

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MONAHAN PRODUCTS, LLC d/b/a UPPABABY; and  
BABY GENERATION, INC d/b/a MOCKINGBIRD;

Petitioners,

v.

BABY JOGGER, LLC,  
Patent Owner.

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IPR2025-01105  
Patent 8,955,869

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PATENT OWNER'S  
DISCRETIONARY DENIAL BRIEF

**TABLE OF CONTENTS**

|      |                                                                                                  |    |
|------|--------------------------------------------------------------------------------------------------|----|
| I.   | Introduction .....                                                                               | 3  |
| II.  | Factual Background.....                                                                          | 4  |
| A.   | Origin of the Invention.....                                                                     | 4  |
| B.   | Prosecution of the Patents .....                                                                 | 5  |
| C.   | Petitioners Follow Baby Jogger’s Lead with Notice of the Patents.....                            | 7  |
| III. | <i>Fintiv</i> -Based and PTAB Workload Management Memo Discretionary Denial<br>Factors .....     | 8  |
| A.   | The Settled Expectations of the Parties Weigh Strongly in Favor of<br>Discretionary Denial ..... | 8  |
| B.   | Petitioners’ Extensive Reliance on Voluminous Expert Testimony Favors<br>Denial.....             | 12 |
| C.   | The <i>Fintiv</i> Factors Favor Discretionary Denial .....                                       | 15 |
| D.   | Balancing all Factors Favors Denial .....                                                        | 19 |
| IV.  | Conclusion.....                                                                                  | 20 |

**PATENT OWNER'S EXHIBIT LIST**

| <b>Exhibit No.</b> | <b>Description</b>                                                                                                                                                                                                                                                                                                           |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2001               | Baby Jogger Letter to UPPAbaby dated December 4, 2015                                                                                                                                                                                                                                                                        |
| 2002               | Excerpt of File History of Application No. 12/631,375, Applicant's Response to Office Action, Remarks and Attachments (Nov. 4. 2013)                                                                                                                                                                                         |
| 2003               | United States District Courts—National Judicial Caseload Profile for 12-month period ending December 31, 2024; <i>available at</i> <a href="https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_distprofile1231.2024.pdf">https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_distprofile1231.2024.pdf</a> |
| 2004               | <i>RESERVED</i>                                                                                                                                                                                                                                                                                                              |
| 2005               | Docket Sheet (as of Sept. 1, 2025) for <i>Baby Jogger, LLC v. Monahan Products, LLC d/b/a UPPAbaby</i> , No. 1:24-cv-11582 (D. Mass. filed June 18, 2024)                                                                                                                                                                    |
| 2006               | Docket Sheet (as of Sept. 1, 2025) for <i>Baby Jogger, LLC v. Baby Generation, Inc. d/b/a Mockingbird</i> , No. 1:24-cv-00725 (D. Del. filed June 18, 2024)                                                                                                                                                                  |
| 2007               | <i>RESERVED</i>                                                                                                                                                                                                                                                                                                              |
| 2008               | UPPAbaby's Invalidity Contentions in <i>Baby Jogger, LLC v. Monahan Products, LLC d/b/a UPPAbaby</i> , No. 1:24-cv-11582 (D. Mass. served Feb. 14, 2025)                                                                                                                                                                     |
| 2009               | Scheduling Order, <i>Baby Jogger, LLC v. Monahan Products, LLC d/b/a UPPAbaby</i> , No. 1:24-cv-11582 (D. Mass. Dec. 2, 2024), ECF No. 37                                                                                                                                                                                    |
| 2010               | <i>RESERVED</i>                                                                                                                                                                                                                                                                                                              |

## I. INTRODUCTION

Patent Owner Baby Jogger, LLC (“Baby Jogger”) respectfully requests that the Director exercise discretion and deny institution in two *inter partes* review proceedings, IPR2025-01105 (“the 105 IPR”) and IPR2025-01106 (“the 106 IPR”), challenging U.S. Patent No. 8,955,869 (“the ’869 Patent”) and 9,403,550 (“the ’550 Patent”) (collectively, “the Patents”).<sup>1</sup> Here, the Petitions challenge patents with years of accrued settled expectations, having issued over 9 and 10 years ago. The Petitions also rely on unmanageably voluminous “expert” testimony, references the Examiner already considered, and theories that are more efficiently and appropriately addressed in the parallel district court proceedings, which the parties have already meaningfully invested in. For each of these reasons, the Director should grant this request for discretionary denial.

