UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD. and
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

RADIAN MEMORY SYSTEMS, LLC,
Patent Owner.

Case IPR2025-01289
Patent 11,681,614

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 3

III. ARGUMENT 8

A. Regardless Of How The Motion To Dismiss Is Decided, Institution Should Be Denied. 8

1. If The Case Is Dismissed, The IPRs Are An Inefficient Use Of Board Resources. 8

2. If The Case Is Not Dismissed, *Fintiv* Factors Favor Denial. 9

B. The Petition Should Be Denied Because Samsung Had Extensive Knowledge Of Radian And Its Patent Portfolio. 14

C. Samsung's Unfair Dealings Weigh Against Institution. 17

IV. CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

COURT DECISIONS

Allied Tube & Conduit Corp. v. Indian Head, Inc.,
486 U.S. 492 (1988).....19

Am. Soc'y of Mech. Eng'rs v. Hydrolevel Corp.,
456 U.S. 556 (1982).....19

Lionra Techs. Ltd. v. Cisco Sys.,
No. 2:24-CV-00097-JRG, 2025 U.S. Dist. LEXIS 80719
(E.D. Tex. Apr. 28, 2025) (Gilstrap, J.).....10

United States v. Microsoft Corp.,
253 F.3d 34 (D.C. Cir. 2001).....20

Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.,
549 U.S. 312 (2007).....19

AGENCY DECISIONS

Advanced Micro Devices, Inc. v. Concurrent Ventures, LLC,
IPR2025-00223, Paper 9 (June 12, 2025).....11

Amgen Inc. v. Bristol-Myers Squibb Co.,
IPR2025-00603, Paper 8 (July 24, 2025) 17

Google LLC v. Mullen Industries LLC,
IPR2025-00227, Paper 13 (June 25, 2025).....9

Green Revolution Cooling, Inc., v. Midas Green Tech., LLC,
IPR2025-00196, Paper 15 (July 25, 2025) 13

iRhythm Techs., Inc. v. Welch Allyn, Inc.,
IPR2025-00363, Paper 10 (June 6, 2025).....15

Murata Mfg. v. Georgia Tech. Research Corp.,
IPR2025-00383, Paper 14 (July 29, 2025) 16

NVIDIA Corp. v. Neural AI, LLC,
IPR2025-00608, Paper 18 (July 31, 2025) 16

Samsung Elecs. Co., Ltd. v. GenghisComm Holdings,
IPR2025-00793, Paper 12 (Aug. 22, 2025) 16

Samsung Elecs. Co., Ltd. v. Keyless Licensing LLC,
IPR2025-00527, Paper 12 (July 17, 2025) 12

SportRadar AG v. Sportscastr Inc.,
IPR2025-00313, Paper 19 (July 16, 2025) 9

STATUTES

35 U.S.C. § 314(a). 18

EXHIBIT LIST	
2001	*Reserved*
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I. INTRODUCTION

This is one of seven petitions challenging patents-at-issue in a co-pending district court action. Based upon information learned in discovery and Petitioner's affirmative statements in that matter, Patent Owner has assessed that proceeding with that litigation is not a worthwhile use of its resources and has sought to dismiss that action in its entirety. Petitioner opposes the motion and seeks to maintain its counterclaims, including counterclaims of invalidity as to each of the challenged patents. Notably, Petitioner asserted those counterclaims of invalidity only after meet and conferring with Radian on Radian's motion to dismiss the case.

The motion will either be granted such that the entire case is dismissed or denied insofar as Petitioner's counterclaims remain. However the motion is decided, the petitions are not a useful expenditure of the Office's limited resources. If the motion is granted and the case is dismissed, there is no ongoing dispute between the parties, and it is an inefficient use of the Office's resources to proceed with IPRs concerning patents that are no longer in litigation. *See* Section III.A.1. If the motion is denied, at least insofar as Petitioner's invalidity defenses are allowed to remain, the petitions should be denied under *Fintiv* because the district court will reach the question of validity 4.5 to 5 months before the final written decisions would be due. *See* Section III.A.2.

