

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON WEB SERVICES, INC.,

Petitioner,

v.

CROGA INNOVATIONS, LTD.,

Patent Owner.

Case: IPR2025-00884

U.S. Patent No. 10,601,780

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

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1001	U.S. Patent No. 10,601,780
1002	Declaration of Nicholas Bambos, Ph.D.
1003	Curriculum vitae of Nicholas Bambos
1004	File History of U.S. Patent No. 10,601,780
1005	Jose Nazario, DEFENSE AND DETECTION STRATEGIES AGAINST INTERNET WORMS (Artech House, 2004) (“Nazario”)
1006	U.S. Patent Publication No. 2010/0122343 to Ghosh et al., filed on September 14, 2009 and titled “Distributed Sensor for Detecting Malicious Software” (“Ghosh”)
1007	William R. Cheswick et al., FIREWALLS AND INTERNET SECURITY, REPELLING THE WILY HACKER (Brian W. Kernighan et al., 2nd ed. 2003) (“Cheswick”)
1008	Michael Rash, LINUX FIREWALLS: ATTACK DETECTION AND RESPONSE WITH IPTALBES, PSAD, AND FWSNORT (Christina Samuelli & William Pollock eds., 2007) (“Rash”)
1009	Steven E. Madnick & John J. Donovan, <i>An Approach to Information System Isolation and Security in a Shared Facility</i> (1973) (“Madnick”)
1010	Robert P. Goldberg, <i>Survey of Virtual Machine Research</i> , 7(6) COMPUTER 34 (1974) (“Goldberg”)
1011	Average Time to Trial for Patent Cases – Western District of Texas
1012	Average Time to Trial for Patent Cases – J. Albright
1013	Patent Assignment at Reel 065999, Frame 0444 (CROGA-AWS-00003324-28)
1014	Declaration of Rachel J. Watters

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Exhibit	Description
1015	Harper Batts & Stephen W. Tang, <i>How Quickly are Judge Albright Patent Cases Going to Trial?</i> , Nat'l L. Rev. (June 28, 2023)
1016	Time to Trial Statistics for Judge Albright from late 2021 to mid-2023
1017	Time to Trial Statistics for Judge Albright from mid-2023 to Present

Pursuant to the Acting Director’s guidance concerning “Interim Processes for PTAB Workload Management” (Mar. 26, 2025) (“Guidance”), Petitioner Amazon Web Services, Inc. (“Petitioner”) submits this brief opposing the Request for Discretionary Denial (“Brief” or “PO Br.”) filed by Patent Owner Croga Innovations Ltd. (“PO”).

I. INTRODUCTION

The Board should not deny institution under *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential), or any other authority. The Petition presents a clear and compelling challenge to the patentability of U.S. Patent No. 10,601,780 (the “780 patent”), based on two prior art references—Nazario and Ghosh—that the Patent Office did not consider or have before it during prosecution, and that have not been raised in any other Patent Office proceedings. And PO has no settled expectations regarding the validity of the 780 patent, as PO acquired the patent only two years ago (and the patent issued five years ago).

As explained fully below, the *Fintiv* factors favor institution, and no discretionary factor supports denial. The Petition raises distinct grounds not previously adjudicated, and institution would serve the public interest by promoting efficiency and ensuring that likely invalid claims are reviewed by subject matter experts in a forum created for this very purpose.

II. THE FACTORS THE BOARD CONSIDERS WEIGH AGAINST DISCRETIONARY DENIAL UNDER 35 U.S.C. § 314(a)

The Board has repeatedly declined to deny institution where, as here, the Patent Office has not previously considered the asserted prior art, the petition presents strong invalidity grounds, and the PO has no settled expectations of validity.

Here, institution would promote the integrity and efficiency of the patent system because the PO is a non-practicing entity that does not offer any products in the marketplace. Indeed, as the Supreme Court explained, *inter partes* review protects the public’s “paramount interest in seeing that patent monopolies . . . are kept within their legitimate scope.” *Cuozzo Speed Techs. v. Lee*, 579 U.S. 263, 279-80 (2016) (citation omitted).