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<sup>1</sup> This brief addresses both proceedings and is identically filed in each (other than case style/headers). Non-identical Papers and exhibits in each IPR are referenced by the IPR number followed by the document, while duplicated exhibits are referenced by number only. E.g., “105 IPR Ex-1015” or “106 IPR Ex-1015” versus “Ex-1014.”

## II. FACTUAL BACKGROUND

### A. Origin of the Invention

The origins of the Patents began around 2008, when Baby Jogger—a leading innovator of baby strollers since 1984—developed and introduced the first true convertible single-to-double stroller. Before this invention, parents with multiple children were limited to either using two separate strollers or buying existing double strollers that suffered from significant drawbacks. Some existing double strollers were too large, making them difficult to maneuver. Ex-1031, 65.<sup>2</sup> Others included a second seat tucked beneath the first seat that was small, cramped, and reduced the stroller’s storage capacity. *Id.* at 70. Still other models had components that were permanently affixed and did not permit reversibility or interchangeability of the seat. *Id.* at 65.

Baby Jogger overcame these limitations by developing a novel modular stroller system capable of seamlessly alternating between single- and double-seat configurations without expanding the stroller’s overall footprint. One aspect of the patented Baby Jogger stroller system, known commercially as the “City Select,” was its seat attachments, which allowed a second seat to be added directly to the

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<sup>2</sup> Petitioners did not number this exhibit, so page references are to the PDF page number.

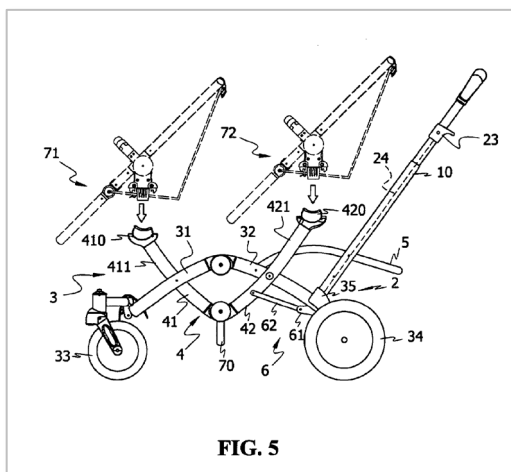
frame of the single stroller, converting it into a double stroller while preserving both its stability and maneuverability. Ex-1004, Abstract, 1:14-23. Within months of its introduction in 2009, the City Select won numerous awards for its innovative design, which Baby Jogger was actively seeking to patent. 105 IPR Ex-1014, 327 (response to office action noting awards supported secondary considerations); 106 IPR Ex-1014, 327 (same); *see also* Ex-2002 (providing copies of NPL awards not included in Petitioners' exhibits).

**B. Prosecution of the Patents**

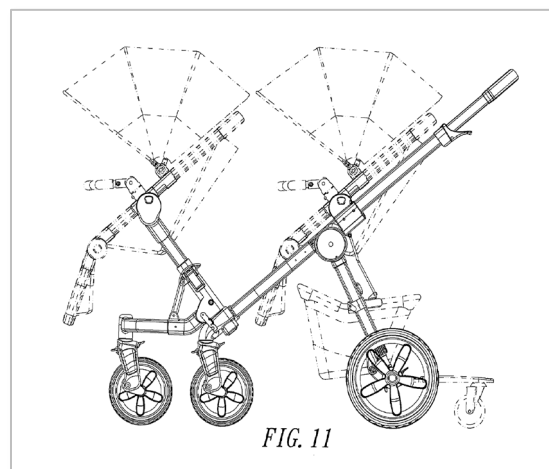
Baby Jogger filed its initial provisional application related to the City Select in 2008. Ex-1002. Since that time, this patent family has undergone years of intensive review, examination, and negotiation between Baby Jogger and the Patent Office. Notably, the entire patent family (all of which claim priority to this first provisional application) was examined by the same Examiner, who was familiar with the state of the art and repeatedly allowed the claims in this patent family.

