

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NOKIA OF AMERICA CORPORATION

Petitioner,

v.

SPADA INNOVATIONS, INC.

Patent Owner.

Case No. IPR2025-01442

U.S. Patent No. 11,589,142

**PATENT OWNER'S DISCRETIONARY DENIAL BRIEF
UNDER 35 U.S.C. § 325(d)**

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**PATENT OWNER'S DISCRETIONARY DENIAL BRIEF
UNDER 35 U.S.C. § 325(d)**

I. INTRODUCTION AND APPLICABLE FRAMEWORK

Pursuant to the USPTO's Interim Director Discretionary Process Memorandum dated March 26, 2025, together with its associated FAQs and implementation guidance (collectively, the “Process Memorandum”), Patent Owner SPADA Innovations, Inc. (“SPADA”) respectfully requests denial of institution under 35 U.S.C. § 325(d). This brief is limited to § 325(d). SPADA will respond to the August 27, 2025 Petition For *Inter Partes* Review (the “Petition”) on the merits in its POPR under 35 U.S.C. § 314(a) by November 28, 2025.

The request for IPR in the Petition rests on references and arguments that the Examiner has previously rejected, or on references that are cumulative of those references. Under *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential), discretionary denial is appropriate here because (1) the same or substantially the same prior art or arguments were previously presented and (2) the Petition fails to show material error in the prior evaluations and rejections. In assessing both prongs, the *Becton, Dickinson* factors (a–f) must be considered, including the extent to which the same art and arguments were previously evaluated and whether the Petition identifies specific error. *Becton, Dickinson & Co. v. B. Braun Melsungen AG*,

IPR2017-01586, Paper 8 at 17–18 (PTAB Dec. 15, 2017) (precedential). Those factors warrant discretionary denial of the Petition.

The Petition seeks a do-over of issues the Office already evaluated and resolved. Ahn (Ex. 1015) is cumulative of references already considered, including Cheng, Zheng, Schmidtke and Rarick/Doiron (Ex. 1005 at 79-80, 83–86, 108, 127-28, 136)—all of which, like Ahn, include VRF/MPLS functionality at the OLT. The Examiner found these references insufficient because they teach VRF separation at the OLT through integrated router functionality, whereas the claims recite VRF separation before OLT receipt, followed by OLT aggregation and distribution to ONUs. Ex. 1004 at 18, ¶6; Ex. 1005 at 105-06. The prior art teaches the opposite: the OLT using integrated router functionality on received data streams. The Petition offers no new art addressing this deficiency and presents the same thesis the Examiner rejected.

Both *Advanced Bionics* prongs favor denial of the Petition. The references are substantially the same – PON standards, VRF standards, and references having router functionality at the OLT that receives Layer 3 VRF data streams. The Petition shows no material error in the Examiner’s conclusions, which are also supported by secondary indicia of non-obviousness, considered by the Examiner in patent applications, including industry skepticism, unexpected results and long-felt need. Ex. 1005 at 105–06; Ex. 1004 at 62; Ex. 1006 at 67-84 (declarations), 128-29

(remarks), 172-75 (allowance).

II. THE '142 PATENT APPLICATIONS

A. The Examination Was Thorough, And The References And Arguments In The Petition Are Cumulative

The Examiner previously considered the same or substantially the same art and arguments set forth in the Petition. In particular, the record reflects consideration of PON/GPON standards and materials (e.g., ITU-T G.984.1 and G.984.3), VRF/MPLS standards (including RFC 2547, the predecessor to RFC 4364) and references describing inclusion of routing functionality at the OLT (e.g., Cheng, Schmidtke, Zheng, and Rarick/Doiron).

