UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

v.

CText IP LLC,

Patent Owner.

Case IPR2025-01113

Patent No. 10,009,304

PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION

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EXHIBIT LIST

Exhibit No.	Description
2001	Civil Docket For CText IP LLC v. Apple Inc., No. 1:24-cv-08821-JMF (filed Nov. 20, 2024) ("District Court Litigation")
2002	First Amended Complaint for Patent Infringement (Dkt. No. 24)
2003	CText Letter to Apple (Jan. 5, 2023)
2004	Apple Letter to CText (Jan. 11, 2023)
2005	Apple Letter to CText (Mar. 29, 2023)
2006	CText Letter to Apple (Jun. 2, 2023)
2007	Apple Letter to CText (Aug. 9, 2023)
2008	CText Letter to Apple (Apr. 4, 2024)
2009	Apple Letter to CText (May 17, 2024)
2010	Proposed Scheduling Order (Dkt. No. 42-2)
2011	Apple's Redline Edits for Proposed Scheduling Order
2012	Teleconference Transcript (Jul. 28, 2025)
2013	Memorandum of July 31, 2025 from Acting Undersecretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office

I. INTRODUCTION

Under the Interim Director Discretionary Process, Patent Owner CText IP LLC (hereinafter "Patent Owner") respectfully requests that the Director exercise her discretion to deny institution of *inter partes* review under 35 U.S.C. § 314(a) based on the facts and argument below.

First, settled expectations based on the issue date of the patent warrant denial. The patent-at-issue in this proceeding, U.S. Patent No. 10,009,304 (the "'304 Patent"), issued on June 26, 2018, allowing expectations to settle for over seven years. Relatedly, U.S. Patent No. 9,246,857 (the "'857 Patent"), which is the subject of IPR2025-01112 and is the parent to the '304 Patent, issued on Jan. 26, 2016, over nine years ago.

Second, settled expectations based on the parties' correspondence and discussions warrant denial. Over two-and-a-half years ago (on January 5, 2023), Patent Owner began corresponding with Petitioner via a notice letter that included claim charts detailing Petitioner's infringement of the '304 Patent. That correspondence continued with at least five more letters between the parties. In those letters, Petitioner alleged that the '304 Patent is invalid over the prior art while Patent Owner refuted Petitioner's positions. Patent Owner even invited Petitioner to explain why its invalidity positions survived despite Patent Owner's arguments, but Petitioner went conspicuously silent on that request. Eventually Petitioner

abandoned the prior art it relied upon in its letters in favor of different art in its Petition. Because Petitioner has been on notice of its alleged infringement for over two-and-a-half years, chose to ignore Patent Owner's specific questions challenging Petitioner's prior art, abandoned that prior art for its IPRs, and did not file any IPRs until now, Petitioner allowed Patent Owner expectations to further settle.

Third, even though this case has been stayed at in its parallel proceedings in district court (*CText IP LLC v. Apple Inc.,* Case No. 1:24-cv-08821-JMF (S.D.N.Y.), hereinafter the "District Court Proceeding"), this proceeding is not a true alternative to the District Court Proceeding. Petitioner originally preferred pursuing its invalidity arguments before the district court. Instead of promptly filing for *inter partes* review at the outset of the District Court Proceeding (or before, during the parties' correspondence), Petitioner opted to file two motions to dismiss based on subject matter eligibility. After losing those motions, Petitioner changed course and filed its IPR requests. And if the District Court Proceeding resumes, Petitioner has demonstrated an intent to continue pursuing invalidity arguments on an excessive number of prior art references. Accordingly, Petitioner is using the *inter partes* review process as one of its many litigation defenses against Patent Owner, not as a true alternative to the District Court Proceeding.

Fourth, the validity challenges are weak. The Petition often fills holes in the references themselves with declarative statements about "common sense," what

"would be obvious to a POSITA," and expert testimony.

In total, the circumstances weigh in favor of discretionary denial. Although the District Court Proceeding has been stayed, Petitioner is simply using this proceeding as one of many litigation defenses. Further, the remaining facts—the age of the patents, settled expectations arising from negotiations, and overall weakness of the validity challenges—strongly favor discretionary denial.

