

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SNAP, INC.,

Petitioner,

v.

NOKIA TECHNOLOGIES OY,

Patent Owner.

IPR2025-01338

U.S. Patent No. 7,724,818

**PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL**

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
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Ex. No.	Title	Previously Submitted
2001	Complaint for Patent Infringement in <i>Nokia Technologies Oy v. Amazon.com, Inc., et al</i> ; Case No. 1:23-cv-01236 (DDE), Oct. 31, 2023	
2002	Petition for <i>Inter Partes</i> Review of U. S. Patent No. 7,724,818 in IPR2024-00572	
2003	<i>Certain Video Capable Electronic Devices, Including Computers, Streaming Devices, Televisions, and Components and Modules Thereof</i> , Inv. No. 337-TA-1380, Initial Determination (Dec. 20, 2024)	
2004	Declaration of Dr. Eli Saber, Ph.D. Regarding U. S. Patent No. 7,724,818 in IPR2024-00572	
2005	Decision Granting Institution of <i>Inter Partes</i> Review 35 U.S.C. § 314 in IPR2024-00572	
2006	Order of Dismissal in IPR2024-00572	
2007	Complaint for Patent Infringement in <i>Nokia Technologies Oy v. Lenovo Group Ltd.</i> , Case No. 5-19-cv-00427 (EDNC), Sept. 25, 2019	
2008	Complaint for Patent Infringement in <i>Nokia Technologies Oy v. HP Inc.</i> , Case No. 1-23-cv-01237 (DDE), Oct. 31, 2023	
2009	Complaint for Declaratory Judgment in <i>Element Television Co., LLC v. Nokia Corporation et al.</i> , Case No. 24-cv-4269 (LMB/DTS) (D. Minn.), Nov. 25, 2024	
2010	<i>Certain Electronic Devices, Including Computers, Tablet Computers, and Components and Modules Thereof</i> , Inv. No. 337-TA-1208, Complaint (July 1, 2020)	

Pursuant to the Director’s March 26, 2025 Memorandum concerning “Interim Processes for PTAB Workload Management” (“March 26, 2025 Memorandum”), Patent Owner Nokia Technologies Oy (“Patent Owner” or “Nokia”) respectfully requests that the Director exercise his discretion and deny institution of Petitioner Snap Inc.’s (“Petitioner” or “Snap”) Petition for *inter partes* review of U.S. Patent No. 7,724,818 (“the ’818 Patent”).

First, settled expectations of the Parties favors discretionary denial. The ’818 Patent issued over 15 years ago. *See* Ex-1001 at 1 (indicating May 25, 2010 issue date). Since then, Patent Owner has established an extensive patent licensing program relating to video coding technology with over 50 license agreements involving the ’818 Patent. Additionally, the ’818 Patent has been asserted in district court litigation and the subject of an overlapping *inter partes* review filed by Amazon. *See, e.g.*, Ex-2001 (*Nokia Technologies Oy v. Amazon.com, Inc.*, 1:23-cv-01236 (D. Del.) (filed Oct. 31, 2023)); Ex-2002 (*Amazon.com, Inc. v. Nokia Technologies OY*, IPR2024-00572, Paper 3 (April 1, 2024) (“Amazon Petition”). Additionally, the ’818 Patent was asserted in an International Trade Commission (“ITC”) investigation where the Administrative Law Judge (“ALJ”) determined the priority date of the ’818 Patent—which predates U.S. Patent No. 6,646,578 (“Au”)—

and found that a POSITA would not have been motivated to combine VCEG-N52¹ and U.S. Patent No. 6,539,059 (“Sriram”), and now Petitioner attempts to relitigate these issues before the Board. Ex-2003 (*Certain Video Capable Electronic Devices, Including Computers, Streaming Devices, Televisions, and Components and Modules Thereof*, Inv. No. 337-TA-1380, Initial Determination (Dec. 20, 2024)) at 44-47. Petitioner’s attempt to litigate the validity of the ’818 Patent—which it could have done at any time since its founding in 2011—is nothing but an inefficient attempt to relitigate the validity decision in the ITC investigation.

Second, prior adjudication of the ’818 Patent’s validity favors discretionary denial. The ITC investigation involved extensive fact and expert discovery, depositions, briefing, motions, and trial, and the ALJ issued an Initial Determination finding the ’818 Patent not invalid. Ex-2003 at 35-48. Petitioner’s attempt to relitigate issues already decided would waste resources.

