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 IPR2025-01253
Patent No. 12,193,790

PETITIONERS' OPPOSITION TO PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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EXHIBIT LIST

Exhibit No.	DESCRIPTION
1001	U.S. Patent No. 12,193,790 ("'790")
1002	File History of U.S. Application No. 18/438,144 ("'790FH")
1003	Declaration of Brian Anthony in Support of Petition for *Inter Partes* Review of U.S. Patent No. 12,193,790 ("Anthony")
1004	Declaration of Brian Anthony in Support of Petition for *Inter Partes* Review of U.S. Patent No. 9,651,533 submitted in IPR2019-00916, Ex. 1003 ("'533-Anthony")
1005	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2019-00916, Paper 1 (P.T.A.B. Apr. 10, 2019) ("'533-Pet.")
1006	Apple Inc. v. Omni Medsci, Inc., No. IPR2019-00916, Paper 23 (P.T.A.B. Jan. 31, 2020) ("'533-POR")
1007	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2019-00916, Paper 16 (P.T.A.B. Oct. 18, 2019) ("'533-Inst.")
1008	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2019-00916, Paper 39 (P.T.A.B. Oct. 14, 2020) ("'533-FWD")
1009	*Omni MedSci, Inc. v. Apple Inc.*, No. 21-01229, ECF 69 (Fed. Cir. June 8, 2022)
1010	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. 1003 ("'484-Anthony")
1011	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2021-00453, Paper 1 (P.T.A.B. Jan. 22, 2021) ("'484-Pet.")
1012	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2021-00453, Paper 10 (P.T.A.B. Nov. 12, 2021) ("'484-POR")
1013	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2021-00453, Paper 7 (P.T.A.B. Aug. 6, 2021) ("'484-Inst.")
1014	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2021-00453, Paper 11 (P.T.A.B. Feb. 4, 2022) ("'484-Pet.-Reply")

Exhibit No.	DESCRIPTION
1015	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2021-00453, Paper 22 (P.T.A.B. Aug. 3, 2022) ("'484-FWD")
1016	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2021-00453, Paper 26 (P.T.A.B. Feb. 14, 2025) ("'484-RFWD")
1017	*Apple Inc. v. Omni MedSci, Inc.*, No. 23-01034, ECF 44 (Fed. Cir. June 21, 2024)
1018	*Omni MedSci, Inc. v. Apple Inc.*, 2:18-cv-00134-RWS, Dkt. No. 211 (E.D. Tex. June 24, 2019)
1019	*Omni MedSci, Inc. v. Apple Inc.*, 2:18-cv-00429-RWS, Dkt. No. 152 (E.D. Tex. Aug. 14, 2019)
1020	Second Amended Docket Control Order, June 16, 2025. *Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:24-cv-01070-JRG-RSP (E.D. Tex.)
1021	Plaintiff's Disclosure of Asserted Claims & Infringement Contentions, March 12, 2025. *Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:24-cv-01070-JRG-RSP (E.D. Tex.)
1022	*Reserved*
1023	Defendants' Supplemental Invalidity and Subject Matter Eligibility Contentions, July 18, 2025. *Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:24-cv-01070-JRG-RSP (E.D. Tex.)
1024	File History of U.S. Application No. 17/078,771 ("'455FH")
1025	U.S. Patent No. 9,241,676 ("Lisogurski")
1026-1027	*Reserved*
1028	U.S. Patent Pub. No. 2005/0049468A1 ("Carlson")
1029-1030	*Reserved*
1031	U.S. Patent No. 8,050,730 ("Zhang")
1032	*Reserved*

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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	Joseph D. Bronzino, The Biomedical Engineering Handbook (1995)
1039	U.S. Patent No. 8,079,735 ("Vakil")
1040	U.S. Patent No. 8,304,805 ("Lochtefeld")
1041-1080	*Reserved*
1081	US. Patent No. 9,651,533 ("'533")
1082	U.S. Patent No. 10,517,484 ("'484")
1083	*Reserved*
1084	Declaration of Jonathan Bradford
1085	*Reserved*
1086	*Reserved*
1087	*Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.*, No. IPR2025-01254 Paper 6 (P.T.A.B. Aug. 5, 2025)
1088	U.S. Patent No. 11,896,346
1089	U.S. Patent No. 11564,577
1090	Plaintiff's First Amended Complaint, March 6, 2025. *Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:24-cv-01070-JRG-RSP (E.D. Tex.)

