September 2026) was 4.2 months after trial date (April 20, 2026)); *Samsung Electronics Co. Ltd et al. v. SinoTechnix LLC*, IPR2025-00331, -00333, -00335, -00336, Paper 13 at 2 (Director July 2, 2025) (finding this factor weighed in favor of discretionary denial and denying institution where the final written decision date (September 6, 2026) was roughly 4 months after trial date (May 4, 2026)); *Cisco Systems, Inc. v. WSOU Investments LLC d/b/a Brazos Licensing and Development*, IPR2025-00429, Paper 15 at 2 (Director June 25, 2025) (finding this factor weighed in favor of discretionary denial and denying institution where the final written decision date (July 30, 2026) was roughly 3-5 months after trial date (March 2026 or April 20, 2026)); *Advanced Micro Devices, Inc. et al. v. Concurrent Ventures, LLC et al.*, IPR2025-00223, Paper 9 at 2 (Director June 12, 2025) (finding this factor weighed in favor of discretionary denial and denying institution where the final written decision date was only 16 days after trial); *see also EClinicalWorks, LLC v. Decapolis LLC*, IPR2022-00229, Paper 10 at 9 (PTAB Apr. 13, 2022) (finding this factor weighed in favor of discretionary denial and denying institution where “the beginning of the jury trial in the WDTX Cases is

roughly one or two months before any final decision would have been due had *inter partes* review been instituted”); *Resmed Corp. v. Cleveland Med. Devices Inc.*, IPR2023-00565, Paper 13 at 11 (PTAB September 25, 2023) (denying institution where trial was scheduled to occur “approximately one month” before the deadline to issue a final written decision).

Thus, *Fintiv* Factor 2 weighs heavily against institution because of the EDTX Litigation.

3. *Fintiv* Factor 3: The Parties Have Already Invested Significant Effort and Resources in Parallel District Court Proceedings

***Fintiv* Factor 3** weighs heavily against institution.

In the EDTX Litigation, by this IPR’s institution deadline (November 20, 2025), the parties will already have exchanged initial infringement and invalidity contentions and conducted extensive discovery in advance of the deadline for substantial completion of document production just five days later (November 25, 2025). Ex. 2009 (Amended Docket Control Order). VB Assets has already produced a substantial amount of documents—over sixty thousand—and will continue to make ongoing supplemental productions. Samsung, for its part, has made gigabytes of highly confidential source code available for inspection by VB Asset’s experts, who have spent approximately two hundred hours reviewing 8.5 GB of source code. Samsung has likewise committed to producing technical documents

for the accused products implicated by VB Asset's infringement contentions. Samsung has likewise committed to producing technical documents for the accused products implicated by VB Asset's infringement contentions.

Further, as of this paper's filing Samsung has already served seven third-party subpoenas seeking documents and deposition testimony pertaining to alleged prior art in an attempt to bolster its validity challenges before the district court. Exs. 2016–2022. Although the subpoenas ostensibly seek information about prior art systems, Samsung did not limit the scope of its subpoenas to exclude prior art printed publications about such systems, demonstrating its intent to maintain parallel and duplicative validity challenges between this tribunal and the district court. Indeed, several of these third-parties have already begun producing responsive documents, and the return dates on all third-party subpoenas served to-date are before the institution deadline in this IPR. In addition, Samsung's counsel confirmed the deposition of a Samsung employee will take place on September 4, 2025, and VB Assets has already noticed an additional deposition. Ex. 2023; Ex. 2024. On top of this, Samsung recently produced thousands of documents from one or more additional third-parties outside the above-mentioned subpoenas. These documents include marketing materials, technical diagrams, and various user and implementation guides for asserted prior art. All told, third parties in the district

court action have already made more than eight thousand documents available in the litigation.

In addition, the *Markman* process will commence months before the institution deadline in this IPR, as the parties must exchange claim terms for construction by September 9, 2025. Ex. 2009 (Amended Docket Control Order). Soon after, on September 30, 2025, the parties will exchange preliminary constructions followed by a joint claim construction submitted to the court on October 21, 2025. *Id.* Indeed, the parties are to complete claim construction discovery by November 18, 2025, days before institution in this IPR, and opening claim construction briefs will be exchanged before the institution deadline in the last IPR of the VBA Assets Patents on December 10, 2025. *Id.*

Given the significant resources already invested by both VB Assets and Samsung in the EDTX Litigation, *Fintiv* factor 3 weighs heavily against institution.

