

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RED HAT, INC.
Petitioner,

v.

COMPETITIVE ACCESS SYSTEMS INC.
Patent Owner

IPR2025-01371
U.S. Patent No. 10,868,908

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
DISCRETIONARY DENIAL BRIEF**

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1002	<i>Curriculum Vitae</i> of Bill Lin
1003	Certified Copy of U.S. Patent No. 11,582,343
1004	Certified File History of U.S. Patent No. 11,582,343
1005	Certified Copy of U.S. Patent No. 11,418,641
1006	Certified File History of U.S. Patent No. 11,418,641
1007	Certified Copy of U.S. Patent No. 10,868,908
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1015	Certified Copy of U.S. Patent No. 7,606,156
1016	Certified File History of U.S. Patent No. 7,606,156
1017	U.S. Patent Application Publication No. 2004/0001512 A1 (“Challener”)
1018	U.S. Patent Application Publication No. 2003/0026221 A1 (“Kotzin”)
1019	James Carlson, <i>PPP Design, Implementation, and Debugging</i> (2d ed. 2000) (“Carlson”)
1020	Gilbert Held, <i>Network Design Principles and Applications</i> , 2000 (“Held”)
1021	U.S. Patent No. 6,917,960 (“Decasper”)

¹ Unless otherwise specified, citations are to the original page, column, and line numbers in exhibits rather than the PDF page. Citations corresponding to the PDF pagination and are indicated in [[brackets]]. Unless otherwise noted, all emphasis and annotations are added.

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1022	Johnny Chen, <i>New Approaches to Routing for Large-Scale Data Networks</i> (Rice University, 1999) (“Chen”)
1023	Declaration of Sylvia Hall-Ellis
1024	Webster's Ninth New Collegiate Dictionary, 1990
1025	Xin, W., Ishihara, S., and Mizuno, T., <i>A QoS-ensured Transmission Scheme with Content-based Priority for Mobile Cluster Users</i> , 2000 (“Xin”)
1026	U.S. Patent Application Publication No. 2002/0042274 A1 (“Ades”)
1027	U.S. Patent No. 7,003,580 (“Cook”)
1028	U.S. Patent No. 5,625,877 (“Dunn”)
1029	U.S. Patent Application Publication No. 2002/010866 A1 (“McCullough”)
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1032	U.S. Patent Application Publication No. 2004/0022224 A1 (“Billhartz”)
1033	Hung-Yun Hsieh & Raghupathy Sivakumar, <i>A Transport Layer Approach for Achieving Aggregate Bandwidths on Multi-homed Mobile Hosts</i> (2002) (“Hsieh”)
1034	U.S. Patent No. 6,778,495 (“Blair”)
1035	Cisco Systems, Inc., <i>Troubleshooting Async Multilink PPP Operations</i> (2001) (“Cisco”)
1036	U.S. Patent Application Publication No. 60/377,631 (“Tucker”)
1037	Konishi et al., <i>Web SHAKE: A fast WWW access method for mobile terminals on temporary cluster networks</i> , IEEE Proceedings April 28-May 2, 2002 (“Konishi”)
1038	RFC 1990: The PPP Multilink Protocol (MP), August 1996
1039	<i>Competitive Access Systems, Inc. v. Oracle Corporation, and Oracle America, Inc.</i> , 1:23-ca-00286-ADA, Dkt. 82 (W.D.TX. Aug. 10, 2023)
1040	<i>Red Hat, Inc. v. Competitive Access Systems, Inc.</i> , 4:24-cv-00130-D, Dkt. 1 (E.D.N.C. Sep. 3, 2024)