Exhibit No.	DESCRIPTION
1091	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2021-00453, Paper 27 (P.T.A.B. Apr. 11, 2025)
1092	*Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.*, No. IPR2025-01249 Paper 1 (P.T.A.B. Aug. 5, 2025) ("'868 Pet.")
1093	*Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.*, No. IPR2025-01250 Paper 1 (P.T.A.B. Aug. 5, 2025) ("'533 Pet.")
1094	*Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.*, No. IPR2025-01251 Paper 1 (P.T.A.B. Aug. 5, 2025) ("'304 Pet.")
1095	*Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.*, No. IPR2025-01252 Paper 1 (P.T.A.B. Aug. 5, 2025) ("'455 Pet.")
1096	*Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.*, No. IPR2025-01254 Paper 1 (P.T.A.B. Aug. 5, 2025) ("'475 Pet.")
1097	*Reserved*
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	*Reserved*
1103	U.S. Patent No. 12,268,475 ("'475")
1104	*Apple Inc. v. Omni MedSci, Inc.*, No. IPR2020-00175, Paper 26 (P.T.A.B. June 14, 2021)
1105	*Omni MedSci, Inc. v. Apple Inc.*, No. 2021-2213, 2022 WL 2062167 (Fed. Cir. June 8, 2022), ECF No. 47
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1107	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2019-00914, Paper 13 (P.T.A.B. Nov. 6, 2019)

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1108	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2019-00917, Paper 14 (P.T.A.B. Oct. 17, 2019)
1109	*Reserved*
1110	United States District Courts – National Judicial Caseload Profile
1111	EDTX Trials 2026-08-17
1112	Joint Mot for Preferential Trial Setting, *Multimedia Techs. Ltd. v LG Elecs.*, 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	*Reserved*
1115	OnePlus Waiver of Service, *Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:24-cv-01070-JRG-RSP, Dkt. No. 70 (E.D. Tex. June 27, 2025)
1116	*Omni MedSci, Inc. v. Apple Inc.*, 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
1118	Defendants' Preliminary Constructions and Extrinsic Evidence – Exhibit A, *Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:24-cv-01070-JRG-RSP (E.D. Tex. Oct. 31, 2025)
1119	Local Patent Rules for the United States District Court for the Eastern District of Texas
1120	Email correspondence between counsel for Samsung to counsel for Omni

TABLE OF ABBREVIATIONS

Exhibit No.	DESCRIPTION
Challenged Claim	Claim 7 of the ’790
IPR	*Inter Partes* 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.	*Samsung Electronics Co., Ltd. et al. v. Omni MedSci, Inc.*, No. IPR2025-01253, Pap. 1 (PTAB Aug. 5, 2025)
DD Br.	*Samsung Electronics Co., Ltd. et al. v. Omni MedSci, Inc.*, No. IPR2025-01253, Pap. 12 (PTAB Oct. 14, 2025)
FWD	Final Written Decision
Texas Case	*Omni MedSci, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:24-cv-01070-JRG-RSP (E.D. Tex.)
’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
’790	U.S. Patent No. 12,193,790
’475	U.S. Patent No. 12,268,475

