

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner

v.

CARDWARE INC.,
Patent Owner.

Case No. IPR2025-01361
U.S. Patent No. 11,620,634

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

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I. INTRODUCTION

Google's Petition should be instituted because the challenged patent, Patent No. 11,620,634 ("the '634 patent"), issued in 2023 without any rejections after the Examiner failed to cite any references and Patent Owner CardWare failed to cite information material to patentability during prosecution. While the patent application that issued as the '634 patent was pending, seven *inter partes* review petitions were filed against five patents in the same family. CardWare cited none of these petitions while burying only some of the asserted references in IDS filings containing approximately 300 references. The Examiner proceeded to sign off on the IDS and issue 72 claims with typos and without any further explanation. The Petition's grounds include references from an instituted petition of a parent patent, which allows the Board to efficiently review the challenged patent after CardWare's disclosure practices burdened the Examiner. Institution is warranted given the Board's familiarity with this patent family and in the interest of preventing disclosure gamesmanship. Because the '634 patent is involved in two parallel cases before two different Judges in the Western District of Texas, the Board may help the Western District of Texas avoid duplicative efforts and inconsistent outcomes.

II. THE PETITION SHOULD BE INSTITUTED GIVEN THE MATERIAL OVERSIGHTS DURING PROSECUTION AND PATENT OWNER'S INCOMPLETE DISCLOSURES THAT CONTRIBUTED TO THOSE OVERSIGHTS

A. LEGAL BACKGROUND

The Office imposes a duty on patent applicants to disclose information that is material to patentability. *See* 37 C.F.R. § 1.56. The Office explains that the “term ‘information’ is intended to be all encompassing” such as “prior art” and “litigation statements.” MPEP § 2001.04. The Office specifically mentions AIA trial proceedings and explains that where “the subject matter for which a patent is being sought is or has been involved in litigation and/or a trial proceeding...the existence of such litigation and any other material information arising therefrom must be brought to the attention of the examiner.” MPEP § 2001.06(c); *see also id.* (“material information that is raised in trial proceedings that is relevant to related applications undergoing examination should be submitted on an Information Disclosure Statement for the examiner’s consideration.”).

Referral is favored both to enforce Office regulations and when the Board has previously instituted review of similar claims on similar grounds, as doing so ensures consistency and predictability in the Office’s application of the law. *See, e.g., POSCO Co. Ltd. v. ArcelorMittal*, IPR2025-00370, Paper 10 (Director June 25, 2025) (referring petition to ensure consistent application of Office regulations); *RØDE Microphones, LLC v. Zaxcom, Inc.*, IPR2025-00557, Paper 11 (Director July

17, 2025) (referring petition because the related IPRs were not considered during prosecution); *Mercedes-Benz Group AG. v. The Phelan Group, LLC*, IPR2025-00758, Paper 8 (Director Aug. 14, 2025) (institution of similar claims on similar grounds favors referral); *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 (Director June 13, 2025) (same).

B. THE OMITTED INFORMATION

The patent application that issued as the '634 patent was filed on November 16, 2021. EX1001 at 1. On November 16, 2022, the Examiner allowed the claims without explanation. EX1002 at 1024-1031. It is doubtful the Examiner conducted a wholesome examination: the Examiner did not cite a single reference despite the fact that the '634 patent is directed to the crowded field of mobile payments, and the claims issued with numerous typos such as "Lather" in place of "further." See EX1001 at 1-6 (not a single reference is marked as "cited by examiner"); EX1002 (file history does not include a single Examiner's Notice of References Cited (PTO-892)); EX1053 at 6-7 (CardWare agreeing that "reduce" means "produce," "Lather" means "further," and "preforming" means "performing," among others).

The same Examiner was responsible for all six of the parent patents, failing to raise prior art rejections for five patents and finding allowable all but 4 claims of another patent in the first Office action before withdrawing the rejection without a reasoned explanation. See EX1079 (patent family listing); EX1075 at 136-143;

EX1072 at 69-72, 112-117; EX1074 at 67-70, 134-141; EX1076 at 78-83, 108-114; EX1077 at 58-65; EX1078 at 79-86.