The existence of a pending *ex parte* reexamination does not bear on the discretionary denial request. The reexamination relies on different prior art than that presented in the Petition. *See generally* USPTO Reexamination Control No. 90/019,638 for U.S. Patent No. 10,601,780. Moreover, no authority requires the Board to defer to a reexamination rather than instituting review on distinct, non-overlapping grounds. Indeed, the Board often conducts *inter partes* review in parallel with co-pending reexaminations where, as here, doing so promotes efficiency and resolves issues not addressed in other forums. *See, e.g., Mueller Sys., LLC v. Rein Tech, Inc.*, IPR2020-00100, Paper 9 at 6-14, (PTAB May 12, 2020); *Google LLC v. Proxense, LLC*, IPR2024-00232, Paper 10 at 26-39 (PTAB July 24,

2024); *Nintendo Co., Ltd. v. Polaris PowerLED Techs., LLC*, IPR2023-00778, Paper 9 at 45-50 (PTAB Oct. 18, 2023); *Juniper Networks, Inc. v. Monarch Networking Sols. LLC*, IPR2024-00565, Paper 14 at 3 (PTAB Aug. 26, 2024).

Nor does the absence of a stay of the parallel district court case favor discretionary denial. First, the court has yet to rule on Amazon's motion to stay pending reexamination. Second, little has transpired in the district court case. Though the court already construed the asserted claims, it merely applied either agreed upon or plain and ordinary meaning constructions and did so without holding a hearing. Otherwise, the parties have expended little effort on the case, with only modest written and document discovery, and no depositions having been taken or even scheduled. The minimal investment of the parties and the district court does not warrant discretionary denial. Finally, the fact that the district court case involves the same parties involved in this proceeding is irrelevant, as *inter partes* review often addresses patents asserted by the patent owner against petitioners in parallel litigation.

Considered as a whole, the *Fintiv* factors and other considerations identified by the Acting Director do not support discretionary denial.

III. PETITIONER’S REBUTTAL TO PO’S ARGUMENT FOR DISCRETIONARY DENIAL

The Board considers the following six factors to determine whether to exercise its discretion to deny institution of *inter partes* review under 35 U.S.C. § 314(a):

1. Whether a stay exists or is likely to be granted if a proceeding is instituted.
2. Proximity of the court’s trial date to the Board’s projected statutory deadline for a Final Written Decision.
3. Investment in the parallel proceeding by the court and the parties.
4. Overlap between issues raised in the petition and in the parallel proceeding.
5. Whether the petitioner and the defendant in the parallel proceeding are the same party.
6. Other circumstances that impact the Board’s exercise of discretion, including the merits.

Fintiv, Paper 11 at 6-15. Here, the *Fintiv* factors do not support discretionary denial. Nor do the additional considerations identified in the Acting Director’s Guidance support discretionary denial.

A. The *Fintiv* Factors Do Not Favor Discretionary Denial

1. Factor 1: District Court Stay

Fintiv Factor 1 weighs against discretionary denial because Petitioner has moved the district court to stay the litigation pending completion of the ongoing *ex*

parte reexamination of the 780 patent in which all claims have been rejected in a final office action. *See* Pet.’s Mot. to Stay, Dkt. 54 (filed Aug. 20, 2025). As discussed below, given the significant likelihood that the reexamination will result in invalidation of all asserted claims in the litigation—obviating trial or any further proceedings—Petitioner expects the district court to grant that motion. Assuming the court stays the case pending reexamination, this would *favor* institution. *ResMed Corp. v. Cleveland Med. Devices, Inc.*, IPR2025-00160, Paper 11 at 12-13 (PTAB June 13, 2025) (stay factor favored institution where district court stayed the case pending reexamination).