The petitions should further be denied due to Petitioner's long-standing knowledge of Radian, its technology, and its patents and patent applications and as a consequence of Samsung's unfair and anticompetitive dealings. Patent Owner ("Radian") is a pioneer in the field of flash memory. Samsung also garnered vast knowledge of Radian's patented technology through prosecution of its own patents. Indeed, Samsung and/or examiners have cited the Patents themselves, their applications, or related patents/applications at least ***64 times*** in prosecution of Samsung's own patents or patent applications.

Beyond its extensive knowledge of the patents-at-issue, Samsung was well aware of Radian's impact in the flash memory industry. Samsung is the worldwide market share leader in flash solid state drives ("SSDs") and a top-tier and influential member of the standard-setting NVMe consortium. Radian's technology was desired, and Radian was heavily pressured to join the consortium on the condition that it provide a royalty free license to its technology. When Radian refused to join, members of the consortium carried through on their threats, refused to work with Radian, and froze Radian out of the market. *See* Section II.

Despite all of this knowledge of Radian, its technology, and its patent portfolio dating back at least ten years, Samsung has never challenged any of Radian's patents until now. The Petition should be denied due to Samsung's

failure to bring an earlier challenge. *See* Section III.B. Samsung's petitions should also be denied due to its anticompetitive misconduct. *See* Section III.C.

II. FACTUAL BACKGROUND

Patent Owner Radian Memory Systems, LLC ("Radian") was founded in 2010 with a focus on developing and building what would become "Symphonic Cooperative Flash Management" to solve inefficiencies with managing flash storage at scale that plagued the industry at the time. Ex. 2005 [Jadon-Decl.] ¶¶ 8-9, 12. To this end, Radian worked tirelessly from 2010 to 2015 and beyond, dedicating an extraordinary amount of resources, including investing tens of millions of dollars, into developing its Symphonic technology and products. *Id.*, ¶¶ 12-13. Radian's employees worked on heavily reduced salaries and its founder and CEO, Mike Jadon, took no salary in order to dedicate more funds to Symphonic research. *Id.* Mr. Jadon also invested over a million dollars of his own money and Radian raised another million dollars from angel investors for Symphonic research. *Id.* Radian invested heavily in its patent portfolio and by early 2013, Radian had begun filing patent applications—including the provisionals for four of the Patents. *Id.*, ¶ 14.

And Samsung has long been aware of the Patents through prosecution of its own patents. Radian's patents, patent applications, and patent application publications have been repeatedly cited in prosecution of Samsung's patents—by

both examiners and Samsung itself. Indeed, Samsung and/or examiners have cited the Patents themselves, their applications, or related patents/applications at least ***64 times*** in prosecution of Samsung's own patents or patent applications. *See* Ex. 2009 [Complaint] ¶¶ 381-590. Indeed, a related application to the '614 patent that is the subject of the Petition was cited by the examiner during prosecution of at least two of Samsung's patents. *See* Section III.B, *infra*.

The industry also recognized the import of Radian's contributions to flash memory. Indeed, by 2013, a representative from a leading NAND flash and SSD manufacturer acknowledged that Radian had solved the main problems of flash SSDs and that Radian was years ahead of the industry in doing so. Ex. 2005 [Jadon-Decl.] ¶ 15. By 2015, Radian had developed a working system-level implementation of its Symphonic technology and presented it at the 2015 Flash Memory Summit, the industry's largest flash storage conference with thousands of attendees. *Id*., ¶¶ 16-17. At the Summit, Radian was awarded Most Innovative Technology, beating out multi-billion-dollar companies. *Id.* Thereafter, Radian continued to market, promote, and develop its technology through conferences, booths, and technical engagement meetings. *Id.*, 19. By 2015, Radian introduced Cooperative Flash Management to Samsung. *Id.*, ¶ 25. While Samsung was initially not receptive to this technology, it entered the market in 2021 adopting Radian's cooperative flash management solutions. *See id*.