The examination was exceptionally thorough, as evidenced by:

Examination Feature	Evidence
Track One Priority Examination	Ex. 1005 at 12, 49; Ex. 1006 at 15, 50
Multiple Office Actions & First Action Interview	Ex. 1005 at 51-57; Ex. 1006 at 51-60, 66, 109-12, 139-47
Technical Declarations	Ex. 1006 at 67-84 (inventor and industry expert on counter-intuitiveness, skepticism, test results)
IDS with Cumulative References	Ex. 1005 at 96-101 (Rarick/Doiron; Zheng; Schmidtke—all teaching OLT router functionality like Ahn)
Exhaustive Prior Art Search	Ex. 1006 at 151-58, 181-214 (100+ EAST queries; ACM/IEEE searches)
Detailed Reasons for Allowance	Ex. 1005 at 105-06; Ex. 1004 at 18, 62 (explaining why prior art insufficient)

B. The Examiner Previously Considered References, Like Ahn, That Disclosed Having Router Functionality At An OLT

Critically, the Examiner considered – and rejected – several references that, like Ahn, have routing functionality at the OLT. These references include:

Cheng (U.S. Patent Application Publication No. 2012/0014693 A1): Cheng discloses a combination of MPLS and a PON system wherein the passive optical network splits downstream signals from the MPLS system to a plurality of users and combines signals from the users for upstream transmission through the MPLS system, with router functionality included in an OLT. (Bloomberg Decl, Ex A). Cheng thus teaches the same method the Petition now alleges is disclosed in Ahn: integrating MPLS with a PON by placing routing functionality in the OLT.

Zheng (U.S. Patent Application Publication No. 2011/0116796 A1): Zheng, which is included in the May 18, 2021 Information Disclosure Statement, discloses a PON-based LFIB table on the OLT and updating a PON-based Label Forwarding Information Base (LFIB) table on the OLT. (Bloomberg Decl, Ex B).

Schmidtke (European Application No. EP215754A1): Schmidtke, which is included in the May 18, 2021 Information Disclosure Statement, teaches a G-PON (Gigabit-capable passive optical network) enabled to operate as a combined router, having routing functions and PON functions. Schmidtke expressly discloses a GPON OLT that performs routing functions, mirroring Ahn's method. (Bloomberg

Decl, Ex C).

Rarick/Doiron (MPLS and GPON: Happy together in the next-generation OLT): This non-patent literature reference, included in the May 18, 2021 Information Disclosure Statement, proposes to “push [MPLS] functionality out to the [OLT]” and discusses “[i]ntegrating service edge router functionality into OLTs” as part of an MPLS-over-PON deployment. (Bloomberg Decl, Ex D).

In the Notice of Allowability for the ‘142 patent application, the Examiner stated that the “closest prior art fails to disclose, teach or even suggest” the claimed invention. [Ex. 1004 at 18, ¶ 6].

Like Ahn, these references disclose PON OLTs with integrated router functionality handling Layer 3 VRF-separated data streams, which the Examiner found insufficient to show the claimed methods are obvious. Ahn is cumulative, and fails for the same reason.

III. PRONG ONE: THE PETITION PRESENTS SUBSTANTIALLY THE SAME ART AND ARGUMENTS

Under prong one of *Advanced Bionics*, the references and arguments are substantially the same where they “overlap in their disclosure” and present “the same general approach.” *Advanced Bionics*, Paper 6 at 8-9. The test is not whether the references are identical, but whether they present the same basic thesis. Here, both the prosecution record and the Petition rely on the same thesis: combining VRF

standards with PON standards requiring OLT-resident router functionality. The prior prosecution and the Petition both present: (i) PON standards, (ii) VRF references, and (iii) references teaching OLT receipt of Layer 3 data streams with router functionality at the OLT. These references overlap in disclosure and approach. All place routing functionality at the OLT, which the Examiner found insufficient. Ahn merely restates this approach.

The Examiner considered PON references (including Dupont, Cheng, Akasaka and Mitsunaga (Ex. 1005 at 58; Ex. 1006 at 138-49), VRF references (including Daruwalla, Kolli and Vasseur) (Ex. 1005 at 58), and RFC 2547 – the predecessor to RFC 4364 – and methods by which OLTs received Layer 3 data streams, including Zheng, Schmidtke and Rarick/Doiron (Ex. 1005 at 81–82, 88–91). In prosecution remarks, Applicants explained that these OLT references teach OLT-resident routing functionality, e.g., “GPON system used as router with its related virtual routing functionality” (Schmidtke) and OLT MPLS label manipulation (Rarick/Doiron). Ex. 1005 at 79-80. Applicants distinguished these references as requiring router functionality for the received data streams, whereas the claims recite the OLT operating on Layer 3 VRF-separated streams without including router functionality. Ex. 1005 at 79-81. The Examiner accepted this distinction. Ex. 1005 at 105–06.

