

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 IPR2025-01250
Patent No. 9,651,533

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

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EXHIBIT LIST

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1001	U.S. Patent No. 9,651,533 (“533”)
1002	File History of U.S. Application No. 14/875,709 (“533FH”)
1003	Declaration of Brian Anthony in Support of Petition for <i>Inter Partes</i> Review of U.S. Patent No. 9,651,533 (“Anthony”)
1004	Declaration of Brian Anthony in Support of Petition for <i>Inter Partes</i> Review of U.S. Patent No. 9,651,533 submitted in IPR2019-00916, Ex. 1003 (“533-Anthony”)
1005	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00916, Paper 1 (P.T.A.B. Apr. 10, 2019) (“533-Pet.”)
1006	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00916, Paper 23 (P.T.A.B. Jan. 31, 2020) (“533-POR”)
1007	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00916, Paper 16 (P.T.A.B. Oct. 18, 2019) (“533-Inst.”)
1008	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00916, Paper 39 (P.T.A.B. Oct. 14, 2020) (“533-FWD”)
1009	<i>Omni MedSci, Inc. v. Apple Inc.</i> , No. 21-01229, ECF 69 (Fed. Cir. June 8, 2022)
1010-1014	<i>Reserved</i>
1015	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2021-00453, Paper 22 (P.T.A.B. Aug. 3, 2022) (“484-FWD”)
1016	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2021-00453, Paper 26 (P.T.A.B. Feb. 14, 2025) (“484-RFWD”)
1017	<i>Apple Inc. v. Omni MedSci, Inc.</i> , No. 2023-1034, 2024 WL 3084509 (Fed. Cir. June 21, 2024), ECF No. 44
1018	<i>Omni MedSci, Inc. v. Apple Inc.</i> , 2:18-cv-00134-RWS, Dkt. No. 211 (E.D. Tex. June 24, 2019)
1019	<i>Omni MedSci, Inc. v. Apple Inc.</i> , 2:18-cv-00429-RWS, Dkt. No. 152 (E.D. Tex. Aug. 14, 2019)
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.)

Exhibit No.	DESCRIPTION
1021-1022	<i>Reserved</i>
1023	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.)
1024	<i>Reserved</i>
1025	U.S. Patent No. 9,241,676 (“Lisogurski”)
1026-1027	Reserved
1028	U.S. Patent Pub. No. 2005/0049468 (“Carlson”)
1029	<i>Reserved</i>
1030	U.S. Patent No. 7,029,628 (“Tam”)
1031	U.S. Patent No. 8,050,730 (“Zhang”)
1032	<i>Reserved</i>
1033	U.S. Patent Pub. No. 2011/0237911 (“Lamego”)
1034	U.S. Patent No. 5,942,749 (“Takeuchi”)
1035	U.S. Patent No. 5,822,473 (“Magel”)
1036	US Patent 5,592,124 (“Mullins”)
1037	E.F. Schubert, Light-Emitting Diodes (Cambridge Univ. Press, 2nd ed. reprinted 2014)
1038	“The Biomedical Engineering Handbook,” by Joseph D. Bronzino (1995)
1039-1058	<i>Reserved</i>
1059	U.S. Patent No. 5,497,769 (“Gratton”)
1060	U.S. Patent No. 5,827,182 (“Raley”)

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1061	U.S. Patent No. 7,764,982 (“Dalke”)
1062-1070	<i>Reserved</i>
1071	U.S. Patent No 7,005,679 (“Tarsa”)
1072	U.S. Patent Publication No. 2010/0249550 (“Lovejoy”)
1073	U.S. Patent Publication No. 2015/0057511 (“Basu”)
1074	U.S. Patent Publication No. 2013/0327966 (“Fidler”)
1075	U.S. Patent Publication No. 2011/0267688 (“Kleppe”)
1076	U.S. Patent Publication No. 2005/0133691 (“Doppke”)
1077	U.S. Patent Publication No. 2006/0184040 (“Keller”)
1078	<i>Reserved</i>
1079	U.S. Patent No. 6,339,715 (“Bahr”)
1080	U.S. Patent No. 8,417,307 (“Presura”)
1081-1083	<i>Reserved</i>
1084	Declaration of Jonathan Bradford in Support of Petition for <i>Inter Partes</i> Review of U.S. Patent No. 9,651,533
1085	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00916, Paper 10 (P.T.A.B. Jul. 22, 2019) (“’533-POPR”)
1086	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01253 Paper 6 (P.T.A.B. Aug. 5, 2025)
1087	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01254 Paper 6 (P.T.A.B. Aug. 5, 2025)
1088-1090	<i>Reserved</i>
1091	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2021-00453, Paper 27 (P.T.A.B. Apr. 11, 2025)