Meanwhile, on May 11, 2022, CardWare asserted five related patents against third-party Samsung. *CardWare Inc. v. Samsung Electronics Co., Ltd. et al*, EDTX-2-22-cv-00141. Between November 15, 2022 and January 20, 2023, Samsung filed seven petitions against the five asserted patents: IPR2023-00210 and IPR2023-00211 challenging Patent No. 10,339,520; IPR2023-00196 challenging Patent No. 10,810,579; IPR2023-00219 challenging Patent No. 11,176,538; IPR2023-00314 challenging Patent No. 10,628,820; and PGR2023-00012 and PGR2023-00013 challenging Patent No. 11,328,286. EX1046. Six of the petitions included prior art based grounds and one of the petitions, PGR2023-00013, included grounds based on other issues. EX1047; EX1064-EX1069.

On January 12, 2023, CardWare made six IDS filings that included approximately 300 citations to various content such as patent applications, website articles, and internet videos. EX1002 at 29-90. Buried among these hundreds of citations were three of the references relied upon by Samsung in its petitions and now asserted by Google's Petition: Gomez – US Patent No. 9,600,808; Casey – US Patent No. 6,255,323; and Amacker – US Patent No. 6,423,462. EX1002 at 66. Omitted from the IDS filings were any of the petitions against the related patents that would have shown the Examiner how to apply these references. Even though

two more petitions, PGR2023-00012 and -00013, were filed just over a week later on January 20, 2023, CardWare did not make any more IDS filings. Facing both an overwhelming number of cited references and an incomplete record, the Examiner allowed the '634 patent on February 13, 2023 without any reasoned explanation. EX1002 at 14-23. The '634 patent issued on April 4, 2023. EX1001 at 1.

C. THE OMITTED INFORMATION WAS MATERIAL

The omitted petitions were material to patentability of the claims of the '634 patent. First, on April 14, 2022, CardWare filed an unsolicited Terminal Disclaimer for the '634 patent against the related patents; the petitions for which CardWare failed to disclose to the Examiner. EX1002 at 1107-1112. The terminal disclaimer demonstrates the substantive similarity of the claims across the patent family. *See* MPEP § 804. Second, despite omitting the existence of the related litigation to the Examiner who issued the '634 patent on April 4, 2023, CardWare's decision to assert the '634 patent on April 24, 2023 against the same product as the related patents demonstrates keen awareness of the litigation context and the scope of the claims of the '634 patent. *Compare* EX1055 ¶¶22-23 (CardWare asserting the '634 patent against Samsung Pay) *with* EX1056 ¶¶38-39 (CardWare asserting the related patents against Samsung Pay). Third, CardWare likewise emphasizes that these related patents "share a common specification," are continuations of "the same non provisional application," and claim "similar subject matter." DD Req. 13. Fourth,

the Board ultimately instituted most of the petitions, which the parties moved to terminate due to settlement. EX1059; EX1070.

The Board's multiple institutions against similar claims demonstrates that the petitions were material to the patentability of the '634 patent, and that the Examiner could have used the petitions to reject the claims of the '634 patent. Of particular importance was the instituted IPR2023-00196 challenging the '579 patent, whose claims are very similar to those of the '634 patent:

'579 patent – Claim 1 (EX1047 at 4-5)	'634 patent – Claim 1 (Pet. at Appx. A.)
1. A method of performing a transaction, the method comprising:	[1.pre] A method of generating and using limited-use payment information for performing a payment transaction, the method comprising:
[1a] receiving an input at an electronic device, wherein the input corresponds to a priming operation of the electronic device by an identified user and wherein the electronic device comprises:	[1.a] receiving an input at an electronic device, wherein the input comprises a priming operation, and, wherein the electronic device comprises: [1.e] responsive to said priming operation, readying said device to

	perform a payment transaction by an identified user;
[1b] a processor; [1c] a touch screen display coupled to the processor; and [1d] a near field communications (NFC) interface coupled to the processor;	[1.b] a processor; [1.c] a touch-screen display coupled to the processor; and [1.d] a near field communications (NFC) interface coupled to the processor;
[1e] receiving a request for a transaction payment at said electronic device via the NFC interface;	[1.f] receiving a payment request for the payment transaction at said electronic device;
[1f] displaying, on the touch-screen display, images of: a card issuer payment method selection, including a last 4-digit partial number of a card issuer supplied account number of a payment card; [1g] a card logo; and [1h] other iconography of the payment card;	[1.g] displaying, on the touch-screen display, information reflecting the payment request, and an image representing a selected issued payment account;