Third, the merits of the Petition are weak and thus favor discretionary denial. Au is not prior art. Au was filed on November 22, 2002, whereas the ALJ in its Initial Determination found that the priority date of the ’818 Patent is May 1, 2002. Ex-2003 at 41 (“Nokia has shown diligence and reduction to practice, and the 818 patent is entitled to a priority date of May 1, 2002.”). Therefore, Au cannot be prior art to

¹ H.26L over IP and H.324 Framework (“VCEG-N52”), available at https://www.itu.int/wftp3/avarch/videosite/0109_San/VCEG-N52.doc

the '818 Patent and cannot be used to challenge the validity of the patent. Further, the ALJ already found that a POSITA would not have combined VCEG-N52 and Sriram, and Petitioner and its expert use the same failed arguments from the ITC investigation to effectively asks the Board to relitigate this issue and find a result inconsistent with the ALJ. Ex-2003 at 44-47. The Board should decline.

Fourth, Petitioner's over-reliance on expert testimony, including filling in gaps in the alleged prior art teachings, favors discretionary denial. Petitioner attempts to use expert testimony to plug holes in Au, VCEG-N52, and Sriram, but this favors discretionary denial.

For these reasons and the reasons identified below, Patent Owner respectfully requests that the Director exercise discretion under § 314(a) and deny institution.

I. THE FACTORS IDENTIFIED IN THE DIRECTOR'S MARCH 26, 2025 MEMORANDUM HEAVILY FAVOR DISCRETIONARY DENIAL

The Director's March 26, 2025 Memorandum notes that "consistent with the discretionary considerations enumerated in existing Board precedent (including *Fintiv*, *General Plastic*, and *Advanced Bionics*) and the Consolidated Trial Practice Guide (Nov. 2019), the parties are permitted to address all relevant considerations" that weigh in favor of discretionary denial." March 26, 2025 Memorandum at 2 (citations omitted). These factors include:

- Whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims;
- Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability;
- The strength of the unpatentability challenge;
- The extent of the petition's reliance on expert testimony;
- Settled expectations of the parties, such as the length of time the claims have been in force;
- Compelling economic, public health, or national security interests; and
- Any other considerations bearing on the Director's discretion.

Id. at 2-3. As discussed in detail below, these factors weigh heavily in favor of discretionary denial, and Patent Owner respectfully requests that the Director deny institution.

A. Patent Owner's Strong Settled Expectations in the '818 Patent Heavily Favor Discretionary Denial

"Settled expectations" is generally directed to the length of time the claims have been in force. This factor weighs heavily in favor of denying institution.

The '818 Patent issued on May 25, 2010 and has "been in force for over fifteen years, creating strong settled expectations" for Patent Owner. *See, e.g., Int'l Business Machines Corporation v. VirtaMove, Corp.*, IPR2025-00599, Paper 8 at 2 (PTAB

July 17, 2025); *Amazon.com, Inc. v. KAIFI LLC*, IPR2025-00626, Paper 14 at 2-3 (PTAB July 29, 2025); *Microsoft Corp. v. Dialect, LLC*, IPR2025-00656, Paper 12 at 2 (PTAB Aug. 14, 2025); *Dabico Airport Solutions Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 (“The challenged patent has been in force almost eight years, creating settled expectations”); *Samsung Electronics, Co., Ltd. et al. v. Cerence Operating Co.*, IPR2025-00458, -00459, -00460, Paper 14 (“[T]he challenged patents issued over 11 years ago Patent Owner’s settled expectations also weigh toward discretionary denial.”); *iRhythm Technologies, Inc. v. Welch Allyn*, IPR2025-00363, -00374, -00376, -00377, -00378, Paper 10 (denying institution where “one of the patents has been in force since as early as 2012”). The fact that the parties are not currently engaged in a parallel proceeding involving the ’818 Patent does not negate these settled expectations. *Amgen Inc., v. Bristol-Myers Squibb Co.*, IPR2025-00601, Paper 9 at 3 (PTAB July 24, 2025) (denying institution based on settled expectations regarding patents not currently asserted against the petitioner); *Kahoot! AS, v. Interstellar Inc.*, IPR2025-00696, Paper 12 at 2 (PTAB July 31, 2025) (“Petitioner’s argument that Patent Owner does not have settled expectations because Patent Owner did not previously assert the challenged patent against Petitioner does not defeat Patent Owner’s settled expectations.”). Because there are no legitimate reasons to use Board resources to disturb these settled expectations, this factor weighs heavily in favor of discretionary denial. *See Dabico*

Airport Solutions Inc. v. AXA Power ApS, IPR2025-00408, Paper 21 at 2–3 (Director June 18, 2025).