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1092	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01249 Paper 1 (P.T.A.B. Aug. 5, 2025) (“868 Pet.”)
1093	<i>Reserved</i>
1094	<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.”)
1095	<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.”)
1096	<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.”)
1097	<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.”)
1098	Email correspondence between counsel for Fossil to counsel for Omni
1099	U.S. Patent No. 9,055,868 (“868”)
1100	U.S. Patent No. 10,874,304 (“304”)
1101	U.S. Patent No. 11,160,455 (“455”)
1102	U.S. Patent No. 12,193,790 (“790”)
1103	U.S. Patent No. 12,268,475 (“475”)
1104	<i>Apple Inc. v. Omni MedSci, Inc.</i> , No. IPR2020-00175, Paper 26 (P.T.A.B. June 14, 2021)
1105	<i>Omni MedSci, Inc. v. Apple Inc.</i> , No. 2021-2213, 2022 WL 2062167 (Fed. Cir. June 8, 2022), ECF No. 47
1106	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2020-00029, Paper 7 (P.T.A.B. Apr. 22, 2020)
1107	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00914, Paper 13 (P.T.A.B. Nov. 6, 2019)
1108	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00917, Paper 14 (P.T.A.B. Oct. 17, 2019)
1109	<i>Reserved</i>

Exhibit No.	DESCRIPTION
1110	United States District Courts – National Judicial Caseload Profile
1111	EDTX Trials 2026-08-17
1112	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)
1113	Omni’s First Set of Common Interrogatories to Defendants (2025-05-12)
1114	<i>Reserved</i>
1115	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)
1116	<i>Omni MedSci, Inc. v. Apple Inc.</i> , 4:20-cv-00563, Dkt. No. 52 (N.D. Cal. Dec. 06, 2021)
1117	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 6, 11-12, 14, and 18 of the '533
Cancelled Independent Claims	Claims 5 and 13 of the '533
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. IPR2025-01250, Pap. 1 (PTAB Aug. 5, 2025)
DD Br.	<i>Samsung Electronics Co., Ltd. et al. v. Omni MedSci, Inc.</i> , No. IPR2025-01250, Pap. 11 (PTAB Aug. 5, 2025)
FWD	Final Written Decision
Texas Case	<i>Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:24-cv-01070-JRG-RSP (E.D. Tex.)
Apple '533 IPR	<i>Apple Inc. v. Omni Medsci, Inc.</i> , No. IPR2019-00916 (PTAB)
'868	U.S. Patent No. 9,055,868
'533	U.S. Patent No. 9,651,533
'484	U.S. Patent No. 10,517,484
'304	U.S. Patent No. 10,874,304
'455	U.S. Patent No. 11,160,455

Exhibit No.	DESCRIPTION
'790	U.S. Patent No. 12,193,790
'475	U.S. Patent No. 12,268,475
'868 Pet	<i>Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.</i> , No. IPR2025-01249 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)
Lisogurski	U.S. Patent No. 9,241,676
Carlson	U.S. Patent Pub. No. 2005/0049468
Tam	U.S. Patent No. 7,029,628

I. INTRODUCTION

Discretionary denial is not warranted. This is one of six IPRs challenging six patents asserted against Petitioners in the parallel district court proceeding (“Texas Case”).¹ Five out of the six patents are related to each other, including the ’533 at issue here. Several ’533 claims were already cancelled based on a prior IPR filed by Apple Inc. (“Apple ’533 IPR”).² The instant IPR challenges claims that depend from those invalidated in the Apple ’533 IPR and that PO asserts in the Texas Case.

