

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

**SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,
FOSSIL GROUP, INC.,
FOSSIL STORES I, INC.,
FOSSIL PARTNERS, L.P., AND
OURA HEALTH OY, AND
ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD.**

Petitioners,

v.

OMNI MEDSCI, INC.,

Patent Owner.

Case IPR2025-01249
Patent No. 9,055,868

**[CORRECTED] PETITIONERS' OPPOSITION TO PATENT OWNER'S
DISCRETIONARY DENIAL BRIEF**

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EXHIBIT LIST

Exhibit No.	DESCRIPTION
1001	U.S. Patent No. 9,055,868 (“’868”)
1002	File History of U.S. Application No. 17/078,771 (“’868FH”)
1003	Declaration of Brian Anthony in Support of Petition for <i>Inter Partes</i> Review of U.S. Patent No. 9,055,868 (“Anthony”)
1004	U.S. Patent Pub. No. 2003/0208113 (“Mault”)
1005	JP Publication No. 2000074829A (Certified English Translation) (“Mitsui”)
1006	U.S. Patent No. 5,891,022 (“Pologe”)
1007	U.S. Patent No. 6,526,300 (“Kiani”)
1008	U.S. Patent No. 5,377,674 (“Kuestner”)
1009	U.S. Patent No. 4,244,045 (“Nosu”)
1010	U.S. Patent No. 6,067,463 (“Jeng”)
1011	U.S. Patent No. 6,049,727 (“Crothall”)
1012	U.S. Patent No. 5,660,163 (“Schulman”)
1013	Defendants’ Supplemental Invalidity and Subject Matter Eligibility Contentions, July 18, 2025. <i>Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:24-cv-01070-JRG-RSP (E.D. Tex.)
1014	<i>Omni MedSci, Inc. v. Apple Inc.</i> , 2:18-cv-00134-RWS, Dkt. No. 211 (E.D. Tex. June 24, 2019) (“CC Order”)
1015	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00916, Paper 1 (P.T.A.B. Apr. 10, 2019) (“’533-Pet.”)
1016	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00916, Paper 39 (P.T.A.B. Oct. 14, 2020) (“’533-FWD”)

Exhibit No.	DESCRIPTION
1017	Declaration of Brian Anthony in Support of Apple Inc.’s Petition for <i>Inter Partes</i> Review of U.S. Patent No. 9,651,533 submitted in IPR2019-00916, Ex.1015 (“533-Anthony”)
1018	U.S. Patent No. 6,757,001 (“Allport”)
1019	U.S. Patent No. 6,641,533 (“Causey”)
1020	Second Amended Docket Control Order, June 16, 2025. <i>Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:24-cv-01070-JRG-RSP (E.D. Tex.)
1021	U.S. Patent No. 6,727,930 (“Currans”)
1022	U.S. Patent No. 3,609,475 (“Kaposhilin”)
1023	U.S. Patent No. 7,020,508 (“Stivoric”)
1024	JP Publication No. 2000074829 (Original Japanese Publication)
1025	U.S. Patent No. 6,597,345 (“Hirshberg”)
1026	U.S. Provisional Patent App. No. 60/212,319
1027	Apple Inc. v. Omni Medsci, Inc., No. IPR2021-00453, Paper 1 (P.T.A.B. Jan. 22, 2021) (“484-Pet.”)
1028	Apple Inc. v. Omni Medsci, Inc., No. IPR2021-00453, Paper 22 (P.T.A.B. Aug. 3, 2022) (“484-FWD”)
1029	Reserved
1030	Declaration of Brian Anthony in Support of Petition for Inter Partes Review of U.S. Patent No. 10,517,484 submitted in IPR2021-00453, Ex.1027 (“484-Anthony”)
1031	U.S. Patent No. 5,544,357 (“Huei”)
1032	U.S. Patent No. 4,817,050 (“Komatsu”)
1033	E.F. Schubert, Light-Emitting Diodes (Cambridge Univ. Press, 2nd ed. reprinted 2014)

Exhibit No.	DESCRIPTION
1034	Joseph D. Bronzino, “The Biomedical Engineering Handbook,” (1995)
1035	U.S. Patent No. 5,122,943 (“Pugh”)
1036	U.S. Patent No. 6,661,167 (“Eliashevich”)
1037	U.S. Patent No. 7,001,058 (“Inditsky”)
1038	U.S. Patent No. 6,424,851 (“Berman”)
1039	U.S. Patent No. 9,651,533 (“’533”)
1040	U.S. Patent No. 10,517,484 (“’484”)
1041	Declaration of Jonathan Bradford in Support of Petition for Inter Partes Review of U.S. Patent No. 9,055,868
1042	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01253, Paper 6 (P.T.A.B. Aug. 5, 2025)
1043	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01254, Paper 6 (P.T.A.B. Aug. 5, 2025)
1044	<i>Omni MedSci, Inc. v. Apple Inc.</i> , No. 2021-1229, 2022 WL 2062168 (Fed. Cir. June 8, 2022), ECF No. 69
1045	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2021-00453, Paper 26 (P.T.A.B. Feb. 14, 2025)
1046	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2021-00453, Paper 27 (P.T.A.B. Apr. 11, 2025)
1047	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01250, Paper 1 (P.T.A.B. Aug. 5, 2025) (“’533 Pet.”)
1048	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01251, Paper 1 (P.T.A.B. Aug. 5, 2025) (“’304 Pet.”)
1049	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01252, Paper 1 (P.T.A.B. Aug. 5, 2025) (“’455 Pet.”)
1050	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01253, Paper 1 (P.T.A.B. Aug. 5, 2025) (“’790 Pet.”)