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1044	U.S. Patent No. 5,878,040 (“Peirce”)
1045	“A Novel Mechanism for Data Streaming Across Multiple IP Links for Improving Throughput and Reliability in Mobile Environments,” IEEE INFOCOM 2002 (“Phatak”)
1046	RFC 2543: SIP: Session Initiation Protocol, March 1999
1047	RFC 2131: Dynamic Host Configuration Protocol, March 1997
1048	RFC 1945: Hypertext Transfer Protocol – HTTP/1.0, May 1996
1049	Endler, David, <i>Brute-Force Exploitation of Web Application Session IDs</i> , iALERT White Paper, Nov. 1, 2001 (“Endler”)
1050	Rappaport, Theodore S., et al., <i>Wireless Communications and Application Above 100 GHz: Opportunities and Challenges for 6G and Beyond</i> , IEEE Access, Vol. 7, 2019 (“Rappaport”)
1051	Reex. Control No. 90/019,265
1052	Gast, Matthew S., <i>802.11 Wireless Networks – The Definitive Guide</i> , 2002
1053	Shoemake, Matthew B., <i>Wi-Fi (IEEE 802.11b) and Bluetooth CoExistence Issues and Solutions for the 2.4 GHz ISM Band</i> , Texas Instruments, Feb. 2001, Ver. 1.1
1054	Furuskär, Anders, et al., <i>EDGE: Enhanced Data Rates for GSM and TDMA/136 Evolution</i> , IEEE Personal Communications, June 1990
1055	RFC 2326: Real Time Streaming Protocol (RTSP), April 1998
1056	Random House Webster’s Computer & Internet Dictionary, 3 rd ed., December 1998
1057	Andrew S. Tanenbaum, <i>Computer Networks</i> , Chps. 1 & 5 (3d ed. 1996)
1058	Adolfo Rodriguez <i>et al.</i> , <i>TCP/IP Tutorial and Technical Overview</i> , Chps. 1 & 14 (Prentice Hall PTR 2002)

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1060	<i>Red Hat, Inc. v. Competitive Access Systems, Inc.</i> , 4:24-cv-00130-D, Dkt. 50 (E.D.N.C. Oct. 31, 2025)
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1066	<i>Pentair Water Pool and Spa, Inc. v. Haywood Indus., Inc.</i> , No. 5:11-cv-459-D, 2014 WL 351865 (E.D.N.C. Jan. 31, 2014)
1067	Cox, J., <i>Apple iOS 7 Surprises as First with New Multipath TCP Connections</i> , Sept. 19, 2013, NetworkWorld, https://www.networkworld.com/article/679952/lan-wan-apple-ios-7-surprises-as-first-with-new-multipath-tcp-connections.html#:~:text=iOS%207%20first%20large-scale,-la-Neuve%2C%20Belgium
1068	<i>Ex parte</i> Reexamination of U.S. Patent No. 10,868,908, Examiner's Answer to Appeal (PTAB Mar. 25, 2025)
1069	<i>Competitive Access Systems, Inc. v. Oracle Corporation, and Oracle America, Inc.</i> , 2:22-cv-00287-JRG-RSP, Dkt. 35 (E.D.T.X. Dec. 2, 2022)
1070	Eastern District of Texas Local Patent Rules
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1072	Redline comparing April 2002 draft application to U.S. Patent No. 10,868,908 patent specification

I. INTRODUCTION

Discretionary denial is unwarranted because CAS has no settled expectations as it pertains to the '908 patent. *First*, the '908 patent was recently issued in December 2020—not even five years old when Red Hat filed its IPR. Red Hat's timely challenge, brought within five years of issuance, strongly favors institution.

Second, contrary to CAS's assertions, the parallel litigation in the Eastern District of North Carolina ("EDNC") is at a very early stage: pleadings are still open, discovery has just begun, and no trial date is set. The parties are still negotiating the Protective and ESI Orders, and no substantive merits activity has occurred. Under these circumstances—particularly given the EDNC's schedule—institution of IPR will not create duplicative proceedings or inefficiency. Instead, IPR will streamline the district court litigation and promote judicial economy, especially in light of Red Hat's broad *Sotera* stipulation.

Third, based on CAS's insistence on baselessly connecting Red Hat and Oracle—the sole target of its prior litigation—CAS could have asserted the '908 patent against Red Hat after that patent issued, but did not. CAS's selective assertion created settled expectations of non-assertion for the rest of the industry. Furthermore, CAS' infringement theories have transformed, targeting new parties (e.g., Red Hat) after years of only enforcing against Oracle, and expanding now to allege new and far-broader interpretations of the patent that have never been

considered by the PTO or PTAB. Further weighing against settled expectations, CAS' pre-suit allegations against Red Hat accused a product Red Hat does not make (Unix) and use of a standard that Red Hat has never implemented (RFC6824).

Fourth, CAS's accusation that Red Hat somehow waited too long to petition for IPR is baseless. After its initial letter, CAS itself waited for *eight months* before providing Red Hat with any infringement claim charts in June 2024, despite repeated requests from Red Hat, and CAS provided *no infringement chart* for the '908 Patent. Its assertion tactics also resulted in an *eleven-year* delay from its first letter "proposing a license" of related patents to Apple to its 2025 lawsuit, which defeats any claim of settled expectations. On these bases, Red Hat is pursuing claims that CAS violated the North Carolina Abusive Patent Assertions Act ("APAA").