4. *Fintiv* Factor 4: The Overlap Between the Asserted Art and Petitioners' Invalidity Arguments in the District Court is Significant, and Petitioners' So-Called *Sotera* Stipulation Is Ineffective

***Fintiv* Factor 4** also weighs against institution.

Samsung's massive EDTX Litigation contentions assert all the same prior art in this IPR, and the same grounds. To be sure, Samsung's validity challenges before the district court are expansive to say the least. For just six patents, Samsung asserts a staggering ***200 individual claim charts*** that add up to ***over 25,000 pages***. As to the

'536 Patent, there is complete overlap between this IPR and Samsung's validity challenges in the district court because Samsung "attaches and incorporates IPR No. IPR2025-00869, including the petition (Appendix F-33A) and expert declaration of Stuart Lipoff (Appendix F-33B), as if fully set forth [in its EDTX Litigation invalidity contentions]." Ex. 2012 at 74 (Samsung EDTX Litigation Invalidity Contentions). Samsung relies on this IPR to "show[] how the prior art references [O'Neill, Jones, Franco, Wang, and Howard] teach or suggest each and every element of the Asserted Claims of the '536 Patent." *Id.* In fact, the *only* obviousness combinations to challenge the '536 Patent that Samsung specifically articulates across its 372-page cover document are the four grounds from this IPR:

Table 4F: Exemplary Obviousness Combinations for the Asserted Claims of the '536 Patent

Claims	Combinations
1-12, 16-23, 30, 32, 50-55	O'Neill and Jones
13-15, 24, 33-38	O'Neill, Jones and Franco
25-26, 31, 39-43	O'Neill, Jones and Wang
27-29, 44-49	O'Neill, Jones and Howard

Id., at 157-167.

Beyond this, Samsung asserts at least 10 system art references in its EDTX Litigation invalidity contentions, as shown in the chart excerpted below:

F-23	MIT Galaxy
F-24	MIT Galaxy Source Code

F-25	Systems Subject to Further Discovery
F-26	Nuance Voice Platform System
F-27	ScanSoft United System
F-28	SpeechWorks MINT System
F-29	HeyAnita
F-30	Cybermind System
F-31	TellMe System
F-32	Microsoft MiPad System

Id., at 73-74 (alleging the above chart shows “the prior art references that anticipate or render obvious the Asserted Claims in the claim charts Appendices F-1–F-32”). Samsung’s invalidity contentions ensure that each system art reference asserted above can be combined with any other reference, including the references asserted in the Petition. Ex. 2012, 75 (“The prior art identified above, and in Appendices F-1–F-32 **and in IPR No. IPR2025-00869**, individually anticipate and/or can be properly combined in multiple ways to demonstrate the obviousness of the Asserted Claims of the ’536 patent.”) (emphasis added).

Accordingly, even with the limited Sotera stipulation proffered by Petitioners, Samsung would still claim to retain the ability to discuss at the jury trial the majority of the prior art references discussed in this Petition (including each of its primary references) in combination with system prior art that they have identified. Ex. 2012, 76 (“In addition to contending that the ’536 patent Asserted Claims are invalid in

view of the prior art references cited in the claim charts of Appendices F-1–F-32 *and IPR No. IPR2025-00869*, Samsung further contends that the '536 patent Asserted Claims are invalid as anticipated and/or obvious under U.S.C. §§ 102 and/or 103 *in view of public knowledge and uses and/or offers for sale of products and services related to the subject matter of the cited references.*”), at 77 (“Samsung’s reference to a particular device or product in the claim charts of Appendices F-1–F-32 *and IPR No. IPR2025-00869* should be interpreted *alternatively as both a reference to the product itself and to any corresponding patents, publications, or product literature cited in the claim charts that relate to the cited device or product.* In addition, Samsung may rely on other documents or things that have not yet been located to support its contentions regarding such prior art device(s) or product(s) that are referenced in the charts.”) (emphasis added).