Exhibit No.	DESCRIPTION
1051	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01254, Paper 1 (P.T.A.B. Aug. 5, 2025) (“’475 Pet.”)
1052	Email correspondence between counsel for Fossil to counsel for Omni
1053	<i>Apple Inc. v. Omni MedSci, Inc.</i> , No. IPR2020-00175, Paper 26 (P.T.A.B. June 14, 2021)
1054	<i>Omni MedSci, Inc. v. Apple Inc.</i> , No. 2021-2213, 2022 WL 2062167 (Fed. Cir. June 8, 2022), ECF No. 47
1055	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2020-00029, Paper 7 (P.T.A.B. Apr. 22, 2020)
1056	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00914, Paper 13 (P.T.A.B. Nov. 6, 2019)
1057	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00917, Paper 14 (P.T.A.B. Oct. 17, 2019)
1058	U.S. Patent No. 10,874,304 (“’304”)
1059	U.S. Patent No. 11,160,455 (“’455”)
1060	U.S. Patent No. 12,193,790 (“’790”)
1061	U.S. Patent No. 12,268,475 (“’475”)
1062	Reserved
1063	<i>Cheetah Omni, LLC v. Whoop, Inc.</i> , 6:23-cv-00478, Dkt. No. 7 (W.D. Tex. Sept. 28, 2023)
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1065	<i>Cisco Sys. Inc. v Lionra Techs. Ltd.</i> , No. IPR2024-01281, Paper 2 (P.T.A.B. Aug. 26, 2024)
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1068	Joint Mot for Preferential Trial Setting, <i>Multimedia Techs. Ltd. v LG Elecs.</i> , 2:22-cv-00494-JRG-RSP, Dkt. No. 273 (E.D. Tex. Mar. 18, 2025)
1069	Omni's First Set of Common Interrogatories to Defendants (2025-05-12)
1070	<i>Reserved</i>
1071	OnePlus Waiver of Service, <i>Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:24-cv-01070-JRG-RSP, Dkt. No. 70 (E.D. Tex. June 27, 2025)
1072	U.S. Patent No. 9,055,868 Prior Art Search Report
1073	2025-10-31 - Omni's Local P.R. 4-2 Claim Construction Disclosures
1074	<i>Omni MedSci, Inc. v. Apple Inc.</i> , 4:20-cv-00563, Dkt. No. 52 (N.D. Cal. Dec. 06, 2021)
1075	Declaration of James Nowell in Support of Petitioners' Opposition to Patent Owner's Discretionary Denial Brief

TABLE OF ABBREVIATIONS

Exhibit No.	DESCRIPTION
Challenged Claims	Claims 7-11, 13-14 of the '868
IPR	<i>Inter Partes</i> Review
Petitioners	Petitioners Samsung Electronics Co. Ltd., Samsung Electronics America Inc., Fossil Group, Inc., Fossil Stores I, Inc., Fossil Partners, L.P., Oura Health Oy, and OnePlus Technology (Shenzhen) Co., Ltd.
PO	Patent Owner
Pet.	<i>Samsung Electronics Co., Ltd. et al. v. Omni MedSci, Inc.</i> , No. IPR2025-01249, Pap. 1 (PTAB Aug. 5, 2025)
DD Br.	<i>Samsung Electronics Co., Ltd. et al. v. Omni MedSci, Inc.</i> , No. IPR2025-01249, Pap. 11 (PTAB Aug. 5, 2025)
Texas Case	<i>Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:24-cv-01070-JRG-RSP (E.D. Tex.)
FWD	Final Written Decision
533-FWD	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00916, Paper 39 (PTAB Oct. 14, 2020)
484-FWD	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2021-00453, Paper 22 (PTAB Aug. 3, 2022)
Prior IPRs	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00916 (PTAB) and <i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2021-00453 (PTAB)
'868	U.S. Patent No. 9,055,868
'533	U.S. Patent No. 9,651,533

Exhibit No.	DESCRIPTION
'304	U.S. Patent No. 10,874,304
'455	U.S. Patent No. 11,160,455
'790	U.S. Patent No. 12,193,790
'475	U.S. Patent No. 12,268,475
'533 Pet	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01250, Paper 1 (P.T.A.B. Aug. 5, 2025)
'304 Pet.	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01251, Paper 1 (P.T.A.B. Aug. 5, 2025)
'455 Pet.	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01252, Paper 1 (P.T.A.B. Aug. 5, 2025)
'790 Pet.	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01253, Paper 1 (P.T.A.B. Aug. 5, 2025)
'475 Pet.	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01254, Paper 1 (P.T.A.B. Aug. 5, 2025)
Mault	U.S. Patent Pub. No. 2003/0208113
Lisogurski	U.S. Patent No. 9,241,676