A. Ahn Is Cumulative (*Becton, Dickinson* Factor (a); Prong One)

Ahn is cumulative of Zheng, Schmidtke, and Rarick/Doiron – all of which teach an OLT with routing functionality, and all of which were provided to the Examiner in an Information Disclosure Statement:

Reference	Teaching
Ahn	“routing and MPLS edge functionalities are implemented at the OLT level” (Ex. 1015 at 3); “OLT must implement...MP-BGP functionality” and “manage VRF tables” (<i>id.</i> at 4)
Schmidtke	“GPON enabled as router with virtual routing” (Ex. 1005 at 79)
Rarick/Doiron	“OLT routing/MPLS label manipulation” (Ex. 1005 at 79-80)
Zheng	“set up and use of an ONT as a router...MPLS labelled packets” (Ex. 1005 at 79)

Each reference – whether Ahn or the prosecution references – places routing functionality at the OLT to handle Layer 3 VRF data streams – the opposite of what the claims recite. The Examiner found this approach did not teach the claimed method. Ex. 1005 at 105-06. Even when the Examiner combined Mitsunaga (PON/OLT), Daruwalla (VRF) and Kolli (virtual routing), the combination was insufficient. Ex. 1006 at 174. Ahn teaches that same approach, and is cumulative.

B. Ravindran And BCM56685 Add Nothing Material (*Becton, Dickinson* Factor (a))

Ravindran (Ex. 1016) addresses content-oriented networking and does not disclose GPON OLT operations or the claimed method. Even assuming Ravindran teaches sending VRF over a PON generally, it does not cure the deficiency the

Examiner identified: Ravindran does not disclose an OLT receiving data streams that have been VRF-separated, without having router functionality at the OLT to manipulate those data streams.

BCM56685 (Ex. 1020) is a two-page switch-chip product brief. While it lists VRF support as a feature, it does not teach or suggest OLT aggregation of VRF-separated data streams received by the OLT, or distributing such data streams to ONUs. Like the rejected prosecution references, BCM56685 contemplates switch/router functionality at the aggregation point – the same method the Examiner found insufficient.

Neither reference addresses the fundamental deficiency in the Petition’s combinations of references.

IV. PRONG TWO: THE PETITION SHOWS NO MATERIAL ERROR

A. The Examiner's Reasoning For Allowing Claims To Issue

The Examiner found the prior art did not teach the method recited in the claims: (1) receipt at the OLT of Layer 3 data streams already virtually separated using VRF; (2) aggregating those data streams within the OLT into a common data feed; and (3) distributing that common data feed to ONUs for extraction. Ex. 1005 at 105–06; Ex. 1004 at 18-19.

The Examiner found that “conventional methods do not use the virtual routing and forwarding in the same way as the [claims].” Specifically, the Examiner found

the prior art did not show a PON OLT receiving and operating on Layer 3 VRF data streams without router functionality at the OLT. The prior art instead taught integrated router functionality at the OLT—the opposite of the claimed method where the OLT receives VRF data streams and aggregates those streams into a common data feed. Ex. 1005 at 105–06.

B. The Petition Does Not Identify Material Error

The Petition identifies no error in the Examiner's finding the claims were not obvious over the references identified in connection with the applications. Instead, the Petition:

- **Fails to address the claimed steps of the method:** The Petition does not explain how the cited art teaches what the Examiner found was missing from the prosecution art. Instead, it cites Ahn’s teaching that “routing and MPLS edge functionalities are implemented at the OLT level” (Pet. at 54)—the same approach the Examiner found insufficient. Ex. 1005 at 105-06.
- **Mischaracterizes the claims:** The Petition argues the claims merely combine known standards (Pet. at 14-15, 18, 25), ignoring that the point of novelty is the specific claimed method of combination. Ex. 1005 at 105-06.
- **Relies on wrong-layer mechanisms:** The Petition cites Layer-2 GEM Port-ID filtering (Pet. at 40-41) but does not explain ONU extraction based on received Layer-3 VRF separation.