As the Acting Director recognized in a recent Order Granting Director Review, such stipulations do not ensure that these IPR proceedings would be a “true alternative” to the district court proceeding where unpublished system prior art is asserted in combination with the art used in the IPR’s grounds. *Motorola Sol’ns, Inc. v Stellar LLC*, IPR2024-01205, Paper 19, 3-4 (Order Granting Director Review, Vacating the Decision Granting Institution, and Denying Institution of Inter Partes Review) (P.T.A.B. March 28, 2025) (Stewart, A.D.) (finding that a *Sotera* stipulation was unlikely to moot petitioner’s combination of IPR art with

unpublished system prior art in district court proceedings, and therefore could not outweigh other factors favoring denial); *see also* Ex. 2003 at Q.14 (“... The Director will take into account whether the stipulation materially reduces overlap between the proceedings. Where the petitioner is relying on corresponding system art in a co-pending proceeding and/or several other invalidity theories, a stipulation may not be particularly meaningful because the efficiency gained by any AIA proceeding will be limited.”).

Aside from system art, Samsung also challenges the '536 Patent as claiming ineligible subject matter under Section 101, not compliant with the written description and/or enablement requirements of Section 112, and indefinite under Section 112. Ex. 2012 at 366 (citing Ex. 2013 (Exhibit G-6, Subject Matter Eligibility Contentions for '536 Patent)); *see also id.*, at 360-362 (challenging claims under Section 112); at 363-365 (challenging claims as indefinite).

It is clear that this IPR, or even all of Samsung's IPRs challenging the VB Assets Patents, will not streamline Samsung's validity case. *See Shenzhen Tuozhu Tech. Co., LTD v. Stratasy, Inc.*, IPR2025-00354, Paper 11 at 2–3 (Director June 12, 2025) (“Petitioner's invalidity arguments in the district court, however, are more expansive and include combinations of the prior art asserted in these proceedings with unpublished system prior art, which Petitioner's stipulation is not likely to moot.”). Accordingly, Samsung's limited *Sotera* stipulation should be afforded little,

if any, weight when evaluating this *Fintiv* factor. Even if this IPR is instituted, and Samsung were to refrain from advancing any prior art or ground that was raised or reasonably could have been raised in this IPR, the district court will still have to try Samsung's voluminous validity challenges alleging system prior art, patent ineligible subject matter, claims lacking written description, claims that are not enabled, and claims that are indefinite.

Samsung's reliance on corresponding system art and several other invalidity theories in the EDTX Litigation at the same time as these IPRs defeats the AIA's stated purpose of increased efficiency. The *Sotera* stipulation is simply not meaningful because the district court will still have to conduct a simultaneous, and robust, validity analysis regardless of the outcome of these IPRs. *See* Ex. 2003 (FAQs), at Q.14 (" . . . The Director will take into account whether the stipulation materially reduces overlap between the proceedings. Where the petitioner is relying on corresponding system art in a co-pending proceeding and/or several other invalidity theories, a stipulation may not be particularly meaningful because the efficiency gained by any AIA proceeding will be limited.").

Because there is complete overlap between the art raised in these proceedings and asserted in the underlying district court proceedings, and because inefficiencies created by multiple validity proceedings is not materially diminished by Petitioners'

Sotera stipulation in view of Petitioners' use of unpublished system art in the district court proceeding, this factor favors denial.

5. *Fintiv* Factor 5: The Identity of the Parties Weighs Against Institution

Fintiv Factor 5 also weighs against institution because Samsung is the accused infringer and defendant in the EDTX Litigation and Patent Owner is the plaintiff. Ex. 2004 (Complaint). Therefore, there is complete identity of the parties.