[1i] generating, by the processor, a limited-use payment information, and using said limited-use payment information in place of said card issuer supplied payment information;	[1.h] dynamically generating, by the processor, limited-use payment information; [1.i] wherein said limited-use payment information is dynamically generated based on a per-transaction sequential parameter originating from the electronic device; [1.j] using said limited-use payment information in connection with the payment transaction in place of issued payment information associated with said selected issued payment account;
[1j] transmitting said limited-use payment information from said electronic device to an NFC recipient of the transaction via said NFC interface; and	[1.k] transmitting said limited-use payment information from said electronic device via said NFC interface for receipt by an NFC recipient;

[1k] visually conveying a status of said transaction via a user-interface displayed on said touch-screen display	[1.l] responsive to the transmitting the limited-use payment information, receiving via the NFC interface information reflecting a status of said payment transaction; and [1.m] displaying the status of said payment transaction via said touch-screen display.
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As shown, both sets of claims are directed to a user priming operation, dynamic or limited use payment information generation, use of that information in place of issuer data, NFC transmission, and touch screen display of the payment status.

D. THE PETITION SHOULD BE INSTITUTED TO REVIEW THE MATERIAL INFORMATION

The Petition should be instituted because after CardWare's omissions and the Board's prior institutions, Board review is the most efficient and consistent path forward. The Board has already undertaken an extensive, detailed analysis of the same specification, same claim structure, and same prior art including Gomez, Amacker, and Casey. Although numerous petitions were instituted against the related claims, the institution of IPR2023-00196 in particular involved very similar claims and the same Gomez, Amacker, and Casey references as this Petition.

In IPR2023-00196, the Board found that Gomez's authentication cryptogram is transmitted via NFC, and that the authentication cryptogram with the EPIC account number satisfy the claimed "limited-use payment information" because they are used in place of the issuer payment information. EX1047 at 35-37. The Petition here includes a similar position. *See e.g.*, Pet. 25-26. The Board also credited Amacker's disclosure of a user interface that receives a payment request via NFC and prompts the user to accept or reject the transaction, which is similar to how the Petition maps elements [1.f] and [1.g] here. EX1047 at 36; Pet. 21-23. Finally, the Board accepted Casey's teachings of displaying a receipt or transaction status for the "user to better ensure that they are approving the correct transaction and to allow the user to visually review transaction data before approving the transaction," thereby satisfying the limitation of "visually conveying a status of the transaction." EX1047 at 19-20. The Petition takes a similar approach. Pet. 26-27.

Each of these teachings – Gomez's dynamic cryptogram, Amacker's NFC-based user approval, and Casey's on-screen receipt display – forms the core of the present Petition's grounds. As explained above, the claims of the '579 patent are very similar to those of the challenged '634 patent. The overlap makes the Board's prior analysis directly applicable here: it has already parsed the specification language, interpreted the claims, and found those references as rendering the claims

obvious. Institution is warranted given the Board has already found those same teachings persuasive against very similar claims.

The efficiency of Board review here is further underscored by CardWare's omissions during prosecution. As explained above, CardWare presented the Examiner with approximately 300 references but not the petitions. CardWare's footnote that "Gomez, Amacker, and Casey (i.e., the 3 references in Petitioner's Ground 1A and 3 of 4 references in Grounds 1B and 1C) were already considered by the Patent Office during original prosecution" is nonsensical. *See* DD Req. 16. Discretionary denial is not warranted when an applicant burdens the Examiner with a large volume of references without any assistance regarding the relevance of those references. *Ecto World LLC v. Rai Strategic Holdings Inc.*, IPR2024-01280, Paper 13 at 6-7 (Director May 19, 2025) (precedential). Here, CardWare should have, but did not, present the petitions to show the Examiner which of the 300 references are most relevant. *See Ecto World* at 7 n.3 (only 4% of applications contain more than 200 citations). CardWare's omission of the petitions also contravened the duty of disclosure, which specifically requires applicants to identify the existence of related AIA proceedings and information therefrom. *See* MPEP § 2001.06(c) (requiring patent applicants to disclose the existence of AIA proceedings); *cf. Critikon, Inc. v. Becton Dickinson Vascular Access, Inc.*, 120 F.3d 1253, 1258-59, (Fed. Cir. 1997) (finding a duty to disclose the existence of litigation). Had the Examiner been aware

of IPR2023-00196 in particular, the Examiner could and likely would have raised rejections that are similar to the grounds in the present Petition instead of issuing a first-action allowance. By instituting this Petition, the Office can cure the omission and prevent CardWare from benefitting from improper disclosure practices.