In 2017 at an industry conference, Microsoft made a public call for the industry to adopt a version of the flash management technology and architecture that Radian had been evangelizing for years. Ex. 2005 [Jadon-Decl.] ¶ 21. In 2018, Microsoft announced Project Denali SSDs which "provide the flexibility needed to optimize for the workloads of a wide variety of cloud applications, the simplicity to keep pace with rapid innovations in NAND flash memory and application design, and the scale required for multitenant hardware that is so common in the cloud." Ex. 2006 [Project-Denali-Article]. To that end, Microsoft called for the industry "to begin formalization of the specification that will define the interface to Project Denali drives." *Id.* The NVM Express ("NVMe") consortium, a consortium of companies that work together to set standards for how host systems communicate or interact with non-volatile memory in SSDs, formed technical working groups to standardize command sets that used Cooperative Flash Management. Ex. 2005 [Jadon-Decl.] ¶ 21. The technical working groups eventually set the Zone Namespaces ("ZNS") and Flexible Data Placement ("FDP") standards that incorporated Radian's patented technology. *Id.*, ¶ 23. Samsung is a top-tier "promoter" member of NVMe and was a key contributor on the ZNS and FDP specifications, with several employees serving on the technical working group and/or listed as authors of the specifications. *Id.*, ¶ 24; *see also* Ex. 2007 [Amended-Answer] 5.

Because of Radian's pioneering technology, Radian faced increasing pressure to join the NVMe consortium. Ex. 2005 [Jadon-Decl.] ¶ 23. Significantly, however, a condition for joining NVMe would be granting royalty-free licenses to the other members—including Samsung—for use of any of Radian's patented technology that might be incorporated into the standards. *Id.* Radian resisted joining the NVMe consortium and received threats from certain individuals in the consortium, promising that Radian would be cut off from access to drafts of new specifications and that customers in the technical working groups would be prohibited from working with Radian. *Id.* When Radian refused to join NVMe, those threats were carried out, and Radian lost access to working drafts that it previously had access to, and Radian's customers dried up, though Radian was then the only company with a fully functional zoned Flash SSD product. *Id.*

When the specifications were finally publicly published, Radian realized that NVMe had incorporated Radian's Symphonic Cooperative Flash Management into its specifications. *Id.*, ¶ 23. Indeed, Radian's SSDs were independently verified to be compliant with the new ZNS specification merely two months after the specification was published. *Id.* No other company was able to achieve this for at least another year, despite having the access to working drafts that Radian did not. *Id.* Samsung also released a ZNS-compatible product, helping itself to Radian's innovations. *Id.*, 25.

To address Samsung's infringement, Radian filed suit, *Radian Memory Systems LLC v. Samsung Electronics Co., Ltd. et al.*, 2-24-cv-01073 (E.D. Tex.) (the "District Court Action") asserting U.S. Patent Nos. 11,307,995; 11,347,656; 11,347,657; 11,544,183; 11,681,614; 11,709,772; and 11,740,801 (the "Patents"). In connection with Radian's motion for a preliminary injunction, Radian received discovery from Samsung. Based upon that discovery, Radian moved to withdraw its preliminary injunction motion with the Court granting the motion, explaining that "Radian sets forth several affirmative representations made to it by Samsung which Radian now believes obviate the imminent risk that would support a preliminary injunction" and that "Radian also says it seeks withdrawal to preserve judicial resources." Ex. 2010 [Order] 1.

Based upon this same information, Radian similarly has sought to dismiss the underlying case because it is not an efficient use of Radian's resources and to preserve judicial economy. Ex. 2011 [Motion-to-Dismiss]. After Radian had notified Samsung of its intent to move to dismiss the District Court Action and after the parties had conferred on Radian's motion, Samsung amended its answer, adding for the first time counterclaims asserting that the Patents are invalid. Ex. 2007 [Amended-Answer] 163-178. Petitioner, however, has opposed Radian's motion to dismiss and seeks to maintain these newly filed counterclaims.

Should the case not be dismissed, Samsung has not sought a stay. The parties have exchanged infringement and invalidity contentions. Ex. 2012 [Docket Control Order] 5-6. By the time of the institution decision, under the case schedule, the parties will be engaged in the Markman Process, and fact discovery would be closing in just two months. *Id.*, 4-5. The trial is scheduled to occur 4.5-5 months before the final written decisions would be due. *Id.*, 1. While Samsung has offered a *Sotera* stipulation, it has not forsworn reliance upon system art.