I. INTRODUCTION

Discretionary denial is not warranted. This is one of six IPRs challenging six patents¹ asserted against Petitioners in the parallel district court proceeding (“Texas Case”).² The vast majority of the limitations in the challenged claims in the six IPRs are identical or substantially similar to those that the Board found unpatentable in prior IPRs challenging related patents.³ The patentability of the challenged claims

¹ U.S. Patent Nos. 9,055,868 (“’868”), 9,651,533 (“’533”), 10,874,304 (“’304”), 11,160,455 (“’455”), 12,193,790 (“’790”), 12,268,475 (“’475”).

² Petitioners filed IPR2025-01249 to -01254 challenging six patents asserted against them in district court. PGR2025-00063 and PGR2025-00064 are alternative and substantively identical to IPR2025-01254 and -01253, respectively. Thus, Petitioners seek to institute only six proceedings. Exs. 1042-1043. Collectively, the six IPRs (and the two alternative PGRs) are referred to as “the IPRs” herein.

³ Apple Inc. previously challenged claims 5, 7-10, 13, 15-17 of the ’533 in IPR2019-00916 and all claims (1-23) of the ’484 in IPR2021-00453 (collectively, “Prior IPRs”). The Board’s unpatentability decision as to all challenged claims of the ’533 (Ex. 1016, “’533-FWD”) was affirmed on appeal (Ex. 1044), and PO did not appeal the Board’s unpatentability decision on claims 1, 2, 7, and 15-23 of the ’484 (Ex. 1028, “’484-FWD”). Upon remand from the Federal Circuit, the Board also found

should be decided by the Board to promote consistency and efficiency.

It is more efficient for the Board to resolve the overlapping validity questions of the six patents-at-issue. **First**, collateral estoppel—which eliminates substantive review of over 70% of all challenged limitations based on the unpatentability decisions in the Prior IPRs—can only be applied by the Board. **Second**, efficiency and consistency will be best promoted by the Board’s review because five (’533, ’304, ’455, ’790, ’475) of the six challenged patents include claim limitations identical or substantially similar to those deemed unpatentable in the Prior IPRs, and both parties agree that the sixth patent (’868) “concern[s] similar subject matter” as the other challenged patents and should be addressed in the same proceeding. **Third**, Petitioners’ *Sotera*-plus stipulation eliminates potential overlap between the IPRs and district court proceedings—minimizing duplicative efforts or inconsistency.

PO’s purported settled expectations in the ’868 do not outweigh these efficiency or consistency interests, and certainly do not favor discretionary denial. Though the ’868 issued in 2015, the fact that PO failed to assert the ’868 until just two months before its expiration in 2023 weighs against PO’s claim of settled

the remaining claims of the ’484 unpatentable. Ex. 1045 at 2-3. PO appealed. Ex. 1046. PO’s litigation against Apple involving the ’484 patent is currently stayed pending that appeal. Ex. 1074.

expectations. And any ostensibly remaining expectations cannot outweigh the efficiency gains from addressing all six substantively similar patents together, with five of those patents sharing the same or substantially similar limitations as those already found to be unpatentable by the Board.

The median time-to-trial also places trial after the final written decision (“FWD”). With the *Fintiv* factors weighing against discretionary denial, these IPRs are uniquely positioned to benefit from the efficiency and consistency gains that only the Board can realize. PO’s request for discretionary denial should be denied.

II. DISCRETIONARY DENIAL IS NOT WARRANTED

A. Efficiency and Consistency Strongly Weigh Against Discretionary Denial

The Director has repeatedly declined to exercise discretionary denial in similar situations to promote the “efficient use of Board resources” and consistency in related proceedings. *See, e.g., Embody, Inc. v. LifeNet Health*, IPR2025-00248, Pap. 13 at 2-3 (Director June 26, 2025) (“it is an efficient use of Board resources to address the related patent” even with strong settled expectations); *POSCO Co., Ltd. v. ArcelorMittal*, IPR2025-00370, Pap. 10 at 3 (Director June 25, 2025) (“It is an appropriate use of Office resources to provide consistency and predictability to the public[.]”). That rationale applies even more strongly here for at least three reasons.

First, collateral estoppel significantly narrows the scope of substantive review, but this efficiency gain can only be realized by the Board. Specifically, out

of 194 limitations challenged across the 6 IPRs, at least 139—over 70%—are identical or substantially similar to those held unpatentable in prior IPRs based on the same grounds presented here. IPR2025-01252, Pap. 1 (“455 Pet.”), 18-20; IPR2025-01250, Pap. 1 (“533 Pet.”), 19; IPR2025-01251, Pap. 1 (“304 Pet.”), 16-18; IPR2025-01253, Pap. 1, (“790 Pet.”) 18-21; IPR2025-01254, Pap. 1 (“475 Pet.”) 19-21. Collateral estoppel precludes PO from relitigating these limitations. *Samsung Elecs. Co., Ltd. v. Netlist, Inc.*, IPR2025-00002, Pap. 17 at 17-24 (PTAB May 15, 2025) (applying collateral estoppel based on FWDs relying on the same ground to find “substantially similar” limitations in related patents obvious).

