

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

VAMPIRE LABS, LLC,
Patent Owner.

Patent No. 8,358,103

Inter Partes Review No. IPR2025-01215

**PETITIONER'S OPPOSITION TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL OF INSTITUTION**

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Patent Owner's Exhibit List

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I. INTRODUCTION

Discretionary denial is not appropriate for at least three reasons.

First, the *Fintiv* factors weigh in favor of institution and against discretionary denial in this proceeding. The Board recently considered the time-to-trial statistics for Judge Albright and the Western District of Texas; and found discretionary denial of an IPR petition to be “not appropriate” where Judge Albright had scheduled trial for *six months* before the Final Written Decision deadline. (*ClearCorrect Operating, LLC v. Align Tech., Inc.*, IPR2025-00814, Paper 14, 2 (PTAB Aug. 29, 2025).) Here, the scheduled trial date leads the Final Written Decision by only twenty days; the same time-to-trial statistics demonstrate that the current trial date is speculative and unlikely to hold. The litigation is also in its earliest stages. The parties have only just begun briefing claim construction, fact discovery has not begun, and the district court has not yet engaged in substantive analysis of the challenged patent. Further, Petitioner’s commitment to a *Sotera* stipulation minimizes concerns of overlapping issues between the district court and *inter partes* review proceedings.

Second, the parties’ settled expectations weigh against discretionary denial. Patent Owner has no settled expectation of validity. The ’103 patent expired in early 2021, after Patent Owner neglected to pay the maintenance fees, and remained lapsed for over four years—well into the litigation, which began in 2024.

Only when preparing to sue Petitioner in 2024 did Patent Owner attempt to revive the patent—only to *again* neglect to pay the maintenance fees. The '103 patent was not reinstated by the Patent Office until June 2025—six months after the complaint was filed.

Patent Owner also alleges that it contacted Petitioner in 2009 regarding the claimed technology. But Patent Owner waited until late 2024 to file suit. Because Patent Owner repeatedly failed to maintain its patent, and delayed fifteen years from first contacting Petitioner regarding the claimed technology before filing suit, Patent Owner's assertion of settled expectations rings hollow. In a recent decision, the Board declined discretionary denial where the patent owner had waited only eleven years after such contact. (*See Apple Inc. v. Allani*, IPR2025-00856, Paper 10, 3 (PTAB Sept. 4, 2025).) Here, as in *Allani*, Petitioner had a settled expectation of non-enforcement, based on Patent Owner's conduct.

Third, the Petition would address specific material errors made by the Office during the prosecution of U.S. Patent No. 8,358,103. The Examiner incorrectly applied an early priority date, because he failed to recognize that the claims recite new matter that is not supported by the parent and provisional applications. Because of this new matter, the '103 patent should have been evaluated from its 2009 filing date—not the earlier 2008 priority date that was applied. Examination was also cursory: the application was allowed after only a single office action. A

proper search and examination would have revealed that the prior art, including references presented in the Petition, teaches the same limitations that the Examiner relied on to find patentability.

II. FACTUAL BACKGROUND

The '103 patent relates to battery chargers for devices, such as mobile phones. The specification explains that chargers may suffer from “vampiric” power consumption that can occur while the charging unit is coupled to an alternating current (AC) power source. (EX1001, 1:26-62.) The '103 patent aims to solve this problem by automatically coupling the charging unit and the AC power source to charge a battery when a battery is below a charging threshold, and then decoupling once a desired charging state is reached. (EX1001, 1:26-62, 2:67-3:51.)

Patent Owner alleges that it met with Petitioner in 2009 “to present the technology of the '103 Patent.” (EX1015, 14.) But the application was pending at the time, and the '103 patent did not issue until four years later, on January 22, 2013. (EX1001.) The '103 patent then expired on January 22, 2021, because Patent Owner failed to pay the 7.5-year maintenance fee. (EX1016.) After allowing the '103 patent to expire, Patent Owner waited over three-and-a-half years before trying to revive it. (EX1016.) Only a few weeks after petitioning the Office to accept a delayed maintenance-fee payment, on November 12, 2024,

Patent Owner sued Petitioner in the Western District of Texas, asserting the '103 patent. (EX1017.) But even after filing that complaint, Patent Owner again neglected to pay the subsequent 11.5-year maintenance fee, prompting yet another petition by the Patent Owner. (EX1018, EX1019.) Over six months after Patent Owner filed its complaint, the Office eventually reinstated the '103 patent on June 3, 2025. (EX1016.) Petitioner filed a petition for *inter partes* review on June 27, 2025. (Paper 2.)