Judge Albright routinely stays cases where the Patent Office proceedings will simplify issues in the litigation, especially where, as here, the PTO rejects all claims in an office action. *TC Tech. LLC v. T-Mobile USA, Inc.*, No. 6:20-CV-00899-ADA, 2021 WL 8083373, at *3 (W.D. Tex. Dec. 7, 2021); *see also DynaEnergetics Eur. GmbH v. GR Energy Servs. Operating GP LLC*, No. 6:21-cv-00085, Dkt. 44 (W.D. Tex. Dec. 20, 2021) (text order granting opposed Motion to Stay); *EcoFactor, Inc. v. Google LLC*, No. 6:20-cv-00075-ADA, Dkt. 306 at 1-2 (W.D. Tex. Aug. 15, 2025) (granting stay pending reexamination where PTAB denied request for rehearing post-appeal from final rejection).

For example, in *TC Tech.*, Judge Albright considered the three factors governing stay requests under Fifth Circuit law—undue prejudice, the stage of

proceedings, and the simplification of issues—and granted a stay pending reexamination. *TC Tech.*, 2021 WL 8083373, at *2-3. First, the court found that the simplification *strongly* favored a stay because the PTO had already instituted reexamination and rejected the asserted claims, which had expired and thus could not be amended to overcome a rejection. *Id.* The court noted that *ex parte* reexaminations cancel or amend claims in 80 percent of cases, while cancellation of the claims would moot the litigation entirely. *Id.* On these facts, the court concluded that a stay would simplify—or potentially eliminate entirely—the issues for trial. *Id.* The court found little risk of undue prejudice because the plaintiff, like Croga, sought only monetary damages for infringement of an expired patent, waited years before filing suit, and could seek expedited resolution of the reexamination, which would otherwise conclude well before trial. *Id.* at *2. The court found the stage of proceedings favored a stay because no *Markman* hearing had taken place, discovery had not begun, trial was more than a year away, and the parties had invested minimal resources. *Id.* at *2-3.

PO argues that the district court likely will not grant a stay, but it made this argument *before* the PTO rejected all claims of the 780 patent in the pending reexamination. PO Br. at 3-4. Because the reexamination has advanced to a Final Rejection, it will likely conclude well before the district court's current trial date,

which will likely be delayed anyway, as discussed below. In view of these facts, continuing to litigate likely invalid claims would waste party and judicial resources.

Once the district court grants the stay, it will “allay[] concerns about inefficiency and duplication of efforts” in instituting this IPR. *Fintiv*, Paper 11 at 6. Accordingly, Factor 1 favors institution.

2. Factor 2: Proximity of Trial Date to Board’s Statutory Deadline for Final Written Decision

The second factor is, at most, neutral due to uncertainty in the schedule and time to trial statistics. PO cites to the current schedule, which sets a June 2026 trial date, to argue that this factor favors denial. But the trial will likely not go forward on this date. The parallel district court litigation has already undergone multiple judicial assignment changes. First, it was assigned to the placeholder “Judge Docket II – Austin” upon filing in April 2024, then it was reassigned to Judge Pitman in February 2025, and it was reassigned yet again to Judge Albright in March 2025. Even assuming no further reassignments or schedule shifts, historical data suggests that trial may still occur later, closer in time to the Final Written Decision.

Indeed, a June 2023 review of Judge Albright’s docket showed that the majority of scheduled trials experience multiple extensions and delays, resulting in trial dates well beyond the original schedule. EX1015. Over the past two years, the average time to trial in Judge Albright’s court has increased from 25 months to 31 months, with some cases reaching trial in 39 months. *Compare* EX1016 (statistics

for cases filed between 2021 and 2023), *with* EX1017 (statistics for cases filed between 2023 and present); *see also* EX1015. Applied to this case, an average time to trial would result in a November 2026 trial date with the possibility of delays pushing the trial even further to July 2027 (39 months) or beyond. Therefore, it is highly likely that trial will take place after an expected Final Written Decision, and this factor favors institution.