The '869 Patent is the earliest granted patent in this family, issuing more than ten years ago, on February 17, 2015. Ex-1004. It was filed as a continuation of Application No. 12/631,375 ("the '375 Application"). During prosecution of the '375 Application, the Examiner rejected the claims as anticipated and obvious over multiple prior art references comparable to those cited here. *See* Ex-1014, 94-115, 180-99, 268-93.

For example, the Examiner relied on U.S. Patent 7,475,900 (“Cheng”) as teaching a stroller seat attachment “capable of supporting the stroller seat in either a forward or backward position.” Ex-1014, 283. Notably, Petitioner UPPAbaby itself included Cheng in its Preliminary Invalidity Contentions in its parallel district court action. Ex-2008, 8. Here, Petitioners rely on U.S. Patent D593,459 (“Liao”), which is strikingly similar to the disclosure of features in Cheng. 105 IPR Pet. 34-46; 106 IPR Pet. 32-43. The similarities between these references are evident in their drawings:



Cheng (Ex-1016)



Liao (Ex-1048)

The Examiner ultimately allowed the claims over Cheng, though the applicant later withdrew the '375 Application from issue. Ex-1014, 333-43, 520-27. The application for the '869 Patent was then filed with a preliminary amendment aligning its claims with those already allowed in the '375 Application.

Ex-1015, 52-58. Unsurprisingly, the Examiner allowed the claims of the '869 Patent following a telephonic interview and minor amendments.

The '550 Patent issued on August 2, 2016, more than 9 years ago, and is a continuation of the '869 Patent. During prosecution, it was also subject to multiple office actions, including anticipation and obvious rejections. Ex-1016, 49-56, 117-24, 172-76.

**C. Petitioners Follow Baby Jogger's Lead with Notice of the Patents**

Around 2015, Petitioner UPPAbaby released its "RumbleSeat," a product that enabled its Vista stroller to convert into a double stroller. Petitioner Mockingbird introduced its Single-to-Double Stroller (2023 model) and 2nd Seat Kit, which similarly converted its stroller into a double stroller. Each of these single-to-double products introduced by Petitioners falls within the scope of claims of the Patents.

Moreover, at least Petitioner UPPAbaby developed and sold its products for up to a decade *with actual knowledge of the Baby Jogger patent family*. In December 2015, Baby Jogger sent a letter to Petitioner UPPAbaby providing actual notice that it was infringing the '869 Patent. *See* Ex-2001.

In the years since Baby Jogger first introduced its stroller system, it has continued to refine, protect, and commercialize its inventions. On June 18, 2024, Baby Jogger decided to put an end to Petitioners' willful infringement of the

Patents and filed patent infringement actions against each Petitioner, asserting the Patents and those in the related IPRs. Ex-2005; Ex-2006.

### **III. *FINTIV*-BASED AND PTAB WORKLOAD MANAGEMENT MEMO DISCRETIONARY DENIAL FACTORS**

Institution should be denied under § 314(a) in view of the strong settled expectations of the patent owner, Baby Jogger, the *Fintiv* factors, and the heavy burden imposed on the Office (and Baby Jogger) by the voluminous petitions and expert declarations, all of which weigh in favor discretionary denial.<sup>3</sup> Taken together, these factors support a single conclusion: institution would be unjustified and an inefficient use of the Office's resources.

