

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

CORETRONIC CORPORATION and
OPTOMA CORPORATION,
Petitioners,
v.
MAXELL, LTD.,
Patent Owner.

Case No.: IPR2025-00942
U.S. Patent No. 9,900,569

**PETITIONERS' OPPOSITION TO PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

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I. INTRODUCTION

Petitioners Coretronic Corporation and Optoma Corporation (“Petitioners”) respectfully submit this Opposition to Patent Owner Maxell, Ltd.’s (“Patent Owner”) Request for Discretionary Denial of the Petition for *inter partes* review (“IPR”) of U.S. Patent No. 9,900,569 (“the ’569 Patent”). Patent Owner’s request, filed on August 18, 2025, seeks to avoid a merits-based review of the Petition under 35 U.S.C. § 314(a) and the March 26, 2025 Acting Director’s Memorandum (“Memo”). Patent Owner’s arguments lack merit and therefore discretionary denial is unwarranted.

The Petition, filed on May 14, 2025, challenges claims 1-4 of the ’569 Patent based on five grounds, relying on prior art such as Pollmann-Retsch, Hirabayashi, Kambara, Abe, and Ishitani, which reveal significant deficiencies in the patentability of the challenged claims. Petitioners have not been involved in any previous review of the ’569 Patent, and the Office has not previously considered the cited references or their combinations. The *Fintiv* factors do not favor denial, as the parallel district court litigation in *Maxell, Ltd. v. Coretronic Corp.*, No. 5:24-cv-00088-RWS-JBB (E.D. Tex.) remains at an early stage, with Petitioners committing to file a motion to stay upon institution and offering a *Sotera*-style stipulation to eliminate overlap between the two proceedings. Further, the additional factors set forth in the Memo,

including settled expectations, further support institution. Accordingly, the Board should reject Patent Owner's request and institute trial in this proceeding.

II. PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL SHOULD BE REJECTED

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

Patent Owner argues that the Board should exercise discretion under 35 U.S.C. § 314(a) and *Fintiv* to deny institution due to parallel district court litigation. However, a comprehensive analysis of the *Fintiv* factors shows that discretionary denial is unwarranted. The parallel litigation is not sufficiently advanced to prejudice efficient resolution by the Board, and Petitioners' proactive measures mitigate any potential overlap or inefficiency.

1. Status of Motion to Stay (Factor 1)

Patent Owner asserts that no stay has been requested in the district court litigation and surmises that the grant of a stay "would likely be denied." Paper 7 at 4. This argument is both speculative and premature. As of the date of this Opposition, expert discovery is ongoing with a deadline of October 23, 2025 (EX2004), and no final pretrial conference, trial preparations, or substantive rulings have occurred.

Requesting a stay of the district court proceedings pending an IPR that has not been instituted is premature. *See Trover Grp., Inc. v. Dedicated Micros USA*, No. 2:13-CV1047-WCB, 2015 WL 1069179, at *6 (E.D. Tex. Mar. 11, 2015) (Bryson, J.) ("In this district . . . it is the universal practice" to deny stay requests before the

PTAB has acted on a petition for review); *Viavi Sols. Inc. v. Zhejiang Crystal-Optech Co.*, No. 2:21-CV-00378-JRG, 2022 WL 16856099, at *5 (E.D. Tex. Nov. 10, 2022) (“It is the Court’s established practice to consider that motions to stay pending IPR proceedings which have not been instituted are inherently premature and should be denied as such.”).