III. ARGUMENT

A. Regardless Of How The Motion To Dismiss Is Decided, Institution Should Be Denied.

As discussed, Patent Owner has moved to dismiss the underlying District Court Action deciding, based upon information learned in discovery, that it is not a worthwhile expenditure of Radian's limited resources. *See* Section II. Petitioner has opposed, seeking to maintain, *inter alia*, its newly filed counterclaims of invalidity challenging each of the Patents. *See* Ex. 2007 [Amended-Answer] 163-178. Patent Owner does not know whether its motion to dismiss the case will be granted. Either way, these IPRs are not an efficient use of the Office's resources.

1. <u>If The Case Is Dismissed, The IPRs Are An Inefficient Use Of Board Resources.</u>

If Patent Owner's motion to dismiss is granted and the underlying District Court Action is dismissed in its entirety, the IPRs should not go forward because it

is an inefficient use of the Office's limited resources. *See* Ex. 2008 [3/26/25 Memo] (outlining procedures to manage PTAB workload). Here, again, based upon the information Patent Owner learned in discovery, it has determined that the underlying District Court Action is an inefficient use of its and the Court's resources. If the Court grants the motion and dismisses the District Court Action in its entirety, it would be an inefficient use of the Board's resources to adjudicate the validity of patents that are no longer asserted in litigation. *See, e.g.*, *Google LLC v. Mullen Industries LLC,* IPR2025-00227, Paper 13, 4 (June 25, 2025) ("it is an inefficient use of Board resources to review the '540 patent that has been dismissed from the litigation."); *SportRadar AG v. Sportscastr Inc.*, IPR2025-00313, Paper 19, 2 (July 16, 2025) ("Additionally, for IPR 2025-00313 and IPR2025-00315, the challenged claims are no longer asserted in the parallel litigation. Under these circumstances, it is an inefficient use of Board resources to review claims of a patent that are no longer being asserted in district court.") (cleaned up).

2. <u>If The Case Is Not Dismissed, *Fintiv* Factors Favor Denial.</u>

In the event that the case is not dismissed, institution should also be denied because each of the six *Fintiv* factors, discussed in turn below, favors denial.

Factor 1 Strongly Favors Denial. No stay pending IPR has been sought. Nor is there any indication a stay pending IPR will even be requested, much less

granted.

Trial is scheduled for five months before the final written decisions will be due. Ex. 2012 [Docket Control Order] 1. Samsung delayed until over seven months after the complaint was filed (December 2024) to finish filing its IPRs (August 2025). Moreover, Samsung's invalidity arguments are much more expansive in the District Court Action than in the IPRs. Samsung's invalidity contentions include combinations not asserted in the IPRs and leaves the door open for additional unnamed combinations. Ex. 2013 [Invalidity Contentions] 50 ("These combinations are merely examples."). Indeed, Samsung relies upon 22 prior art systems and products in the District Court Action. *Id.*, 33-34. The District Court Action is pending before Judge Gilstrap, and a stay is unlikely in such circumstances. *See, e.g.*, *Lionra Techs. Ltd. v. Cisco Sys.*, No. 2:24-CV-00097-JRG, 2025 U.S. Dist. LEXIS 80719, at *3-10 (E.D. Tex. Apr. 28, 2025) (Gilstrap, J.) (denying stay pending IPR where the "final written decision, which could be subject to further appeals, is not due until a date more than five months after the jury trial is set to begin" and "the IPR only covers a portion of Defendant's invalidity arguments").

Here, where there is no stay and any stay is speculative and unlikely, allowing this IPR to proceed in parallel would be wasteful and inefficient.

Factor 2 Overwhelmingly Favors Denial. This is one of seven IPR

petitions brought by Samsung against Radian (IPR2025-01266, -01289, -01321, -01350, -01376, -01377, -01378). The FWD deadlines for these cases would fall between January 20 and February 12, 2027. The District Court Action, however, is scheduled to go to trial on August 31, 2026, *i.e.*, approximately ***five months before*** the FWD deadlines. Where the district court trial is set to proceed five months before the final written decision deadline, the Director has near-universally denied institution under *Fintiv*. Indeed, Director has denied institution in over 125 such cases that Patent Owner has identified. The trial date is, moreover, consistent with Judge Gilstrap's median time to trial of 20 months (Ex. 2018 [Gilstrap Time to Trial]), which would place the trial date in mid-June 2026.