Moreover, Red Hat's current petition does not overlap with Unified Patent's prior EPR, which challenged claims 1-3, 5-6, and 13-15, each found unpatentable. Here, Red Hat does not ask for a second bite at the apple and only challenges remaining claims 4, 7, 8-12, and 17. Unified Patents' other prior challenge to the '908 patent, IPR2023-00584, was voluntarily terminated pre-institution, and the PTO has not ruled on the challenged claims. This petition for IPR is indeed Red Hat's first bite at the apple.

The record further shows material error by the Patent Office, as key prior art references were not considered and several claims subject to reexamination have

already been found unpatentable. Further, the PTAB is the best suited to resolve CAS's antedating claims, which require Pre-AIA analysis. In this regard, CAS's failure to establish earlier priority additionally suggests this discretionary denial is inappropriate. These factors strongly favor institution, ensuring that the most complex patentability issues are resolved by the PTAB, consistent with the fairness and efficiency goals of the AIA.

II. THE '908 PATENT'S 2020 ISSUANCE HEAVILY WEIGHS AGAINST DISCRETIONARY DENIAL AND SETTLED EXPECTATIONS

The age of the '908 patent—four years and eight months old at the time of the Petition—alone does not create settled expectations favoring discretionary denial of IPR. *See Berkshire Hathaway Energy Company et al v. Birchtech Corp.*, IPR2025-00274, Paper 23 at 3 (denying request for discretionary denial where “the challenged patents issued in 2019 and 2020 [five years and six months old at time of Petition], such that Patent Owner has not developed strong settled expectations that favor discretionary denial”); *Google v. Withrow Networks*, IPR2025-00775, Paper 10 at 2 (Director Decision, Aug. 14, 2025) (“early challenges [including for a four years and six month-old patent] . . . weigh against discretionary denial”).

III. IPR WILL SIMPLIFY OR ELIMINATE THE NEED FOR THE EDNC TO RESOLVE VALIDITY ISSUES

A. Status Of EDNC Litigation

The proceeding remains at a very early stage. The recently issued Scheduling Order (EX2008, entered September 26, 2025) confirms so.

Pleadings Not Yet Settled: This case is still at the pleading stage. CAS filed an Amended Answer and Counterclaim on October 31, 2025, which Red Hat plans to dismiss. EX1060. In addition, the parties filed a Consent Motion on October 31, 2025 jointly proposing an extended schedule in view of the amendment. EX1061.

Early Discovery: Discovery has just begun. Red Hat served answers to CAS's first set of discovery requests on October 14, 2025. CAS responded to Red Hat's first discovery requests on October 31, 2025, pursuant to an extension requested by CAS. No depositions have been noticed or taken, and there have been no substantive discovery disputes or motions to compel. The parties are still exchanging initial written fact discovery and have not yet engaged in any expert discovery. Further, the parties are still negotiating a Protective Order and an ESI Order before confidential documents can be produced.

Preliminary Contentions Pending: CAS's infringement contentions were just served on October 24, 2025. The parties consented to moving Red Hat's invalidity contentions due date to January 20, 2026.

No Substantive Merits Activity: There have been no claim construction proceedings, expert reports, or dispositive motions on the merits (other than Red Hat's § 101 motion to dismiss, to be refiled due to CAS's amended counterclaims).

No Trial Date Set: No trial date has been scheduled. The schedule is tied to future events, such as pretrial conference, dependent on completing earlier

phases. Furthermore, given the EDNC's median time to civil trial of 32.2 months, the AIA's standard 12-month statutory window places the deadline for a final written decision well ahead of trial. EX1062 at 21 (Federal Court Management Statistics).

Dispositive Motions and Pretrial Disclosures Distant: Dispositive motions are not due until 30 days after expert discovery (date not set), and pretrial disclosures are not required until at least 20 days before the unscheduled pretrial conference.

Long Timeline Before Resolution: Given the current schedule, trial is unlikely to occur until well after the FWD (anticipated by February 2027). CAS's amended counterclaims alone extend the pleading phase into early 2026.

These issues weigh heavily against discretionary denial under *Fintiv* factor 3.