The Acting Director has recently considered the time-to-trial statistics and referred a petition to the Board for further evaluation where a trial was scheduled to take place before the expected Final Written Decision, but the statistics suggested otherwise. *Amazon.com, Inc. v. NL Giken Inc.*, IPR2025-00250, -00407, Paper 14 at 2 (PTAB May 16, 2025) (favoring institution because time-to-trial statistics indicated trial would occur after the Final Written Decision, despite a district court schedule identifying an earlier trial date). Accordingly, this factor is neutral.

3. Factor 3: Investment in the Parallel Proceeding by the Court and the Parties

This factor does not favor discretionary denial because the district court has only issued one substantive order, has deferred substantive questions of patentability, and significant efforts by the parties and court remain. PO overstates

the level of investment in the district court action.¹ Routine litigation milestones PO identifies, like claim construction and ongoing discovery, do not, on their own, support denial, especially here, where the court adopted either agreed-upon or plain and ordinary meaning constructions for the proposed terms without holding a *Markman* hearing.² The district court itself has acknowledged the early stage of the case on validity issues by expressly “defer[ring] the question of patent eligibility” in denying Defendant’s Motion to Dismiss. *Croga Innovations, Ltd. v. Amazon Web*

¹ PO has taken little action in the district court action for months, serving only one set of interrogatories and requests for production nearly a year ago. No additional discovery has been pursued, no motions are pending, and no depositions have been noticed or scheduled.

² In its Preliminary Response, filed August 20, 2025, PO suggests that Petitioner was required to propose means-plus-function constructions for the two “device” terms in claims 1 and 11 of the 780 patent, but this ignores the district court’s order construing these terms under their plain and ordinary meaning, the same construction applied by Petitioner. *Amazon Web Servs., Inc. v. Croga Innovations Ltd.*, IPR2025-00884, Paper 7 at 2-7 (PTAB August 20, 2025).

Servs., Inc., No. 1:24-CV-00398-ADA, Dkt. 35 at 5 (W.D. Tex. Feb. 19, 2025).³

Accordingly, Factor 3 does not support discretionary denial.

4. Factors 4 & 5: Overlap of Issues Raised in the Petition and the Parallel Proceeding & Identity of Petitioner and District Court Defendant

Factors 4 and 5 are neutral. PO argues that because the Petition and the district court litigation involve the same parties and similar issues, this factor favors discretionary denial. PO Br. at 7-8. But in *every* case involving a parallel district court litigation, some overlap exists between the parties and invalidity issues. This does not, without more, favor discretionary denial. *Philip Morris Prods., S.A. v. RAI Strategic Holdings, Inc.*, IPR2020-00921, Paper 13 at 7-9 (PTAB Aug. 5, 2021). In *Phillip Morris Products*, the Board found that overlap alone was insufficient to deny institution, particularly where the remaining *Fintiv* factors did not support denial.

³ Petitioner monitored the pending *Cisco* and *Fortinet* petitions to determine whether to burden the PTAB with an additional *inter partes* review. See *Cisco Sys., Inc. v. Croga Innovations Ltd.*, IPR2024-01196, Paper 7 at 13-21 (PTAB Feb. 13, 2025) (“*Cisco*”); *Fortinet, Inc. v. Croga Innovations Ltd.*, IPR2025-00086, Paper 9 at 10-21 (PTAB Mar. 27, 2025) (“*Fortinet*”). Once both were denied—on February 13, 2025 and March 27, 2025, respectively—Petitioner filed this petition less than three weeks later, on April 17, 2025.

Id. The Board also noted that Factors 4 and 5 are typically neutral in cases involving parallel litigation. *Id.* Accordingly, these factors should be treated as neutral, or at most entitled to minimal weight.

5. Factor 6: The Merits Strongly Favor Institution

Factor 6 strongly favors institution because the cited prior art raises substantial questions of validity for the challenged claims. When evaluating Factor 6, the Board routinely considers the strength of the merits, which can outweigh other factors and support institution. *Cisco Sys. v. WSOU Invs.*, IPR2025-00188, Paper 10 at 22, (PTAB June 13, 2025); *Rode Microphones, LLC v. Zaxcom, Inc.*, IPR2025-00230, Paper 14 at 12-13 (PTAB June 16, 2025).