6. *Fintiv* Factor 6: The Merits of the Petition Are Weak

Fintiv Factor 6 relates to the weakness of the Petition on the merits, which weighs against institution. While the merits will be more fully addressed in Patent Owner's Preliminary Response (which is incorporated herein by reference pursuant to FAQ Q.25), a few examples are provided below to illustrate the weakness of Petitioners' arguments.

a. Petitioners Overlook the Designs of O'Neill and Jones

Across all grounds, Petitioners propose modifying the O'Neill reference with Jones. But reliance on O'Neill dooms Petitioners' challenges, especially once combination with Jones is contemplated, because O'Neill doesn't do what Petitioners allege and because Petitioners do not appreciate that Jones relies on human searchers.

O'Neill uses a dialogue manager provided by a "cohort of [computational] agents," where "[e]ach agent is a specialist in a particular transactional area." Ex.

1005, Paragraph [0073]. In Ground 1, Petitioners assert O'Neill discloses [1H] (“obtaining a first interpretation of the second natural language utterance from the first domain agent”) and [1I] (“obtaining a second interpretation of the second natural language utterance from the second domain agent”) as well as [32H] and [32I], which Petitioners assert are similar. To do so, Petitioners map O'Neill's computational agents to the first and second domain agents. Petition, 15-16. But Petitioners err when they allege that O'Neill obtains a first and second interpretation from these agents because, in Petitioners' view, “the domain agents *must* obtain interpretations.” Petition, 16. Petitioners are wrong to assume that the agents “must” do so.

At the “DomainSpotter” stage that Petitioners rely upon, O'Neill's agents do not obtain interpretations but rather score “parse tags” against categories the agent can handle to add up the hits. Ex. 1005, Paragraphs [0200]-[0202]. O'Neill explains that it provides “[e]ach service agent . . . with a range of integer values for scoring the degree of relevance it assigns to different domain-specific parse tags.” Ex. 1005, Paragraph [0201]. In this way, “each service agent 30 scores the parse of the initial user utterance against the semantic categories that it can process and returns the score.” *Id.* At this point, based on the highest score, only one “service agent is selected to apply . . . more detailed processing of the user's enquiry.” *Id.*, at Paragraph [02020]. In sum, O'Neill's agents score the number of categories within

their purview that match the parse tags they are provided, which *then* leads to a *single* service agent processing the utterance (which is what Petitioners allege to be interpretation). Petitioners fail to identify a teaching in O'Neill where *multiple* domain agents obtain different interpretations of the second natural language utterance.

The Petition should be denied for this reason alone, but Petitioners' errors are compounded by Jones. Jones defines a "provider" as "a guide or paid searcher [who] is a human searcher." Ex. 1005, Paragraph, [0022]. Thus, when Jones relies on "providers" or "guides," it relies on human searchers. It is these human searchers that identify categories, keywords, areas of interest, and so on, the results of which are populated in Jones's database. *Id.*, Paragraph [0024]. Even Jones's "unguided search" relies on information in the database that was gathered from previous human guided requests (e.g., "data gathered by guide(s) for responding to requests"). *Id.*, [0046]. Petitioners then rely on Jones's database as part of the proposed combination with O'Neill. Petition, 17; *see also id.*, 41-44 (cited in support of challenge to independent claims 50, 53, and 54). But Petitioners *never acknowledge* that Jones achieves its proposed solution using human searcher work product. More importantly, Petitioners provide no reason why a POSITA would be motivated to modify O'Neill's computational service agents with a human-based system, leaving

the Board with insufficient evidence to reach a finding of obviousness. *In re Magnum Oil*, 829 F.3d at 1381.

b. Petitioners’ Tertiary References in Grounds 2-4 do not Resolve the Flaws of Ground 1

Petitioners’ further modification with tertiary references Franco, Wang, and Howard (in Grounds 2-4, respectively) does nothing to resolve these issues. In Ground 2, for example, Petitioners map Franco to “reinterpretation” of an utterance but ignore that Franco works by “assuming” a second utterance will be a repeat of the first, so Franco then merges the audio of these repeats to yield a better recognition result. Ex. 1007, Paragraph [0020]. Petitioners do not identify anything in Franco that indicates it determines that an interpretation was incorrect or that any reinterpretation is performed (and admit as much: “Franco does not explicitly [sic] ‘determining a reinterpretation of the second language utterance.’”)—instead Franco performs recognition by merging repetitive utterances. *See* Ex. 1003, Paragraph 552.