- **Ignores objective indicia:** The Petition does not address the record of skepticism, counter-intuitiveness, and unexpected results (Ex. 1006 at 72, 80-83) or the Examiner’s reasons for allowance (Ex. 1005 at 105-06).

The Examiner found the prior art did not teach the method steps recited in the claims: (1) the OLT receiving data streams virtually separated using VRF, (2) OLT aggregating those data streams into a common data feed, and (3) distribution of the common data feed to ONUs for extraction. Ex. 1004 at 18,. The Petition’s cited references do not teach this ordered integration. It simply reargues the same insufficient combination the Examiner considered and rejected. Ex. 1006 at 172–75.

C. The Petition’s Extensive Reliance On An Expert Declaration Confirms The References Do Not Teach The Claimed Invention

The Process Memorandum identifies “[t]he extent of the Petition’s reliance on expert testimony” as a discretionary consideration, noting that extensive reliance “may suggest that the questions are better resolved in an Article III court.” FAQ 22. Here, the Petition relies on Dr. Hajduczenia’s declaration for virtually every substantive point – hundreds of paragraphs of expert explanation (see Ex. 1002 ¶¶ 1-481) in a failed attempt to supply what the prior art lacks.

Examples of such expert glosses include:

- **VRF separation received by the OLT:** The Petition needs expert testimony to bridge between RFC 4364 PE routers and an OLT receiving data streams

that have been virtually separated using VRF (Pet. at 30-31, Ex. 1002 ¶¶ 145-152), despite Ahn expressly placing functionality “at the OLT level” (Ex. 1015 at 3)—the same approach the Examiner found insufficient;

- **ONU extraction based on VRF data streams received at the OLT:** The Petition needs expert testimony to connect GEM Port-ID filtering (a Layer 2 GPON mechanism) to extracting VRF-separated streams (Pet. at 41, Ex. 1002 ¶ 180);
- **Motivation:** The Petition relies on expert testimony to assert Ahn teaches using virtually separated data streams received by an OLT, yet Ahn expressly teaches the same approach the Examiner found insufficient (Pet. at 54, Ex. 1002 ¶ 221).

The Examiner evaluated these same references teaching OLT-resident VRF functionality and found them insufficient without expert testimony. Ex. 1005 at 105-06. If the claimed method were obvious, the prior art would have disclosed so explicitly. The extensive expert reconstruction required here—explaining how to combine disparate references, configure generic standards, and repurpose Layer-2 mechanisms for Layer-3 data reveals hindsight rather than teachings in the art. Under the Process Memorandum, this extensive reliance weighs against institution. FAQ 22.

D. The Petition Fails to Establish Motivation To Combine

The Petition's motivation arguments are circular and rely on hindsight. The Petition argues a POSITA "would have been motivated" to combine VRF with PON because a PON is agnostic as to the type of data transmitted (Pet. at 20) and to limit the number of physical devices required (Pet. at 20, 23). This reasoning applies to any combination of networking technologies, and does not explain why a POSITA would have been motivated to combine the references as the Petition proposes. The prior art points in the opposite direction. Ahn expressly states that "routing and MPLS edge functionalities are implemented at the OLT level" and the "ONU does not operate as a system with upper-layer protocol capabilities, such as MPLS or routing protocols." Ex. 1015 at 3. This contradicts the claims, which recite that the OLT receive streams that "have been virtually separated using [VRF]." Ex. 1004, claim 8. During prosecution, Applicants explained why a POSITA would not be motivated to use VRF in optical networks like Suvakovic's:

There would be no motivation for Suvakovic to utilize VRF in its network....Ultimately, there would be no reason for a Suvakovic-type optical network to provide information separation as accomplished by VRF...the use of VRF in a Suvakovic-type optical network would result in some of the routes being unpublished and potentially lost, defeating the operation of the network.