Exhibit No.	DESCRIPTION
’868 Pet	*Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.*, No. IPR2025-01249, Paper 1 (P.T.A.B. Aug. 5, 2025)
’533 Pet.	*Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.*, No. IPR2025-01250, Paper 1 (P.T.A.B. Aug. 5, 2025)
’304 Pet.	*Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.*, No. IPR2025-01251, Paper 1 (P.T.A.B. Aug. 5, 2025)
’455 Pet.	*Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.*, No. IPR2025-01252, Paper 1 (P.T.A.B. Aug. 5, 2025)
’475 Pet.	*Samsung Electronics Co., Ltd. et al v. Omni MedSci, Inc.*, No. IPR2025-01254, Paper 1 (P.T.A.B. Aug. 5, 2025)
’533-FWD	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2019-00916, Paper 39 (P.T.A.B. Oct. 14, 2020)
’484-FWD	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2021-00453, Paper 22 (P.T.A.B. Aug. 3, 2022)
Prior FWDs	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2019-00916, Paper 39 (P.T.A.B. Oct. 14, 2020) and *Apple Inc. v. Omni Medsci, Inc.*, No. IPR2021-00453, Paper 22 (P.T.A.B. Aug. 3, 2022)
Prior IPRs	*Apple Inc. v. Omni Medsci, Inc.*, No. IPR2019-00916 (PTAB) and *Apple Inc. v. Omni Medsci, Inc.*, No. IPR2021-00453 (PTAB)
Lisogurski	U.S. Patent No. 9,241,676
Carlson	U.S. Patent Pub. No. 2005/0049468

I. INTRODUCTION

Discretionary denial is not warranted. This is one of six IPRs challenging six patents[1] asserted against Petitioners in the parallel Texas Case.[2] The vast majority of the limitations challenged in the IPRs, including those here, are identical or substantially similar to those already found unpatentable in prior IPRs challenging related patents.[3] Efficiency and consistency are thus best served by the Board's

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[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 through -01254 challenging six patents asserted in district court, as well as PGR2025-00063 and -00064, which are alternative and substantively identical to IPR2025-01254 and -01253 (collectively, "the IPRs"). Thus, Petitioners seek to institute only 6 proceedings. Pap. 6; Ex. 1087.

[3] Apple Inc. challenged claims 5, 7-10, 13, 15-17 of the '533 in IPR2019-00916 and all claims of the '484 in IPR2021-00453 (collectively, "Prior IPRs"). The Board's unpatentability decision as to all challenged claims of the '533 (Ex. 1008, "'533-FWD") was affirmed on appeal. Ex. 1009. Though PO did not appeal the Board's unpatentability decision on claims 1, 2, 7, and 15-23 of the '484 (Ex. 1015, "'484-FWD"), Apple appealed the remaining claims (Ex. 1017), which were ultimately found unpatentable by the Board after remand from the Federal Circuit based on

review of the IPRs together.

It is more efficient for the Board to resolve the overlapping validity questions of the six patents-at-issue. ***First***, collateral estoppel eliminates substantive review of over 70% of all challenged limitations across the IPRs (90% here), and can only be applied by the Board. ***Second***, the Board's collective review of the IPRs will promote efficiency and consistency, as five ('533, '304, '455, '790, '475) of the six challenged patents include limitations identical/substantially similar to those deemed unpatentable in Prior IPRs. ***Third*****,** Petitioners' *Sotera*-plus stipulation eliminates any potential overlap with the Texas Case.

Importantly, despite having access to the same art and grounds—including the IPR petitions and expert declarations—that rendered identical/substantially similar claims of the related '484 and '533 unpatentable in the Prior IPRs, the Examiner nevertheless allowed the Challenged Claim without a single rejection. This constitutes material error, and discretionary denial under §325(d) is not warranted.

The median time-to-trial also places trial after the final written decision ("FWD"). With no settled expectations given the '790's issuance this year, and the *Fintiv* factors further weighing against exercising discretionary denial, PO's request

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construction (Ex. 1016, 2-23). PO appealed again. Ex. 1091. PO's litigation against Apple involving the '484 patent is currently stayed pending that appeal. Ex. 1116.

for discretionary denial should be denied.