Here, the Petition presents a combination of Nazario and Ghosh that has not been considered in any prior proceeding. Nazario discloses the concepts of virtualization, various firewalls, and using them in conjunction to strengthen network security. Petition at 27-32. Ghosh describes a virtual machine monitor that “provides the separation between the guest OS and the host OS,” and further emphasizes that this “strong isolation” prevents malware in the guest OS from compromising the host OS. *Id.*; EX1006 at [0032], [0038]. This goes beyond a generic reference to “virtual machines,” as PO contends, and directly addresses the claimed “internal firewall” limitation. *See* 780 patent at claim 1.

PO argues that the Petition should be denied because prior petitions already relied on other prior art referencing “virtual machines.” But PO’s comparison to the earlier *Cisco* and *Fortinet* petitions is unavailing. Both relied on the prior art reference Delco for its disclosure of the claimed “internal firewall” limitation. *Cisco* at 12-21; *Fortinet* at 11-21. Delco describes a networked system including a packet filter layer, between a guest operating system and the virtual network controller, through which network traffic may pass. *Cisco* at 14-19; *Fortinet* at 11-19.

The *Cisco* and *Fortinet* petitions argued that Delco’s packet layer acted as the claimed “internal firewall” by filtering packets between the virtual machine and external destinations. *Cisco* at 15; *Fortinet* at 15. The Board determined instead that Delco’s packet filter restricts network traffic from accessing a virtual machine but does not separate the virtual machine from the host machine as required by the “internal firewall” limitation. *Cisco* at 21; *Fortinet* at 20.⁴

The grounds presented in this Petition, however, contrast with those of the *Cisco* and *Fortinet* petitions. Here, the combination of Nazario and Ghosh *explicitly*

⁴ The Board noted that Delco potentially discloses the “internal firewall” limitation anyway based on other disclosed means of isolating virtual machines from the host machine, but did not institute on that theory, as petitioners had not raised it. *Cisco* at 20; *Fortinet* at 19.

discloses a mechanism that *isolates* the virtual machine from the host machine, satisfying the internal firewall limitation. Petition at 27-32; EX1006 at [0032], [0038]. Petitioner’s expert, Dr. Nicholas Bambos, also explains that a person of ordinary skill (“POSITA”) would have been motivated to combine Ghosh’s virtual machine monitor with Nazario’s virtualized computing architecture with layered firewalls. *See* Petition at 20-23, 27-32; EX1002 at ¶¶ 121, 122. This addresses the precise deficiency identified by the Board in denying the earlier petitions and supports the strength and uniqueness of the asserted combination.

In sum, the Petition presents compelling and previously-unconsidered challenges to patentability the Board—a specialized forum with technical expertise to evaluate patentability issues—is uniquely situated to resolve. Allowing it to do so “serve[s] the interest of overall system efficiency and integrity.” *Fintiv*, Paper 11 at 15. Factor 6 thus strongly weights against discretionary denial.

B. Additional Considerations Identified by the Acting Director Do Not Favor Denial

1. Whether Another Forum Has Already Adjudicated the Validity or Patentability of The Challenged Claims

No forum has already adjudicated the challenged claims. PO argues that the Petition should be denied in view of the prior *inter partes* review institution denials and a pending *ex parte* reexamination. *See* PO Br. at 9-10. But these proceedings are not *adjudicated* patentability decisions.