Even if the District Court Action were delayed, that still would not justify maintaining parallel proceedings in view of the investment of the parties that would be expected through trial in the District Court Action. *Advanced Micro Devices, Inc. v. Concurrent Ventures, LLC*, IPR2025-00223, Paper 9, 2 (June 12, 2025) ("Even though a district court trial date that occurs after a projected final written decision date reduces the possibility of conflicting decisions, that benefit does not outweigh the efficiencies gained by avoiding parallel proceedings in this instance because of the parties' meaningful investment in the district court proceeding discussed above."). Here, given the approximately five-month gap between the final written decision deadline and the scheduled district court trial

date, Factor 2 overwhelmingly favors denial.

Factor 3 Strongly Favors Denial. The parties have exchanged initial disclosures and infringement/invalidity contentions. If the case is not dismissed, at the time of the last institution decision on February 12, 2026, the parties will be engaged in the Markman process and fact discovery would be closing in just two months. Ex. 2012 [Docket Control Order] 4-5. The Director has found that factor 3 "strongly favors denial" where such events have occurred. *See, e.g.*, *Samsung Elecs. Co., Ltd. v. Keyless Licensing LLC*, IPR2025-00527, Paper 12, 2 (July 17, 2025) (meaningful investment where "parties are engaged in the *Markman* process and fact discovery is nearly closed."). Thus, the case schedule is similar to those found by the Director to "strongly" favor denial under factor 3.

Factor 4 favors denial. There is a complete overlap between Samsung's invalidity contentions in the District Court Action and its IPR grounds. Leaving no doubt, Samsung's invalidity contentions call out the very same grounds based upon Ellis, Son, Olbrich, Yamada, Takeo, and Sinclair, that it relies upon in its IPR Petition. *Compare* Pet., 1 *with* Ex. 2013 [Invalidity-Contentions] 51-52 (raising same grounds based upon Ellis/Son, Ellis/Son/Olbrich, Ellis/Son/Olbrich/Yamada, Takeo/Son/Sinclair, Takeo/Son/Sinclair/Olbrich, Takeo/Son/Sinclair/Olbrich/Yamada). Samsung has offered a *Sotera* stipulation, but that stipulation does not forswear all reliance upon system art. Ex. 1012

[Stipulation]. Further, when "the likely trial date … is approximately four months before" the FWD, even an enhanced stipulation does not outweigh other *Fintiv* factors. *Green Revolution Cooling, Inc., v. Midas Green Tech., LLC*, IPR2025-00196, Paper 15, 2-3 (July 25, 2025); *see also id.* ("the [enhanced] stipulation does not outweigh the other *Fintiv* factors."). Here, the trial date is approximately five months before the final written decisions, a stay is unlikely, and there will be meaningful investment in the District Court Action if it is not dismissed. Samsung's enhanced stipulation does not outweigh these factors.

Factor 5 strongly favors denial. The parties to this IPR are the same parties in the District Court Action.

Factor 6: other factors strongly favor denial. Here, the surrounding circumstances do more than reinforce the first five *Fintiv* factors—they make institution inappropriate in their own right.

<u>If the Case Goes Forward, It Is Because Samsung Fought To Keep It There.</u> Should the District Court Action continue, it will be because Petitioner Samsung recently asserted and fought to maintain new invalidity counterclaims, and refused to consent to Patent Owner's motion to dismiss. Having brought its validity challenges only after being notified of Patent Owner's intent to move to dismiss the case and having fought to keep its validity challenges in the district court, Samsung should not get a second bite at the apple before the Board.

Samsung's Long-Standing Knowledge And Unfair Dealings. As discussed in Sections II and III.B-C, Samsung's failure to challenge the Patents despite its long-standing knowledge and unfair dealings should be reason alone to deny institution, and it reinforces the basis for denial under *Fintiv*.