For Ground 3, Petitioners ignore that Wang’s “multi-request utterance” process (Ex. 1008, 56:12-23 (shifting the original focus to “the background while the system addresses the” new request) is contrary to O’Neill’s stated goal to “cop[e] with user-initiated shifts of discourse focus” where “rules have been developed for controlling transfers,” which are “restricted to ensure that the improved dialogue manage elicits information in a clearly defined context.” Ex. 1005, Paragraph [0235]. Put another way, Petitioners overlook that O’Neill is designed to maintain

focus while Wang is designed to shift focus—a POSITA would have understood that these two references teach opposite approaches to the same problem. *See generally* Petition, 68-69.

Last, in Ground 4, Petitioners map Howard to Claim [27A] and allege that “Howard provides an example of a *single user utterance* which includes multiple requests.” Petition, 79-80 (citing Ex. 1009, 2:37-50); *see also id.*, (“That utterance contains two separate requests sent to two separate devices.”). But the example in Howard that Petitioners rely upon makes clear that Howard discloses, at most, multiple utterances with only one request in each. *See* Ex. 1009, 2:37-50. Petitioners’ expert admits as much, citing two utterances as allegedly disclosing this limitation: “the user . . . might speak into the microphone associated with the refrigerator and ask, ‘What can I make for dinner?’ *The system would then make suggestions In response* the user says . . . [p]lease print me a shopping list.” Ex. 1003, Paragraph 829 (emphasis added). Petitioners never demonstrate that Howard discloses multiple requests in a single utterance, or explain how the Howard system would function with such an utterance.

c. Petitioners Force the Board (and Patent Owner) to Play Archaeologist with the Record

The Petition’s grounds are fatally flawed and lack the particularity required for petitions, which the Board cannot remedy. *Microsoft Corp. v. FG SRC, LLC*, No. 2020-1928 (Fed. Cir. June 17, 2021) (The “petitioner is the ‘master of its

complaint.”); *Intelligent Bio-systems, Inc. v Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed Cir. 2016) (IPR petitioners must “‘adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence’ that supports the grounds for the challenge to each claim.’”).

The Petition’s labyrinthine layout is nearly identical to that in *Lenovo (United States) Inc. v. LiTL LLC*, where the Board declined to institute because the petition’s confusing and deficient arguments failed to explain petitioner’s positions. IPR2021-00800, Paper 7 at 19 (P.T.A.B. Nov. 2, 2021). Like here, the *Lenovo* petition relied heavily on a web of internal cross references that required the reader to engage in extensive analysis just to decipher what is being argued, much less evaluate the merits of that argument. *Id.*; see also *Niantic, Inc., v. Barbaro Technologies, LLC*, IPR2019-00668, Paper 8 at 16 (P.T.A.B. August 14, 2019) (denying institution because Petitioner’s internal cross references improperly “place[d] the burden on us to sift through the information presented by Petitioner[.]” rather than providing a sufficiently clear explanation (citing *Google Inc. v. EveryMD.com LLC*, IPR2014-00347, Paper 9 at 23-25 (P.T.A.B. May 22, 2014))). The Board denied institution in *Lenovo* because instituting would require the Board to “play archaeologist with the record,” which it declined to do. *Id.* at 18 (citing *DeSilva v. DiLeonardi*, 181 F.3d 865, 866–67 (7th Cir. 1999)). The same defects are found in the present Petition; thus, the Board should likewise deny institution here.

Take Ground 4’s challenge of Independent Claim 44, for example. Petition, 82. Independent Claim 44 is not challenged anywhere else, just Ground 4, which asserts a combination of O’Neill, modified by Jones, and further modified by Howard.