B. Red Hat's *Sotera* Stipulation Will Simplify The EDNC Proceeding

Red Hat's entry into a *Sotera* stipulation is highly significant for the Director's discretionary denial analysis, particularly since trial in the EDNC will occur well *after* the PTAB's statutory deadline for a final written decision. By agreeing not to pursue in the EDNC any grounds raised or reasonably raisable in the IPR, Red Hat eliminates the risk of duplicative litigation and inconsistent outcomes. This ensures the PTAB is the exclusive forum for adjudicating the patentability of challenged claims 4, 7, 8-12, and 17 of the '908 patent on all IPR-type grounds, regardless of the district court's schedule, and the overlap between the

IPR and district court litigation—the focus of *Fintiv* factor 4—is effectively neutralized, preserving efficiency and integrity.

If IPR is instituted in February 2026, while the district court case is still in the pleading stage, the *Sotera* stipulation will significantly streamline the invalidity aspects of the EDNC case. Although Red Hat’s product prior art defenses and invalidity contentions under §§ 101 and 112 will remain in the EDNC, the most complex patentability disputes—those based on patents and printed publications—will be resolved in a single, expert forum, ensuring the district court’s resources are not spent on those issues and avoiding unnecessary duplication.

C. CAS’s Arguments About The EDNC Proceeding Are Speculative Or Simply Incorrect

1. EDNC Has A Well-Established Record Of Granting Stays

First, CAS asserts, “[t]here is little to no likelihood the North Carolina district court will stay the parallel proceeding . . . and Red Hat has little incentive to do so.” Discretionary Denial (“DD”) Brief at 10-11. To the contrary, the EDNC has a well-established record of granting stays pending IPR *after* institution by the PTAB.

EDNC’s willingness to stay cases, especially after institution, is demonstrated by multiple recent orders granting stays even in matters with active discovery or pending dispositive motions. For example, the same judge presiding over Red Hat’s case consistently granted stays, *e.g.*, in *Valencell, Inc. v. Apple Inc.*, 2017 WL 2819768, No. 5:16-CV-1-D (E.D.N.C., June 28, 2017), where judge granted a stay

pending IPR, emphasizing that the PTAB's institution warranted a stay to avoid duplicative proceedings. EX1063. Similarly, in *Implus Footcare, LLC v. Maverick Sports Med., Inc.*, 5-15-cv-00659, Dkt. 26 (E.D.N.C. Oct. 10, 2016), the same judge granted a stay, finding that it would not unduly prejudice the plaintiff and would simplify the issues for trial. EX1064. In *Eli Lilly and Co. v. Synthon Pharms., Inc.*, 5-10-cv-00402, Dkt. 60 (E.D.N.C. Oct. 2, 2015), a stay was also granted stay upon IPR institution. EX1065. The court is also willing to partially stay a proceeding. *See Pentair Water Pool and Spa, Inc. v. Haywood Indus., Inc.*, 2014 WL 351865, 5:11–CV–459–D (E.D.N.C., Jan. 31, 2014) (partial stay pending IPR of several asserted patents while allowing proceedings on a non-reviewed patent to continue). EX1066. This reflects the EDNC's willingness to tailor stays to the status of IPRs. Here, CAS only recently filed its amended counterclaims on October 31, 2025, and Red Hat is considering a stay but will move to dismiss first. Thus, *Fintiv* factor 1 is neutral.

2. CAS Misstates The Relevance And Overlap Of District Court Issues With The IPR Proceeding

Second, CAS conflates issues in the EDNC litigation that are not at issue in the IPR, misrepresenting both the potential for overlap and the value of the IPR process. While CAS highlights that the discovery plan covers validity and eligibility under “35 U.S.C. §§ 101, 102, 103, 112, and/or 116” and that Red Hat has moved to dismiss on § 101 grounds regarding six of the seven patents (DD Brief at 5), even CAS concedes the IPR is limited to patentability issues under §§ 102/103. The

presence of §§ 101/112 issues does not create overlap with the IPR or reduce its value in streamlining. With the EDNC pleadings stage not completed and discovery just beginning, the IPR remains an efficient tool to avoid unnecessary judicial waste.

IV. RED HAT'S CHALLENGE TO THE '908 PATENT WAS REASONABLE AND PROMPT CONSIDERING CAS'S ACTIONS

A. CAS Has A History Of Patent Selective Assertion Against Oracle And Non-Assertion And Prolonged Delay Against Others

CAS' haphazard and evolving history of assertion weighs against any settled expectations here. Prior to its recent campaign, CAS only asserted this patent against Oracle (in 2022), and never informed Red Hat about any alleged infringement. Oracle asserted that certain CAS claims are indefinite. EX1039.