The Petition's Weakness & Lack Of New Authority Favor Denial. The Petition's weakness supports denial. Ex. 2008 [3/26/25 Memo] 2; *see* POPR (forthcoming). Radian is not aware of any change in the law affecting patentability. *Id.*

B. The Petition Should Be Denied Because Samsung Had Extensive Knowledge Of Radian And Its Patent Portfolio.

Institution should further be denied because Samsung had extensive knowledge of Radian and its patent portfolio but failed to bring an earlier challenge to the Patents. Indeed, Samsung had extraordinary knowledge of the Patents through its own prosecution. Here, the Patents, their applications, and/or related applications or patents were cited at least ***64 times*** in multiple prosecutions of Samsung's own patents. *See* Section II; *see also* Ex. 2009 [Complaint] ¶¶ 381-590. For instance, the '614 patent's ancestor U.S. Patent No. 10,445,229 was cited ***by the examiner*** during prosecutions of at least two of Samsung's patents. *See* Ex. 2009 [Complaint] ¶¶ 576, 579.

The prevalence of the Patents in Samsung's prosecution supports denial. In *iRhythm*, for instance, institution was denied because the petitioner was aware of just one of the patent owner's patent applications "as early as 2013," when it was cited in an IDS in the prosecution of petitioner's own patent application, but "fail[ed] to seek early review of the patents." *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10, 3 (June 6, 2025) ("*iRhythm*"). Here, Radian's Patents, their applications and/or patent application publications were cited ***at least 64 times*** during prosecution of Samsung's patents. The '614's ancestor was cited ***by the examiner*** in prosecutions of at least two Samsung patents. Thus, Samsung's knowledge of the Patents far exceeds that present in *iRhythm*.

Beyond its own prosecution, Samsung was long familiar with Radian, a key player in its technological space. The parties, again, engaged in discussions about Radian's technology since at least 2015, the same year that Radian won the Most Innovative Technology award at the Flash Memory Summit. Ex. 2005 [Jadon-Decl.] ¶¶ 17, 25. Samsung was a frequent visitor of Radian's booths at summits and conferences, and Radian presented its technology to Samsung in 2015. *Id.*, 24.

Moreover, Samsung had extensive knowledge of Radian, its technology, and its patents through the NVMe consortium of which Samsung was a pioneering and influential member. The consortium actively pursued Radian and collaborated with it for a limited time. Ex. 2005 [Jadon-Decl.] ¶ 23. The consortium pressured

Radian to join on the condition that it provide a royalty-free license to Radian's patents to the consortium's members, including Samsung. *Id.*

As the Director has consistently found, even pre-suit awareness that "Patent Owner was involved in the same technology space for a significant amount of time" but "fail[ed] to seek early review of the patents" favors denial. *Murata Mfg. v. Georgia Tech. Research Corp.*, IPR2025-00383, Paper 14, 2-3 (July 29, 2025). Here, the evidence of Samsung's presuit knowledge goes far beyond awareness that Radian was in the same "technology space."

Similarly, in *Neural AI*, the Director denied institution as to a reissue patent that issued in 2023 where the parties had a "commercial relationship" and the patent owner discussed its patented technology, including the original patent the reissue patent issued from, finding that "Petitioner had actual notice of the challenged patents and Petitioner's failure to seek early review of the patents favors denial." *NVIDIA Corp. v. Neural AI, LLC*, IPR2025-00608, Paper 18, 2-3 (July 31, 2025). In view of Samsung's actions and long-standing actual knowledge of the Patents through its own prosecution, that the Patents issued in 2022-2023 should "not tip the balance against discretionary denial." *See Samsung Elecs. Co., Ltd. v. GenghisComm Holdings*, IPR2025-00793, Paper 12, 2 (Aug. 22, 2025) (2022 patent issuance date did "not tip the balance against discretionary denial."). Here, through at least the predominance of Radian's patented technology in

Samsung's own prosecution, Samsung had far greater actual knowledge of the Patents.

Further favoring discretionary denial is the tens of millions of dollars Radian spent developing its innovative technology, an extraordinary amount for such a small company, causing its employees to receive reduced compensation and its CEO to take no pay. Ex. 2005 [Jadon-Decl.] ¶¶ 12-13. This investment of time and capital led to the development of Radian's patented technology and caused Radian to be identified as the Most Innovative Technology at the leading industry conference and for the NVMe consortium to seek Radian's involvement. *Id.*, ¶¶ 16-17. This extraordinary investment further favors denial. *See Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00603, Paper 8, 2 (July 24, 2025) (settled expectations for three year old patent where "an extraordinary amount of investment, time, and resources dedicated to research, development … correlates to settled expectations.").