The proper question according to the Acting Director's Guidance is whether any forum—including the PTAB—has adjudicated the validity or patentability of the challenged claims. *See, e.g., Kubota N. Am. Corp. v. Vermeer Mfg. Co.*, IPR2025-00171, Paper 15 at 15 (PTAB June 10, 2025) (concluding that termination of prior litigation with no validity determination did not weigh in favor of discretionary denial). Here, no adjudication has occurred on the validity of the challenged claims. The Board has issued no decisions on the merits of the 780 patent, and no other tribunal has resolved the validity of the challenged claims either. The prior *inter partes* review proceedings did not proceed beyond the institution stage, involved different petitioners and prior art, and have no preclusive effect. *See Skechers U.S.A., Inc. v. Nike, Inc.*, IPR2025-00142, Paper 11 at 5-7, 9 (PTAB June 12, 2025) (declining to deny institution even where a different party filed a petition based on similar art and arguments as a prior IPR).

The pending reexamination has not yet resulted in a final determination and does not affect this analysis either as it relies on different prior art. *ResMed*, Paper 11 at 8-12. Indeed, as discussed above in section III.A.1, PO's inconsistent positions across different proceedings supports institution here.

Because the challenged claims have never been substantively adjudicated and the Petition presents new grounds, this factor strongly weighs in favor of institution.

2. Changes in The Law That May Affect Patentability

This factor is neutral. PO contends that this factor weighs in favor of denial because Petitioner has not identified any intervening change in law. *See* PO Br. at 10. But under the Board’s framework, that is not a basis for discretionary denial. As the Board recently explained in *Intel Corp. v. Proxense LLC*, IPR2025-00327, -00328, -00329, Paper 12 at 2-3 (PTAB June 26, 2025), the absence of a legal shift makes this factor neutral.

3. The Strength of the Unpatentability Challenge

This factor strongly weighs against denial. As explained in Section III.A.5, the Petition raises a distinct patentability challenge based on Nazario and Ghosh—prior art that was not considered during prosecution or in any prior PTAB proceeding involving the 780 patent. It addresses shortcomings in earlier denials through a detailed claim-by-claim analysis mapping of the cited art. Recent Board decisions confirm that strong merits weigh heavily in favor of institution. *See WSOU Invs.*, Paper 10 at 22; *see also Rode Microphones*, Paper 14 at 12-13. PO’s assertion that this Petition merely attempts to “fill in the gaps” of *inter partes* review proceedings ignored the Petition’s explanation of new prior art and argument. *See* PO Br. at 11-12. The strength of the unpatentability challenge favors institution.

4. The Extent of the Petition’s Reliance on Expert Testimony

This factor too weighs against denial because the Petition’s reliance on expert testimony is appropriate. PO contends that Petitioner’s position on the “internal

firewall” limitation relies entirely on unsupported expert testimony that duplicates prior arguments. *See* PO Br. at 11-12. This mischaracterizes both the role and substance of the expert declaration submitted with the Petition. *See* EX1002.

It is proper for petitioners to use expert testimony to explain how a POSITA would have understood the prior art, particularly when addressing nuanced claim limitations. Dr. Bambos’ declaration does precisely that. It provides a detailed analysis supported by citations to Nazario and Ghosh, explains how a POSITA would understand the disclosures, and supports the Petition’s mapping of the prior art to each claim limitation.

Specifically, Dr. Bambos opines that the “‘internal firewall’ is not a standard term of art” and thus he “examined the prior art for security mechanisms that perform the same function as the ‘internal firewall’ described in the 780 patent.” EX1002 at fn. 8. Thus, Dr. Bambos’ opinion tracks the 780 patent’s own specification, which expressly states that the host and guest “are separated by an ‘internal firewall’ defined by the hypervisor that restricts the interaction between the host and guest,” thereby equating the claimed term with the separation functionality provided by a hypervisor. *Id.* Moreover, Dr. Bambos’ analysis reflects the perspective of a POSITA: by focusing on the claimed function of separating host and guest in light of the patent and prior art, his interpretation aligns with the practical understanding and expectations of a POSITA. *Id.*

Dr. Bambos’ testimony is not conclusory or speculative—it applies established technical principles to support the unpatentability analysis. The Board has repeatedly found such use of expert declarations to be proper and persuasive. *See iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, -00374, -00376, -00377, -00378, Paper 10 at 2-3 (PTAB June 6, 2025) (“Petitioner appears to rely on its expert to explain the background knowledge of a person of ordinary skill in the art, and the expert provides citations to evidence in support of his statements in the required manner. Thus, this also weighs against discretionary denial.”) (citation modified). Here, Dr. Bambos appropriately provides the perspective of a POSITA in support of the Petition’s technical analysis. Accordingly, this factor weighs against denial.