II. DISCRETIONARY DENIAL IS NOT WARRANTED

A. Efficiency and Consistency Weigh Strongly 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 for the Board, but not the district court. Specifically, 139 of 194 total limitations (over 70%) challenged across the 6 IPRs, or 13 of 14 limitations in this IPR (over 90%), are identical or substantially similar to those already held unpatentable in Prior IPRs based on the same grounds presented here. IPR2025-01253, Pap. 1 ("Pet."), 18-21; IPR2025-01250, Pap. 1 ("'533 Pet."), 19; IPR2025-01251, Pap. 1 ("'304 Pet."), 16-18; IPR2025-01252, Pap. 1 ("'455 Pet."), 18-20; IPR2025-01254, Pap. 1 ("'475 Pet."), 19-21. PO does not dispute. Collateral estoppel precludes PO from relitigating these limitations before the Board. *Samsung Elecs. Co., Ltd. v.*

Netlist, Inc., IPR2025-00002, Pap. 17 at 17-24 (PTAB May 15, 2025) (applying collateral estoppel to find "substantially similar" limitations in related patents obvious). Collateral estoppel, however, does not apply in district court based on prior Board unpatentability decisions rendered under a different standard. *See ParkerVision, Inc. v. Qualcomm Inc.*, 116 F.4th 1345, 1361-62 (Fed. Cir. 2024).

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. Pap. 12 ("DD Br.") 17; Ex. 1098 (Petitioners' request to narrow claims remaining unanswered). And even if it did, and assuming it asserts one independent claim per patent and a claim for the '533 (fewer than 16 claims), the district court would still have close to 80 limitations[4] to address, as opposed to fewer than the 60 at issue across the six IPRs before the Board.

Second, 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, '790, '475) are related to the '533 and '484 successfully challenged in the Prior IPRs. *Embody*, IPR2025-00248, Pap. 13 at 2-3; *FreightCar*

[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).

Am. Inc. v. Nat'l Steel Car Ltd., IPR2025-01046, Pap. 20 at 3 (Director Oct. 10, 2025) (same); *POSCO*, IPR2025-00370, Pap. 10 at 3 (emphasizing "consistency and predictability to the public").

Contrary to PO's argument, *Tesla, Inc. v. Intellectual Ventures II LLC*, is on point. DD Br. 18. There, the "diverse range of subject matter" was just a factor for declining to exercise discretion. IPR2025-00217, Pap. 9 at 2-3 (Director June 13, 2025). And, as here, challenged claims "similar" to those in an "ancestor patent" that the Board found unpatentable "counsel[ed] against discretionary denial." *Id.*

Third, Petitioners' broad stipulation eliminates any overlap with the Texas Case, alleviating any concerns about inefficiency or inconsistency. As stated in all six IPRs, 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. Specifically, Petitioners' broad stipulations recite:

> 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 Claim; or (2) combinations of the prior art asserted in this IPR with any other type of prior art against the Challenged Claim.

Pet. 13; '868 Pet. 15; '533 Pet. 13; '304 Pet. 12; '455 Pet. 13; '475 Pet. 14.

Thus, there will be no overlap between the IPRs and the Texas Case (contra DD Br. 8). That the alleged assignee of the **Lisogurski** reference coincides with a potential prior art product manufacturer (DD Br. 7) does not establish actual overlap. And, 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) (no preclusion from relying on a prior art system even though publications evidencing the prior art system in an IPR could have been raised). Sections 101 and 112 would not cause duplicative efforts or inconsistent rulings (DD Br. 8) either, as those are beyond the Board's statutory jurisdiction. 35 U.S.C. §311(b).

PO's cited cases are also inapposite. DD Br. 8-9. *Motorola Sols. v. Stellar, LLC*, IPR2024-01205, Pap. 19 at 3-4 (Director Mar. 28, 2025) involved only a "*Sotera* stipulation" unlike Petitioners' broader stipulations. 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 sufficiency of the stipulation at all. Indeed, a "broad stipulation" similar to Petitioners' precluding combination with system art was found to weigh against discretionary denial. *See Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.*, IPR2025-00438, Pap. 10 at 3 (Director July 17, 2025).