It is more efficient for the Board to resolve the overlapping validity questions of the six patents-at-issue. *First*, the Board is already familiar with most of the limitations and prior art presented here. In the Apple ’533 IPR, the Board held unpatentable independent claims 5 and 13 (“Cancelled Independent Claims”), from which all claims (6, 11-12, 14, 18) challenged here (“Challenged Claims”) depend,

¹ Petitioners have filed IPR2025-01249 to -01254 challenging six patents asserted against them in district court. PGR2025-00063 and -00064 are alternative and substantively identical to IPR2025-01254 and -01253, respectively. Thus, Petitioners seek to institute only six proceedings. Exs. 1086-1087. Collectively, the six IPRs (and the two alternative PGRs) are referred to as “the IPRs.”

² In IPR2019-00916 filed by Apple, the Board found unpatentable claims 5 and 13 (and dependents 7-10 and 15-17). Ex. 1008 (“’533-FWD”), 25-43; Ex. 1009.

based on the same prior art (**Lisogurski, Carlson**) relied upon in the instant Petition. **Second**, collateral estoppel eliminates substantive review of over 70% of all challenged limitations across the IPRs—including limitations in the Cancelled Independent Claims—and can only be applied by the Board. **Third**, efficiency and consistency will be best promoted by the Board’s review of the IPRs together, as five out of the six challenged patents³ include limitations identical/substantially similar to those deemed unpatentable in prior IPRs. **Fourth**, Petitioners’ broad *Sotera*-plus stipulation eliminates any potential overlap between the IPRs and the Texas Case—preventing duplicative efforts or inconsistency.

PO should have no settled expectations in the ’533. The Board already held all claims challenged in the Apple ’533 IPR unpatentable, and the Federal Circuit affirmed. ’533-FWD, 25-43; Ex. 1009. The Challenged Claims in this Petition (“Pet.”) depend from the Cancelled Independent Claims, and merely add three limitations that PO does not substantively dispute were known in the art—e.g., the same art that rendered the Cancelled Independent Claims unpatentable in the Apple ’533 IPR and other prior art relied upon by the Examiner during prosecution. Pet. at 9-11, §§IX.B-C. It was material error for the Examiner to allow the Challenged

³ U.S. Patent Nos. 9,651,533 (“’533”), 10,874,304 (“’304”), 11,160,455 (“’455”), 12,193,790 (“’790”), 12,268,475 (“’475”).

Claims. Any minimal settled expectations accrued in these claims cannot outweigh the efficiency and consistency gains from addressing all six patents together.

The median time-to-trial also places trial after the final written decision (“FWD”). With *Fintiv* and *General Plastic* factors weighing against discretionary denial, especially when this Petition is not a “follow-on” petition, the instant IPR is 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 patentability of the Challenged Claims should be reviewed by the Board, rather than the district court, to best promote efficiency and consistency.

First, the Board can efficiently and consistently extend its analysis in the Apple ’533 IPR to the Challenged Claims because it is already familiar with most of the limitations and prior art presented in the ’533 Petition. Cancelled Independent Claims, upon which all Challenged Claims depend, were already found unpatentable by the Board in the Apple ’533 IPR, based on the same prior art (**Lisogurski** and **Carlson**) and testimony from the same expert (Dr. Anthony) as in the instant Petition. ’533-FWD, 25-43; Pet. §§IX.B-C. This counsels against discretionary denial. *Bayerische Motoren Werke Aktiengesellschaft v. Paice LLC* (“BMW”),

IPR2020-00994, Pap. 19 (PTAB Nov. 19, 2020) is squarely on point. In *BMW*, as here, petitioner BMW challenged dependent claims of a patent that was challenged in a prior IPR filed by different petitioners. IPR2020-00994, Pap. 19 at 13-16. As here, the BMW IPR challenged dependent claims based on the same prior art that rendered the independent claims unpatentable in the prior IPR. *Id.* at 14-15, 19, 21-22. The Board declined to exercise its discretion: “rel[ying] on the Board’s prior determinations with respect to previously cancelled independent claims by using the same prior art to extend that analysis to” newly challenged dependent claims of the same patent “*efficiently streamlines the analysis to the benefit of the Board and Patent Owner.*” *Id.* at 19-20 (emphasis added). That rationale equally applies here.