First, CAS's argument that Red Hat knew about these patents as early as the **Oracle** lawsuit is without merit. There is no such evidence that Red Hat knew of the patents or had reason to believe it would infringe them. Imputing a separate and unrelated party's knowledge to Red Hat without a shred of evidence would lead to absurd results. Indeed, CAS' own actions confirm that even CAS did not believe Red Hat infringed—when it did reach out to Red Hat, years later, it only accused a product Red Hat does not make (Unix) and a standard Red Hat does not use (RFC6824). *Second*, CAS's own arguments undercut their request for denial because CAS's selective assertion against Oracle and only Oracle confirms that any alleged players in the industry (including Red Hat) did not expect enforcement. Indeed, after

CAS contacted Red Hat in 2023 a mere *twelve days* before the expiration of the '908 patent, Red Hat promptly requested infringement claim charts to evaluate CAS's claims, which CAS did not supply until *eight months* later in **June 18, 2024** after multiple requests—and only for three of its seven listed patents—and *no infringement chart* was included for the '908 patent. Further, despite the parties' discussion, CAS did not assert its patents until its counterclaim in July 2025 *after* Red Hat filed its declaratory judgment of non-infringement in September 2024. The Director has explained that actual settled expectations may be undermined where the patent owner's conduct create a reasonable expectation of non-enforcement. *See DataDome S.A. and DataDome Sols., Inc. v. Arkose Labs Holdings, Inc.*, IPR2025-00694, Paper 14 (Director Decision, Aug. 14, 2025) (Patent Owner's actions may form settled expectations for a petitioner); *Apple Inc. v. Ferid Allani*, IPR2025-00856, Paper 11 at 3 (Director Decision, Sept. 5, 2025) (Petitioner "did not expect enforcement"). CAS's selective assertion only against Oracle strongly weighs against discretionary denial.

CAS's prolonged delay in asserting its patents—after solely asserting them against Oracle—does not stop with Red Hat. Its protracted delay in pursuing other new defendants—Apple, Samsung, and Motorola—also defeats any claims of settled expectations-based denial. CAS first sent letters to Apple in June **2014** and subsequently sent letters in 2016 and 2023. EX2009, ¶ 59. But it sat on its patents

and did not assert infringement until May 2025. CAS's *eleven-year* wait defeats any claims of settled expectations. Further, CAS sent a letter to Samsung in October 2023 and did not sue Samsung until August 15, 2025. EX2010, ¶ 64. The industry thus has settled expectation about the risk of assertion based on CAS's own delay.

Accordingly, CAS's argument that Red Hat should have filed its IPR sooner—else be accused of improper tactical gamesmanship—is unsupported.

B. CAS Has Reinvented Its Theories Of Infringement And Interpretations Of Its Own Claims

Moreover, CAS has recently broadened its interpretation of the scope of its asserted patents, including the '908 patent. Notably, in August 2025, CAS filed complaints against Samsung and Motorola, asserting for the first time that smartphones “implement[ing] 3GPP standards in conjunction with . . . simultaneous use of 4G LTE and 5G connections” infringe its patents (*see* EX2010, CAS's Complaints against Samsung at ¶¶ 1, 28 and Motorola filed on August 15 and September 2, 2025; EX2011, ¶ 1). This brand-new theory of infringement—targeting standard-compliant smartphones and their dual connectivity capabilities—and *without requiring MPTCP*—is entirely new and never disclosed to Red Hat in pre-suit letters. EX2010. Red Hat's IPR petitions were drafted in response to CAS's *original* theory, which targeted Red Hat Linux's (mistaken by CAS as “Unix”) MPTCP capabilities. EX2014. CAS's recent expansion of infringement theories beyond MPTCP to include dual connectivity marks a fundamental shift in alleged

claim scope. Red Hat could not have anticipated or addressed these new allegations in its IPR filings, and thus this factor weighs strongly against discretionary denial. *See* Samsung Compl., EX2010, ¶ 28; and Motorola Compl., EX2011.