B. Examiner's Material Errors Support Institution

PO's §325(d) arguments (DD Br. 12-16) only highlight the Examiner's material error. The '533-FWD and '484-FWD ("Prior FWDs") each invalidated

respective challenged claims identical/substantially similar to those challenged here based on **Lisogurski** (optionally in view of **Carlson**)[5]—the same art asserted here, and as PO asserts (DD Br. 12-13), was considered by the Examiner during prosecution. Pet. 18-20. Comparing the '790 claim 1 and '484 limitations, which the Board found to be met by **Lisogurski** (optionally in view of **Carlson**) asserted here, illustrates the Examiner's error:

'790 claim 7[6]	**'484, claims 1 & 3**
[7.pre] An optical system, comprising:	A system
[7.a] a wearable device for measuring one or more physiological parameters,	for measuring one or more physiological parameters and for use with a smart phone or tablet, the system comprising:
[7.b] the wearable device adapted to be placed on a wrist of a user;	a wearable device adapted to be placed on a wrist or an ear of a user,
[7.c] the wearable device including a light source comprising a plurality of semiconductor diodes that are configured to generate an output	including a light source comprising a plurality of semiconductor sources that are light emitting diodes, each of the light

[5] Petitioners identified Lisogurski and Carlson via the '533-/'484-FWDs.

[6] Identical language is highlighted in **green**, and substantially similar language with minimal linguistic differences is highlighted in **purple**.

optical light having one or more optical wavelengths, wherein at least a portion of the one or more optical wavelengths is a near-infrared wavelength between 700 nanometers and 2500 nanometers;	emitting diodes configured to generate an output optical light having one or more optical wavelengths;
[7.d] the wearable device comprising one or more lenses configured to receive at least a portion of the output optical light and to deliver a lens output light to tissue comprising skin;	the wearable device comprising one or more lenses configured to receive a portion of at least one of the output optical lights and to direct a lens output light to tissue;
[7.e] the wearable device further comprising a detection system configured to receive at least a portion of the lens output light reflected from the tissue and to generate an output signal having a signal-to-noise ratio,	the wearable device further comprising a detection system configured to receive at least a portion of the lens output light reflected from the tissue and to generate an output signal having a signal-to-noise ratio,
[7.f] wherein the detection system is configured to be synchronized to the light source;	wherein the detection system is configured to be synchronized to the light source;
[7.g] wherein the detection system comprises a plurality of detectors that are spatially separated from each other, and wherein at least one analog to digital converter is coupled to at least one of the plurality of detectors;	wherein the detection system comprises a plurality of spatially separated detectors, and wherein at least one analog to digital converter is coupled to at least one of the spatially separated detectors;

[7.h] wherein the output signal is indicative of the one or more of the physiological parameters;	wherein the output signal is indicative of one or more of the physiological parameters,
[7.i] the wearable device configured to increase the signal-to-noise ratio by increasing light intensity of at least one of the plurality of semiconductor diodes from an initial light intensity; and	the wearable device configured to increase the signal-to-noise ratio by increasing light intensity of at least one of the plurality of semiconductor sources from an initial light intensity
[7.j] the detection system further configured to: generate a first signal responsive to light received while the semiconductor diodes are off,	the detection system further configured to: generate a first signal responsive to light received while the light emitting diodes are off,
[7.k] generate a second signal responsive to light received while at least one of the semiconductor diodes is on, and	generate a second signal responsive to light received while at least one of the light emitting diodes is on, and
[7.l] increase the signal-to-noise ratio by comparing the first signal and the second signal; and	increase the signal-to-noise ratio by comparing the first signal and the second signal.
[7.m] wherein the wearable device is at least in part configured to identify an object.	…wherein the wearable device is at least in part configured to identify an object[7]

[7] This limitation is from ’484 claim 3, which is dependent on ’484 claim 1.

Despite having access to the same art and grounds relied upon in the Prior FWDs (e.g., **Lisogurski**, **Carlson**)—including the '484/'533 IPR petitions and supporting materials laying out how the art meets claims identical/substantially similar to the Challenged Claim, the '484 IPR institution decision, and the '533-FWD[8]—the Examiner allowed the Challenged Claim ***without a single rejection***. '790FH, 271, 303-310. This is a material error. *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Pap. 13 at 5 (Director May 19, 2025) (precedential) (*Advanced Bionics* part two may be satisfied if the asserted art "was not a basis for

