

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

IPR2025-01380
U.S. Patent No. 9,350,649

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

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LIST OF EXHIBITS¹

Exhibit No.	Description
1001	Declaration of Bill Lin, Ph.D. in support of <i>Inter Partes</i> Review
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
1008	Certified File History of U.S. Patent No. 10,868,908
1009	Certified Copy of U.S. Patent No. 9,350,649
1010	Certified File History of U.S. Patent No. 9,350,649
1011	Certified Copy of U.S. Patent No. 8,861,349
1012	Certified File History of U.S. Patent No. 8,861,349
1013	Certified Copy of U.S. Patent No. 8,228,801
1014	Certified File History of U.S. Patent No. 8,228,801
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”)

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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1021	U.S. Patent No. 6,917,960 (“Decasper”)
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”)
1030	Candace Leiden & Marshall Wilensky, <i>TCP-IP for Dummies</i> (3d ed. 1999) (“Dummies”)
1031	U.S. Patent Application Publication No. 2003/0223450 A1 (“Bender”)
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, 2022 (“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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1042	Lai et al., <i>Measuring Bandwidth</i> , IEEE (1999)
1043	RFC 2663: IP Network Address Translator (NAT) Terminology and Considerations, August 1999
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
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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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1059	Richard O. LaMaire, et al., <i>Wireless LANs and Mobile Networking: Standards and Future Directions</i> , IBM, May 31, 1996
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)
1061	<i>Red Hat, Inc. v. Competitive Access Systems, Inc.</i> , 4:24-cv-00130-D, Dkt. 49 (E.D.N.C. Oct. 31, 2025)
1062	Federal Court Management Statistics
1063	<i>Valencell, Inc. v. Apple Inc.</i> , 2017 WL 2819768, No. 5:16-CV-1-D (E.D.N.C. June 28, 2017)
1064	<i>Implus Footcare, LLC v. Maverick Sports Med., Inc.</i> , No. 5:15-cv-00659, Dkt. 26 (E.D.N.C. Oct. 10, 2016)
1065	<i>Eli Lilly and Co. v. Synthon Pharms., Inc.</i> , No. 5:10-cv-00402, Dkt. 60 (E.D.N.C. Oct. 2, 2015)
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%20%20first%20large-scale,-la-Neuve%2C%20Belgium
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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
1071	<i>In re Steed</i> , No. 2014-1458, 802 F.3d 1311 (Fed. Cir. 2015)
1072	Redline comparing April 2002 draft application to U.S. Patent No. 9,350,649 patent specification
1073	<i>Red Hat, Inc. v. Competitive Access Systems, Inc.</i> , IPR2025-01370, EX2021 (April 2002 Draft Application, Apr. 12, 2022)
1074	<i>Red Hat, Inc. v. Competitive Access Systems, Inc.</i> , 4:24-cv-00130-D, Dkt. 52 (E.D.N.C. Nov. 14, 2025)

I. INTRODUCTION

The Court should not grant discretionary denial with respect to the '649 patent. 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. Indeed, the district court just granted the parties' proposed amended scheduling order based on CAS's amended complaint—which pushes the pleading stage into 2026, as the parties engage in renewed motion to dismiss practice. The parties are still negotiating the Protective and ESI Orders, and almost no substantive merits activity has occurred. Institution of inter partes review ("IPR") will *not* create duplicative proceedings or inefficiency. Rather, IPR will streamline the district court litigation and promote judicial economy, especially in light of Red Hat's broad *Sotera* stipulation.

CAS's accusation that Red Hat waited too long to petition for IPR is baseless. CAS itself waited *eight months*—from its initial letter and despite repeated requests—to provide Red Hat with insufficient infringement claim charts in June 2024. CAS's assertion tactics also resulted in a *nine-year* delay from its first letter to Apple regarding the '649 patent, to its 2025 lawsuit against Apple, EX2009, ¶¶ 59, 63. This defeats any claim of settled expectations. CAS insists on baselessly connecting Red Hat and Oracle—the sole target of its prior litigation—yet CAS could have asserted the '649 patent against Red Hat at the time, but did not. CAS's

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selective assertion created settled expectations of non-assertion for the rest of the industry.

Furthermore, CAS's 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's 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 (RFC 6824). 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 is based on new and different prior art to Oracle's prior challenge to the '649 patent, which challenged only claims 1-12, and 21-22, and which was voluntarily terminated prior to institution. *Oracle Corp. v. Competitive Access Sys., Inc.*, IPR2023-0088, Paper 2 at 2–3 (IPR Petition, May 8, 2023), Paper 10 (Joint Termination Request, Oct. 24, 2023).