Second, collateral estoppel significantly narrows the scope of substantive review. Collateral estoppel precludes review of the Cancelled Independent Claims from which all Challenged Claims depend. Pet. 15, 19-21. Thus, the Board would only need to address the three new limitations collectively recited in the Challenged Claims.⁴ The Petition’s reliance on the same art that rendered the Cancelled

⁴ Claims 6 and 14 recite “at least one of the light emitting diodes emits light with a bandwidth between 20 nanometers to 40 nanometers”; claims 11 and 18 recite “one or more filters in front of one of more detectors to select a fraction of the one or more optical wavelengths”; and Claim 12 recite “a plurality of optical wavelengths, and

Independent Claims unpatentable would “efficiently streamline[] the analysis to the benefit of the Board.” *BMW*, IPR2020-00994, Pap. 19 at 19-20. In contrast, the district court would not be able to 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).

Third, these IPRs will promote “efficient use of Board resources” and “consistency and predictability to the public” because five of the six challenged patents (’533, ’304, ’455, ’475, ’790) are “related” to the ’533 and ’484⁵ successfully

the output signal is generated in part by comparing signals at different optical wavelengths.” These limitations were disclosed or rendered obvious by at least **Lisogurski** and/or **Carlson**. Pet. 41-45, 56-62.

⁵ Apple challenged all claims (1-23) of the Patent No. 10,517,484 (“’484”) in IPR2021-00453, and the Board held claims 1, 2, 7, and 15-23 unpatentable. Ex. 1015, 61. Though PO did not appeal, Apple appealed the Board’s determination that the remaining claims were not unpatentable. Ex. 1017. Upon remand from the Federal Circuit on a claim construction issue, the Board found the remaining claims of the ’484 unpatentable, and PO appealed. Ex. 1016, 2; Ex. 1091. PO’s litigation against Apple involving the ’484 is currently stayed pending that appeal. Ex. 1116.

challenged in prior IPRs filed by Apple. *Embody, Inc. v. LifeNet Health*, IPR2025-00248, Pap. 13 at 2-3 (Director June 26, 2025); *POSCO Co., Ltd. v. ArcelorMittal*, IPR2025-00370, Pap. 10 at 3 (Director June 25, 2025). Indeed, at least 139 out of 194—over 70%—of the limitations across the IPRs are identical/substantially similar to limitations challenged in the prior Apple IPRs. Pet. 19; IPR2025-01251, Pap.1 (“’304 Pet.”), 16-18; IPR2025-01252, Pap. 1 (“’455 Pet.”), 18-20; IPR2025-01253, Pap. 1 (“’790 Pet.”), 18-21; IPR2025-01254, Pap. 1 (“’475 Pet.”), 19-21.

While PO 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. Pap. 11 (“DD Br.”) 14; Ex. 1098 (Petitioners’ request to narrow claims and prior art, which remains unanswered). Even if PO narrowed its claims, and assuming it asserted one independent claim per patent and a claim for the ’533 (totaling fewer than 16), the district court would still have close to 80 limitations⁶ to address, as opposed to fewer than 60 limitations at issue across the six IPRs.

PO’s attempt to distinguish *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Pap. 9 (Director June 13, 2025) is unavailing. DD Br. 14. There,

⁶ 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 “diverse range of subject matter” across petitions was a factor, not the sole reason, for declining to exercise discretion. *Tesla*, IPR2025-00217, Pap. 9 at 2-3. Challenged claims “similar” to those in an “ancestor patent” that the Board previously found unpatentable “counsel[ed] against discretionary denial.” *Id.* The same rationale applies here. *See BMW*, IPR2020-00994, Pap. 19 at 19; *Embodys*, IPR2025-00248, Pap. 13 at 2-3; *POSCO*, IPR2025-00370, Pap. 10 at 3.

Fourth, Petitioners’ broad stipulation eliminates any overlap with the Texas Case, alleviating any concerns about inefficiency or inconsistency. Petitioners’ stipulations include 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. Specifically:

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. 13; ’868 Pet. 15; ’304 Pet. 12; ’455 Pet. 13; ’790 Pet. 13; ’475 Pet. 14. Thus, PO’s argument that there will be no overlapping issues between an instituted IPR and the Texas Case (DD Br. 8-9) misses the mark. Besides the fact that **Lisogurski** is assigned to Covidien (DD Br. 8-9), PO identifies no support for its assumption

that **Lisogurski** overlaps with the “product prior art from Covidien.” Regardless, a prior art publication and its corresponding prior art system form “different grounds.” *Ingenico Inc. v. IOENGINE, LLC*, 136 F.4th 1354, 1366-67 (Fed. Cir. 2025) (“IPR estoppel” did not preclude petitioners from relying on prior art system even though it could have raised printed publications evidencing the prior art system in an 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. *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 13-16 (PTAB June 6, 2025) involved a standard “*Sotera* stipulation,” narrower than Petitioners’ stipulations here. In *Samsung Elecs. Co., Ltd. v. Headwater Rsch. LLC*, IPR2025-00482, Pap. 15 at 2 (Director July 24, 2025), the Director 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. Stratasy, Inc.*, IPR2025-00438, Pap. 10 at 3 (Director July 17, 2025) (finding “broad stipulation” precluding combination with system art weighed against discretionary denial).

B. There Are No Settled Expectations in the’533

The Board has already held claims from six patents in the same family unpatentable or at least reasonably likely to be unpatentable. Exs. 1104-1108. The

'533 is particularly vulnerable to validity challenges. In the Apple '533 IPR, every challenged claim was determined to be unpatentable, including the Cancelled Independent Claims. '533-FWD, 25-43. The Challenged Claims, which depend from those Cancelled Independent Claims, fare no better. The Challenged Claims collectively recite only three new limitations, all of which were known in the art. PO does not dispute that these limitations are disclosed by the same art that rendered the Cancelled Independent Claims unpatentable in the Apple '533 IPR (**Lisogurski** and **Carlson**). Pet. 41-45, 56-62. During prosecution, the Examiner also found all three limitations to be disclosed by additional prior art. Pet. 9-11. PO did not then—and does not now—identify anything undermining the Examiner's findings.

Given the strong teachings of **Lisogurski** and **Carlson**, and the Board's repeated confirmation of their strength, the Challenged Claims should never have been allowed. They were not considered during prosecution (Pet. 11), and thus, the examiner materially "erred by overlooking the[ir] teachings." *See, e.g., Anthony Inc. v. ControlTec, LLC*, IPR2025-00559, Pap. 12 at 2 (Director July 16, 2025) (discretionary denial was "not appropriate" where "the patent examiner erred by overlooking the teachings of Carter," which was not of record); *Microsoft Corp. v. Partec Cluster Competence Center GmbH*, IPR2025-00318, Pap. 9 at 3 (Director June 12, 2025) ("Office erred in a manner material to the patentability of the challenged claims by overlooking the teachings of" two prior art references that were

not of record). Such material error outweighs any settled expectation PO may have had in the '533. Even where challenged patents have been in force for more than twice as long as the '533, that is not enough to favor discretionary denial. *Anthony*, IPR2025-00559, Pap. 12 at 2 (“it is an appropriate use of Office resources to review the [examiner’s] potential error” for patents “in force for...eighteen and seventeen years”). And PO’s argument that it should have settled expectations in the validity of the Challenged Claims because Apple chose not to challenge them in the prior '533 IPR is baseless. DD Br. 19. PO never asserted the Challenged Claims against Apple, and thus Apple did not need to challenge them. Ex. 2014, ¶36.⁷

PO’s reliance on Petitioners’ purported prior knowledge of the '533 also fails. Samsung’s alleged knowledge is supported solely by unsubstantiated allegations in PO’s complaint, and Oura’s alleged knowledge is based on a very recent 2024 IDS filed by Ouraring, Inc., who is not even a Petitioner here. DD Br. 20.

Regardless, discretionary denial is not warranted: the material error, in addition to the strong interest in efficiency and consistency, outweigh any minimal expectation that may have been developed. *See, e.g., Anthony*, IPR2025-00559, Pap.

⁷ The only unasserted claim that Apple challenged (claim 15) recites an identical limitation to an asserted claim (claim 7) and thus required no additional work to challenge in Apple’s IPR. Ex. 1005, 3; Ex. 2014, ¶36, Ex. 1001 at 49-50.

12 at 2 (“patent examiner erred by overlooking the teachings of Carter,” which was not of record); *BMW*, IPR2020-00994, Pap. 19 at 19 (reusing the “same prior art” to “extend” the Board’s analysis of cancelled claims in prior IPR to their “dependent claims” “efficiently streamlines the analysis to the benefit of the Board”).