5. Settled Expectations of the Parties

This factor weighs against denial. Petitioner has strong settled expectations since the 780 patent has not been commercialized, asserted, marked, licensed, or otherwise applied in Petitioner’s technology space.

The Board has not given weight to PO’s claims of settled expectations where, as here, the patent has not played a meaningful role in the relevant industry. In *Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.*, IPR2025-00438, -531, -532, -585, -611, Paper 10 at 3 (PTAB July 17, 2025), the Board rejected PO’s settled

expectations argument about a decade-old patent that had never been enforced or applied in the petitioner's field.

The 780 patent was only recently acquired by the current PO, and there is no evidence that it has been commercialized, licensed, or widely enforced (or enforced at all until very recently⁵) during its lifetime. Nor is there any indication that PO previously marked or otherwise applied the patent to establish a visible presence in the relevant industry. Moreover, PO is an NPE. Under the Board's own guidance, such circumstances weigh against a finding of meaningful reliance interests or settled expectations. In *Intel v. Proxense*, Paper 12 at 2-3, the Board explained that even longstanding patents do not create reliance interests if they remain unused or unenforced:

As another example, a patent may have been in force for years but may not have been commercialized, asserted, marked, licensed, or otherwise applied in a petitioner's particular technology space, if at all. These non-exclusive examples provide considerations that weigh against a patent owner's claim of settled expectations and bears on the Director's discretion.

Id. The Board's reasoning applies with equal force here and significantly undermines any claim of settled expectations by PO.

⁵ The 780 patent was first enforced in December 2023. *Croga Innovations Ltd. v. Int'l Bus. Machs. Corp.*, No. 2:23-cv-00634 (E.D. Tex. Dec. 29, 2023).

PO argues that the patent's issuance five years ago supports discretionary denial. PO Br. at 12-13. But the Board has held that patents in force for similar time periods do not show strong settled expectations. *See, e.g., Advanced Micro Devices, Inc. v. Concurrent Ventures, LLC*, IPR2025-00479, Paper 10 at 2 (PTAB July 10, 2025) (finding no strong settled expectations for patent in force for four years); *Amazon.com, Inc. v. Soundclear Techs. LLC*, IPR2025-00565, Paper 11 at 2 (PTAB July 10, 2025); *Google LLC v. Withrow Networks, Inc.*, IPR2025-00775, Paper 10 at 1 (PTAB Aug. 14, 2025); *Zhuhai Cosmx Battery Co., Ltd. v. Ningde Amperex Tech. Ltd.*, IPR2025-00385, Paper 9 at 2-3 (PTAB July 2, 2025) (declining discretionary denial even though the district court trial would occur before the projected FWD due date, citing lack of settled expectations because “early challenges...tip the balance against discretionary denial”). And as noted in *Intel v. Proxense*, patent age alone is insufficient to find strong settled expectations—especially in the absence of commercialization or industry recognition of the patent like it is here. *Intel Corp. v. Proxense*, Paper 12 at 2-3. Accordingly, this factor weighs against discretionary denial.

6. Compelling Economic, Public Health, or National Security Interests

This factor weighs against denial because of compelling economic interests. PO argues that Petitioner has not identified any compelling interests beyond a statement regarding the enforcement of valid patents. *See* PO Br. at 13-14. But PO

ignores the significant economic implications posed by its enforcement strategy, particularly given that it is an NPE that does not offer any competing products or services in the relevant market.

NPE-driven litigation imposes substantial costs on productive companies, diverting resources from research, development, and the deployment of new technologies toward defensive litigation and settlement. This dynamic undermines the public interest and creates uncertainty in the marketplace—outcomes that run counter to the objectives of the *inter partes* review system.