III. THE PETITION SHOULD BE INSTITUTED FOR THE BOARD TO EFFICIENTLY REVIEW THE '634 PATENT

The Petition should be instituted for the Board to adjudicate the '634 patent. The '634 patent is involved in two District Court cases, *CardWare Inc. v. Apple Inc.*, No. 1:25-cv-00446-ADA (W.D. Tex. Nov. 4, 2024) ("Apple district court case") and *CardWare Inc. v. Google LLC*, No. 7:24-cv-00278-DC (W.D. Tex. Nov. 4, 2024) ("Google district court case"). As both the Google and Apple district court cases involving the same patents were filed in the same District but ended up with different Judges, the Board's adjudication of these patents may allow the District Court to avoid duplicative invalidity efforts and inconsistent outcomes. Google has also filed petitions against the other three asserted patents on similar grounds. *See* IPR2025-01344, IPR2025-01513, IPR2025-01514. The factors enumerated in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (P.T.A.B. Mar. 20, 2020) (precedential) further confirm that the Petition should be instituted.

***Fintiv* Factor 1 (stay)** weighs in favor of institution because both the Apple and Google district court cases may be stayed. Apple has indicated that it intends to seek a stay if the Board institutes review, and that Judge Albright may be inclined to

grant a stay. EX1048 at 22. Google likewise would move to stay the Google district court case if the Board institutes review, and Judge Counts may be inclined to grant a stay. *See, e.g., Greenthread, LLC v. Cirrus Logic, Inc.*, WDTX-1-23-cv-00369-DC (Order Sep. 06, 2024) (granting post-institution stay). Given that the Apple and Google district court cases are occurring in parallel before two different Judges in the same District, the Judges may be even more likely to stay their respective cases to prevent inconsistent outcomes and inefficiencies.

***Fintiv* Factor 2 (trial)** weighs in favor of institution because time to trial statistics indicate that the Board's Final Written Decision (FWD) is expected to occur at least 6 months before the trial in both the Apple and Google district court cases. The Board accorded a filing date on August 5, 2025, which means the Board is expected to issue a FWD by February 2027. *See* Paper 5. CardWare mentions that the Apple district court case is scheduled for trial in July 2026 and the Google district court case for September 2026 (DD Req. 4-5), but the current time-to-trial in the Western District of Texas is 32.8 months for civil cases generally (EX1049) or 41 months for patent cases specifically (EX1050). The Apple and Google district court cases were both filed on November 4, 2024, which pushes the statistically expected trial dates to at least August 2027. CardWare's trial statistics are unpersuasive because they aggregate patent cases going back to 2008. *See* EX2017 ("2008"). Accordingly, *Fintiv* Factor 2 weighs in favor of institution.

***Fintiv* Factor 3 (investment)** weighs in favor of institution because the Board's review of the patentability of the '634 patent would absolve the Western District of Texas from duplicative effort and potentially inconsistent outcomes between two different cases. Both the Apple and Google district court cases were filed on the same day in the Western District of Texas. The Apple case is with Judge Albright and the Google case is with Judge Counts. Each district court case has overlapping validity issues being considered on very similar schedules. Unless the Board resolves the patentability of the '634 patent, the resources of the Western District of Texas will be unnecessarily spent on the simultaneous consideration of overlapping issues. If both cases go to trial, there is a risk of inconsistent outcomes coming from the same District. Instituting the Petition to the Board may assist the Western District of Texas conserve judicial and party resources, and achieve the AIA's goal of efficient determination of patentability. Accordingly, *Fintiv* Factor 3 weighs in favor of institution.

***Fintiv* Factor 4 (overlap)** weighs in favor of institution because Google's *Sotera* stipulation (EX2014) eliminates any meaningful overlap between this proceeding and the Google district court case. CardWare speculates about system art (DD Req. 7-8), but system art cannot be raised before the Board.