In addition, Petitioners will promptly file a motion to stay the parallel litigation upon institution of this IPR. Courts frequently grant such stays, and the Board has not found that this factor weighs against institution where a Patent Owner offers only self-serving conjecture. *See, e.g., VMWare, Inc. v. Intell. Ventures II LLC*, IPR2020-00859, Paper 13 at 12 (PTAB Nov. 5, 2020) (“In the absence of any evidence specific to this case, we decline to speculate about the presiding judge’s inclinations.”) (*citing Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 12 (PTAB May 13, 2020) (informative) (“We decline to infer, based on actions taken in different cases with different facts, how the District Court would rule should a stay be requested by the parties in the parallel case here.”)); *Nikon Corp. et al. v. Optimum Imaging Techs., LLC*, IPR2024-01374, Paper 19 at 10 (PTAB April 29, 2025) (“We will not attempt to predict how the court in the parallel district court proceedings would proceed if a stay is requested because the court may determine whether or not to stay any individual case based on a variety of circumstances and facts beyond our control and to which the Board is not privy.”) (*citing Sand Revolution II, LLC v.*

Cont'l Intermodal Grp. - Trucking LLC, IPR2019-01393, Paper 24 at 7 (PTAB June 16, 2020) (informative)); *MediaTek Inc. v. Daedalus Prime LLC*, IPR2025-00100, Paper 10 at 27 (PTAB May 19, 2025) (“The Board’s decision in [*Fintiv*] cautions against speculating whether the district court would grant a stay if one were requested. Therefore, this factor has a neutral effect on the overall balancing of the *Fintiv* factors.”); *Samsung Elecs. Co., Ltd. et al. v. Mullen Indus. LLC*, IPR2025-00021, Paper 14 at 8-9 (PTAB May 14, 2025) (“Given that the district court denied Samsung’s motion to stay ‘WITHOUT PREJUDICE to refiling of the same within fourteen (14) days following the PTAB’s institution decision on the last of the pending IPRs’ . . . we decline to speculate whether the district court will grant a stay. Thus, we find that factor 1 is neutral.”); *RØDE Microphones, LLC et al. v. Zaxcom, Inc.*, IPR2025-00232, Paper 14 at 8 (PTAB June 16, 2025) (“Patent Owner contends that a stay has not been requested in the district court case and, if requested, would ‘likely’ be denied. []. Petitioner contends that it ‘intends to seek a stay’ of the district court case...We decline to speculate whether the district court will grant a stay. []. Thus, we find that factor 1 is neutral.”) Patent Owner provides no evidence specific to this case of judicial resistance to a stay. Thus, this factor is neutral.

2. Proximity of the District Court Trial Date (Factor 2)

Patent Owner contends that a projected trial date over four months before the statutory Final Written Decision deadline of December 10, 2026 favors denial. Paper

7 at 6-8. However, this timeline provides the Board with sufficient opportunity to issue a decision before trial, aligning with the America Invents Act's (AIA) goal of efficient patentability resolution since the currently scheduled trial date is more than several months away and much can change during this time. *Dish Network LLC v. Broadband iTV, Inc.*, IPR2020-01359, Paper 15 at 15 (PTAB Feb. 12, 2021) (granting institution). As stated above, Petitioners will promptly file a motion to stay the parallel litigation upon institution of this IPR. If the motion to stay is granted, the trial date will be after the deadline for a Final Written Decision.

In addition, Patent Owner recently moved to amend its infringement contentions to add dozens of newly identified third party devices to the district court case, which could further postpone the projected trial date. *See Maxell, Ltd. v. Coretronic Corp. et al.*, Case No. 5:24-cv-000888, Dkt. 121 (Aug. 18, 2025).

Moreover, Patent Owner overstates its argument that this factor “strongly favors discretionary denial.” Paper 7 at 8. In similar cases where the scheduled trial date is five months before the statutory Final Written Decision deadline but subject to change, the Board has found that this factor only weighs “slightly in favor of discretionary denial.” *Zynga Inc. v. IGT*, IPR2022-00368, Paper 7 and 10 (PTAB July 8, 2022). Such is the case here.