Moreover, Patent Owner has a well-established patent licensing program relating to video coding technology and has executed over 50 license agreements encompassing the '818 Patent. Further, the '818 Patent has been the subject of multiple litigations, including district court litigation against Lenovo Group (EX-2007 (filed Sept. 25, 2019), Amazon (EX-2001 at 16, 574 (filed Oct. 31, 2023)), Hewlett-Packard (EX-2008 (filed Oct. 31, 2023)), Element TV Company (EX-2009 (filed Nov. 25, 2024)), and International Trade Commission litigation against Lenovo (EX-2010 (filed July 2, 2020)) and Amazon and HP (EX-2003). No court, agency, or the PTAB has ever found any claim of the '818 Patent invalid. Thus, the Parties have settled expectations regarding the validity and enforceability of the '818 Patent, particularly given the 15 plus years the claims have been in force, the numerous licenses the patent is subject to, and the number of times the patent has been asserted and challenged in litigation. Thus, this factor heavily favors discretionary denial.

**B. Prior Adjudication of the '818 Patent Heavily Favors
Discretionary Denial**

**1. The ALJ's Initial Determination Held the '818 Patent Not
Invalid**

This prior adjudication factor is directed to “whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims.” Here, the ALJ already adjudicated the validity and patentability of claims 6, 8, 9, and 15 (decoder and decoding claims) of the '818 Patent, holding the claims nonobvious under § 103. Ex-2003 at 44-47.

The Board should discretionarily deny institution and decline to relitigate the ALJ's holdings. During the ITC investigation, Respondents Amazon and HP and their expert challenged the validity of claims 6, 7, 8, 9, 11, 15, and 21 of the '818 Patent. Their invalidity theories included, among others, (1) obviousness by Au, and (2) obviousness by VCEG-N52 in view of Sriram. Prior to the ITC trial, Respondents dropped their weakest theories, including their theory that Au renders obvious the claims of the '818 Patent. Respondents likely dropped their invalidity theory based on Au because, as discussed below, Au is not prior art to the '818 Patent. At the trial, the ALJ considered expert testimony, among other evidence, to hold that the asserted decoder and decoding claims (6, 8, 9, and 15) of the '818 Patent are not obvious by VCEG-N52 in view of Sriram. Ex-2003 at 44-47. As discussed

below, the ALJ based his decision on the lack of motivation to combine VCEG-N52 and Sriram. *See id.*

The Petition's inclusion of additional challenged claims (such as encoder/encoding claims) carries no weight in the discretionary denial analysis. That is because the Petition's fatal flaws are found in the references themselves rather than an application of the references to the challenged claims. The Petition and Petitioner's expert include the same theories litigated at the ITC, where the '818 Patent was found nonobvious. *See* Petition at 1-2. The Petition's Ground 1 (Au) fails because, as discussed below, Au is not prior art. The Petition's Ground 2 (VCEG-N52 in view of Sriram) fails because, as discussed below, a POSITA would not have been motivated to combine the references. Thus, including additional challenged claims in the Petition cannot overcome the failures of these references.

Thus, prior adjudication weighs heavily against institution. *See Celltrion, Inc. v. Regeneron Pharmaceuticals, Inc.*, IPR2025-00456, Paper 14 at 2 (Director June 25, 2025) (exercising discretion to deny institution when other forums have already adjudicated the validity of the challenged patent claims).