[8] These materials were submitted during prosecution of the '790's ancestor applications. **Lisogurski** and **Carlson** were disclosed during prosecution of the '455. Ex. 1101, 4 ("References Cited"). The Prior IPR materials were submitted during prosecution of other ancestor applications. Ex. 1088, 1 (listing '484 institution decision under "Other Publications"); Ex. 1089, 1 (same); Ex. 1024 at 350, 371, 375, 404, 416, 433 (identifying the remaining IPR materials). According to PO, the Examiner thus had access to those materials during the '790's prosecution (DD Br. 12-14) but, to the extent PO is incorrect, *Advanced Bionics* part one is not met. *Thorne Rsch., Inc. v. Trs. of Dartmouth Coll.*, IPR2021-00491, Pap. 18 at 8-9 (PTAB Aug. 12, 2021) (finding *Advanced Bionics* part one not met when only one of three asserted references was cited and used as basis for rejection during prosecution).

rejection" or, "even though the asserted prior art is listed on an IDS, the Examiner did not issue any prior art rejections"); *see also ClearCorrect Operating, LLC v. Align Technology, Inc.*, IPR2025-00814, Pap. 14 at 3 (Director Aug. 29, 2025) ("the Office erred by allowing the claims after the Board determined that substantially similar claims are unpatentable"); *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464, Pap. 12 at 2 (Director July 16, 2025) (allowing a related patent "directly contradicts the Board's determination and raises concerns of material error such that review of the challenged patents is an appropriate use of Office resources").

Indeed, in arguing that collateral estoppel does not apply to "identify an object" ([7.m]) due to a pending appeal, PO acknowledges the Board's finding that **Lisogurski** meets the limitation. DD Br. 10. Likewise, while one limitation in [7.c] has no analog in the '484, the Board already found that **Lisogurski** discloses the limitations. Pet. 29-30. Contrary to PO's assertion (DD Br. 15-16), that **Lisogurski** meets these limitations is thus not mere disagreement with the Examiner, especially given the Examiner's failure to reject even the limitations identical/substantially similar to those already found unpatentable in the Prior IPRs based on **Lisogurski**. *Keysight Techs., Inc. v. Centripetal Networks, Inc.*, IPR2022-01421, Pap. 14, 6-8 (Director Aug. 24, 2023) (finding the Examiner misapprehended or overlooked the Board's earlier FWD involving the same prior art and overlapping subject matter, despite "some differences between the [claim] language"). In fact, the Board has

repeatedly held claims from related patents unpatentable or at least reasonably likely to be unpatentable, including based on at least **Lisogurski**. Exs. 1104-1108.

The Examiner's initials on various IDS submissions during prosecution of the '790's great-grandparent ('455) (DD Br. 12-13) is not a "meaningful evaluation and appreciation of the prior art." *Dr. Reddy's Lab'ys S.A. v. Eye Therapies, LLC*, IPR2024-00467, Pap. 14 at 19 (PTAB Aug. 13, 2024). Indeed, Applicant submitted about 700 references during the '455's prosecution, rendering any claim of careful consideration questionable. *Ecto World*, IPR2024-01280, Pap. 13 at 6-7 (finding IDS containing over 1,000 references as "over 40 times the size of a typical IDS," and "may demonstrate that discretionary denial under § 325(d) is not warranted").

Notably, the '790 issued in 2025. Applicant never submitted the '484-FWD issued in 2022 (Ex. 1015) during prosecution of the '790 or any ancestor applications. The '790 thus issued without the Examiner ever having considered the '484-FWD. §325(d) is not warranted. *See Ecto World,*, IPR2024-01280, Pap. 13 at 7 (failure to "identify references to 'which the examiner should [pay] particular attention,'" or "respond to that request. . . may demonstrate that discretionary denial under § 325(d) is not warranted").

The Examiner's failure to meaningfully consider **Lisogurski** and **Carlson**, the same art in the Prior FWDs rendering identical/substantially similar claims unpatentable, amounts to a material error. Discretionary denial is not warranted.

C. The *Fintiv* Factors 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 weighs against discretionary denial 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, Petitioners' pre-institution motion to stay was denied without prejudice as "premature." Ex. 2006. Petitioners will renew their motion to stay if the Board institutes the IPRs, and it is likely to be granted.[9] *See e-Watch Inc. v. Apple, Inc.*, No. 2:13-cv-1061, 2015 WL 12915668, at *3 (E.D. Tex. Mar. 25, 2015) (the timing of the defendant's earlier motion to stay weighs in favor of granting "promptly renewed" motion to stay after institution).