Despite all of this long-standing knowledge of Radian and the Patents—through its own prosecution, direct discussions, the consortium, and Radian's awards for innovation—Samsung has not challenged any of the Patents until now. This is reason enough to deny institution.

C. Samsung's Unfair Dealings Weigh Against Institution.

The petitions should also be denied as a consequence of Samsung's unfair

dealings. *See Tessell, Inc. v. Nutanix, Inc.*, IPR2025-00322, Paper 14, 2-3 (June 12, 2025) ("the Office may consider unfair dealings as a factor when determining whether to exercise discretion to deny institution under 35 U.S.C. § 314(a).

Here, again, Samsung was a major player in the NVMe consortium and the NVMe Technical Working Groups that ultimately drafted standards that were based on Radian's technology. Ex. 2005 [Jadon-Decl.] ¶ 23. Seeing Radian's far-advanced technology and industry praise, the NVMe consortium heavily pressured Radian to join. *Id.* A condition of joining, however, was granting a royalty-free license to Radian's patents to all NVMe consortium members. *Id.* The consortium pursued Radian so aggressively that certain members threatened Radian that if Radian did not join, Radian's customers would be prohibited from dealing with Radian and that Radian would lose access to working drafts of the standards. *Id.* When Radian refused to give in, those members made good on their threats, and Radian precipitously lost customers when customers should have been exponentially rising, and Radian was cut off from accessing working drafts any longer. *Id.* Consequently, Radian was unable to assess the standards for patent infringement until it was too late and the standards were released. *Id.*

Samsung's "unfair dealings" once Radian refused to grant it and the other members of the NVMe consortium a royalty-free license to its patents left Radian cast out of the industry and unable to assess the consortium's technical standards

for patent infringement. It would be unfair and an inappropriate use of the Office's resources to allow Samsung, who pursued a license to Radian's patents, to then argue for their invalidity when Samsung did not get its way.

Notably, here, the United States Government took the extraordinary step of supporting Radian's motion for a preliminary injunction, noting precisely the harm in such anticompetitive conduct from standards setting bodies, explaining:

> The complaint here involves a product standard developed by a private consortium that includes several large firms who practice the standardized technology (commonly called implementers). While Radian did not bring an antitrust claim, the complaint nevertheless raises competition concerns. ***There is "serious potential for anticompetitive harm" inherent in these standards-development organizations (SDO), which "often have economic incentives to restrain competition,"*** as their members collaborate on what products will or will not be "manufacture[d], distribute[d], or purchase[d]." *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 500 (1988); *see also Am. Soc'y of Mech. Eng'rs v. Hydrolevel Corp.*, 456 U.S. 556, 571 (1982) ("[A] standard-setting organization . . . can be rife with opportunities for anticompetitive activity."). ***These competition concerns are particularly acute where an SDO is controlled by large implementers with market power. Large purchasers working together can exercise monopsony power—the "mirror image" of monopoly power***. *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312, 322 (2007). An abuse of market power "to squash

> nascent, albeit unproven competitors" is "inimical" to the goal of preserving and protecting competition. *See United States v. Microsoft Corp.*, 253 F.3d 34, 79 (D.C. Cir. 2001).

Ex. 2014 [US Statement of Interest] 1-2 (footnote omitted) (emphasis added). Such concerns are particularly acute as to Samsung, the world's market share leader in SSD flash memory. Ex. 2016 [Samsung-Article] 3 ("Since 2006 to present, Samsung Electronics has maintained the top market share in the world's SSD market.").

Samsung and the NVMe consortium's abuse of market power has left Radian shut out from the industry and left Radian's patents as, under Samsung's view, a free-for-all. Allowing Samsung to continue its abuse of market power to "squash nascent, albeit unproven competitors" with highly desirable technology through the IPR process would be an inappropriate use of Office resources. Samsung's actions and the harm to competition it perpetuates should weigh heavily in favor of denial.

IV. CONCLUSION

For the foregoing reasons, institution should be denied.

Respectfully submitted,

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Date: September 18, 2025

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following documents were served by electronic service, by agreement between the parties, on the date below:

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

EXHIBITS 2005-2018

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