III. ARGUMENT

A. The *Fintiv* Factors Favor Institution

1. Factor 1: The Likelihood of a Stay Is Neutral

Patent Owner claims that a stay of the district court litigation before Judge Albright is “unlikely.” (Paper 7, 6.) But the Board has previously “decline[d] to speculate on the likelihood of Judge Albright entering a stay after institution,” finding this factor neutral. (*See W. Digit. Corp. v. Kuster*, IPR2020-01391, Paper 10, 8-9 (PTAB Feb. 16, 2021); *see also Allani*, IPR2025-00856, Paper 10, 2.)

Accordingly, this factor is neutral.

2. Factor 2: The Parallel Trial Date Weighs Against Discretionary Denial

This factor weighs against discretionary denial because the trial date in the parallel district court litigation before Judge Albright in the Western District of Texas is likely to occur after the Board would issue the Final Written Decision in

the instant *inter partes* review proceeding. Under the current schedule in the district court, trial is scheduled for December 7, 2026, ***less than one month*** before the Board would issue its Final Written Decision on December 27, 2026.

(EX2001, 5.) But Judge Albright’s current time-to-trial statistics and caseload demonstrate that the trial date in the district court proceeding will likely be months ***after*** the Board issues the Final Written Decision.

For the year ending June 2025, the median time-to-trial in the Western District of Texas is 32.8 months. (EX1020, 37.) Judge Albright’s increasing median time-to-trial in patent cases over the last two years aligns with the district-wide statistics. For patent trials occurring in 2023, Judge Albright’s median time-to-trial was approximately 29.7 months. (EX1021.) And in 2024, Judge Albright’s median time-to-trial in patent cases was approximately 35.5 months. (EX1022.) Based on this data, trial in the parallel district court litigation would likely be pushed to November 2027, which is almost a year after the deadline for the Final Written Decision in this *inter partes* review proceeding.

The Board recently considered the time-to-trial statistics for the Western District of Texas. In August 2025, the Board declined the patent owner’s discretionary denial request, finding it inappropriate where “the time-to-trial statistics suggest that the trial will not begin until” after the expected date of the Final Written Decision—including where Judge Albright had scheduled trial for a

date six months before the Final Written Decision date. (*ClearCorrect*, IPR2025-00814, Paper 14, 2.) This case is even more persuasive: trial is currently set for only twenty days before the expected date of the Final Written Decision, and the time-to-trial statistics suggest that trial will occur almost a year after the Final Written Decision.

Judge Albright's increasing caseload also supports that trial likely will not begin as scheduled on December 7, 2026. In January 2025, the Chief Judge of the Western District of Texas assigned Judge Albright 40% of the Austin Division docket, in addition to his previous assignment of 100% of the Waco Division cases. (EX1023, 3.) This recent expansion of Judge Albright's caseload is not captured in the time-to-trial statistics cited above and will undoubtedly increase his median time to trial. Even before the influx of new Austin Division cases, Judge Albright's heavy caseload often resulted in delayed proceedings because of trial conflicts. (*See Motion Offense, LLC v. Google LLC*, No. 6:21-cv-514-ADA, Dkt. 68 (W.D. Tex. June 10, 2022) ("Due to a scheduling conflict with a trial, the Court hereby vacates the remaining scheduled deadlines in this case."); *IOENGINE, LLC v. Roku Inc.*, No. 6:21-cv-1296-ADA, Dkt. 30-6 (W.D. Tex. Sept. 19, 2023) (notifying the parties that "due to the Court's schedule, the trial will have to be reset to the coming spring.")).) Because only twenty days separate the currently scheduled trial date and the anticipated Final Written Decision date, and Judge

Albright’s caseload and time-to-trial statistics indicate that trial will likely be delayed by much more, this factor weighs against discretionary denial.