As detailed below (§II.C.3), there is still significant work to do in the parallel litigation, including most of claim construction, fact and expert discovery, and

[9] 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.

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 set for February 13, 2026, after the Board's institution deadline on February 12, 2026. This district court, and Judge Gilstrap in particular, frequently stays proceedings post-institution when the court has not yet conducted a *Markman* hearing. *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*).

Indeed, the district court has granted stays in cases with far more progress. *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 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 after fact discovery and expert report exchange because "a stay might still obviate the need to prepare for trial"); *CyWee Grp. Ltd. v. Samsung Elecs. Co.*, No. 2:17-CV-00140, 2019 WL 11023976, at *6-7 (E.D. Tex. Feb. 14, 2019) (granting stay three months prior to scheduled trial date).

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

The FWD will issue here by February 12, 2027. While the Texas Case's trial is tentatively scheduled for August 17, 2026, even PO acknowledges that this is

unlikely given the longer "median time to trial." DD Br. 5. Between 2024-2025, the median time to trial in the Eastern District of Texas is 26 months, pushing the expected trial date to February 20, 2027 (the complaint was filed December 20, 2024) and ***after*** the expected FWD date. Ex. 1110 at 35. And, PO's "637" day median time to trial date (DD Br. 5) is based on outdated data spanning a 10 year period that no longer reflects the increased congestion experienced by the district court. Ex. 2008 (based on cases pending between 10/3/2015-10/3/2025).

Indeed, delay is likely in the Texas Case. Twelve other active cases have the same trial date as the Texas Case, where trial dates are routinely delayed. Ex. 1111; Ex. 1112 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. Optronic 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 trials on the same day). The trial date is likely to be 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. Factor 2 is thus neutral and does not support discretionary denial. *Volkswagen Grp. of Am., Inc. v. Longhorn Auto. Grp. LLC*, IPR2025-01064, Pap. 9 at 2 (Director Oct. 10, 2025) (*Fintiv* factor 2 neutral where the scheduled trial date

preceded the expected FWD date, but the time-to-trial statistics suggested the trial would begin after the FWD date); *BOE Tech.*, IPR2024-01130, Pap. 16 at 10.

Even in the unlikely event that the current trial date is not delayed, when "balanced" against the other factors favoring 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 to deny institution, 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, at 2-4 (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) (post-recission) (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 10 (finding no "orders related to the patent at issue in the petition" weighing against discretionary denial). This factor strongly weighs against discretionary denial.

Contrary to PO's misleading suggestion (DD Br. 6), 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 has served only four interrogatories, provided no substantive responses to

any of Petitioners' interrogatories, and produced only around a hundred documents. Ex. 1113. No case-dispositive motions have been filed (deadline not until May 11, 2026). Claim construction is also in its early phases—claim construction discovery is not complete, and no briefing has been filed.[10] *Markman* is set for February 13, 2026, shortly after the Board's institution deadline. 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* hearing was 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 3 favors institution even after *Markman* briefing was complete).

PO's assertion that Petitioners "waited more than ***seven months*** after the filing of the Complaint to file this petition" is misleading. DD Br. 6. While the original Complaint was filed on December 20, 2024, the '790 issued in January 2025, and was not asserted against Petitioners until March 6, 2025. Ex. 1090. Further, PO served its infringement contentions on March 12, 2025 and amended them on May

[10] In the Texas Case, Petitioners propose constructions consistent with the plain and ordinary meaning and do not contend that any term is indefinite, which is consistent with these IPRs. Exs. 1118-1120. *See* §VIII of Pet., '868 Pet., '533 Pet., '455 Pet., '304 Pet., and '475 Pet.

