

From: [Director Discretionary Decision](#)
To: [Matt Antonelli](#); [Director Discretionary Decision](#)
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Subject: RE: IPR2025-00958: Request for authorization to file reply in support of discretionary denial
Date: Monday, September 29, 2025 10:06:54 AM

Patent Owner's request is denied as moot.

From: Matt Antonelli <matt@ahtlawfirm.com>
Sent: Monday, September 22, 2025 5:04 PM
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Subject: IPR2025-00958: Request for authorization to file reply in support of discretionary denial

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Dear Honorable Director:

On September 12, 2025, Petitioner (Maplebear Inc. d/b/a Instacart) filed its opposition brief in response to Patent Owner's (Fall Line's) brief requesting discretionary denial in IPR2025-00958. The lengthy opposition contains new argument and cites nine new exhibits. Patent Owner requests authorization to file a reply to briefly address the following topics:

1. Petitioner's Attempt To Overcome The Overlap With The IPR That Confirmed Claim 7: Petitioner argues in its opposition brief that the Director should not discretionarily deny institution of its petition challenging claim 7—even accepting the substantial overlap between its petition and a previous IPR in which claim 7 was challenged—because the Patent Office allegedly erred in granting the 748 Patent. But that alleged error occurred during the original prosecution and has nothing to do with the overlap between the current IPR petition and the prior IPR petition in which claim 7 was confirmed. Petitioner merely wants to take second bite at the apple by rearguing the grounds presented in the prior IPR.

2. Petitioner's Argument That The Texas Litigations Do Not Matter.
Petitioner's primary argument in response to multiple factors weighing in favor of

discretionary denial is that Instacart is not a party to the Texas actions against Instacart's customers and so should not be considered. That argument is not only inconsistent with the law, but also with multiple statements that Instacart and its customers have made in the litigations that make clear that (a) Instacart filed this IPR petition specifically to protect the interests of its customers who have been sued in Texas and (b) Instacart is active in the Texas litigations.

3. Petitioner's Argument That The Texas Trial Will Not Occur Until After The Final Written Decision. In response to the fact that trial has been set for (not estimated to take place) August 2026—long before a final written decision would issue if the requested IPR were instituted—Petitioner argues that trial is likely to be stayed or “potentially delayed” for various reasons. These are purely speculative arguments for which there is no good basis.

Good cause thus exists for authorization for Patent Owner to file a 7-page reply brief by Friday, September 26 to address these issues, and to submit supporting exhibits, including materials from the Texas litigations.

Patent Owner has conferred with Petitioner, who opposes this request. Petitioner's written statement is provided below:

Petitioner opposes the request because Patent Owner has not demonstrated any good cause for the requested briefing. See Interim Director Discretionary Process (“Interim Process”), Section IV.A (“A patent owner must demonstrate good cause for authorization to file a reply.”). None of the issues Patent Owner seeks to address are new arguments or issues. Patent Owner's brief either did or could have addressed each of these issues, which fall squarely within the well-established discretionary denial factors considered by the Board (*Fintiv*, *Advanced Bionics*). See also Interim Process, Section I.C (“The patent owner may file a brief that explains the facts and circumstances that warrant discretionary denial of the petition ... Each brief should provide a thorough explanation of the outcome that the party is advocating for, supported with facts and evidence.”). Indeed, Petitioner's Opposition Brief, limited to 20 pages in contrast to Patent Owner's 14,000-word discretionary denial brief allowance, simply responded to Patent Owner's discretionary denial arguments. Additionally, with respect to issues (4) and (5), Patent Owner had the opportunity to file a Patent Owner's Preliminary Response (POPR), including merit arguments and expert testimony, but chose not to.

Lastly, while any briefing would be unwarranted, if the Board were to authorize a reply and sur-reply, they should be limited to three pages.

You may copy this response into any email to the Board, setting forth our opposition to the requested briefing.

Respectfully submitted,

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