3. Investment in the Parallel Proceeding (Factor 3)

Patent Owner argues that investment in the district court litigation, *including* a Markman hearing on May 9, 2025 and ongoing discovery, weighs against institution. Paper 7 at 8-11. However, as of the anticipated institution decision date (December 16, 2025), the parallel litigation will remain in its early stages. Expert discovery closes on October 23, 2025 (EX2004), no dispositive motions (beyond 12(b) motions) have been filed, and no trial preparations have been completed. Opening expert reports will have just been exchanged on September 18, 2025. Thus, this case stands in stark contrast to *Motorola Sols., Inc. v. Stellar, LLC* cited by Patent Owner, where extensive expert discovery and trial preparation had occurred. The court's denial of Petitioners' motion to transfer (EX2005) and related dismissals (EX2006) reflect routine case management, not "significant investment" in the parallel proceeding. In *Sand Revolution II*, the Board observed that "aside from the district court's Markman Order, much of the district court's investment relates to ancillary matters untethered to the validity issue itself. . . . Also, we recognize that much work remains in the district court case as it relates to invalidity: expert discovery is still ongoing, including expert reports have not yet due and expert depositions have not been conducted yet, and substantive motion practice is yet to come. Thus, although the parties and the district court have invested effort in the related district court litigation to date, further effort remains to be expended in this

case before trial.” IPR2019-01393, Paper 24 at 10-11 (finding factor 3 “weighs only marginally, if at all, in favor of exercising discretion to deny institution . . .”).

Although the district court conducted a Markman hearing, that hearing did not involve the ‘569 Patent. Therefore, there has been little investment in the Markman hearing for the ‘569 Patent. As such, the district court’s construction order is therefore irrelevant to the ‘569 Patent. “If, at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising discretion to deny institution.” *Fintiv*, IPR2020-00019, Paper 11 at 10.

Moreover, under *Fintiv*, the Board recognizes that “it is often reasonable for a petitioner to wait to file its petition until it learns which claims are being asserted against it in the parallel proceeding,” and that if the petition is filed “promptly after becoming aware of the claims being asserted, this fact has weigh[s] against exercising the authority to deny institution” *Id.* at 11. Here, Petitioners diligently prepared and filed the Petition approximately six months after receiving Patent Owner’s infringement contentions on October 28, 2024, approximately ten months after being served with the complaint asserting seven patents against Petitioners, and approximately two months before Petitioners’ bar date. In similar circumstances, the Board has found that this factor weighs against discretionary denial. *Markforged Inc. v. Continuous Composites, Inc.*, IPR2022-00679, Paper 7 at 32 (PTAB Oct. 25, 2022)

("[A]lthough the parties have invested some effort in the parallel district court proceeding, the majority of the work to prepare the invalidity case for trial remains to be done. We also acknowledge Petitioner's diligence in filing the Petition less than 10 months after being served the complaint.") (internal citations omitted). *See also Zynga, Inc. v. IGT*, IPR 2022-00199, Paper 11 at 15-16 (PTAB June 14, 2022) (finding that petitioner was reasonably diligent in filing the petition approximately five months after receiving infringement contentions); *Liberty Energy Services LLC et al. v. U.S. Well Services, LLC*, IPR2025-00139, Paper 14 at 12-13 (PTAB June 11, 2025) (finding that Petitioner acted diligently in filing because the Petitioner filed the Petition four months after Patent Owner's preliminary infringement contentions and four and a half months prior to the deadline).

Based on the foregoing, this factor is neutral or weighs against discretionary denial.

4. Overlap of Issues (Factor 4)

Patent Owner claims "significant overlap" between the issues raised in the Petition and district court litigation because the same claims and prior art are at issue. Paper 7 at 11-13. While claims 1-4 are challenged in both forums, Petitioners have filed a proposed a *Sotera*-style stipulation (EX1020), *i.e.* upon institution, Petitioners will not (i) pursue the grounds presented in the Petition in the parallel district court case, or (ii) pursue any other ground that reasonably could have been raised in the

Petition in the parallel district court case. *Sotera* endorses such stipulations to eliminate overlap in proceedings, noting that they prevent duplicative efforts and conflicting rulings. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 13-14 (PTAB Dec. 1, 2020).