9, 2025. PO amended its complaint a second time on May 19, 2025 to assert the ’475, subject to the concurrently-filed IPR No. 2025-01254. Importantly, PO did not send a request for waiver of service to Petitioner OnePlus Technology (Shenzhen) Co., Ltd. (“OnePlus”) for six months, until June 20, 2025—the waiver was timely returned on June 27, 2025. 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 and before OnePlus even appeared in the Texas Case. Any purported “delay” (DD Br. 6-7) was the “direct result of [PO’s] own litigation activity” and Petitioners’ reliance on the Prior IPRs is a proper and “efficient[]” “exten[sion]” of the Board’s prior analysis, not an attempt to gain an unfair advantage or using the Prior FWDs as a roadmap. *Bayerische Motoren Werke Aktiengesellschaft v. Paice LLC*, IPR2020-00994, Pap. 19 at 12, 19, 21-22 (PTAB Nov. 19, 2020).

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

Petitioners’ stipulations guarantee no overlap between the instant IPRs and the district court litigation, and strongly favors institution. *See supra* §II.A. Contrary to PO’s assertions (DD Br. 16-18), this IPR challenges only the claim asserted in the Texas Case. For the other related IPRs (involving the ’868, ’533, ’304, ’455),

challenging additional claims with substantively different limitations beyond those involved in the Texas Case weighs in favor of institution as the district court will not reach these issues. *Fintiv*, IPR2020-00019, Pap. 11 at 10, 13 (challenging claims not "similar[]"to "those at issue in the district court" weighs "against" discretionary denial).

5. Factor 5 (Same Party) Is Neutral

Petitioners are defendants in the Texas Case; factor 5 is "neutral." *See 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 Institution

Efficiency and consistency strongly favor institution, and no settled expectations support denial—PO does not even claim any settled expectation regarding the '790. *See supra* §II.A. Collateral estoppel eliminates the Board's need to substantively review over 70% of all limitations at issue in the IPRs and ***all but one*** of the limitations in this IPR. *See supra* §II.A. "[C]ollateral estoppel requires that the *issues of patentability* be identical," not claims. *Google LLC v. Hammond Dev. Int'l, Inc.*, 54 F.4th 1377, 1381 (Fed. Cir. 2022); *Keysight Techs., Inc. v. Centripetal Networks, Inc.,* IPR2023-00446, Pap. 30 at 20-21 (PTAB Aug. 5, 2024) (applying collateral estoppel to a subset of a claim).

Petitioners do not assert collateral estoppel against limitation [7.m], and PO claims it as an "acknowledg[ement of] … differences between claim 7 and the

claims at issue in the prior IPRs." DD Br. 9. This is misleading.[11] As shown above (*supra* §II.B), the '484 contains a limitation identical or substantially similar to [7.m]. The Board found the limitation met by **Lisogurski** on remand (Ex. 1016), which is still subject to appeal. Should the appeal resolve during the pendency of this proceeding, collateral estoppel will apply even to this limitation. *See Ironsource Ltd. v. Digital Turbine Inc.*, PGR2022-00053, Pap. 58 at 13-15 (PTAB Mar. 12, 2024) (applying collateral estoppel based on prior FWD that concluded appeal during pendency of instant IPR). Regardless, PO does not urge the Board to deviate from its decision on remand. DD Br. 12; Pet. 40-41. It cannot. *Vivint, Inc. v. Sb Ip Holdings LLC*, IPR2022-01352, Pap. 20 at 52-53 n.12 (PTAB Mar. 19, 2024) ("find[ing] no reason…to deviate from the Board's decision" even without collateral estoppel due to pending appeal).

III. CONCLUSION

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

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[11] PO also tries to distinguish *Hammond*, *Netlist,* and *POSCO* to argue that collateral estoppel does not apply to all challenged limitations. DD Br. 11-12. PO, however, does not dispute that collateral estoppel applies to the vast majority of challenged limitations, or that the Board is uniquely positioned to apply collateral estoppel.

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CERTIFICATE OF COMPLIANCE

Pursuant to §42.24(d), the undersigned certifies that the foregoing Petitioner's Opposition to Patent Owner's Discretionary Denial Brief contains, as measured by the word-processing system used to prepare this paper, 4707 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 PETITIONERS' OPPOSITION TO PATENT OWNER'S DISCRETIONARY DENIAL BRIEF were 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:

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