As the Supreme Court recognized in *Cuozzo Speed*, *inter partes* review serves the public’s “paramount interest in seeing that patent monopolies ... are kept within their legitimate scope.” 579 U.S. at 279-80 (citation omitted). Here, institution of this *inter partes* review proceeding would directly further that goal by allowing the Board to assess the patentability of claims asserted by an NPE in a cost-efficient, expert-driven forum. This factor, therefore, weighs against denial.

7. Other Additional Considerations

Here, the PTAB can be more effective in addressing these validity concerns than the district court litigation. PO contends that there is no misuse of the patent system because it has asserted the 780 patent in district court based on what it claims is reasonable evidence. PO Br. at 13-14. But this overlooks the broader concern raised when NPEs assert patents of questionable validity in parallel suits against

multiple defendants across different district courts, as PO has done here. Petitioner faces this case in the Western District of Texas, while PO sued IBM, Cisco, Fortinet, and Palo Alto Networks in the Eastern District of Texas. *See Croga Innovations Ltd. v. Int’l Bus. Machs. Corp.*, No. 2:23-cv-00634 (E.D. Tex. Dec. 29, 2023); *Croga Innovations Ltd. v. Cisco Sys., Inc.*, No. 2:24-cv-00065 (E.D. Tex. Feb. 1, 2024); *Croga Innovations Ltd. v. Fortinet, Inc.*, No. 2:24-cv-00206 (E.D. Tex. Mar. 22, 2024); *Croga Innovations Ltd. v. Palo Alto Networks, Inc.*, No. 2:24-cv-00208 (E.D. Tex. Mar. 22, 2024). The Board’s review helps to preserve the integrity of the patent system by allowing for efficient, expert adjudication of patentability. This is particularly true where litigation may otherwise burden innovative companies with significant defense costs and protracted uncertainty.

Inter partes review serves as a necessary safeguard to ensure that asserted patents meet the legal requirements of patentability. When an NPE seeks to enforce a patent that has not been commercialized or even applied in the relevant market, the risk of strategic litigation abuse is heightened. *Inter partes* review provides a forum specifically designed to assess such patents in a focused and cost-effective manner.

The presence of multiple pending district court actions underscores the need for streamlined and centralized review. In *Berkshire Hathaway Energy Co. v. Birchtech Corp.*, IPR2025-00274, -00278, -00280, -00281, Paper 23 at 2 (PTAB July 2, 2025), the Board recognized that PTAB review is more efficient when related

litigation is dispersed across multiple jurisdictions. That rationale applies here as well, as Croga has asserted the 780 patent against four different parties across both Eastern and Western Districts of Texas. Accordingly, this factor weighs against denial, as it supports the PTAB's role in curbing potential abuse and resolving validity questions more effectively than piecemeal district court litigation.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the Board should deny the request for discretionary denial of institution.

* * *

Dated: August 21, 2025

Respectfully submitted,

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Amazon Web Services, Inc.

**CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION**

Pursuant to 37 C.F.R. §42.24(b) *et seq.*, the undersigned certifies that **Petitioner's Response To Patent Owner's Request For Discretionary Denial** complies with the 14,000-word type-volume limitation. The Response contains 4,797 words, excluding the parts of the Response exempted from the type-volume limitation.

Dated: August 21, 2025

FENWICK & WEST LLP

/J. David Hadden/

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Amazon Web Services, Inc.

CERTIFICATION OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on August 21, 2025, I caused a true and correct copy of the foregoing PETITIONER'S RESPONSE TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL and related Exhibits 1015 through 1017 to be served electronically on Petitioner's lead and backup counsel at the following addresses:

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The foregoing was also electronically served upon counsel of record for Patent Owner in the litigation pending before the U.S. District Court for the Western District of Texas entitled *Croga Innovations, Ltd. v. Amazon Web Services, Inc.*, No. 1:24-cv-00398-DII (W.D. Tex.) as follows:

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Dated: August 21, 2025

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