3. Factor 3: The Investment in Parallel Proceeding Weighs Against Discretionary Denial

Investment in the parallel proceeding weighs against discretionary denial because the parties have invested little in the district court litigation thus far. The district court litigation is in its very early stages. Fact discovery will not begin for a few more months. (EX2001, 3.) The parties are at the start of the claim construction briefing process, and the district court has not yet grappled with any patent-specific issues. (EX2001, 2.) The court has not yet been asked to consider any dispositive motions on the prior art for the ’103 patent that would overlap with the *inter partes* review proceeding. This factor weighs against exercising discretion to deny institution where “much more work remains [in the district court litigation], including, expert reports, expert discovery, expert depositions, and pretrial motions and disclosures.” (*See Bio-Rad Lab’s, Inc. v. Cal. Inst. of Tech.*, IPR2024-01451, Paper 11, 10 (PTAB Mar. 27, 2025); *see also Sand Revolution II, LLC v. Continental Intermodal Grp. – Trucking LLC*, IPR2019-01393, Paper 24, 10-11 (PTAB June 16, 2020) (“[M]uch work remains in the district court case as it relates to invalidity: fact discovery is still ongoing, expert reports are not yet due, and substantive motion practice is yet to come.”).)

Patent Owner asserts that the district court litigation “progressed considerably” during the first nine months pending before the Western District of Texas. (Paper 7, 7.) Not so. The parties have only briefed one table-setting issue to date: whether Patent Owner’s complaints should be dismissed for failure to state a claim. (EX1024, EX1025.) The district court has yet to reach a decision on the merits of this issue—Petitioner’s first two motions to dismiss were mooted by the filing of Patent Owner’s first and second amended complaints, and briefing only just concluded for Petitioner’s third motion to dismiss. (EX1026, EX1027, EX1028.) Claim construction briefing is in its early stages, and fact discovery has not begun. The district court has not yet invested time to resolve the dispute. Because neither the parties nor the district court have expended significant resources litigating the parallel district court proceeding, this factor weighs against discretionary denial.

4. Factor 4: The Overlap Between Petition and Parallel Proceeding Weighs Strongly Against Discretionary Denial Because Petitioner Agreed to *Sotera* Stipulations

Petitioner committed to a full *Sotera* stipulation, which requires that if the Board institutes *inter partes* review, “Petitioner will not advance in the co-pending district court proceeding . . . : (i) the specific grounds raised in this proceeding; or (ii) any other ground that reasonably could have been raised in this proceeding.” (Paper 6, 1.) The *Sotera* stipulation “weighs strongly in favor of not exercising

discretion to deny institution” because it “mitigates any concerns of duplicative efforts between the district court and the Board.” (*Sotera Wireless, Inc., v. Masimo Corp.*, IPR2020-01019, Paper 12 at 19 (PTAB Dec. 1, 2020).)

Patent Owner argues that the *Sotera* stipulation does not resolve the overlap between the district court litigation and the *inter partes* review proceeding because Petitioner might rely in district court on a combination of prior art systems and prior art presented in the *inter partes* review. (Paper 7, 9.) Patent Owner claims that this would present duplicative efforts before the district court and Board. (*Id.*) But Patent Owner’s arguments are purely speculative—it has no basis to assume that Petitioner would “simply apply system art . . . to one trivial limitation and then apply the same prior art references from this IPR to the remaining limitations.” (*Id.*) Further, Patent Owner ignores Board precedent determining that this factor weighs strongly against discretionary denial because it “obviate[s] much, if not all, of any potential overlap between the issues in the proceeding and the district court proceeding.” (*Liberty Energy Servs. LLC v. U.S. Well Servs., LLC*, IPR2025-00139, Paper 14, 13-14 (PTAB June 11, 2025); *see also Stingray Grp. Inc. v. Hernandez-Mondragon*, IPR2025-00349, Paper 19, 7-8 (PTAB June 13, 2025) (finding this factor weighs against discretionary denial where Petitioner committed to a *Sotera* stipulation); *Kubota N. Am. Corp. v. Vermeer Mfg. Co.*, IPR2025-00170, Paper 15, 13 (PTAB June 10, 2025) (same).)