PO cannot dispute that it would be less work for the Board to resolve the validity issues of the challenged claims. First, the efficiency benefits of collateral estoppel—which precludes review of over 70% of the limitations—can only be realized by institution. The district court cannot apply collateral estoppel based on prior Board unpatentability decisions rendered under a different standard of proof. *See ParkerVision, Inc. v. Qualcomm Inc.*, 116 F.4th 1345, 1361-62 (Fed. Cir. 2024); *Kroy IP Holdings, LLC v. Groupon, Inc.*, 127 F.4th 1376, 1379-81 (Fed. Cir. 2025). And second, as further discussed below, Petitioners’ broad *Sotera*-stipulation eliminates any overlap between the district court and the IPRs, including combinations with prior art systems. IPR2025-01249, Pap. 1 (“Pet.”) at 15.

While PO also argues that the Eastern District of Texas’s model order requires

the narrowing of asserted claims to a maximum of 16, PO has refused to agree to limit its asserted claims. Paper 11 (“DD Br.”), 13-14; Ex. 1052 (Petitioners’ request to narrow claims and prior art, which remains unanswered). Even if PO did, and assuming it asserts one independent claim per patent and a claim for the ’533 (much less than 16 claims), the district court would still have close to 80 limitations⁴ to address, as opposed to fewer than 60 limitations at issue across the six IPRs.

Second, as PO acknowledges, it is more efficient to address these invalidity issues for all six patents before the same tribunal because they “concern similar subject matter.” *See* DD Br. 14. Five of the patents challenged here (’533, ’304, ’455, ’790, ’475) are the same or related to the ’533 and ’484 patents successfully challenged in the Prior IPRs, and all five patents share virtually identical limitations to those rendered unpatentable in the Prior IPRs. ’304 Pet. 16-18; ’455 Pet. 18-20; ’475 Pet. 19-21; ’790 Pet. 18-21. In addition to the previously challenged ’533 and ’484 patents, the Board has also held four other patents in the same family unpatentable or at least reasonably likely to be unpatentable. Exs. 1053-1057. Discretionary denial is not warranted where the Board can more efficiently address

⁴ E.g., ’868 claim 7 (7 limitations); ’533 claim 11 (8 limitations, including independent claim 5); ’304 claim 11 (16 limitations); ’455 claim 1 (14 limitations); ’790 claim 17 (14 limitations); ’475 claim 1 (15 limitations).

the patentability of a patent that is related to one that was deemed unpatentable in a prior IPR. *See, e.g., Embody*, IPR2025-00248, Pap. 13 at 2-3 (“[i]t is an efficient use of Board resources to address the related patent”); *FreightCar America Inc. v. National Steel Car Limited*, IPR2025-01046, Pap. 20 at 3 (Director Oct. 10, 2025) (same); *POSCO*, IPR2025-00370, Pap. 10 at 3 (declining discretionary denial for a child patent to promote “consistency and predictability to the public”); *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Pap. 9 at 2 (Director June 13, 2025) (challenged claims “similar” to those in an “ancestor patent” that Board previously found unpatentable “counseled against discretionary denial”). Thus, having the Board—rather than the district court—address these identical or substantially similar limitations in the IPRs here promotes “efficient use of Board resources” and “consistency and predictability to the public.” *See Embody*, IPR2025-00248, Pap. 13 at 2-3; *POSCO*, IPR2025-00370, Pap. 10 at 3.

Similarly, the sixth patent (’868) at issue in this IPR concerns the same subject matter as the remaining challenged patents—it would thus be “efficient” to address all six patents together even though the ’868 is in a different family.⁵ *See Advanced*

⁵ PO proposes construing “beam” the same way across all patents where the term appears (’868, ’304, ’533) (Ex. 1073), and has asserted all six patents against overlapping products and instrumentalities in the Texas Case. Ex. 2004 at 3-17.

Micro Devices, Inc. v. Concurrent Ventures, LLC, IPR2025-00478, Pap. 10 at 3 (Director Jul. 31, 2025) (“it is an efficient use of Board resources to address the challenged patent” in force for 10 years and unrelated to patents challenged in concurrently-filed IPRs, because “the parallel district court proceeding between Petitioner and Patent Owner involves other patents that have been referred to the Board.”).

Third, Petitioners’ broad *Sotera*-plus stipulation eliminates any overlap with the Texas Case, alleviating any concerns about inefficiency or inconsistency. Petitioners’ stipulation includes two parts: (1) a standard “*Sotera* stipulation,” and (2) an additional stipulation precluding combining any asserted IPR reference with “any other type of prior art” including system art. The stipulation recites:

Petitioners hereby stipulate that, if the PTAB institutes this IPR, Petitioners will not pursue in the Texas Case (1) the specific grounds asserted in this IPR or any ground that was raised or could have been raised in an IPR against the Challenged Claims; or (2) combinations of the prior art asserted in this IPR with any other type of prior art against the Challenged Claims.