II. BACKGROUND OF THE DISTRICT COURT PROCEEDING

On November 20, 2024, Patent Owner filed its complaint in the District Court Proceeding accusing Petitioner Apple Inc. ("Petitioner" or "Apple") of infringing the '304 Patent.[1] Ex. 2001 (Civil Docket for District Court Proceeding) at 1 (Dkt. Entry No. 1). Petitioner then filed a motion to extend its deadline to respond to the complaint by 45 days. *Id.* at 3 (Dkt. Entry No. 13). Instead of answering after that 45-day extension, Petitioner moved to dismiss the complaint, alleging that the Asserted Patents are directed to patent ineligible subject matter. *Id.* at 4 (Dkt. Entry Nos. 20, 21). Patent Owner thereafter amended its complaint, adding significant details explaining the eligibility of the claims. *See, e.g.,* Ex. 2002 (First Amended

[1] That complaint also alleged infringement of the '857 Patent (collectively, with the patent in this proceeding, the "Asserted Patents"). Petitioner challenged the '857 Patent in co-pending *inter partes* review petition IPR2025-01112.

Complaint) at ¶¶10-40. The amended complaint even explained that Petitioner filed for, and the PTO issued, several patents on very similar subject matter. *See, e.g., id.* at ¶¶25-27. But despite its own patents on similar subject matter, Petitioner again moved to dismiss the complaint based on subject matter ineligibility. Ex. 2001 at 4 (Dkt. Entry Nos. 25, 26). Unsurprisingly, the district court denied Petitioner's motion to dismiss. *Id.* at 5 (Dkt. Entry No. 31). Petitioner then filed this *inter partes* review petition (hereinafter the "Petition") (and the co-pending IPR2025-01112 petition) and moved the district court for a stay. *Id.* at 5 (Dkt. Entry No. 32). On July 28, 2025, the district court held a pretrial videoconference, during which time the court heard argument on Petitioner's motion to stay and ultimately granted that stay despite Patent Owner's opposition. *Id.* at 6 (Dkt. Entry No. 43). Thus because of Petitioner's two motions to dismiss, and because of Petitioner's motion to stay, the parties and the district court have already invested substantial resources in the District Court Proceeding. And for the same reasons, the court now has detailed knowledge of the patents, the parties, and of Petitioner's alleged infringement.

III. DISCRETIONARY DENIAL IS WARRANTED

A. The Asserted Patents have been in force for seven and nine years, creating strong settled expectations in favor of discretionary denial.

The Director may consider the "[s]ettled expectations of the parties, such as the length of time the claims have been in force." Interim Processes for PTAB Workload Management (March 26, 2025) ("Process Memorandum") at 2. The '304

Patent issued on June 26, 2018, (Ex. 1001) allowing expectations to settle for over seven years. The other Asserted Patent (the '857 patent) issued on January 26, 2016, and therefore has been in force for well over nine years. Seven years exceeds or matches other timeframes that the Board has found to create "strong settled expectations," whereas nine years comfortably exceeds the time needed to create strong settled expectations.

The Board has found strong settled expectations for patents that have been in force for six and seven years. *See, e.g., Kahoot! AS v. Interstellar Inc.*, IPR2025-00696, Paper 12 (Jul. 31, 2025) ("*Kahoot!*") at 2 ("the challenged patent has been in force for over six years, creating strong settled expectations") (emphasis added); *Samsung Elecs. Co., Ltd. et al. v. GenghisComm*, IPR2025-00780[2], Paper 11 (Aug. 14, 2025) at 2 ("the challenged patents have been in force for approximately eight and six years, creating strong settled expectations for Patent Owner") (emphasis added); *Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, Paper 9 (Jul. 24, 2025) at 3 ("the challenged patents have been in force for seven and six years, respectively, creating strong settled expectations for Patent Owner.") (emphasis added); *SmartSky Networks LLC v. Gogo Business Aviation LLC*, IPR2025-00672, Paper 10 (Jul. 31, 2025) at 2 ("the challenged patent has been in force for seven years, creating strong settled expectations") (emphasis added); *Intel Corp. v.*

[2] Many of the cited discretionary denial orders involve a series of IPR petitions between the parties. For brevity, the citations in this request only include the first IPR petition in the series.