5. Factor 5: Whether the Parties Are the Same Is Neutral

The parties before the Board in this *inter partes* review proceeding and in the parallel district court litigation are the same. Where the parties are identical between two parallel proceedings, the Board has held that this factor is “neutral or, at most, weighing slightly in favor of exercising discretion to deny institution.” (*Snap, Inc. v. SRK Tech. LLC*, IPR2020-00820, Paper 15, 16 (PTAB Oct. 21, 2020); *see also Shenzhen Root Tech. Co., Ltd. v. Chiaro Tech. Ltd.*, IPR2024-01296, Paper 9, 19-20 (PTAB Feb. 25, 2025) (finding this factor neutral where parties are the same in both proceedings).) Even if this factor weighs in favor of discretionary denial, this factor is not dispositive, and it should not outweigh the other factors favoring institution. (*See, e.g., Cisco Sys., Inc. v. WSOU Invs.*, IPR2025-00188, Paper 10, 17, 23 (PTAB June 13, 2025) (instituting *inter partes* review even though the same parties were involved in the proceedings before the Board and the district court).)

6. Factor 6: Other Considerations, Including the Strength of the Petition, Weigh Strongly Against Discretionary Denial

Factor 6 weighs heavily against discretionary denial because the Petition provides strong arguments on the merits of the ’103 patent’s validity and addresses material errors made by the Patent Office during prosecution. *See infra* Section III.C. Patent Owner’s request for discretionary denial does not address the merits of the Petition at all. (Paper 7, 10.) Instead, Patent Owner merely asserts

that the Petition lacks merit and concludes that the other *Fintiv* factors outweigh any merit that might exist. (*Id.*, 10-11.) But here, no *Fintiv* factor weighs against discretionary denial. All factors are neutral or point in favor of institution.

Under these circumstances, discretionary denial is not appropriate. (*See CrowdStrike, Inc. v. Open Text Inc.*, IPR2023-00289, Paper 7, 17 (PTAB July 21, 2023) (declining to exercise discretion to deny the petition where “no *Fintiv* factor weighs in favor of exercising our discretion to deny institution, while two factors weigh against, and four factors are neutral”).)

B. Settled Expectations of the Parties Weigh Against Discretionary Denial

The Board should deny Patent Owner’s request for discretionary denial in view of the expectations (or lack thereof) of the parties. (*See* USPTO “Interim Processes for PTAB Workload Management,” March 26, 2025, 2 (“relevant considerations” for discretionary denial may include “[s]ettled expectations of *the parties*”) (emphasis added).)

1. Patent Owner Has No Settled Expectations Because It Let the Patent Lapse for Over Four Years

After allowing the ’103 patent to expire, Patent Owner could not have maintained any settled expectation of validity. Although the ’103 patent issued in 2013, it remained lapsed for over four years between 2021 and 2025. (EX1016.) In January 2021, the ’103 patent expired after Patent Owner failed to pay the 7.5-

year maintenance fee. (EX1018, 2.) Only in October 2024, while preparing to file its complaint against Petitioner, did Patent Owner finally petition to accept delayed payment of the maintenance fee. (EX1018, 3.) But in January 2025, after the complaint was filed, Patent Owner again failed to meet its maintenance-fee obligations—this time, for the 11.5-year fee. (EX1018, 3.) Patent Owner’s petition was dismissed, and Patent Owner was forced to file a second petition—more than four months after its second non-payment—to accept delayed payment of the maintenance fees. (EX1019.) The Office eventually reinstated the ’103 patent on June 3, 2025. (EX1016, 2.)

During the four-plus-year lapse in the term of the ’103 patent, Patent Owner could not have had any settled expectation because the patent—through Patent Owner’s own inaction—was not in effect at that time. The ’103 patent was not reinstated by the Patent Office until June 3, 2025—six months *after* the district court proceeding was filed and less than one month before Petitioner filed the petition for *inter partes* review of the ’103 patent. Patent Owner’s repeated disregard for its patent maintenance obligations, even after filing suit, is inconsistent with any expectation of the patent’s validity.

Patent Owner argues that because patent documents related to the ’103 patent were cited during the prosecution of one of Petitioner’s patents, Patent Owner has a settled expectation of validity of the ’103 patent based on Petitioner’s

alleged prior notice. (Paper 7, 12-13.) U.S. Patent Publication No. 2010/0001685, which later issued as the '103 patent, and U.S. Patent No. 8,232,775,¹ which is the parent of the '103 patent, were both cited during the prosecution of U.S. Patent No. 8,575,917, assigned to Petitioner. (EX2003, 1-2.) But the '685 publication and the '775 patent were two references among thirty-three cited during the prosecution of the '917 patent. (EX2003, 1-2.) And the '917 patent is just one of nearly 2,500 U.S. patent applications filed by Petitioner in 2009. Patent Owner's assumption that Petitioner had the opportunity to contemplate the validity of the '103 patent based on the Examiner's citation to the published application and a related patent is farfetched.