Pet. 15; ’533 Pet. 13; ’304 Pet. 12; ’455 Pet. 13; ’790 Pet. 13; ’475 Pet. 14.

PO’s argument that Petitioners’ “*Sotera* stipulation does not ensure that there will be no overlapping issues between an instituted IPR and the Texas Case” (DD Br. 8-9) misses the mark. PO’s purported risk of overlap based on “alleged product

prior art from Covidien, which corresponds to the primary **Lisogurski** reference in the Petition” (*id.*) is likewise unfounded—**Lisogurski** is not in the instant ’868 IPR. Sections 101 and 112 would not cause duplicative efforts or inconsistent rulings (DD Br. 8), as those are beyond the Board’s statutory jurisdiction. 35 U.S.C. §311(b).

PO’s cited cases are also inapposite. DD Br. 9, 12. In *Motorola Sols. v. Stellar, LLC*, IPR2024-01205, Pap. 19 at 3-4 (Director Mar. 28, 2025) and *Samsung Elecs. Co., Ltd., v. Sionyx, LLC*, IPR2025-00064, Pap. 16 at 14-16 (PTAB Jun. 6, 2025), discretionary denial was granted where Petitioner filed a standard “*Sotera* stipulation,” much narrower than Petitioners’ broad stipulation here. In *Samsung Elecs. Co., Ltd. v. Headwater Rsch. LLC*, IPR2025-00482, Pap. 15 at 2 (Director July 24, 2025), the Director’s discretionary denial did not address the stipulation at all. Indeed, a stipulation similar to Petitioners’ has been found to weigh against discretionary denial. See *Shenzhen Tuozhu Technology Co., Ltd. v. Stratasys, Inc.*, IPR2025-00438, Pap. 10 at 3 (Director July 17, 2025) (finding “broad stipulation” precluding combination with system art weighed against discretionary denial).

B. PO’s Claimed Expectations Are Far From Settled

As recent decisions have made clear, the fact that “a patent may have been in force for years but may not have been commercialized, asserted, marketed, licensed, or otherwise applied in a petitioner’s particular technology space” are “non-exclusive examples...that weigh against a patent owner’s claim of settled

expectations.” *Intel Corp. v. Proxense, LLC*, IPR2025-00327, Pap. 12 at 2-3 (Director June 26, 2025). That rationale squarely applies to the ’868—it was not asserted until the eve of its expiration, and that assertion, which was against a non-petitioner third party, was voluntarily dismissed in under three months. Ex. 1063.

Shenzhen is on point. There, the Director declined to exercise discretionary denial for all challenged patents in a set of IPRs even though one of them had been “in force for approximately 10 years”—just like the ’868 patent—because that older patent had not been “commercialized, asserted, marked, licensed, or otherwise applied in petitioner’s particular technology space.” IPR2025-00438, Pap. 10 at 3. For the same reasons, there are no strong settled expectations for the ’868.

PO’s sole basis for its purported settled expectation is Samsung’s alleged knowledge of the ’868 since 2017, with nothing but allegations in its own complaint as support. DD Br. 14-15. Contrary to PO’s allegations, if it truly had settled expectations, it would have asserted these patents years earlier. Indeed, at least some of the accused products launched as early as 2018 (Ex. 1064); yet PO did not assert the ’868 until 2023. *Apple Inc. v. Allani*, IPR2025-00856, Pap. 10 at 3 (Director Sept. 4, 2025) (finding against denial based on PO’s failure to assert the challenged patent for eleven years against the petitioner and until after the patent expired).

Even if PO’s allegations are true, any such settled expectations do not undermine the compelling fact that PO chose not to commercialize the ’868. And

even if some level of settled expectation accrued in the '868, discretionary denial is not warranted because the strong interest in efficiency and consistency outweighs any minimal level of settled expectation that may have developed. *See, e.g., Advanced Micro Devices*, IPR2025-00478, Pap. 10 at 2-3 (it is “an efficient use of Board resources to address the challenged patent” along with unrelated patents in concurrently-filed IPRs because they are asserted in the same district court proceeding, even though the challenged patent was in force for 10 years but allegedly never “commercialized, marked, licensed, or otherwise applied...in Petitioner’s technology space”); *Embodify*, IPR2025-00248, Pap. 13 at 2-3 (declining to exercise discretionary denial for a set of IPRs where one patent did not have settled expectations and the other did, because it was “an efficient use of Board resources to address the related patent” with settled expectations).

C. The Other *Fintiv* Factors Collectively Weigh Against Discretionary Denial

The rest of the *Fintiv* factors collectively weigh against discretionary denial.