Patent Owner’s assertion that such a stipulation “fails to mitigate” potentially duplicative efforts and conflicting rulings ignores the stipulation’s binding nature and the Board’s precedent in *Sotera*. In fact, where such a stipulation and the estoppel provision of 35 U.S.C. § 315(e)(2) simply “reduces, but does not eliminate, the risk of significant overlap between the assertions in the Petition and those that may be raised in the parallel litigation,” the Board has recently found that “[t]his minimized risk of overlap alleviates concerns of inefficiency and the possibility of conflicting decisions” and “determine[d] that this factor weighs against exercising discretion to deny institution.” *Micron Tech., Inc. v. Yangtze Memory Techs. Co., Ltd.*, IPR2025-00034, Paper 19 at 10 (PTAB May 16, 2025).

Accordingly, this factor weighs strongly against discretionary denial.

5. Same Parties (Factor 5)

Patent Owner notes that the parallel district court litigation involves the same parties. Paper 7 at 13-14. However, Optoma Technology, Inc. is identified as a real party-in-interest (Pet. at 1), but is not a party to the parallel litigation. Therefore, this factor is neutral.

6. Other Circumstances (Factor 6)

Patent Owner alleges that the Petition is “flawed” because it relies on an expert declaration that “largely parrots” the wording in the Petition (Paper 7 at 14), but Patent Owner does not discuss or offer any support for this bald assertion. Patent Owner also faults Petitioners for filing motions to dismiss in the parallel litigation before the Petition was filed in this action. *Id.* at 14-15. This issue is addressed in Section II.B below and does not constitute “other circumstances” warranting denial.

* * * * *

Based on a holistic evaluation of the above factors, the Board should not discretionarily deny institution. *See MediaTek Inc. v. Daedalus Prime LLC*, IPR2025-00100, Paper 10 at 34 (PTAB May 19, 2025) (declining to exercise discretion under 35 U.S.C. § 314(a) to deny institution of inter partes review where strong merits of Petitioner’s case and the *Sotera* stipulation lead to conclude that the trial date and other factors favoring denial are outweighed).

B. Factors Set Forth in the March 26, 2025 Memorandum Do Not Support Denial

The Memo’s additional considerations do not justify denying institution for the reasons discussed below.

1. Settled Expectations

Patent Owner argues that the ’569 patent being in force for over seven years constitutes “settled expectations” that warrant denial. Paper 7 at 15-16. However, the

newly created settled expectations doctrine, which permits denials for patents held unchallenged for several or more years with significant reliance interests lacks statutory grounding, imposes arbitrary restrictions, and undermines the AIA’s core purpose. More significantly, the doctrine is in direct contradiction to the Board’s own precedential decisions. *See NHK Spring Co. v. Intri-Plex Techs. Inc.*, IPR2018-00752, Paper 8 at 19 (PTAB March 2, 2020) (precedential).

The settled expectations doctrine requires clear congressional authorization due to its vast economic and political significance. *See West Virginia v. EPA*, 597 U.S. 697 (2022). By shielding older patents from IPR review based on their age and reliance interests, the doctrine protects billions in patent-driven revenue across countless industries likely impacting billions of dollars in licensing or market investments. Such a policy, which creates a *de facto* amnesty for long-held patents, even if they are invalid, significantly alters the AIA’s balance between patent owners and challengers, a matter of “deep economic and political significance” requiring explicit statutory authority. *West Virginia*, 597 U.S. at 716.

The AIA’s text and legislative history provide no such authorization. 35 U.S.C. § 314(a) permits the Director to institute IPR if there is a “reasonable likelihood” of prevailing, with discretion limited to administrative considerations like efficiency or preventing harassment. H.R. Rep. No. 112-98, at 46, 2011; 157 Cong. Rec. S1364, 2011. The legislative history emphasizes IPRs as a mechanism to challenge weak

patents and foster innovation, with no mention of patent age or reliance as barriers. The settled expectations doctrine, if applied in the present instance, imposes a substantive restriction absent from the AIA's framework.

The AIA's silence on time-based or reliance-based denials, coupled with its focus on patent quality, demonstrates that the doctrine exceeds the Director's authority. Congress intended IPRs to be broadly accessible under 35 U.S.C. § 311(a), which grants "a person who is not the owner" the right to petition without age-based restrictions.