CardWare's additional arguments about other types of challenges are irrelevant. First, CardWare conflates the use of references in obviousness grounds

and the use of references to explain background knowledge in a § 101 contention. *See* DD Req. 8-9. Google's stipulation prevents overlapping grounds because courts have recognized that patent eligibility and obviousness are statutorily separated and different inquiries. *See, e.g.*, MPEP § 2106 (collecting cases). Second, CardWare speculates about whether Google will file *ex parte* reexaminations (DD Req. 9), but Google has not challenged the '634 patent in such proceedings nor can Google do so because such proceedings are stayed while there is a pending IPR. Third, as for the Apple district court case (DD Req. 9), Google is not involved and CardWare recognized that "Apple, [is] a competitor of Petitioner" (DD Req. 5). CardWare's decision to file suit against both Apple and Google on the same day is a litigation decision for which CardWare should not be rewarded with an ability to evade review. Accordingly, *Fintiv* Factor 4 weighs in favor of institution.

***Fintiv* Factor 5 (parties)** weighs in favor of institution because the Board's FWD will issue before the statistically projected trial dates in the Apple and Google district court cases. In the Apple district court case, Google is not a party. In the Google district court case, the *Sotera* stipulation in this proceeding will effectively subject Google to estoppel before trial. *See NeuMoDx Molecular, Inc. v. HandyLab, Inc.*, IPR2020-01133, Paper 23 at 13-14 (P.T.A.B. Aug. 6, 2021) ("The parties in this proceeding are identical to the parties in the parallel litigation. Because the final written decision in this case will issue before trial in the parallel litigation, this factor

weighs against exercising discretion to deny institution.”). Accordingly, *Fintiv* Factor 5 weighs in favor of institution.

***Fintiv* Factor 6 (merits)** weighs in favor of institution because, as explained above, the strong merits are demonstrated by the institution of similar claims on similar grounds, which were omitted from the Examiner during prosecution. Institution here promotes overall efficiency and preserves the integrity of the patent system by allowing the Board to use its expertise—with the patent family, the prior art, and disclosure practices—to review the ’634 patent so that the Western District of Texas can avoid duplication or inconsistency.

CardWare’s argument about the expert declaration missing from P-TACTS (DD Req. 10-12) is moot because Google reuploaded the expert declaration with Board authorization. *See* EX1003; EX1051. CardWare did not dispute that Google timely served the expert declaration together with the Petition, and hence CardWare did not oppose Google’s request to reupload the declaration. *See* EX1051. Because it is undisputed that CardWare was timely served the petition and all the exhibits including the expert declaration (EX1051; EX1057), CardWare’s argument about not having enough time to prepare its preliminary response is likewise moot. Having the expert declaration in its possession is likely why CardWare never notified Google that everything except the expert declaration appeared on P-TACTS, which distinguishes the facts here from CardWare’s cite to *Nuna Baby Essentials, Inc. v.*

Britax Child Safety, Inc., IPR2018-01683, Paper 11 at 6 (P.T.A.B. Dec. 18, 2018), where all the exhibits were missing and the Petitioner delayed complying with the Board's order to reupload them. *Fintiv* Factor 6 thus weighs in favor of institution.

IV. THE PETITION SHOULD BE INSTITUTED GIVEN THERE IS NO INCONSISTENCY BETWEEN GOOGLE'S POSITIONS

The Petition should be instituted because there is no inconsistency between Google's positions in district court and this Petition. By asserting that Google's positions are "inconsistent" (DD Req. 14-15), CardWare misapprehends the distinction between indefiniteness challenges and obviousness challenges. The Federal Circuit explained that because the Board cannot find claims indefinite, the Board should construe the claims under *Phillips* and evaluate their patentability in view of the prior art. *Samsung Elecs. Am., Inc. v. Prisia Eng'g Corp.*, 948 F.3d 1342 (Fed. Cir. 2020). Google's Petition thus did not assert nor concede indefiniteness, but rather explained that "given the correlation between the prior art references and the challenged claims of the '634 patent...any reasonable construction reads on the prior art." Pet. 7.