1. Factor 1 (Stay) Is Neutral At Best

Fintiv factor 1 “weigh[s] against exercising authority to deny institution” where there is no stay but “the district court has denied a motion for stay without prejudice and indicated to the parties that it will consider a renewed motion ... to stay if a PTAB trial is instituted.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Pap. 11 at 6-7 (PTAB Mar. 20, 2020) (“*Fintiv*”). Here, the district court denied Petitioners’

pre-institution motion without prejudice, finding it “premature.” Ex. 2006. Petitioners are free—and intend—to renew their motion to stay if the Board institutes the IPRs, and it is likely to be granted.⁶ See *e-Watch Inc. v. Apple, Inc.*, No. 2:13-cv-1061-JRG-RSP, 2015 WL 12915668, at *3 (E.D. Tex. Mar. 25, 2015) (holding that the timing of the defendant’s earlier motion to stay weighs in favor of granting the defendant’s “promptly renewed” motion to stay after institution).

As detailed below (*see* §II.C.3), there is still a significant amount of work left in the parallel litigation, including most of fact discovery and claim construction, expert reports and depositions, and dispositive motions—the early phase of the litigation increases the likelihood of a stay. *Fintiv*, IPR2020-00019, Pap. 11 at 9-10. *Markman* is also scheduled for February 13, 2026, after the institution deadline on February 9, 2026. This district court, and Judge Gilstrap in particular, frequently stays proceedings post-institution when the court has not yet conducted a *Markman*. See, e.g., *Broadphone LLC v. Samsung Elecs. Co.*, No. 2:23-CV-00001, 2024 WL 3524022, at *2-3 (E.D. Tex. July 24, 2024) (granting stay prior to *Markman*).

⁶ PO’s statement that Judge Gilstrap has only a 21% grant rate for post-institution motions to stay is misleading, as the cited document indicates a grant rate of 33% for the last two years. DD Br. 4 (citing Ex. 2007). Regardless, PO’s statistics do not specify at what stage of the case these decisions were made. Ex. 2007.

Indeed, the district court has granted stays in cases that have advanced far beyond the instant case. *See SSL Servs., LLC v. Cisco Sys., Inc.*, 2:15-cv-433, 2016 WL 3523871, at *2 (E.D. Tex. June 28, 2016) (granting stay with trial less than three months away); *Stingray Music USA, Inc. v. Music Choice*, No. 16-cv-00586, 2017 WL 9885167, at *2 (E.D. Tex. Dec. 12, 2017) (granting stay after expert report exchange because “a stay might still obviate the need to prepare for trial [on] some or all ... claims, thus reducing the burden ... on the parties and the Court”); *CyWee Grp. Ltd. v. Samsung Elecs. Co.*, 2:17-cv-140, 2019 WL 11023976, at *6-7 (E.D. Tex. Feb. 14, 2019) (granting stay three months prior to scheduled trial date).

PO’s reliance on *Lionra* (DD Br. 4) is misplaced. In fact, as in *Lionra*, “the bulk of this case is still in the future,” such that “this factor weighs in favor of a stay.” *Lionra Techs. Ltd. v. Cisco Sys., Inc.*, No. 2:24-cv-00097-JRG, 2025 WL 1239317, at *3 (E.D. Tex. Apr. 29, 2025). And, unlike the plaintiff in *Lionra*, Petitioners have entered a broad *Sotera*-plus stipulation here, which will simplify the issues in the parallel litigation to a far greater degree than the typical *Sotera* stipulation at issue in *Lionra*. Compare Pet. 15 with Ex. 1065. The ’868 issued in 2015 and was not asserted until right before its expiration. Ex. 1063. Having waited eight years, PO’s concern with “vindicating its patent rights” falls flat.

2. Factor 2 (Trial Date) Does Not Support Discretionary Denial

If this IPR is instituted, the FWD would issue by February 8, 2027. While trial is tentatively scheduled to occur in the Texas Case on August 17, 2026, even PO acknowledges that this date is unlikely to stick given that it is shorter than the “median time to trial” (DD Br. 5). Based on recent data from 2024-2025, the median time to trial in the Eastern District of Texas is almost 26 months, pushing the expected trial date to February 20, 2027 (the complaint was filed December 20, 2024), *after* the expected FWD date. Ex. 1066 at 35 (based on cases filed between 3/31/2024 and 3/31/2025). Though PO argues that the median time to trial is shorter—“637 days” (DD Br. 5)—that is based on outdated data spanning a 10-year period that no longer accurately reflects the increased congestion experienced by the district court. Ex. 2008 (based on cases pending between 10/3/2015 and 10/3/2025).

Indeed, delay is likely in the Texas Case. Judge Gilstrap has currently scheduled twelve other active cases for trial on that same date, which routinely delays trial dates. Ex. 1067; Ex. 1068 at 1 (“This case has been set for trial five times.... The parties have also been notified that other cases are preferentially set ahead of them for the [other] trial settings.”); *BOE Tech. Grp. Co. v. Optronix Scis. LLC*, IPR2024-01130, Pap. 16 at 10 (PTAB Jan. 27, 2025) (factor 2 “neutral or weigh[s] slightly in favor of not exercising... discretion” where Judge Gilstrap “set 10 cases for jury selection on the same day”). Furthermore, the trial date is likely to be even further delayed given the likelihood the district court will grant Petitioners’

renewed motion to stay if the Board grants institution. *See supra* §II.C.1. Thus, factor 2 does not support discretionary denial. *Volkswagen Grp. of Am., Inc. v. Longhorn Automotive Grp. LLC*, IPR2025-01064, Pap. 9 at 2 (Director Oct. 10, 2025) (factor 2 neutral where the scheduled district court trial date preceded the expected FWD date, but the time-to-trial statistics suggested the district court trial would begin after the FWD date); *BOE*, IPR2024-01130, Pap. 16 at 10.