The record further shows material error by the Patent Office, as key prior art references were not considered and related claims in the same patent family have already been found unpatentable in reexamination. Additionally, the PTAB is the best suited venue to resolve CAS's antedating claims. And to the extent CAS makes the same handwavy priority arguments in its forthcoming POPR, lacking proper

support as with its related patents, CAS's failure to provide a claim-by-claim analysis showing how support is offered for each claim in the alleged priority materials further shows 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. 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 entered Modified Scheduling Order (EX1074, entered November 14, 2025) confirms this.

Pleadings Not Yet Settled: This case is still at the pleading stage. CAS filed an Amended Answer and Counterclaim on October 31, 2025 and Red Hat will renew its motion to dismiss against. EX1060. Additionally, the parties filed a Consent Motion on October 31, 2025, jointly proposing an extended schedule in view of the amendment (EX1061), which the court just granted November 14, 2025 (EX1074).

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

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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. Red Hat's invalidity contentions are not due until January 20, 2026. EX1061.

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 and Red Hat's APAA bond motion, which was just filed on November 17, 2025).

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 claims 1-23 of the '649 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.” Corrected Petition for Discretionary Denial (“DD”) Brief at 7. To the contrary, the EDNC has a well-established record of granting stays pending IPR *after* institution.

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 the 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.*, No. 5:15-cv-00659, Dkt. 26 (E.D.N.C. Oct. 10, 2016), the 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.*, No. 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 in light of IPRs. *See Pentair Water Pool and Spa, Inc. v. Haywood Indus., Inc.*, No. 5:11–CV–459–D, 2014 WL 351865 (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. Accordingly, *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 notes that Red Hat has moved to dismiss on § 101 grounds with respect to the *other* six of seven asserted patents (DD Brief at 3), even CAS concedes the IPR is limited to patentability issues under §§ 102/103. Furthermore, if trial is instituted, Red Hat’s *Sotera* stipulation will substantially reduce any overlap and increase the value of the IPR process. With the EDNC pleadings stage not completed and discovery only just beginning, the IPR remains an efficient tool to avoid unnecessary judicial waste.

D. Red Hat Has Not Engaged In Delay Or Tactical Gamesmanship

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 was accorded a filing date of August 5, 2025. This filing occurred before CAS served its infringement contentions on October 24, 2025 or amended counterclaims on October 31, 2025, meaning Red Hat acted promptly and without the benefit of knowing the full scope of CAS's infringement allegations. The timeline reflects a reasonable and diligent response to the evolving litigation, not any attempt to delay or manipulate the process. *See e.g., 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, based on new prior art grounds. Contrary to CAS's attempt to tie Red Hat to Oracle's 2023 challenge to the '649 patent, Red Hat did not control *Oracle*'s IPR, its prior art, or its decision to voluntarily terminate the IPR pre-institution. *See Oracle Corp.*, IPR2023-0088, Paper 10. Red Hat is the sole party in its IPR Petitions against CAS's patents.

III. PATENT OWNER'S HISTORY OF PATENT ASSERTION WEIGHS AGAINST DISCRETIONARY DENIAL/SETTLED EXPECTATIONS

The age of the '649 patent alone does not create settled expectations favoring discretionary denial of IPR, especially where CAS has strategically chosen to sue

third parties—such as Oracle (*see* EX1039)—but not Red Hat, or indeed any other party. This conduct allows the accused infringer to reasonably develop settled expectations of non-enforcement. *See Apple Inc. v. Ferid Allani*, IPR2025-00856, Paper 11 at 3 (Director Decision, Sept. 5, 2025) (“Petitioner . . . ‘did not expect enforcement’ of the patent challenged . . . because Patent Owner did not assert the challenged patent against Petitioner until eleven years after. . . .”). The Director has emphasized that settled expectations are not determined solely by the age or expiration of a patent but instead require a holistic assessment of all relevant circumstances, including the patent owner’s conduct and the notice provided to the accused infringer. *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 at 2–3 (Director Decision, June 26, 2025) (“a patent may have been in force for years but may not have been commercialized, asserted, marked, licensed . . .”).

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

CAS’s haphazard and evolving history of assertion weighs against settled expectations. Prior to its recent campaign, CAS asserted this patent only against Oracle (in 2022), and never informed Red Hat about any alleged infringement until October 2023. 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. CAS's 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 (RFC 6824).

Second, CAS's own arguments undercut its 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, Red Hat promptly requested infringement claim charts to evaluate CAS's claims, which CAS did not supply until *eight months* later on **June 18, 2024** after multiple requests—and only for three of its seven listed patents. EX1040, 8–10. That CAS did not even attempt to provide a shred of infringement evidence for nearly eight months further defeats any discretionary denial arguments from CAS. *See Ferid Allani*, IPR2025-00856, Paper 11 at 3. To be sure, 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 creates 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); *Ferid Allani*, IPR2025-00856, Paper 11 at 3 (Petitioner “did not expect enforcement”). CAS's selective assertion only against Oracle strongly weighs against discretionary denial.