Ex. 1006 at 128-29. The Examiner found this persuasive. Ex. 1006 at 172-75. The Petition does not address this finding, much less explain why it was error.

E. The Petition Conflates The Existence Of Standardized Components With The Use Of Those Components In A Novel Method

The Petition quotes Patent Owner's infringement contentions (Pet. at 14-18, 25-26) to argue the claims merely combine known VRF and GPON standards. This reasoning is flawed. The existence of standardized components does not render their integration obvious. The Examiner found the prior art did not teach the method recited in the claims: VRF separated data streams received by an OLT, followed by OLT aggregation and distribution to ONUs. The question is whether the prior art discloses this method (it does not), not whether VRF and GPON simply existed as standards.

The Petition's logic proves too much. Under its reasoning, any patent claiming novel integration of standardized technologies would be obvious. Neither the PON standards nor RFC 4364 (alone or in combination) discloses the claimed method, and the Examiner thus found the prior art did not teach the claimed method. Ex. 1005 at 105-06.

V. OBJECTIVE INDICIA CREDITED BY THE EXAMINER FURTHER SUPPORT DENIAL

The Examiner's allowance reasoning reflects consideration of the claimed method, noting that "conventional methods do not use [VRF] in the same way" as the claims. Ex. 1005 at 105-06; *see also* Ex. 1004 at 18. This has strong nexus to the

claimed method of integrating VRF and PON. The evidence demonstrates this method was unexpected and solved a long-felt need.

Industry Skepticism And Unexpected Results. Michael Zegarski, Motorola Mobility's Senior Systems Engineer, declared: “I was very skeptical that this could be accomplished because this specific application was not an operational consideration of our OLT.” Ex. 1006 at 82–83. He had “never heard or experienced the use of VRF-labeled Ethernet frames going through a layer-2 OLT” and characterized VRF as “hardly used, very specialized and little known.” *Id.* at 83. The method was counter-intuitive because it eliminated direct information sharing within the shared network. *Id.* at 71. Testing in 2012 demonstrated that the method worked despite this skepticism. *Id.* at 80–81.

Long-Felt Need. As of 2008-2010, PON’s bandwidth promise was recognized, but commercial use in multi-tenant buildings was unavailable. SPADA’s 2012 conception of integrating VRF separation with a PON OLT (without router functionality) solved this need. Ex. 1006 at 71.

The Petition neither addresses any of this objective evidence, nor explains why the Examiner erred in crediting it. This independently supports § 325(d) denial. *Apple Inc. v. Samsung Elecs. Co.*, 839 F.3d 1034, 1052 (Fed. Cir. 2016) (en banc).

VI. THE *BECTON, DICKINSON* FACTORS AND THE PROCESS MEMORANDUM SUPPORT DENIAL

The *Becton, Dickinson* factors support denial. Factors (a), (c), (d) and (f) are addressed above. Factors (b) and (e) are shown by the prior art searches, the Examiner’s consideration of objective indicia, and the Reasons for Allowance. In addition, the discretionary factors listed in Process Memorandum (including “the strength of the unpatentability challenge,” “the extent of the petition's reliance on expert testimony” and “settled expectations of the parties” favor discretionary denial.

A. Factors (a), (c), (d) and (f)

These factors strongly favor denial. Factor (a) (art overlap) is demonstrated by the following comparison:

Element	Petition	Prosecution
PON	G.984.1, G.984.3	Dupont, Cheng, Akasaka, Mitsunaga (Ex. 1005 at 58; Ex. 1006 at 138–46)
VRF	RFC 4364	RFC 2547, Daruwalla, Kolli, Vasseur (Ex. 1005 at 58)
OLT Receiving VRF	Ahn: “at the OLT level” (Ex. 1015 at 3)	Cheng, Schmidtke, Rarick/Doiron, Zheng (Ex. 1005 at 79-80, 83–108)

The Petition adds Ravindran and BCM56685, but neither addresses the deficiency the Examiner identified. Factor (c) (argument overlap): The Petition

makes the same failed argument—combining VRF with PON with router functionality at the OLT—that the Examiner rejected. Ex. 1006 at 138–46, 172–75. Factors (d) and (f) (material error not shown): The Petition identifies no overlooked disclosure, misapplied standard, or error, and does not address the objective indicia the Examiner credited. These factors strongly favor denial.