The settled expectations doctrine's widespread application threatens the patent system's integrity. By shielding older patents like the '569 Patent, it perpetuates invalid monopolies, stifles innovation, and increases litigation costs, contrary to the AIA's goals.

Without conceding the propriety of the newly minted settled expectations doctrine, the examiner's material errors during prosecution outweigh those settled expectations. This is particularly evident where, as is here, Petitioners presented five compelling bases for challenging the '569 Patent that were entirely missed during prosecution. *See Skullcandy, Inc. v. Earin AB* IPR2025-00690, Paper 9 at 2 (PTAB July 31, 2025) ("the challenged patent issued nine years ago, creating strong settled expectations. While ordinarily that counsels for discretionary denial, Petitioner

persuasively explains that the patent examiner materially erred during prosecution of the challenged patent.”).

In determining whether to deny institution under § 325(d), the following two-part framework applies: (1) whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if either condition of [the] first part of the framework is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6, 8 (PTAB Feb. 13, 2020) (precedential). The *Becton, Dickinson* factors provide useful insight into how to apply the *Advanced Bionics* framework under 35 U.S.C. § 325(d). *Id.* at 9 (referencing *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8, 17-18 (PTAB Dec. 15, 2017) (precedential as to § III.C.5, first paragraph)).

Here, the Office did not previously consider any of the prior art relied on in the Petition. Thus, the framework of part 1 of *Advanced Bionics* does not favor discretionary denial. *Oticon Medical AB v. Cochlear Ltd.*, IPR2019-00975, Paper 15 (Oct. 16, 2019) (declining to exercise discretion under 35 U.S.C. § 325(d) because the petitioner relied on a new prior art reference not considered during prosecution).

Therefore, the grounds set forth in the Petition overcome any presumption of settled expectations and warrant institution.

2. There is No Undue Delay or Gamesmanship

Patent Owner alleges a delay of “nearly two years” in filing the Petition, based on Petitioners purportedly “first learning of Maxell’s infringement allegations in April 2023.” Paper 7 at 17. But Maxell’s April 2023 correspondence asked Petitioners to evaluate a potential license of the patent portfolio covering at least 43 United States patents, and did not explain which claims of each patent would be asserted against Petitioners or how Petitioners’ products allegedly satisfy the limitations of such claims. In reality, the Petition was filed less than seven months after Petitioners received Patent Owner’s infringement contentions, and well within the one-year statutory deadline under 35 U.S.C. § 315(b). *Fintiv* explains that “it is often reasonable for a petitioner to wait to file its petition *until it learns which claims are being asserted against it in the parallel proceeding.*” IPR2020-00019, Paper 15 at 11 (emphasis added). And, contrary to Patent Owner’s specious assertion of bad faith, pre-litigation discussions and motion practice in district court (*e.g.*, motions to dismiss) were perfectly reasonable steps to resolve the parties’ dispute. In short,

Patent Owner's speculative claim of "undue delay and gamesmanship" is completely unsupported and should be rejected out of hand.

III. CONCLUSION

For the foregoing reasons Patent Owner's Request for Discretionary Denial should be rejected, and the Board should institute IPR to address the merits of the Petition's unpatentability challenges.

Date: September 18, 2025

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT

As calculated by the “Word Count” feature of Microsoft Word for Microsoft 365, the foregoing Petitioner’s Opposition to Patent Owner’s Request for Discretionary Denial contains 3,278 words, excluding this Certification and the following: Table of Contents, Table of Authorities, and Certificate of Service.

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CERTIFICATE OF SERVICE

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

<i>Date of service</i>	September 18, 2025
<i>Manner of service</i>	Electronic mail addressed to: rpluta@mayerbrown.com sko@mayerbrown.com mcutler@harnessip.com maxell-core-service@mayerbrown.com
<i>Documents served</i>	Petitioner's Opposition to Patent Owner's Request for Discretionary Denial
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