2. Petitioner Had a Settled Expectation of Non-Enforcement

Instead, it is Petitioner who had a settled expectation of non-enforcement based on the January 2021 expiration of the '103 patent, and the Patent Owner's years-long failure to revive it. The Board has declined to exercise discretionary denial where "the challenged patent expired almost four years ago due to non-

¹ Like the '103 patent, the related '775 patent cited during the prosecution of Petitioner's '917 patent expired on October 5, 2020, for failure to pay maintenance fees. (EX1002, 6 (applicant admitting that the '775 patent expired for failure to pay maintenance fees).)

payment of maintenance fees,” as here, reasoning that the petitioner “expected non-enforcement of the challenged patent” based on the non-payment. (*Globus Med., Inc. v. Spinelogik, Inc.*, IPR2025-00225, Paper 8 at 2 (PTAB June 12, 2025); *cf. Allani*, IPR2025-00856, Paper 11, 3 (PTAB Sept. 5, 2025) (“Patent Owner did not assert the challenged patents against Petitioner until after they expired.”).) Here, too, the Board should deny Patent Owner’s request for discretionary denial in view of Petitioner’s settled expectations.

Moreover, Petitioner had no reason to challenge the validity of the ’103 and ’775 patents after the alleged 2009 meeting between Petitioner and Patent Owner. According to Patent Owner’s complaint filed in the parallel district court proceeding, “[i]n 2009, [Patent Owner] met in person with Mr. Jeff Terlizzi and Mr. Jesse Dorogusker of [Petitioner] to present the technology of the ’103 Patent at [Petitioner]’s offices.” (EX1015 ¶ 35.) But in the *fifteen years* since this alleged meeting, Patent Owner has not enforced the ’103 patent against Petitioner. To the extent Petitioner’s awareness of the ’103 patent through that meeting is relevant, Patent Owner’s conduct only reinforced Petitioner’s expectation of non-enforcement of the ’103 patent and its family.² (*See Allani*, IPR2025-00856, Paper

² Petitioner disagrees that the alleged 2009 meeting, which occurred four years before the ’103 patent issued, constitutes notice of the ’103 patent. *SynQor, Inc. v.*

10, 2 (finding discretionary denial not appropriate where the challenged patents were expired and patent owner did not file suit until eleven years after it first notified petitioner of the challenged patents).)

C. Institution of Petitioner’s *Inter Partes* Review Petition Is Appropriate Because the Patent Office Erred During Prosecution

PTAB review of the ’103 patent is warranted, and discretionary denial is inappropriate, because the Office committed specific material error during the patent’s prosecution. (*Microsoft Corp. v. Partec Cluster Competence Ctr. GmbH*, IPR2025-00318, Paper 9, 3 (PTAB June 12, 2025) (“it is an appropriate use of Office resources to review the potential error.”) The Examiner did not apply the correct priority date, so his search for prior art was underinclusive and incorrectly omitted prior art from after July 4, 2008. Further, even within this limited universe of prior art, examination was cursory: Examiner allowed the application after issuing only a single office action, and considering only eight prior art references.

Artesyn Techs., Inc., 709 F.3d 1365, 1379 (Fed. Cir. 2013) (inducement requires “actual ‘knowledge of the existence of the patent that is infringed.’”)(citation omitted); *See Billjco, LLC v. Apple Inc.*, 583 F. Supp. 3d 769, 776 (W.D. Tex. 2022) (Albright J.) (holding no pre-suit knowledge of asserted patent based on pre-issuance notification letter).

First, the Examiner failed to appreciate that Appl. No. 12/511,069, which issued as the '103 patent, is a continuation-in-part that introduced and claimed new matter not found in any of the other applications in its chain of priority. (EX1007 ¶ 23.) A patent can be entitled to the benefit of an earlier application only if every limitation of the claim is supported by the earlier application. (*Paice LLC v. Ford Motor Co.*, 881 F.3d 894, 906 (Fed. Cir. 2018).) Here, all challenged claims of the '103 patent require a monitoring module to determine when a target device battery is below a charging threshold while using power *from a supplemental power source*. (EX1001, claims 1-14.) But neither the provisional applications nor the parent application discloses a supplemental power source. (EX1003-EX1006; EX1007 ¶ 23). Similarly, some of the challenged claims also require a “USB module” or an “opto-coupled relay.” (EX1001, claims 7, 11, 14.) It was not until the filing of the '069 application on July 29, 2009, that a “supplemental power source,” “USB module,” or “opto-coupled relay” were first disclosed. (Exs. 1003-1006; EX1007 ¶ 23.) Because these claim limitations were not disclosed in the provisional applications or parent applications, the '103 patent is not entitled to the July 4, 2008, priority date applied by the Examiner.