2. The Petition Substantially Overlaps with the Amazon Petition, Which Was Instituted Prior to and Without the Benefit of the ALJ's Adjudication that the '818 Patent Is Not Invalid

While the ITC investigation was pending, Amazon filed for *inter partes* review of claims 6-9, 11, 15, 21, and 23 of the '818 Patent in April 2024. Ex-2002 (Amazon Petition). The Amazon Petition relied on four grounds (JVT-E022d7, Linzer, Au, and VCEG-N52 in view of Sriram) and the declaration of Dr. Eli Saber. *Id.* at 2; Ex-2004 (Amazon Saber Declaration). On October 25, 2024, the Board instituted IPR. Ex-2005 (Amazon Institution Decision) at 86. However, at that time, the Board did not have the guidance from the March 26, 2025 Memorandum regarding discretionary denials or the ALJ's December 20, 2024 Initial Determination holding the asserted claims of the '818 Patent are not invalid. That is not the case now and for those reasons prior adjudication weighs heavily against institution.

Here, the Petition relies on the same alleged prior art (Au and VCEG-N52 in view of Sriram) as the Amazon Petition—and which was already litigated at the ITC—and the Declaration of Dr. Eli Saber, which appears to have been copied directly from the Amazon proceeding. *Compare* Ex-1003 *with* Ex-2004 (Amazon Saber Declaration). This type of serial attack has been discouraged by the PTAB in the past and justifies discretionary denial in the present case. *See, e.g., Webgroup*

Czech Republic, A.S. v. Dish Technologies LLC, IPR2025-00467, Paper 14 at 2-3 (PTAB July 16, 2025) (denying institution because the challenged patent had “already been the subject of multiple proceedings”); *Murata Manufacturing Co., Ltd, v. Georgia Tech Research Corp.*, IPR2025-00383, Paper 13 at 2-3 (PTAB July 29, 2025) (“A failure to seek early review of the patent favors denial”). Thus, prior adjudication heavily favors discretionary denial.

C. The Petition Lacks Merit

The Petition’s invalidity grounds using the same alleged prior art from the Amazon IPR and the ITC investigation lack merit. Importantly, the Petition and Petitioner’s expert do not even attempt to address or rebut the fatal findings relating to the alleged prior art from the ALJ’s Initial Determination. While the merits will be more fully addressed in Patent Owner’s Preliminary Response (which is incorporated herein by reference pursuant to FAQ Q.26), a few examples are provided below to illustrate the lack of merit of Petitioner’s arguments.

1. Au Is Not Prior Art

The ALJ’s findings as to the priority date of the ’818 Patent renders Au not prior art, which is fatal to Ground 1. The ALJ already found that the priority date of the ’818 Patent is May 1, 2002. Ex-2003 at 41 (“Nokia has shown diligence and reduction to practice, and the 818 patent is entitled to a priority date of May 1, 2002.”). The Petition admits that Au was filed on November 22, 2002, over six and

a half months after the priority date of the '818 Patent. Petition at 1. Petitioner now attempts to relitigate the ALJ's Initial Determination of the '818 Patent's priority date. The ITC investigation involved extensive fact and expert discovery, depositions, motions, briefing, and a trial on the priority date issue. Instituting this IPR would waste resources, particularly since the ALJ already determined the priority date of the '818 Patent. Thus, the Petition's Ground 1 lacks merit and heavily favors discretionary denial.

2. The ALJ's Initial Determination Already Held that VCEG-N52 in view of Sriram Does Not Render Obvious the '818 Patent

Like its Ground 1 arguments, the Petition attempts to relitigate the ALJ's Initial Determination and have the PTAB reach an inconsistent result. Each of the Petition's arguments for VCEG-N52 and Sriram were already argued in the ITC investigation where the ALJ found there was no motivation to combine VCEG-N52 with Sriram. Ex-2003 at 44-47. For example, the Petition argues that "[s]eparating these parameters into different parameter sets would have been a routine software engineering task with expected results," while the ALJ already found that a POSITA would not have used pointers to break up the single parameter set of VCEG-N52. Petition, 53; Ex-2003 at 46. Although the Board previously instituted the Amazon IPR, the Board at that time did not have the benefit of the ITC record, ALJ Initial Determination, or Dr. Saber's own testimony at that proceeding and the prior IPR

proceeding that contradicts his declaration and confirms the patentability of all challenged claims. Patent Owner will more fully address the merits in Patent Owner's Preliminary Response, which is incorporated herein by reference. Thus, the Petition's Ground 2 lacks merit in view of the ALJ's prior determination that a POSITA would not have been motivated to combine VCEG-N52 and Sriram—the same combination in the Petition. Thus, these facts heavily favor discretionary denial.

Thus, the Petition's lack of merit and attempt to relitigate settled issues heavily favors discretionary denial.