C. *Fintiv* Factors, as a Whole, 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 to stay 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.⁸ See *e-Watch Inc. v. Apple, Inc.*, No. 2:13-

⁸ 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%

cv-1061, 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, most of 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. For example, *Markman* is scheduled for February 13, 2026, after the Board’s institution deadline on February 9, 2026. This district court, and Judge Gilstrap, frequently stays proceedings post-institution when the court has not yet conducted *Markman*. *See, e.g., Broadphone LLC v. Samsung Elecs. Co.*, No. 2:23-CV-00001-JRG-RSP, 2024 WL 3524022, at *2-3 (E.D. Tex. July 24, 2024).

Indeed, the district court has granted stays in cases that advanced far beyond the instant case. *See e.g., SSL Servs., LLC v. Cisco Sys., Inc.*, 2:15-cv-433, 2016 WL 3523871, at *2 (E.D. Tex. June 28, 2016) (granting stay after claim construction and 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

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.

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). This factor thus does not weigh in favor of discretionary denial.

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. 1110 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. 1111; Ex. 1112 (“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) (*Fintiv* 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) (*Fintiv* factor 2 neutral where 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 Tech.*, IPR2024-01130, Pap. 16 at 10.

Even if the current trial date is not delayed, when “balanced” against other factors that favor institution, discretionary denial is still 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 projected FWD 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 7 (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. *Fintiv*, IPR2020-00019, Pap. 11 at 9-10 (finding no “orders related to the patent at issue in the petition” weighing against discretionary denial). This factor strongly weighs 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 scheduled or taken, and no case-dispositive motions have been filed (deadline not until May 11, 2026). Ex. 1020. Indeed, PO has served only four interrogatories, provided no substantive responses to any of Petitioners’ interrogatories, and produced only around a hundred documents. Ex. 1113. Claim construction is also in its early phases—the parties have not completed claim construction discovery or filed any related 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.

PO’s assertion that Samsung waited “more than **8 years** to challenge the ’533” (DD Br. 6-7) is without any support other than PO’s own allegations. *See* §II.B. And, to the extent non-petitioner Ouraring, Inc.’s alleged knowledge of the ’533 patent matters at all, it only had the knowledge for about a year before Petitioners’

filing of the instant Petition. Indeed, Petitioners were diligent in preparing and filing the IPRs. PO served its infringement contentions on March 12, 2025 and amended it on May 9, 2025. And, after filing the Original Complaint against all Petitioners on December 20, 2024, PO twice amended its complaint on March 6 and May 19, 2025 to assert the additional '790 and '475, subject to the concurrently-filed IPR Nos. 2025-01253 and -01254, respectively. Importantly, PO did not effectuate service on Petitioner OnePlus Technology (Shenzhen) Co., Ltd. ("OnePlus") for six months. Ex. 1115. 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 Petitioner OnePlus appeared in the Texas Case.

Indeed, the Board has granted institution in cases more advanced than here. *Samsung Display*, IPR2024-01222, Pap. 12 at 7 (factor 3 weighs against denial though *Markman* has been held 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 1 favoring institution after *Markman* briefing was complete).

Any purported delay in filing the IPRs was the "direct result of [PO's] own litigation activity" and Petitioners' reliance on the prior IPR is a proper and "efficient[]" "exten[sion]" of the Board's prior analysis, not an attempt to gain an

unfair advantage by using the prior FWDs as a roadmap. *BMW*, IPR2020-00994, Pap. 19 at 12, 19, 21-22.

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

Petitioners’ *Sotera*-plus stipulation guarantees no overlap between the IPRs and district court, and strongly favors institution. *See* §II.A. Challenging additional claims with substantively different limitations⁹ beyond those 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 “against exercising discretion[ary] [denial]” 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 Strongly In Favor of Institution¹⁰

As discussed (§§II.A-B), efficiency—particularly given collateral estoppel as

⁹ *E.g.*, “bandwidth between 20 nanometers to 40 nanometers” (’533, cls. 6, 14).