Even if the trial date is not delayed, when “balanced” against the other factors that favor institution, discretionary denial is not warranted. *Home Depot U.S.A., Inc. v. H2 Intellect LLC*, IPR2025-00480, Pap. 11 (Director Sept. 4, 2025) (declining to exercise discretion despite the final written decision due date post-dating the scheduled trial date by 7 months); *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464, Pap. 12 (Director July 16, 2025) (same); *Samsung Display Co. v. Pictiva Displays Int’l Ltd.*, IPR2024-01222, Pap. 12 at 6, 9 (PTAB Mar. 6, 2025) (same).

3. Factor 3 (Parallel Proceeding) Supports Institution

The district court has not made a single substantive ruling regarding any of the six challenged patents. This factor strongly weighs against discretionary denial. *Fintiv*, IPR2020-00019, Pap. 11 at 9-10 (finding no “orders related to the patent at issue in the petition” weighing against discretionary denial).

The parties have invested little into the Texas Case. Fact and expert discovery do not close for almost 5 and 7 months, respectively, no fact or expert deposition has

been taken or scheduled, and no case-dispositive motions have been filed (deadline not until May 11, 2026). Ex. 1020. PO's statement that the parties have exchanged "dozens of interrogatories and hundreds of requests for production" is misleading. DD Br. 6. In actuality, PO has served only four interrogatories, provided no substantive responses to any of Petitioners' interrogatories, and produced only around a hundred documents. Ex. 1069. Claim construction is also in its early phases—the parties have yet to complete claim construction discovery, or file any claim construction briefs. As currently scheduled, *Markman* is set for February 13, 2026—after the Board's institution deadline. And, as discussed above (§II.C.2), the current trial date is also likely to be extended given multiple trials scheduled on the current trial date, further weighing against discretionary denial.

Indeed, the Board has granted institution in cases more advanced than here. *See Samsung*, IPR2024-01222, Pap. 12 at 7 (factor 3 weighs against denial, even after *Markman* because "much remains to be done, including expert discovery"); *SAP Am., Inc. v. Cyandia, Inc.*, IPR2024-01432, Pap. 14 at 8-9 (PTAB Apr. 7, 2025) (factor 3 favors institution even after *Markman* briefing was complete).

PO's assertion that Samsung waited "more than **8 years** to challenge the '868 Patent" (DD Br. 6) is without any support other than its own allegations. *See supra* §II.B. Petitioners were diligent in preparing and filing the IPRs. PO served its infringement contentions on March 12, 2025, which were then amended on May 9,

2025. While the Original Complaint was filed against all Petitioners on December 20, 2024, PO twice amended its complaint on March 6 and May 19, 2025 to additionally assert the '790 and '475 patents, subject to the concurrently-filed IPR Nos. 2025-01253 and -01254, respectively. Importantly, PO did not send a request for waiver of service to Petitioner OnePlus Technology (Shenzhen) Co., Ltd. ("OnePlus") for over six months. Ex. 1071. Without OnePlus's participation, Petitioners could not submit their *Sotera-plus* stipulations across all defendants in the Texas Case. Despite PO's piecemeal litigation efforts, Petitioners were as diligent as they could be and filed the IPRs *a month* after Omni's completion of service on all Petitioners and even before OnePlus appeared in the Texas Case.

4. Factor 4 (Issue Overlap) Weighs Strongly In Favor of Institution

Petitioners' broad *Sotera-plus* stipulation guarantees no overlap between the instant IPR proceedings and the district court litigation, and strongly favors institution. *See supra* §II.A. In addition, challenging additional claims with substantively different limitations⁷ beyond those involved in the district court weighs in favor of institution as the district court will not reach these issues. *Fintiv*, IPR2020-00019, Pap. 11 at 10, 13 (challenging non-overlapping claims weighs

⁷ *E.g.*, "headset" and "a heads-up display" (cl. 10), "voice recognition software" (cl. 11), "proximity sensor" (cl. 13), "audio output device" (cl. 14).

“against exercising discretion to deny institution” if the challenged claims are not “similar[]” to “those at issue in the district court.”).

5. Factor 5 (Same Party) Is Neutral

Petitioners are defendants in the Texas Case—making factor 5 “neutral.” *HP Inc. v. Slingshot Printing LLC*, IPR2020-01084, Pap. 13 at 9 (PTAB Jan. 14, 2021).