#### **A. The Settled Expectations of the Parties Weigh Strongly in Favor of Discretionary Denial**

The Patents are part of a larger family of patents that have been commercialized in a core Baby Jogger product for 15 years. The '550 Patent and '869 Patent have been in force for over 9 and 10 years, respectively, and have developed strong settled expectations. *Dabico Airport Solutions Inc v. HydraFacial LLC*, IPR2025-00408, Paper 21, 3 (June 18, 2025). And there can be no doubt that

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<sup>3</sup> The expert's doorstopper declarations in these two IPRs alone (not including the five related IPRs) contain 160 and 207 pages, with 305 and 376 paragraphs. The declarations in the related IPRs dwarf even these.

Petitioners were aware of the Patents and the related family members through actual notice and by virtue of the stroller system being lauded in the same technology space in which the Petitioners operate. *See supra* Section II.C (citing Ex-2001). Thus, Baby Jogger has strong settled expectations in this family of patents, but in particular, the Patents challenged here. *See Samsung Elecs. Co. v. iCashe, Inc.*, IPR2025-00639, Paper 12, 3 (Aug. 14, 2025) (inefficient use of Board resources to consider validity of 2 newer patents when validity of 5 older patents would be considered by the district court); *Amazon.com, Inc. v. Audio Pod IP, LLC*, IPR2025-00757, Paper 15, 3 (Aug. 14, 2025) (inefficient use of Board resources to consider validity of 1 newer patent when validity of older patents would be considered by the district court).

Petitioners' prior knowledge of the Patents, coupled with a failure to seek early review, is an independent ground for discretionary denial under § 314(a). *See, e.g., iRhythm Technologies, Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10, 3 (June 6, 2025) (finding "Petitioner's awareness of Patent Owner's applications and failure to seek early review of the patents favors denial"—even "outweigh[ing]" other considerations that might weigh against discretionary denial). The '869 Patent application published in November 2014, and the '550 Patent application published in May 2015, providing constructive notice of each to Petitioners. Ex-1004, code 65; Ex-1005 code, 65. Baby Jogger then provided Petitioner UPPAbaby

with actual notice of the '869 Patent through a letter on December 4, 2015. *See* Ex-2001.<sup>4</sup> Baby Jogger also had a continuation of the '869 Patent pending at that time, and since then Baby Jogger has pursued several other continuations to further protect its innovation.

Petitioners were undoubtedly aware of the Patents, as they market stroller products comparable to those offered by Baby Jogger within the same market and to many of the same customers. For example, one of Petitioners' declarants discusses reviewing an UPPAbaby stroller in 2007 and includes mention of Baby Jogger strollers in a buying guide published in 2008. Ex-1031, 2, 62. *Cf. Murata Manufacturing Co., LTD, v. Georgia Tech Research Corporation*, IPR2025-00383, Paper 14, 2 (July 29, 2025) (finding petitioner's awareness of patent owner's involvement in technology space for a significant time before filing petition was a

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<sup>4</sup> In *DataDome S.A. v. Arkose Labs Holdings, Inc.*, Acting Director Stewart rejected petitioner's argument that a patent owner's lack of assertion for several years after sending a notice of infringement would create "settled expectations" *for the petitioner* that the challenged patents "would not be asserted against it." IPR2025-00693, Paper 13, 2 (Aug. 14, 2025). Stewart noted that the "petitioner's reliance on its own [non-infringement] assessment" of the patents did "not overcome Patent Owner's strong settled expectations." *Id.* at 2–3.

factor favoring denial). The products covered by the Patents—the City Select stroller system, first introduced in 2009—have been commercially successful and recognized with innovation awards since at least 2010, including the Juvenile Products Manufacturers Association Innovation Award and National Parenting Publications Award (Ex-2002), and repeatedly recognized as patentable by the Patent Office for 15 years. Further, Baby Jogger’s patent marking began in early 2023, and the notoriety of the products, coupled with Petitioners’ awareness of the growing Baby Jogger portfolio, while they failed to challenge the Patents, means Baby Jogger has strong settled expectations favoring discretionary denial.