The Examiner erred by failing to fully analyze the disclosures of the parent applications, applying an incorrect priority date of July 4, 2008, and evaluating the patentability of the '103 patent only as of that date. Thus, the Examiner failed to

consider the full scope of prior art, *i.e.*, based on the '103 patent's actual July 29, 2009, priority date.

Second, during the prosecution of the '103 patent, the Examiner erred by not finding and considering material prior art, including the references raised in the Petition. The prosecution of the '103 patent consisted of a single Office Action. (EX1002, 39-51.) After an Examiner's Amendment to the claims to recite highly conventional elements—a “separation module . . . comprised of a relay switch” and “at least one of a transformer to inductively generate an electric current, a rectification circuit, and a voltage regulation circuit”—a Notice of Allowance was issued. (EX1002, 28-33.) The Examiner determined that the '103 patent was allowable after considering only *eight* references. (EX1002, 52, 66-67.) None of the references raised in the Petition was cited during prosecution.

In the Notice of Allowance, the Examiner determined that two claim elements were missing from the prior art: (1) “an activation module to automatically couple the inductive power apparatus and an alternating current power source when a power level of the target device battery is below the charging threshold,” and (2) “a separation module to automatically decouple the inductive power apparatus and the alternating current power source when a desired charging state of the target device battery is observed,” where “the separation module . . . compris[es] a relay switch.” (EX1002, 28-33.) But as shown in the Petition, the

Examiner was mistaken: *all* limitations of the challenged claims are met by the prior art, properly considered.

Instituting the Petition would permit the Board to correct this defective examination process. As explained by Petitioner's expert, Dr. Mike Chen, the references cited in the Petition teach the limitations that the Examiner failed to locate in the prior art. (EX1007.) As one example, U.S. Patent No. 5,734,254 ("Stephens") discloses both of the elements that the Examiner concluded were missing. With respect to the "activation module," Stephens describes a controller that controls the coupling between the primary transformer winding and an AC input. (EX1009, 1:64-2:19, 3:14-23, 3:50-4:14, 6:22-25, Fig. 1.) The controller 50 disclosed in Stephens can cause the power converter or power selector to automatically "discontinue charging once a full charge is reached and sustained." (EX1009, 3:16-26, 1:64-2:13, 4:7-14.) A POSITA would understand Stephens to teach that the controller could cause the power converter or power selector to automatically charge the battery when the battery's power level is below the charging threshold. (EX1007 ¶¶ 49-50.)

Stephens also discloses the "separation module" limitation. Stephens teaches a system in which, when a battery is charged to the threshold voltage, the controller signals to the power converter or power selector to automatically "discontinue charging once a full charge is reached and sustained." (EX1009,

3:16-26, 1:64-2:13, 4:7-14; EX1007 ¶¶ 52-53.) A POSITA would understand that the power selector, which is coupled between the primary transformer winding and an AC input, would discontinue charging by decoupling the primary transformer winding and the AC input. Stephens discloses that the power converter can include decoupling relays. (EX1009, 3:34-40; EX1007 ¶ 53.) A POSITA would further understand that the power selector could also include decoupling relays. (EX1007 ¶ 54.)

Because the Examiner failed to properly search for and consider the prior art, including references disclosing the limitations that the Examiner believed to confer patentability, the Patent Office erred in allowing the '103 patent. Institution is appropriate here to review this error. (*See Microsoft*, IPR2025-00318, Paper 9, 3 (finding that discretionary denial is not appropriate where the examiner overlooked material prior art).)

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Director decline to exercise discretion to deny institution and refer the Petition to a panel to decide whether to institute based on the merits.

IPR2025-01215

Dated: October 17, 2025

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I hereby certify that the attached PETITIONER'S OPPOSITION TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION was served on the below date via e-mail (by agreement) to the following counsel of record for the Patent Owner:

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