Additionally, CAS's prolonged delay in pursuing other new defendants—Apple, Samsung, and Motorola—also defeats any claim of settled expectations. CAS first sent letters to Apple “proposing a license” of related patents in June **2014** and specifically to the '649 patent in 2016. *See* EX2009, ¶¶ 59, 61, 63, 65. But it sat on its patents and did not assert infringement until May 2025. CAS's ***eleven-year*** wait, including nine years for the '649 patent in particular, defeats any claims of settled expectations. Further, CAS sent a letter to Samsung in October 2023, yet 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 completely reinvented its interpretation of the scope of its asserted patents, including the '649 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, ¶¶ 1, 28; EX2011. This brand-new theory of infringement—targeting cellphones’ dual connectivity capabilities—and ***without requiring MPTCP***—was never disclosed to Red Hat in pre-suit letters. EX2010. 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*, IPR2025-00856, Paper 11 at 3. CAS’s unexcused delay in revealing broad and new theories resets any expectations, weighing heavily against discretionary denial.

Settled expectations should not be manipulated by patent owners who “lie in wait” while industry standards become entrenched (MPTCP, 3GPP, E-UTRAN, 4G, and 5G standards have been publicly available and adopted for many years), 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 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 public and widely adopted for years. *See* EX1067. CAS's delay in asserting these theories is unjustified, and its recent pivot undermines any claim that Red Hat should have expected such allegations. Accordingly, the long-standing availability of the standards and CAS's failure to assert the '649 patent against Red Hat earlier weigh heavily against settled expectations.

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

This IPR arises from CAS's delayed assertion of a patent allowed due to material Examiner errors. Even if discretionary denial factors—such as CAS's settled expectations—were present, 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 '649 patent.

A. Kotzin Discloses Core Aspects Of The '649 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 in the prosecution history of the '649 patent (H04L, H04N, H04W).² *See e.g.*, EX1010, 446, 521–22, 553. Kotzin discloses a bandwidth aggregation system where the bandwidth available to a plurality of wireless units in a wireless network can be shared with a primary wireless unit, thereby increasing the wireless bandwidth available to the primary wireless unit—a core aspect that is central to the '649 patent's claims. *See* EX1009, Cl. 18 (“at least one interface capable of connecting concurrently to a plurality of network-edge devices during a multipath connection . . .”). Given that the Examiner's searches targeted these very subclasses and Kotzin's teachings directly address the problems and solutions in the '649 patent, the failure to identify and consider Kotzin represents a notable and unexpected

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

material error. To the extent that CAS has any 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 at 2–3 (Director Decision, Oct. 10, 2025).

B. Phatak Also Discloses The Same Approach As The '649 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. For example, the Examiner's search was narrowly constrained by the inclusion of the term "multicast" in every single search except for those relating to the inventor or those searches containing alphanumeric sequences corresponding to patent categories or numbers. *See* EX1010, 451, 528. Consequently, minimal non-patent literature ("NPL") would have been identified in the Examiner's search, except for that which contained the term "multicast." But the '649 patent specification did not even include the term multicast, instead describing the invention with "**MULTIPATH.**" *Id.* at 12. Indeed, terms such as "multilink" and "multipath" were used throughout the '649 patent's specification and claims—and two of the '649 patent's sub-classes, H04L 45/24 ("**Multipath**") and H04L 69/14 ("Multichannel or **multilink** protocols") cover these exact search terms. Yet, the Examiner never conducted searches for either of these terms, both of which are contained in Phatak.

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This material error is further contextualized by the United States Government Accountability Office (“GAO”) in its 2016 report on USPTO search capabilities, which highlights the persistent and well-documented challenges Examiners faced in identifying relevant NPL during examination. The GAO made clear, Examiners’ 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. As such, it is unsurprising that the Examiner did not discover Phatak.

At a minimum, the Examiner’s omission of Phatak undermines the presumption that all material prior art was properly reviewed during prosecution. This material error for failure to consider Phatak during the prosecution of the ’649 patent weighs against discretionary denial. *See CSPC Pharm. Group Ltd. 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 since Phatak and the ’649 patent identify the “multilink PPP session ID” approach. *See* EX1009, 12:33; EX1045, 775 (teaching the same tuple for all connections with Host B recovering the tuple and determining the packet is for an existing connection). To the extent CAS has settled expectations, its settled expectations do not outweigh the need to address the Examiner’s material error in overlooking Phatak. *See Volkswagen Group of Am., Inc.*, IPR2025-01064, Paper 9 at 2–3.