Advanced Cluster Systems, Inc., IPR2025-00794 Paper 13 (Aug. 14, 2025) at 2 ("the challenged patent has been in force for approximately six years, creating settled expectations for Patent Owner"); *HS Hyosung Advanced Materials Corp. v. Kolon Industries, Inc.*, IPR2025-00662, Paper 12 (Aug. 14, 2025) ("*HS Hyosung*") at 2 ("the challenged patents have been in force for more than seven, six, and nine years, respectively, creating strong settled expectations for Patent Owner") (emphasis added).

In the present case, the settled expectations arising from the age of the Asserted Patents favors discretionary denial.

B. Settled expectations based on the parties' correspondence favor discretionary denial.

Over two-and-a-half years ago (on January 5, 2023), Patent Owner sent Petitioner a notice letter that included claim charts detailing Apple's infringement of the '304 Patent. Ex. 2003. That letter resulted in a series of communications between the parties. In those communications, Petitioner presented invalidity positions based on certain prior art. Patent Owner refuted Petitioner's stated invalidity positions to such a degree that Petitioner's current IPRs abandoned any mention of the only prior art reference used by Petitioner in its letters. Having refuted Petitioner's stated invalidity positions, Patent Owner's expectations settled even further, weighing in favor of denial.

Specifically, after Patent Owner's notice letter in January 2023, Petitioner first responded with a boilerplate letter on January 11, 2023. Ex. 2004. Petitioner then

responded with a more substantive letter on March 29, 2023. Ex. 2005 ("March 2023 Letter"). In the March 2023 Letter, Petitioner alleged that "the '857 and '304 patent claims are invalid in light of the prior art." *Id.* at 6. To support that allegation, Petitioner relied on a single prior art reference, U.S. Patent No. 8,166,408 ("Castellucci"). *Id.* at 6-7.

On June 2, 2023, Patent Owner responded with its own letter, explaining to Petitioner that its March 2023 Letter "does not explain how Castelucci [sic] discloses each of the claim limitations of the '857 and '304 patents." Ex. 2006 ("June 2023 Letter") at 3. Patent Owner's June 2023 Letter provided a specific example limitation that Castellucci fails to disclose. *Id.* (explaining that Castellucci does not disclose limitation 1[d] and noting that Petitioner's March 2023 "letter identifies element 612 as the purported visual element that changes to match the visual cue, but your letter fails to explain how element 612 represents a change in a visual element of the message entry location.")

Petitioner responded with another letter on August 9, 2023. Ex. 2007 ("August 2023 Letter"). Despite Patent Owner's June 2023 Letter having pointed out this significant flaw in Apple's invalidity assertions, Petitioner's August 2023 Letter did not explain how Castellucci discloses each of the claim limitations of the Asserted Patents. Instead, Petitioner listed several portions of a subset of the claim limitations (untethered to a specific patent or claim in which they appear) and referred back to

its prior March 2023 Letter. *Id.* at 2-3. Petitioner also failed to rebut Patent Owner's position that Petitioner's March 2023 Letter failed to explain how element 612 represents a change in a visual element of the message entry location. *Id.* at 3. Instead, Petitioner argued that "visual element 612 does change," but Petitioner missed the point of explaining how item 612 was part of the claimed "message entry location." *Id.*

Despite Petitioner's August 2023 Letter merely rehashing Petitioner's prior March 2023 Letter, Patent Owner responded with its own letter on April 4, 2024. Ex. 2008 ("April 2024 Letter"). Patent Owner again addressed the problem with item 612 that it identified in its June 2023 Letter, and which Petitioner failed to meaningfully address in its August 2023 Letter. *Id.* at 7. Patent Owner explained that "[Petitioner] unilaterally describes item 612 as 'visual element,' choosing to ignore [the] actual phrase in Castellucci: 'VDT buttons 612, 614, 616.'" *Id.* Patent Owner then invited Petitioner to "please explain, with support from Castellucci, why [Petitioner] contends that VDT button 612 is part of the message entry location and how the message entry location changes in response to the claimed indications in CText's patents." *Id.*