Despite ten years of actual and constructive notice of the Patents covering aspects of Baby Jogger’s widely praised and successful City Select strollers, Petitioners made no challenge to the Patents. In the many years since these Patents issued, Baby Jogger’s settled expectations grew with no challenge to the Patent Office’s allowance of multiple additional patents in the family. And even after Baby Jogger served its infringement complaints on Petitioners by June 24, 2024 (*see* Ex-2005; Ex-2006), they still waited until the last minute to file their Petitions on June 20, 2025—within days of the one-year bar. This factor favors discretionary denial. *See Ericsson Inc., et al. v. Procomm Int’l PTE. LTD.*, IPR2024-01455, Paper 15, 2 (May 16, 2025) (finding delay in filing petition negatively impacted timing of final written decision with respect to the trial date).

**B. Petitioners' Extensive Reliance on Voluminous Expert Testimony Favors Denial**

Petitioners rely extensively on expert argument and inferences to fill in gaps in the prior art and to attempt to rationalize how that art could allegedly be modified or combined to arrive at the challenged claims. *Cf. iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10, 2-3 (June 6, 2025) (suggesting reliance on expert testimony to fill gaps in prior art weighs in favor of denial) (“*iRhythm*”). In effect, Petitioners use sprawling, backward-looking declarations as a mouthpiece to relitigate the Examiner’s prior assessments of the art and patentability of the claims—despite the Examiner considering references teaching the same features.

Rather than offering focused declarations limited to points where expert input is indispensable, Petitioners cite their expert for *every* claim limitation and every ground—over 250 times in each Petition. *See generally* 105 IPR Pet. 34-158, 106 IPR Pet. 32-109. For example, the Petitions argue that a “latch” is disclosed in a design patent (Liao) in an effort to meet the claim limitations of a “removable” or “releasable” connector portion. 105 IPR Pet. 39; 106 IPR Pet. 37-38. Liao, however, does not disclose or suggest that these parts can be separated at all. As a result, Petitioners rely on their expert’s (speculative) opinion to meet this limitation, though their expert merely parrots the Petitions with *no citation* to any

evidence at all. *Compare* 105 IPR Pet. 39, *with* 105 IPR Ex-1001 ¶ 136; *compare* 106 IPR Pet. 37-38, *with* 106 IPR Ex-1001 ¶ 144.

Another example is found in Petitioners' reliance on Stopp (ES 2253093), where they again use their expert to gap-fill the removable "connector portion" limitation, with the expert merely parroting the language of the Petition. *Compare* 105 IPR Pet. 102-03, *with* 105 IPR Ex-1001 ¶ 276 (using same description); *compare* 106 IPR Pet. 79-80, *with* 106 IPR Ex-1001 ¶ 232 (using same description). The Petitions argues a POSA would have understood Stopp to teach the "connector portion" limitation—arguing that the connectors are "conventional" and pointing only to the expert's testimony for support. But the corresponding paragraph in the declaration is nearly identical. It contains no other discussion or explanation to support that opinion, and it does not cite to anything in the prior art. *Id.*

In fact, Petitioners use their expert to impermissibly gap-fill *every* missing limitation they are unable to identify in the prior art, citing only the expert report for these gaps in their analysis. *See, e.g.,* 105 IPR Pet. 37-43; 106 IPR Pet. 35-40. But their expert simply repeats the Petitions' arguments word-for-word without citing any additional supporting evidence. As a result, Petitioners' expert declaration should be given little weight. *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 (Aug. 24, 2022) (precedential) (holding declaration is entitled to

little weight when it contains an exact restatement of petition’s unsupported, conclusory assertions without any additional supporting evidence or reasoning); *Kinetic Techs. Inc. v. Skywords Solutions, Inc.*, IPR2014-00530, Paper 8 at 13 (Sept. 29, 2014) (“Merely repeating an argument from the Petition in the declaration of a proposed expert does not give that argument enhanced probative value.”).