D. Petitioner's Over-Reliance on Expert Testimony, Including to Fill Gaps in the Alleged Prior Art's Teachings, Heavily Favors Discretionary Denial

This factor heavily favors denial because Petitioner relies extensively on expert argument, assumptions, and inferences to fill in the gaps of the prior art and allegedly arrive at the claimed invention. Petitioner relies on cursory (but lengthy) expert testimony for every cited claim element and every ground, rather than providing a focused expert declaration addressing the elements for which expert testimony is necessary.

The declaration lacks focus because, for example, it provides only a cursory analysis of the prior art using language that tracks the Petition (*compare* Ex-1003, ¶¶ 82-96 *with* Petition, 20-25). Petitioner and its expert follow this same pattern

throughout the claims leaving the expert declaration essentially no different in scope and content than the Petition itself. Similarly, the declaration copies exact portions of the Amazon Saber Declaration. *Compare* Ex-1003 at ¶¶ 82-96 *with* Ex-2004 at ¶¶ 122-136.

Moreover, the Petition relies extensively on the 133-page declaration of Dr. Eli Saber. Ex-1003. Indeed, the Saber Declaration is cited over 300 times throughout the Petition, casting further doubt on the merits of Petitioner's invalidity challenges.

Worse, however, is that Petitioner's expert declaration contains the same fundamental flaws that are in the Petition, the Amazon Petition, and the Amazon Saber Declaration, and does not even attempt to address the fatal findings from the ALJ's Initial Determination. For example:

- Dr. Saber incorrectly “assumed that the ’818 patent is entitled to a priority date of April 30, 2003.” Ex-1003 at ¶ 30. Because Dr. Saber was very involved in the ITC investigation—indeed, he was one of Respondents’ key technical experts—he should have known that the ALJ rejected Respondents’ priority date arguments and found that the ’818 Patent is entitled to a priority date of May 1, 2002. Ex-2003 at 41. Dr. Saber does not address the ALJ’s priority date determination whatsoever. As for the priority date of Au, Dr. Saber fails to opine on

its priority date altogether or explain why he believes it is *allegedly* prior art to the '818 Patent. *See, e.g.*, Ex-1003 at ¶¶ 60-63.

- Because neither VCEG-N52 nor Sriram disclose a motivation to combine the references, Petitioner must exclusively rely on expert testimony to try to fill the gap. The Petition argues that a “POSITA would have been motivated to combine VCEG-N52 and Sriram to extend VCEG-N52 *based on Sriram’s teachings about efficient data structures . . .*” Petition at 51-53 (citing Saber Declaration at ¶¶ 193-98) (emphasis added). But, just as the ALJ found in the ITC investigation, Sriram does not provide a motivation to combine VCEG-N52 and Sriram. Ex-2003 at 44-47. Dr. Saber does not address the ALJ’s determination regarding the lack of motivation to combine VCEG-N52 and Sriram, and instead repeats the same failed arguments from Respondents at the ITC. *Compare* Ex-1003 at ¶¶ 193-98 *with* Ex-2003 at 44-47. Without any motivation to combine found in VCEG-N52 or Sriram, the Petition is left with only expert testimony to try to fill the gaps. *See* Ex-1003 at ¶¶ 193-98. But over-reliance on expert testimony heavily favors discretionary denial.

These are merely examples and there is no shortage of additional failings where Petitioner’s expert stops short of offering testimony that would aid the Board

and instead lists disjointed disclosures of the prior art without providing a coherent explanation as to how they would be combined or overcome the finding of the ITC investigation where Dr. Saber was one of Respondents' key technical experts. *See, e.g.,* Ex-1003, ¶¶ 30, 60-63, 193-198.

In its POPR, Patent Owner will explain why Petitioner's arguments, assumptions, and inferences are incorrect and do not meet the claim limitations. Regardless, and because of the extensiveness of the Petitioner's reliance on the extensive testimony of its expert to establish the claimed invention and motivation to combine references, denial is appropriate to save resources given the ITC investigation's prior findings and analysis.

Therefore, this factor heavily favors discretionary denial.

II. CONCLUSION

For the foregoing reasons, the Director should exercise his discretion under § 314(a) and deny institution.

Dated: October 6, 2025

Respectfully submitted,

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing **PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL** has been served on Petitioner via email on the following counsel of record for Petitioner:

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