Petitioner responded with another letter on May 17, 2024. Ex. 2009 ("May 2024 Letter"). In that letter Petitioner attempted to address, but failed to resolve, certain deficiencies that Patent Owner again identified in its April 2024 Letter. *Id.* at

4-5. But most strikingly, Petitioner completely ignored Patent Owner's invitation to "explain, with support from Castellucci, why [Petitioner] contends that VDT button 612 is part of the message entry location and how the message entry location changes in response to the claimed indications in CText's patents" (Ex. 2008 at 7). Ex. 2009 at 4-5 (ignoring Patent Owner's request for explanation).

At this point, with Petitioner ignoring Patent Owner's requests to explain Petitioner's invalidity position, Patent Owner correctly believed that it had rebutted Petitioner's position.[3] That belief is further evidenced by the fact that Petitioner abandoned Castellucci in favor of other prior art used for this Petition (and also for IPR2025-01112).

Because Petitioner was on notice of its alleged infringement for over two-and-

[3] Also at this point, Patent Owner suspected that Petitioner was simply delaying licensing discussions (or litigation), hoping that Patent Owner would continue engaging in correspondence. Each of Petitioner's substantive letters includes the conclusion, "If you disagree with our assessment, please provide a detailed explanation of your position. Otherwise, we will consider this matter closed," as an apparent attempt to keep correspondence open indefinitely. Ex. 2009 at 5; Ex. 2007 at 3; Ex. 2005 at 8.

a-half years, had its only prior art reference in its correspondence rebutted, and did not file any IPRs until now, Petitioner further allowed Patent Owner's expectations to settle, weighing in favor of denial.

C. Even though the District Court Proceeding is stayed, discretionary denial is warranted because of the strong settled expectations of Patent Owner.

Although the district court has stayed the District Court Proceedings, that factor is outweighed by the remaining facts at issue. In instances in which the parallel district court case is stayed, but the patents have been in force for a similar time period as the Asserted Patents, the Director has still granted discretionary denial. *See Kahoot!* at 2 (granting discretionary denial even though the "parallel district court proceeding involving Petitioner and Patent Owner has been stayed" in the circumstance in which "the challenged patent has been in force for over six years, creating strong settled expectations"); *see also HS Hyosung* at 2 (granting discretionary denial when the "district court litigation involving the parties has been stayed" in light of the strong settled expectations for Patent Owner because "the challenged patents have been in force for more than seven, six, and nine years, respectively"); *see also Google LLC v. SoundClear Technologies*, IPR2025-00344, Paper 15 (Aug. 4, 2025) at 2 (granting discretionary denial when "the parallel district court proceeding involving Patent Owner and Petitioner has been stayed" but Patent Owner has strong settled expectations for Patent Owner because "both challenged

patents have been in force for approximately ten years").

In this case, Patent Owner's expectations based on the age of the Asserted Patents are even further settled based on correspondence between the parties that began in January 2023 and ended with Patent Owner rebutting Petitioner's prior art. Because of these settled expectations, discretionary denial is warranted despite the stay in the District Court Proceeding.

D. This IPR is not a true alternative.

Petitioner's conduct to date suggests that *inter partes* review is not a true alternative to District Court litigation, weighing in favor of discretionary denial. Petitioner initially preferred the District Court Proceeding to this forum, and it still intends to use excessive prior art there. Petitioner did not file for *inter partes* review after Patent Owner notified Petitioner of its infringement in January 2023. And Petitioner did not promptly file for *inter partes* review when the District Court Proceeding was filed in November 2024. Instead, Petitioner preferred pursuing its invalidity arguments before the district court. Accordingly, Petitioner filed two motions to dismiss with the district court, attempting to invalidate the Asserted Patents on the grounds of subject matter ineligibility. Ex. 2001 at 4 (Dkt. Nos. 20, 21, 25, and 26). Only after losing those motions did Petitioner change course and file this IPR request.