The scale of the “expert” declarations is also striking. The two declarations relied on here total over 360 pages, each containing between 307-376 numbered paragraphs and 21,000 words (106 IPR Pet. Ex-1001) to over 24,000 words (105 IPR Pet. Ex-1001), by Baby Jogger’s estimate—nearly double the word count permitted for petitions under 37 C.F.R. § 42.24. And these pale in comparison to the size of the Petitioners’ declarations filed in its related IPRs challenging other patents in the family. *See, e.g.*, Patent Owner’s Request for Discretionary Denial, IPR2025-01100, Paper 8, 10 (Sept. 2, 2025) (describing nearly 1000 pages of declarations and over 134,000 words across three declarations in related IPRs challenging other patents in the family). This volume betrays Petitioners’ strategy: evade the word limits, fill gaps in and rewrite the prior art, and bury the Board in expert testimony rather than rely on the art itself.

If this witness testimony were as essential as Petitioners imply, that fact alone counsels against institution. Live testimony subject to direct and cross-

examination in a district court is the superior forum. And district courts can better manage the scope and presentation of such evidence before a factfinder than can the Board. Here, institution would force the Board (and Baby Jogger) to parse through thousands of pages of declarations and transcripts.

Petitioners’ overreliance on expert testimony—used to parrot their attorney argument rather than aid the Board’s understanding—weighs strongly in favor of denial.

**C. The *Fintiv* Factors Favor Discretionary Denial**

*Factor 1* concerns “whether a stay exists or is likely to be granted if a proceeding is instituted.” *Fintiv* at 6. Here, neither Petitioner has moved for a stay pending the IPRs in the pending district court cases.<sup>5</sup> Thus, this factor favors discretionary denial (because no stay has been requested) or, at best, is neutral.

*Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15, 12 (May 13, 2020)

(informative) (cautioning against speculating whether the district court will grant stay).

*Factor 2* concerns “proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision.” *Fintiv* at 6. While a trial date has not been set in either case, the median time to trial in the District of

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<sup>5</sup> Petitioner Mockingbird has moved for a stay pending its Motion to Dismiss.

Massachusetts indicates the trial against Petitioner UPPAbaby is expected to begin in March 2027. *See* Ex-2003. The expected statutory deadline for the Board’s Final Written Decisions is only a few months earlier, December 20, 2026. With only three months between these dates, essentially all the parties’ investments would be duplicated, leading to significant inefficiencies.

*Factor 3* considers the “investment in the parallel proceeding by the court and the parties.” *Fintiv* at 6. The Massachusetts action against Petitioner UPPAbaby has already seen substantial investment. Discovery is well underway: the parties have completed initial document productions and written discovery; exchanged preliminary infringement, non-infringement, and invalidity contentions (Ex-2009, 1); and briefed and argued a motion for summary judgment, which the court denied (Ex-2005, 7 (ECF 71)). Claim construction briefing is also complete—including UPPAbaby’s expert report and deposition testimony—and the Court held a *Markman* hearing on July 17, 2025. *Id.* (ECF 72-73). The only step remaining is for the Court to issue its ruling, which is expected any day. Petitioner UPPAbaby has not moved for a stay, ensuring that investment in this proceeding will only continue to grow.

Although the Delaware action is less advanced, Petitioner Mockingbird filed a motion to dismiss, and briefing is complete. Without a stay, that case will continue to move forward as well. Institution under these circumstances

undermines the policy of promoting efficient resolution of patent disputes. *See Arthrex, Inc. v. Medshape, Inc.*, IPR2025-00053, Paper 11, 15 (Apr. 25, 2025) (finding that where discovery and dispositive motions would conclude before the deadline for the final written decision, there was a risk of duplicated efforts).

*Factor 4* concerns “overlap between issues raised in the petition and in the parallel proceeding.” *Fintiv* at 6. In the Massachusetts case, Petitioner UPPAbaby served invalidity contentions citing 6 of the Petitions’ combined 18 references, including all of the 106 IPR Petition’s references. Concerning the Delaware action, this factor is uncertain because Petitioner Mockingbird has not yet served invalidity contentions. But there is likely to be substantial overlap.