¹⁰ Petitioners identified **Lisogurski** and **Carlson** via the ’533-FWD, and **Tam** via targeted search.

to the Cancelled Independent Claims—weighs strongly against discretionary denial, and no settled expectations support discretionary denial, especially given the material error. This Petition also presents compelling merits. The Challenged Claims collectively add only three new limitations to the Cancelled Independent Claims, and PO does not substantively dispute that they are disclosed by: (1) **Lisogurski** and/or **Carlson**—the same art found to render the Cancelled Independent Claims unpatentable in the Apple ’533 IPR, and (2) other art relied upon by the Examiner during prosecution of the ’533. Pet. 9-11; *see* §II.B.

There is no dispute that collateral estoppel applies to the Cancelled Independent Claims and thus substantially reduces the number of limitations that must be evaluated by the Board. *See supra* §II.A; Pet. 19-20. *See SK Hynix, Inc. v. Netlist, Inc.*, IPR2017-00561, Pap. 36 at 13 (PTAB July 5, 2018) (“[PO] is precluded from relitigating” where a reference “discloses all the limitations of claim 1...for purposes of determining the patentability of [dependent] claims 2-7.”). Thus, whereas the district court would have to review all limitations of the Cancelled Independent Claims anew as part of the dependent Challenged Claims, the Board would only have to assess three new limitations.

PO also fails to distinguish Petitioners’ cited cases. DD Br. 13. Regardless of whether *Fintiv* applies, “it is an efficient use of Board resources to address the related patent” even when there is no strong settled expectations for that related

patent. *Embody*, IPR2025-00248, Pap. 13 at 3; Pet., 14-15. In *POSCO*, the Director also made clear that “[t]he fact that the Board previously determined related claims to be unpatentable” tips the balance against discretionary denial—similar to the case here Cancelled Independent Claims were found unpatentable. IPR2025-00370, Pap. 10 at 3. PO does not dispute the same rationale applies here. DD Br. 13.

D. General Plastic Favors Institution

None of the *General Plastic* factors favors discretionary denial. The instant Petition is not a “follow-on” petition at least because it does not involve any of the same petitioners or claims challenged in prior IPRs. *Volkswagen Grp. of Am., Inc. v. Carucel Invs., L.P.*, IPR2019-01573, Pap. 7 at 7 (PTAB Jan. 22, 2020) (finding no “follow-on petitions” for **Factor 1** when “no prior petition challeng[ed] [the same] claims”). Indeed, as PO acknowledges, the Challenged Claims recite additional limitations that are different from those challenged in the Apple ’533 IPR. DD Br. 19. As such, PO’s cited cases are inapposite because they involve claims that are identical or substantially similar to those challenged in previous IPRs. DD Br. 17-18 (citing *Ericsson* (IPR2019-01550, Pap. 8), *Samsung* (IPR2017-01305, Pap. 11), *Juniper* (IPR2024-00895, Pap. 15)).

Petitioners raise “the same prior art in the present Petition [as] in [the Apple ’533 IPR],” favoring institution. *Volkswagen*, IPR2019-01573, Pap. 7 at 8 (applying **Factors 2 & 4**). Indeed, as in *BMW*, Petitioners’ “us[e of] the same prior art” from

a prior IPR challenging independent claims of the same patent “to extend that analysis to the dependent claims” “weighs in favor of institution” because “it efficiently streamlines the analysis to the benefit of the Board,” and is not improper road-mapping, as PO wrongly alleges (DD Br. 17). *BMW*, IPR2020-00994, Pap. 19 at 19, 21-22 (**Factors 3 & 6**). Thus, reusing the same prior art helps the Board efficiently issue a final determination regarding these related IPRs within 1 year of institution (**Factor 7**). Petitioners diligently filed the ’533 Petition. At most, any delay is the result of PO’s own making (e.g., piecemeal litigation and asserting different claims to different entities years apart) and does not warrant discretionary denial. *BMW*, IPR2020-00994, Pap. 19 at 20-21 (**Factor 5**).

Denying institution would prejudice Petitioners. No prior petition addressed the Challenged Claims. Whereas institution would allow the Board to address only three new limitations, denying it would force Petitioners to relitigate all Cancelled Independent Claims, burdening both the parties and the district court.