But if this *inter partes* review fails for any reason, Petitioner intends to

continue pursuing invalidity arguments on an excessive number of prior art references. With this IPR pending, Petitioner insisted on adding provisions to the parties' proposed scheduling order that show that Petitioner intends to pursue significant prior art defenses in the District Court Proceeding. Specifically, Petitioner added provisions to the proposed schedule for deadlines to "identify no more than 40 prior art references" and then to reduce those to "12 primary references and 12 secondary prior art references." Ex. 2010 (Dkt. No. 42-2, Proposed Scheduling Order as filed) at 2-3; Ex. 2011 at 2-3 (showing Petitioner's redline to Proposed Scheduling Order before the parties' joint filing that became Ex. 2010). Thus, it is apparent that Petitioner intends to go forward with a full defense of prior art invalidity regardless of the outcome of this IPR.

Petitioner's unwillingness to limit the prior art in the District Court Proceeding was also apparent during the district court's hearing that addressed Petitioner's motion to stay. Even with the prospect of a stay hanging in the balance, Petitioner would not articulate the contours of any specific stipulation that it would be willing to enter (*Sotera* or otherwise) in order to limit the duplicative efforts of the district court and the PTAB, instead hedging by naming stipulations others have used while declining to commit itself to any particulars. *See* Ex. 2012 (Jul. 28, 2025, Hearing Tr.) at 12:3-12; 13:16-22. In fact, Petitioner has yet to file any stipulation thus far, which further weighs in favor of discretionary denial even though the

District Court Proceeding is stayed. *See HS Hyosung* at 2-3 ("Petitioner has not filed a stipulation to address concerns of duplicative efforts and potentially conflicting decisions should the stay be lifted. On balance, the circumstances in these proceedings favor discretionary denial.").[4]

Petitioner first preferred to litigate validity before the district court. When that avenue failed, Petitioner switched to IPRs. And if the IPRs fail, Petitioner intends to continue pursuing invalidity in the District Court Proceeding. Thus, Petitioner is using the *inter partes* review process as one of its many litigation defenses against Patent Owner, not as a true alternative to litigation. This weighs in favor of discretionary denial.

E. The weakness of the validity challenges in the Petition favors exercising discretion.

As discussed in the Process Memorandum, the strength of the merits may be

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[4] Even if Petitioner files a stipulation, it is unlikely to render this IPR a true alternative to the District Court Proceeding because other prior art, like prior art systems, will likely remain at issue. *See Samsung Electronics Co., Ltd. v. SiOnyx, LLC*, IPR2025-00064, Paper 15 (Jun. 6, 2025) at 14 ("Petitioner's Stipulation does not moot these district court invalidity contentions because these contentions could not have been asserted in the Petition (because these involve product art but *inter partes* review can only be based on 'prior art consisting of patents or printed publications (35 U.S.C. § 311(b))).'")

considered as a relevant consideration for discretionary denial. Process Memorandum at 2. The weakness of Petitioner's unpatentability challenge weighs in favor of denial.

The Petition includes three grounds, all of which rely on obviousness to attempt to show invalidity. *See, e.g.,* Petition at 1. Petitioner's failure to identify any anticipatory art serves as an initial indication of the weaknesses of the Petition's merits.[5]

The Petition is also weak because it often fills holes in the references themselves with declarative statements about "common sense," what "would be obvious to a POSITA," and expert testimony. Director Stewart has explained that doing so violates 37 C.F.R. § 42.104(b)(4), which requires that "[t]he petition must specify where each element of the claim is found in the prior art patents or printed publications relied upon." Ex. 2013, Memorandum of July 31, 2025 from Acting Undersecretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office, at 1 (emphasis added). Director Stewart explained that "enforcement of Rule 104(b)(4) means that applicant admitted prior art (AAPA), expert testimony, common sense, and other evidence that is not 'prior

[5] Patent Owner anticipates that its preliminary response will identify other specific weaknesses in the Petition.