While both Petitioners filed a *Sotera* stipulation, they fall short of ensuring that the IPR proceedings would be a “true alternative” to the district court prior art challenges. Petitioner UPPAbaby’s invalidity arguments in the district court are more expansive than in their Petitions and include combinations of art asserted in these proceedings with unpublished systems, which Petitioner’s stipulation does *not* moot. *Compare* 105 IPR Pet. 32 (Grounds 1-5) and 106 IPR Pet. 29 (Grounds 1-4), *with* Ex-2008, 8, 11 (asserting Liao, Chen, Stopp, or Sweeney combined with system art). The Office’s Interim Discretionary Process website itself confirms that a *Sotera* stipulation under these circumstances is not “particularly meaningful” and

there is only “limited” efficiency.<sup>6</sup> *See also Shenzen Tuozhu Tech. Co. v. Stratasys, Inc.*, IPR2025-00354, Paper 11, 2-3 (June 12, 2025) (*Sotera* stipulation “not likely to moot” district court invalidity arguments, so it may “reduce[], but does not eliminate, the inefficiencies” of parallel proceedings); *Motorola Sols. v. Stellar, LLC*, IPR2024-01205, Paper 19, 3-4 (Mar. 28, 2025) (same).

Petitioners filed their stipulations on August 1, 2025, well after the Director’s decision in *Tesla, Inc. v. Intellectual Ventures II, LLC*, IPR2025-00217, Paper 9 (June 13, 2025). Unlike a typical *Sotera* stipulation, Tesla’s “broad stipulation” had an additional provision in which it promised not to raise “any ground based on a combination of *system prior art* and the references asserted as part of a ground raised.” *Id.* at Paper 8, Exhibit 1067, 2–5. The Director stated that this counseled against discretionary denial. *Id.* at Paper 9, 2. Thus, Petitioners were aware they could have filed a stipulation that would have presented a “true alternative” but opted not to do so. Allowing the IPRs here to move forward will not remove the question of the validity of the patents over this system prior art in the district court and, therefore, will not reduce the burdens on the parties to maintain two parallel proceedings. It would be an inefficient use of Board

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<sup>6</sup> <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>.

resources to address the challenged Patents without being able to resolve them completely.

*Factor 5*: The Petitioners and the defendants in the parallel proceedings are the same, so this factor favors discretionary denial. *See Arashi Vision (U.S.) LLC d/b/a/ Insta360 v. GoPro, Inc.*, IPR2025-0017, Paper 11, 13-14 (Apr. 28, 2025).

Lastly, the issues discussed in Sections III.A-B above all bear on *Factor 6* as other “relevant circumstances” are considered as part of the “holistic analysis.”

**D. Balancing all Factors Favors Denial**

In sum, the § 314(a) considerations weigh strongly in favor of discretionary denial. The settled expectations of the Patent Owner in the challenged Patents (and the entire patent family) strongly favor discretionary denial here, with the Patents having issued 9 and 10 years ago. *See iRhythm* at 2 (the settled expectations factor “outweighs” the other considerations that weighed against denial). So does the overreliance on expert testimony. The investment in both parallel actions—especially against Petitioner UPPAbaby—the potential for overlap, and the proximity of the expected trial date against Petitioner UPPAbaby and the final written decision all weigh in favor of exercising discretion to deny the Petitions.

The Board’s resources are better spent allowing the district courts to resolve the validity issues presented here, along with the many *other* patent issues it must address. Because the district court is poised to resolve all relevant disputes, and

these IPRs will not resolve Petitioners' indefiniteness claims, the Board's time and attention are better spent elsewhere.

#### **IV. CONCLUSION**

For the reasons set forth above, and consistent with both *Fintiv* and the USPTO's updated guidance, the Board should exercise its discretion to deny institution under 35 U.S.C. § 314(a).

Respectfully submitted,

/Warren Thomas/

Warren J. Thomas (Reg. No. 70,581)

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. §§ 42.6(e) and agreement of the parties, I certify that on September 8, 2025, a copy of this paper and all accompanying exhibits were served on counsel for the Petitioner by email to:

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