The lack of any specific constructions distinguishes Google's Petition from CardWare's cite to *Arthrex, Inc. v. Medshape, Inc.*, IPR2025-00053, Paper 11 at 14-15 (P.T.A.B. Apr. 25, 2025) (DD Req. 15), where a petitioner affirmatively imported patent owner's constructions from district court. *Arthrex* at 14 ("Petitioner asserts

that, for purposes of its Petition, it will apply 'Patent Owner's apparent interpretation' from the Parallel Proceeding."). Moreover, District Court indefiniteness disputes relating to the '634 patent are now moot after the parties agreed on the meaning of the numerous typos in the claims (e.g., "preforming" means "performing") and none of the terms of the '634 patent were found indefinite in either the Apple or Google district court cases. *See* EX1052; EX1053. There will be no inconsistencies between how the claims will be interpreted in this Petition and how they will be interpreted in the Google and Apple district court cases. Accordingly, Google's petition should be instituted.

V. THE PETITION SHOULD BE INSTITUTED BECAUSE THE '634 PATENT HAS NOT DEVELOPED ANY SETTLED EXPECTATIONS SINCE ITS 2023 ISSUANCE

To the extent settled expectations are considered,¹ the Petition should be instituted because the '634 patent has not developed any settled expectations since its April 4, 2023 issuance. Institution against the very similar '579 patent combined with CardWare's omissions and the Examiner's failure to raise any rejections rendered the '634 patent susceptible to unpatentability challenges, thus preventing

¹ Settled expectations should not be considered in IPRs. *See Celgene Corp. v. Peter*, 931 F.3d 1342, 1361-62 (Fed. Cir. 2019); *see also* 5 U.S.C. § 706(2)(A). But if they are considered, settled expectations favor Petitioner here.

the development of any settled expectations.

CardWare's arguments about settled expectations are misguided. As an initial matter, CardWare cites events that occurred within the last 6 years, which as CardWare concedes, generally do not give rise to settled expectations. DD Req. 15. CardWare's February 2023 subpoena for information about Google's products for a district court case against Samsung and involving related patents (DD Req. 16) is irrelevant because Google was not accused of infringing the related patents and the '634 patent only issued in April 2023 (EX1001 at 1). *See also Interim Processes for PTAB Workload Management* at 3 ("the length of time the claims have been in force"). CardWare purportedly "provided specific notice" of the '634 patent to Google in October 2023 (DD Req. 16), but CardWare merely sent a letter that listed its patents (EX2019; EX2020). Challenging the '634 patent after only seeing its number on a letter would have been a waste of resources, but after CardWare filed its complaint in November 2024, Google timely filed this Petition in July 2025. CardWare complains that Apple is also challenging the '634 patent (DD Req. 16), but Google was not involved with Apple's petition, and CardWare recognized that "Apple, [is] a competitor of Petitioner" (DD Req. 5). CardWare lists Samsung's and Apple's petitions against the related patents (DD Req. 16-18), but all these petitions arose from CardWare's own litigation activity. CardWare strategically settled with Samsung to terminate the instituted Samsung petitions, then CardWare filed suit

against both Apple and Google, who responded with their own petitions. As also explained above, the Samsung petition of the very similar '579 patent demonstrated the vulnerability of the '634 patent. The Petition should be instituted because vulnerable patents do not have settled expectations.

CardWare's final argument about its commercial efforts only cites its own Complaint. DD Req. 18-19 (citing EX2004). Just like CardWare's filings to the Patent Examiner omitted the petitions before the Board, CardWare's Complaint says its "innovations include its SmartTokenization™ technology" (EX2004 ¶15) but CardWare omits that its trademark filings indicated nonuse of SmartTokenization (EX1054 ("Filed Use: No...Currently Use: No")). The Petition should be instituted given Cardware's pattern of omissions and the lack of settled expectations.²

VI. CONCLUSION

Google respectfully requests institution.

² Petitioner reserves the right to challenge the March 26, 2025 Interim Processes for PTAB Workload Management, including that document's list of "relevant factors," at least because that document is legally invalid as (1) exceeding the Director's authority, (2) arbitrary and capricious, and (3) adopted without notice-and-comment rulemaking.

Respectfully submitted,

Dated: November 5, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2025, I caused a true and correct copy of the foregoing Petitioner's Opposition to Patent Owner's Request For Discretionary Denial and supporting exhibits to be served by electronic means on the counsel identified below:

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