6. Factor 6 (Other Considerations) Weighs Against Discretionary Denial⁸

As discussed above in Sections II.A and II.B, efficiency weighs strongly against discretionary denial, and settled expectations do not support discretionary denial. Further, the ’868 Petition presents compelling merits overlooked during

⁸ Petitioners identified **Mault**, **Mitsui**, and **Pologe** via a prior art search firm, and **Kiani** was identified via targeted search. The Examiner did not locate any of the art asserted in this instant IPR because it erred in the examination process. For example, the Examiner’s search omitted keywords relevant to the key concepts in independent claim 7 of the ’868 (e.g., “physiological data,” “control system”) and relevant CPC codes (e.g., A61B5/0022 (Monitoring a patient using a global network, e.g. telephone networks, internet), A61B5/7405 (Details of notification to user or communication with user or patient; user input means using sound), which Petitioners’ prior art search firm used to identify **Mault**. *Compare to* Ex. 1072 (’868 Search Report) at 130-39.

prosecution—**Mault** (Ground 1) renders obvious all Challenged Claims except for a dependent feature in claim 9, which was well-known as described in **Mitsui** (Ground 2). *See* Pet. 7, 16.

PO’s argument that **Mault** does not meet “**control logic at the host to process at least the portion of the wireless data to generate a status of the user**” (as recited in limitation [7.f]) has no merit. *See* DD Br. 10-11. As detailed in the ’868 Petition, **Mault** at paragraphs 77 and 201 discloses that “computer expert system” (claimed control logic) of the “remote computer system” (claimed host) performs “computer expert system analysis” to process the stored “physiologic data” (claimed processing of wireless data) to generate “feedback.” Pet. 38-39 (quoting **Mault**). **Mault** Figure 15 then shows one example of such “[f]eedback” being presented to the user, which indicates a user’s status by showing whether a person’s measured blood glucose level “exceeds the upper recommended blood glucose level.” Pet. 39 (quoting **Mault**, [0136], FIG. 15).

PO does not dispute that the “feedback” showing blood glucose values in **Mault** Figure 15 constitutes the claimed “status of a user,” but argues instead that paragraph 136 (which discusses Figure 15) does not disclose that the “feedback” is generated by the control logic *at the host* by processing wireless data. DD Br. 11-12. But PO improperly reads paragraph 136 in isolation from the other cited disclosures in **Mault**. As explained in the ’868 Petition, **Mault** at paragraph 77 explicitly states

that “[f]eedback, *generated by a specialist or computer expert system, may be transmitted* to the PDA *from the remote computer* over the communications network,” and equates the remote computer 22 (labeled in Figure 1) with “remote computer system 22” ([0077]), which Petitioners identify as the claimed host. In light of this explicit disclosure in **Mault**, no obviousness argument is needed for the limitation. *Contra* DD Br. 12.

PO’s argument that **Mault** “provides no details on what ‘computer expert system analysis’ refers to” and thus does not disclose that it ‘**generate[s] a status of the user**’ based on wireless data” as recited in [7.f] (DD Br. 11) also misses the mark. As explained, **Mault** discloses that: 1) the “computer expert system” “generate[s]” the “feedback,” and 2) the “feedback,” which shows whether a person’s blood glucose measurement exceeds a threshold, meets the claimed status of the user. Pet. 37-39. **Mault** discloses all that is required by the element, which does not otherwise require any particular means to generate a status of the user.

Further, without arguing that the limitation is not met, PO wrongly asserts that Petitioners provide a conclusory obviousness argument for the “storing at least a portion of the wireless data” limitation in element [7.f]. DD Br. 12. But, as detailed in the ’868 Petition, **Mault** discloses that its “remote server system” is “used to *store a database of physiological parameters*” ([0079]), and “*physiologic data*” is “*transmitt[ed]*” from a PDA used to “monitor the physiological state of the person”

to “a database on a remote (i.e. not carried by the person) computer” over a “wireless Internet connection” ([0201]). Pet. 38-43 (quoting Mault; emphases added). Thus, “a POSITA would have known, or at minimum found obvious” that the “physiological parameters” “store[d]” in the remote server system’s “database” includes the “physiologic data” wirelessly transmitted from the PDA (claimed wireless data). Pet. 38-39 (citing Ex. 1003, ¶¶111-117). This statement is far from conclusory, and further supported by testimony from Petitioners’ expert Dr. Anthony, which PO ignores. *Contra iRhythm, Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Pap. 10 at 2-3 (Director June 6, 2025) (finding it proper to “rely on its expert to explain the background knowledge of a person of ordinary skill in the art”).

III. CONCLUSION

For the above reasons, PO’s request for discretionary denial should be denied.

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CERTIFICATE OF COMPLIANCE

Pursuant to §42.24(d), the undersigned certifies that the foregoing [Corrected] Petitioner's Opposition to Patent Owner's Discretionary Denial Brief contains, as measured by the word-processing system used to prepare this paper, 4717 words and 20 pages. This word count does not include the items excluded by §42.24 as not counting towards the word limit. *Interim Director Discretionary Process*, <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing [CORRECTED]

PETITIONERS' OPPOSITION TO PATENT OWNER'S DISCRETIONARY

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