But the Petition’s “analysis” of this independent claim relies entirely on other limitations—which themselves often rely on analyses in other limitations—and are found in *other Grounds* applying a *different prior art combination*. All told, Samsung alleges the following for independent claim 44:

<u>Claim 44</u>	<u>Claim Samsung Analyzes</u>	<u>Analysis</u>	<u>Ground</u>
[44P]- [44C] =	[1P]-[1C]/[32P]-[32C]	Petition, at 11-13	1
[44D] =	[16A]	Petition, at 33 (citing [2B] analysis)	1
	➔ [2B]	Petition, at 18	1
	[27A]	Petition at 79-80	4
[44E] =	[39E]	Petition, at 73-74 (citing [25B] analysis)	3
	➔ [25B]	Petition, at 71 (citing [1K]/[32K]/[1L]/[32L]/[16B] analysis)	3
	○ [1K]/[32K]	Petition, at 17	1
	○ [1L]/[32L]	Petition, at 17-18	1
	○ [16B]	Petition, at 34	1
[44F]	[1L]/[32L]	Petition, at 17-18	1

Thus, for this one independent claim, Samsung asks the Board to stitch together arguments spanning three grounds and dozens of pages. But “[i]t is not the Board’s job to cobble together assertions from different sections of a petition or

citations of various exhibits in order to infer every possible permutation of a petitioner's argument" because "[a]rguments must be made with particularity, not opacity." *Microsoft*, No. 2020-1928 (Fed. Cir. June 17, 2021). Worse, Samsung does not acknowledge that part of its analysis for Independent Claim 44 in Ground 4 relies on its analysis for Claim [25B]—which is only challenged in Ground 3 under the combination of O'Neill, Jones, and Wang. But Ground 4 does not rely on Wang. These problems are not unique to Claim 44 but persist throughout. *See, e.g.*, Petition, 63-64 (alleging independent claim 33 is obvious with no analysis other than twelve internal citations to other claims); at 64 (alleging independent claim 36 is obvious entirely through citations to other claims spanning multiple grounds), at 65 (same, for independent claim 37), at 73-74 (same, for independent claims 39 and 43), and at 82-83 (alleging Ground 4 renders independent claim 49 obvious over claims analyzed elsewhere in Grounds 1, 3, and 4, despite Wang not being asserted in Ground 4).

Respectfully, the Board cannot ultimately find Independent Claim 44 unpatentable given the flawed complex, opaque, and disjointed nature of Petitioners' challenge. The same is true for Independent Claims 33, 36, 37, and 49. Accordingly, it is simply not efficient to institute on other grounds and for other claims. *Chevron Oronite Co. v. Infieum USA LP*, IPR2018- 00923, Paper 9, 9-11 (P.T.A.B. Nov. 7, 2018) (informative).

These failures of the Petition are fatal and warrant denial on their own. Compounded with the additional discretionary denial factors, these failures strongly favor denial. Additional details as to the merits will be presented in Patent Owner's Preliminary Response

IV. CONCLUSION

Taken together, the Director Memo factors and the *Fintiv* factors weigh strongly in favor of discretionary denial—all factors either favor denial or are neutral.

For the reasons noted above, Patent Owner respectfully submits that the Board should deny institution of all Grounds of the Petition.

Dated: July 21, 2025

Respectfully submitted,

By: / Christopher TL Douglas /
Christopher TL Douglas, Reg. No. 56,950

CERTIFICATION UNDER 37 C.F.R. §42.24

Pursuant to 37 C.F.R. §42.24(d), I certify that this brief complies with the type-volume limits of 37 C.F.R. §42.24 and the Director Memo because it contains 8,314 words, according to the word-processing system used to prepare this brief, excluding the parts that are exempted by 37 C.F.R. §42.24 (including the table of contents, a table of authorities, a listing of facts which are admitted, a certificate of service or this certificate word count, and appendix of exhibits).

Dated: July 21, 2025

By: / Christopher TL Douglas /
Christopher TL Douglas

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §42.6(e), the undersigned hereby certifies that true and correct copies of the foregoing **PATENT OWNER'S DISCRETIONARY DENIAL BRIEF and VB ASSETS EXHIBITS 2002-2013; 2016-2024** were served in their entirety on July 21, 2025 by filing this document through Patent Trial and Appeal Case Tracking System (P-TACTS) as well as delivering true and correct copies by electronic mail on Petitioners' lead and backup counsel at the following email addresses (as agreed by counsel for Petitioners):

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