When a patent owner belatedly discloses new, broader theories of infringement—particularly after years of asserting a narrower scope—it effectively “*restarts* the clock” on notice to accused parties. *See, e.g., Google LLC v. Sandpiper CDN, LLC*, IPR2025-00806, Paper 13 at 3 (Director Decision, Sept. 12, 2025) (exemplary of an accused infringer’s *expectations being reset*, noting that assertion of patents after expiration resets expectations). In such circumstances, the accused party could not have reasonably anticipated the newly expanded scope of alleged infringement and, therefore, could not have developed settled expectations regarding the risk of enforcement under these new theories. *See, e.g., DataDome S.A.* at 2–3; *Ferid Allani* at 3. Indeed, Red Hat’s IPR petitions relied on CAS’s much narrower original theory that focused on MPTCP. CAS’s belated significant broadening of the asserted claims far beyond MPTCP means that Red Hat could not have reasonably foreseen or prepared for this new theory. CAS’s delay in revealing these broad and new theories resets any expectations and weigh heavily against discretionary denial.

CAS has no excuse for its delay in presenting its new interpretation, as the MPTCP, 3GPP, E-UTRAN, 4G, and 5G standards have been publicly available and widely adopted for many years, meaning that any diligent patent owner, including

CAS, would have had ample opportunity to assert relevant patents earlier. *See* EX1067 (2013) (“Apple’s iOS 7 [released in 2013] is the first large-scale use of a newly-minted Internet protocol, called multipath TCP.”). Settled expectations should not be manipulated by patent owners who “lie in wait” while industry standards become entrenched, only to assert their rights *after* the industry has made significant investments and reliance on the technology is at its peak. Allowing such tactics would undermine the Director’s rationale behind settled expectations and create perverse incentives for gamesmanship, rather than ensuring fairness to those who have operated openly and transparently in reliance on the public domain.

CAS’s belated expansion of infringement theories, after years of limited and targeted enforcement, effectively “restarts the clock.” Red Hat could not have foreseen the risk of this dramatic change in CAS’s infringement theory, especially given that the relevant technologies and standards—such as MPTCP, 3GPP, E-UTRAN, 4G, and 5G—have been publicly available and widely adopted for years. CAS’s delay in asserting these theories is therefore unjustified, and its recent pivot undermines any claim that Red Hat should have expected to face such allegations. Accordingly, the long-standing availability of the standards and CAS’s failure to assert the ’908 patent earlier weigh heavily against settled expectations.

C. Petitioner Has Not Engaged In Delay Or Tactical Gamesmanship

Red Hat has not engaged in delay or tactical gamesmanship in the timing of its IPR petition. Red Hat filed its petition expeditiously, approximately one month after CAS filed its initial counterclaim for patent infringement in the EDNC. Specifically, CAS filed its counterclaim on July 8, 2025, and Red Hat submitted this IPR petition on August 1, 2025. This filing occurred before CAS served its infringement contentions on October 24, meaning Red Hat acted promptly and without the benefit of knowing the full scope of CAS's allegations. Moreover, CAS only recently filed its amended counterclaims on October 31, 2025, further extending the parties' pleading stage to at least Q1 2026. The timeline reflects a reasonable and diligent response to the evolving litigation, not any attempt to delay or manipulate the process. *See Harbor Freight Tools USA Inc. et al. v. Champion Power Equip., Inc.*, IPR-2025-00805, Paper 20 (Director Decision, Sept. 19, 2025).

Additionally, Red Hat is pursuing this IPR independently. Contrary to CAS's attempt to tie Red Hat to Unified Patents' 2023 challenge to the '908 patent, Red Hat did not control Unified's IPR or EPR, its prior art, or its decision to move to voluntarily terminate the IPR pre-institution. Indeed, Unified dropped its IPR against the '908 patent "to reallocate its budgets and resources, and [because] Unified does not wish to spend additional resources on this proceeding." *Unified Patents, LLC v.*

Competitive Access Systems, Inc., IPR2023-00584, Paper 10 at 2. Red Hat is also the sole interested party in its IPR Petitions against CAS's patents.

V. THE OFFICE HAS ALREADY CONCLUDED THAT CLAIMS ARE UNPATENTABLE

The fact that the Office has already found challenged claims 1-3, 5-6, and 13-15 unpatentable in *ex parte* Reexamination 90/019265 raises substantial questions about the patentability of remaining claims in the same patent. EX1068. Challenged claims 4, 7, 8-12, and 17 do not overlap with the claims challenged in the Reexamination, which also did not consider Kotzin or Phatak. Rather, the Reexamination's prior art references related to multilink session identification (Maurya) and resource provisioning in telephone systems (Low), combining modems for high-speed communications (Krishnan), and broadband communications over multiple POTS lines (Delangis-156). Kotzin and Phatak are fundamentally different, teaching a bandwidth sharing system for many wireless units, and tunneling with bundling IP-in-IP, respectively.