art consisting of patents or printed publications' (collectively, 'general knowledge') may not be used to supply a missing claim limitation." *Id.* (emphasis added).[6] The PTAB has further explained that the "extent of the petition's reliance on expert testimony" may be relied upon by the director.[7]

The Petition in this case relies extensively on expert testimony (appearing in the Petition as citations to Ex. 1003), the purported knowledge of a POSITA, and common sense to fill holes in the references themselves. *See, e.g.,* Petition at 31, 32, 41-42, 43, 53, 59, 61, 74, 76, 78, 83, 84, 95, 98, and 99-100. The following example from the Petition includes all three flaws:

> Based on this disclosure, the knowledge of a POSITA, and common sense, a POSITA would have been motivated and found it obvious to "*incorporat[e]*" information about the user's touch input ("*indication of which one of the several messages*") into the new message transmission so that the device of the other party

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[6] While the USPTO has indicated that it will resume enforcement of Rule 42.104(b)(4) for petitions filed on or after September 1, 2025, the fact that the Petition violates Rule 42.104(b)(4) underscores its weakness.

[7] See Interim Director Discretionary Process at I.B, available at https://www.uspto.gov/patents/ptab/interim-director-discretionary-process (last accessed on Sep. 17, 2025).

> receiving such message can correlate that message to the message it is responding to, including, e.g., via adding the new message to the list or chat area that corresponds to the particular conversation or message. EX1003, ¶113; . . . .

Petition at 43 (underlining added) (additional citations omitted).

An additional example also includes all three flaws (reliance on a POSITA, common sense, and expert testimony to fill holes in the reference):

> Based on Oh's disclosure and common sense, it would be obvious to a POSITA that, in the situation where a user enters a new message without first selecting the message to which it responds, the user may realize after the fact that she/he needs to correlate or link the messages, e.g., by selecting a message with a touch input ("*the first indication*"). … EX1003, ¶161.

Petition at 76 (emphasis added) (additional internal citations omitted).

The Petition's reliance on declarative statements about "common sense," what "would be obvious to a POSITA," and expert testimony demonstrates its weakness, which in turn supports discretionary denial.

IV. CONCLUSION

As explained above, due to settled expectations. the fact that this IPR is not a true alternative to the District Court Proceedings, and the weakness of Petitioner's

arguments, Patent Owner respectfully requests that the Director exercise her discretion to deny institution of this *inter partes* review.

Dated: September 18, 2025

Respectfully submitted,

/s/ Thomas C. Cecil
Thomas C. Cecil (lead counsel)
Registration No. 77,598
CECIL LAW PLLC
10300 N. Central Expressway
Suite 290
Dallas, TX 75231
Telephone: (214) 945-4723
Email: tom@ceciltechlaw.com

Richard C. Weinblatt (back-up counsel)
Registration No. 45,500
STAMOULIS & WEINBLATT LLC
800 N. West Street, Third Floor
Wilmington, DE 19801
Telephone: (302) 999-1540
Email: weinblatt@swdelaw.com

Attorneys for Patent Owner

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Request for Discretionary Denial of Institution was served via email on September 18, 2025, to Lead and Back-up Counsel for Petitioner at the service email address provided in Petitioner's Mandatory Notices:

Philip W. Woo
PWWoo@duanemorris.com

Monte T. Squire
MTSquire@duanemorris.com

D. Stuart Bartow
DSBartow@duanemorris.com

Paul Belnap
PHBelnap@duanemorris.com

/s/ Thomas C. Cecil
Thomas C. Cecil
Registration No. 77,598
CECIL LAW PLLC
10300 N. Central Expressway
Suite 290
Dallas, TX 75231
Telephone: (214) 945-4723
Email: tom@ceciltechlaw.com
Attorney for Patent Owner

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this document complies with the page limits set forth in the Interim Director Discretionary Process guidelines, updated Aug. 22,

2025. This document, excluding those portions excluded pursuant to § 42.24(a)(1), contains fewer than 20 pages.

/s/ Thomas C. Cecil
Thomas C. Cecil
Registration No. 77,598