V. THE OFFICE HAS ALREADY CONCLUDED THAT RELATED CLAIMS ARE UNPATENTABLE

The fact that the Office has already found challenged claims 1-3, 5-6, and 13-15 in related U.S. Patent No. 10,868,908 unpatentable in *ex parte* Reexamination 90/019265 raises substantial questions about the patentability of similar claims in the same family. EX1068. The Director makes clear in *ClearCorrect Operating LLC v. Align Tech., Inc.*, that a prior finding of unpatentability in the same family is a compelling reason to question the patentability of related patents and to proceed with review. This factor thus weighs heavily against discretionary denial. IPR2025-00817, Paper 13 at 3 (Director Decision, Aug. 29, 2025).

VI. PTAB IS THE BEST VENUE TO RESOLVE CAS'S ANTEDATING EFFORTS AND TO AVOID DUPLICATIVE LITIGATION

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 designed to streamline factual development and minimize unnecessary delay. The PTAB is thus a highly effective forum for resolving patentability issues.

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Additionally, the '649 patent is a parent of Patent No. 10,868,908, issued in **2020**; Patent No. 11,418,641, issued in **2022**; and of Patent No. 11,582,343, issued in **2023**. CAS does not have strong settled expectations that favor discretionary denial in the child patents, and it is an efficient use of Board resources to address the related '649 patent, too. *See Embody, Inc. v. LifeNet Health*, IPR2025-00248, Paper 13 at 2–3 (Director Decision, June 26, 2025) (denying request for discretionary denial where “one of the challenged patents has not been in force for a significant period of time (issued in 2022) and the other patent is a parent of the first”).

VII. FAILURE TO PROVIDE CLAIM-BY-CLAIM ANALYSIS OF ALLEGED PRIORITY DEFEATS ANY ANTEDATION ATTEMPT

On November 6, 2025, CAS filed its Corrected Petition for Discretionary Denial. DD Brief. In the petition, CAS states that it anticipates it can “predate both Kotzin and Phatak.” *Id.* at 19. To the extent CAS attempts to antedate without a claim-by-claim analysis demonstrating proper support for each claim in prior materials, as it did for its related patents (*e.g., Red Hat, Inc. v. Competitive Access Sys., Inc.*, IPR2025-01370), the Office should reject CAS’s effort completely. CAS admits it ***does not*** have sufficient evidence to antedate the Kotzin and Phatak references, conceding that “CAS is still collecting its evidence.” DD Brief at 19. However, CAS has already litigated its claims against Oracle in 2022 and 2023—including for this very patent—and per the district court’s rules, CAS was obligated

to collect and *produce “[a]ll documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified”* on Nov. 3, 2022. EX1069 (Dkt. 35 (Docket Control Order)); EX1070 (L.R. 3-1 and 3-2). It is implausible that CAS has not complied with its obligation to collect and produce all such information *as of November 2022*. That CAS has still yet to collect, locate, and produce such basic evidence of conception and reduction to practice—when the prior Court’s rules required production of “*[a]ll documents evidencing the conception, reduction to practice*”—strains credulity and strongly indicates that CAS is trying to manufacture a priority dispute that does not exist.

Tellingly, even after litigating the Oracle case for years, to date CAS has been unable to provide any claim chart showing evidence of its conception or reduction to practice on a claim-by-claim basis. *Red Hat, Inc.*, IPR2025-01370, Paper 9 (Patent Owner’s Preliminary Response, Nov. 6, 2025). CAS’s failure to do so is fatal. *See* EX1071 (*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.”); *Envirotainer AB v. DoubleDay Acquisitions LLC*, IPR2022-00292, Paper 83 n.12 (Final Written Decision, Feb. 1, 2024), *aff’d* (“We assess priority on a claim by claim basis.”) (citing *Santarus, Inc. v. Par Pharm., Inc.*, 694 F.3d 1344 (Fed. Cir. 2012)).

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To the extent CAS relies on the same evidence as in their already submitted POPRs—the purported April 2022 draft application submitted by Mr. Delangis (EX1073)—this so-called evidence of earlier conception does not support each challenged claim. Indeed, even a cursory comparison of the supposed draft application lacks significant substantive content from the '649 specification. *See* EX1072 ('649 Spec Redline) (identifying missing portions of the '649 patent, including at least 3:66-16:29). As one example of CAS's evidentiary deficiency, claim 2 of the '649 patent recites “a connection ID that is generated by one of the data-source device, one of the plurality of network-edge devices, the data-requesting device and a network device,” which has no evidence of conception or reduction to practice in CAS's alleged draft application—and regardless, its failure to provide evidence on a claim-by-claim basis renders its argument unsalvageable. *Compare* EX1073 (April 2002 Draft Application), *with* EX1009 ('649 patent). As such, the Director should reject any attempt by CAS to manufacture a priority dispute.

VIII. CONCLUSION

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

Dated: November 20, 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 20, 2025.

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