The Director's Decision in *ClearCorrect Operating LLC v. Align Tech., Inc.*, IPR2025-00817, Paper 13 at 3 (Director Decision, Aug. 29, 2025) makes clear that a prior finding of unpatentability is a compelling reason to question the patentability of related patents and to proceed with review, rather than granting discretionary denial. This factor thus weighs heavily in favor of institution.

VI. EVIDENCE OF MATERIAL ERROR BY THE OFFICE OUTWEIGHS ANY SETTLED EXPECTATIONS

This IPR arises from CAS's delayed assertion of a patent that was allowed due to material Examiner errors. Even if discretionary denial factors—such as CAS's settled expectations—were present, which is not the case here, a showing of material error by the Office can weigh in favor of institution. That is precisely the situation here. The Examiner failed to identify or consider the primary references cited in the Grounds, Kotzin and Phatak, despite both references directly addressing the same technical problem and proposing solutions disclosed in the '908 patent.

A. Kotzin Discloses Core Aspects Of The '908 Patent's Claims

The Office's oversight of Kotzin during examination is material error given the significant overlap in relevant subclasses and the materiality of Kotzin's disclosures to the claimed subject matter. Kotzin falls within the same class and overlapping subclasses (H04Q) to those which were explicitly searched and cited throughout the prosecution history of the '908 patent (H04W),² as evidenced by the Examiner's search strategies and notations. *See e.g.*, EX1008, 362. Kotzin discloses a bandwidth aggregation system where, for a particular multilink communication session, the bandwidth available to a plurality of wireless units in a wireless network can be shared with a primary wireless unit—a core aspect that is central to the '908

² *See* www.uspto.gov/web/patents/classification/cpc/html/cpc-H.html#H04

patent's claims (Cl. 10 "receive a third multilink packet...; [and] send different groups of data packets to the first . . . the second . . . and the third network communication interface of the device"). Given that the Examiner's searches targeted these very subclasses and that Kotzin's teachings directly address the problems and solutions in the '908 patent, the failure to identify and consider Kotzin represents a notable and unexpected omission that materially impacted the Examiner's patentability analysis. To the extent that CAS has settled expectations, they do not outweigh the need to address the Examiner's material error in overlooking Kotzin. *See Volkswagen Group of Am., Inc. v. Longhorn Auto. Group LLC*, IPR2025-01064, Paper 9, 2-3 (Director Decision, October 10, 2025).

B. Phatak Also Discloses The Same Approach As The '908 Patent

The Office's oversight in failing to discover and apply Phatak is also material error, given the significant overlap in relevant subject matter and terms used. The Examiner, for instance, ran a search for "(multicast\$3 or broadcast\$3 or distribut\$3 or *rou*t\$3) near (packet\$1 or *stream*\$1 or data or traffic) with *multi* near (*path* or link)." As discussed in the Petition, Phatak, in comparing mobile environments to wired environments, notes that "*Multi-path routing* in wired networks concentrates mainly on the network layer. The issue of splitting a single connection into multiple *streams* is not addressed," which directly matches the Examiner's own search terms. This material error is further contextualized by the findings of the United States

Government Accountability Office (GAO) in its 2016 report on USPTO search capabilities. The GAO report highlights that USPTO examiners faced persistent and well-documented challenges in identifying relevant non-patent literature (NPL) during examination. In light of these systemic challenges, it is unsurprising that the Examiner did not discover Phatak. The GAO's findings make clear that the USPTO's infrastructure and processes for NPL searching were insufficient to ensure comprehensive coverage of all relevant non-patent prior art. The Examiner's reliance on keyword-based searches, without the benefit of integrated NPL databases or advanced search tools, left significant gaps in the prior art search process.

At a minimum, the Examiner's omission of Phatak undermines the presumption that all material prior art was properly reviewed during prosecution. The Examiner's material error for failure to consider Phatak during the prosecution of the '908 patent weighs against discretionary denial. *See CSPC Pharmaceutical Group Limited et al v. Ipsen Biopharm Ltd.*, IPR2025-00505, Paper 11 at 2-3 (PTO erred in "not considering or overlooking specific teachings" from an NPL that disclosed "critical limitations in the claims" weighed against discretionary denial). This error is especially significant given both Phatak and the '908 patent identify the "multilink session identification" approach, EX 1007, 12:10-14, and Phatak (teaching the same tuple must be used for all connections and letting Host B recover the TCP tuple and determine that the packet is for an existing TCP

session/connection,), EX 1045. Yet Phatak was not uncovered in the Examiner's search and never considered. To the extent that CAS has settled expectations, those settled expectations do not outweigh the need to address the Examiner's material error in overlooking Phatak. *See Volkswagen Group of Am., Inc.* at 2–3.