III. CONCLUSION

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

Dated: November 14, 2025

By: /s/ James L. Davis, Jr.
Name: James L. Davis, Jr.
Registration No. 57,325
*Counsel for Petitioners Samsung
Electronics Co. Ltd. and Samsung
Electronics America Inc.*

Jasjit S. Vidwan
Registration No. 72,080
Robert G. Pluta
Registration No. 50,970
Counsel for Petitioner Oura Health Oy

Jared A. Smith
Registration No. 73,749
Ricardo J. Bonilla
Registration No. 65,190
*Counsel for Petitioners Fossil Group,
Inc., Fossil Stores I, Inc. and Fossil
Partners*

Jack Shaw
Registration No. 72,262
*Counsel for Petitioner OnePlus
Technology (Shenzhen) Co., Ltd.*

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, 4678 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>.

Dated: November 14, 2025

By: /s/ James L. Davis, Jr.
Name: James L. Davis, Jr.
Registration No. 57,325
*Counsel for Petitioners Samsung
Electronics Co. Ltd. and Samsung
Electronics America Inc.*

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing [CORRECTED] PETITIONERS' OPPOSITION TO PATENT OWNER'S DISCRETIONARY DENIAL BRIEF was served by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) as well as providing a courtesy copy via electronic mail to the following attorneys of record for each party as listed below:

OMNI MEDSCI, INC.	
Lead Counsel	Back-Up Counsel
Jennifer Hayes Registration No. 50,845 Nixon Peabody LLP 300 South Grand Avenue, Suite 4100 Los Angeles, CA 90071-3151 Phone: 213-629-6179 Facsimile: 213-629-6001 jenhayes@nixonpeabody.com	Daniel Stringfield Registration No. 68,677 Phone: 312-977-4130 Facsimile: 833-923-0056 dstringfield@nixonpeabody.com Timothy Maloney Registration No. 38,233 Phone: 312-977-4451 Facsimile: 833-818-8070 tmaloney@nixonpeabody.com Angelo J. Christopher Registration No. 81,594 Phone: 312-977-4391 Facsimile: 312-977-4405 achristopher@nixonpeabody.com Benjamin R. Holt Registration No. 78,605 Phone: 202-585-8048 Facsimile: 833-824-1380 bholt@nixonpeabody.com Daniel Georgiev Registration No. 80,647

	<p>Phone: 312-977-4412 Facsimile: 833-824-7710 dgeorgiev@nixonpeabody.com</p> <p>Corey Leggett Registration No. 70,017 (415) 984-8340 Facsimile: 415-984-8300 cleggett@nixonpeabody.com</p>
FOSSIL GROUP, INC., FOSSIL STORES I, INC., AND FOSSIL PARTNERS, L.P.	
	Back-Up Counsel
	<p>Jared A. Smith Reg. No. 73,749 FISH & RICHARDSON P.C. 12860 El Camino Real, Suite 400 San Diego, CA 92130 Phone: +1 858-678-4702 Fax: +1 858-678-5099 jasmith@fr.com</p> <p>Ricardo J. Bonilla Reg. No. 65,190 FISH & RICHARDSON P.C. 1717 Main Street, Suite 5000 Dallas, TX 75201 Phone: +1 214-760-6150 Fax: +1 214-747-2091 rbonilla@fr.com</p>
OURA HEALTH OY	
	Back-Up Counsel
	<p>Jasjit S. Vidwan Reg. No. 72,080 MAYER BROWN LLP 1999 K Street, NW Washington, DC 20006-1101</p>

	<p>Tel.: 202.263.3065 JVidwan@mayerbrown.com</p> <p>Robert G. Pluta Reg. No. 50,970 MAYER BROWN LLP 71 S. Wacker Drive Chicago, IL 60606 Tel.: 312.701.8641 RPluta@mayerbrown.com</p>
ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD.	
	Back-Up Counsel
	<p>Jack Shaw Reg. No. 72,262 CHERRY JOHNSON SIEGMUND JAMES PC 8140 Walnut Hill Lane, Suite 105 Dallas, Texas 75231 Tel: 254-732-2242 Fax: 866-627-3509 jshaw@cjsjlaw.com</p>

Dated: November 14, 2025

By: /s/ James L. Davis, Jr.
Name: James L. Davis, Jr.
Registration No. 57,325
*Counsel for Petitioners Samsung
Electronics Co. Ltd. and Samsung
Electronics America Inc.*