VII. THE PTAB IS BEST VENUE TO RESOLVE CAS'S ANTEDATING EFFORTS

CAS's argument that the EDNC is a better forum for litigating validity issues involving antedating prior art overlooks several key advantages of PTAB proceedings. The PTAB offers a more specialized and efficient forum for evaluating antedating art, with the Board's technical expertise and regular experience in priority determinations often surpassing that of a district court judge or jury. Moreover, contrary to CAS's suggestion, the procedural framework of an IPR is specifically designed to streamline factual development and minimize unnecessary delay. The PTAB is thus a highly effective forum for resolving patentability issues.

VIII. CAS FAILS TO PROVIDE CLAIM BY CLAIM ANALYSIS OF ALLEGED PRIORITY, DEFEATING ANY ATTEMPT TO ANTEDATE KOTZIN OR PHATAK AS PRIOR ART

CAS concedes that it *does not* have sufficient evidence to antedate the Kotzin and Phatak references, conceding that “[w]ithout surprise, the evidence collected to date is by no means complete.” POPR, 1. But that is indeed surprising. CAS has already litigated its claims against Oracle in 2022 and 2023, and in fact, it should have already collected and *produced “[a]ll documents evidencing the conception,*

reduction to practice, design, and development of each claimed invention, which were created on or before . . . *the priority date* identified pursuant to P. R. 3-1(e)” on Nov. 3, 2022. EX1069 (Dkt. 35 (Docket Control Order)); EX1070 (L.R. 3-1 and 3-2). It is unimaginable that CAS/Mr. Delangis has not already complied with their discovery duties and collected and produced all such evidence *as of November 2022*. That CAS is still yet to locate, and produce what the prior Court required, *i.e.*, “[a]ll documents evidencing the conception, reduction to practice”—indeed strains credulity and strongly indicates that CAS is trying to manufacture a non-existence priority dispute.

Indeed, CAS’s handwavy argument that it “may antedate Kotzin *and/or* Challenger [*sic*]” should not be credited. POPR, 30. After litigating the Oracle case for years, CAS is still unable to provide claim-by-claim analysis or any claim chart showing evidence of its conception or reduction to practice on a claim-by-claim basis. That failure is fatal. *See In re Steed*, 802 F.3d 1311, 1319 (Fed. Cir. 2015) (rejecting priority claim because “[n]o specific dates or acts tied to the several elements of the claims are referenced in the inventors’ Declaration and the exhibits.”) EX1071; *Envirotainer AB v. DoubleDay Acquisitions LLC*, IPR2022-00292, Paper 83, FN 12 (PTAB Final Written Decision, Affirmed on Appeal) (“We assess priority on a claim by claim basis.”) (citing *Santarus, Inc. v. Par Pharm., Inc.*, 694 F.3d 1344 (Fed. Cir. 2012)). As an example, claim 9 of the ’908 patent recites

“multilink session identification that is unique to the data packets,” which has no corresponding evidence of conception or reduction to practice in CAS’s cited draft patent application—and regardless, CAS’s failure to provide such evidence on a claim-by-claim basis renders its argument unsalvageable. EX2022 (April 2002 Draft Application), with EX1007 (’908 Patent). As such, the Director should reject CAS’s half-hearted attempt to manufacture a priority dispute based on such a lack of the most basic information.

Further, Red Hat has just received the so-called “evidence” of earlier priority, and even based on a cursory comparison, the supposed April 2022 draft application submitted by Mr. Delangis (EX2021) lacks significant portions of the substantive content of the ’908 patent specification. *See* EX1072 (identifying missing portions of the ’908 patent, including at least 1:4–1:17; 4:6–16:57). The Director should further reject CAS’s half-hearted “maybe” priority claim for this additional reason.

IX. CONCLUSION

For the foregoing reasons, institution is warranted and CAS’s request for discretionary denial should be denied.

Dated: November 10, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This Opposition complies with the page limitation as mandated in 37 C.F.R. § 42.24, totaling 20 pages.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document with accompanying exhibits, as listed in Petitioner's Exhibit List, will be served on November 10, 2025

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