B. Factor (b): The Examiner’s Evaluation Was Thorough And Thoughtful

Factor (b) considers “the extent to which the Examiner considered the asserted art or arguments presented in the petition during examination.” *Becton, Dickinson*, Paper 8 at 18. Here, the Examiner’s evaluation included: Pre-Interview Communication, First Action Interview with inventor participation, multiple Office Actions, an Information Disclosure Statement with key references, inventor and expert declarations, and detailed Reasons for Allowance. Ex. 1005 at 52-57, 89-90, 96-101, 105–06; Ex. 1006 at 52-60, 66-84, 109-12, 138-46; Ex. 1004 at 18, 62. The record demonstrates thorough searching and review of prior art substantially the same as that in the Petition. This factor strongly favors denial.

C. Settled Expectations Weigh Strongly Against Institution

The Process Memorandum identifies “settled expectations of the parties, such as the length of time the claims have been in force” as a discretionary consideration. Here:

- The '142 patent issued in February 2023 – over two years before the Petition
- The patent family underwent Track One prioritized examination in multiple applications
- The Examiner conducted extensive searching (over 100 queries of multiple databases, Ex. 1006 at 182-214)
- The allowance included detailed reasons addressing the specific steps of the claimed method (Ex. 1005 at 105-07)

Patent Owner has relied on these settled expectations in prosecuting continuation applications, licensing discussions, and litigation strategy. Granting institution here – where the Petition presents substantially the same art and the same arguments already thoroughly evaluated – would send a troubling message: that no allowance is truly final, that detailed reasons for allowance provide no protection, and that a petitioner can simply re-present rejected combinations indefinitely until it finds a more receptive forum. This would undermine prosecution finality and burden the Office with duplicative proceedings. This is not the law. It is precisely the scenario § 325(d) was designed to prevent. This factor strongly favors denial.

D. The District Court Stay Underscores the Inefficiency of Institution

Related litigation is stayed pending IPR resolution, SPADA Innovations, Inc. v. AT&T Communications, LLC, et al., Civil Action No. CV 24-6703-MWF

(MARx), Dkt. 64 (C.D. Cal Sept. 22, 2025) (Bloomberg Decl, Ex E), but this weighs against institution. The stay reflects judicial efficiency—avoiding duplicative validity proceedings. But that efficiency rationale is premised on the IPR presenting new references and arguments. That is not so here. The Petition presents the same art and arguments already considered. The Examiner evaluated references teaching OLT-resident router functionality (Cheng, Schmidtke, Zheng, Rarick/Doiron), found them insufficient, and issued detailed reasons for allowance. Ex. 1005 at 105-06; Ex. 1004 at 18-19. The Petition adds Ahn—which teaches the same method—asking the Board to reach a different conclusion. This is the “do-over” § 325(d) prohibits.

The efficiency calculus is clear. If institution is denied, litigation will proceed on its current schedule with trial in July 2027. The validity challenges will largely mirror the prosecution rejections already resolved by the Examiner. If institution is granted, the litigation stay will add another 12-18 months of delay, while the Board re-examines substantially the same art and arguments the Office already thoroughly considered. If the Board reaches the same conclusion as the Examiner (which it should under *Advanced Bionics*), the parties will return to the district court, 18 months later, having expended substantial Board and party resources on cumulative proceedings.

This is precisely the inefficient “two bites at the apple” scenario that

discretionary denial is designed to avoid. The ‘142 patent expires in 2033, meaning every month of delay erodes the Patent Owner’s remaining term of patent protection. Institution here would thus reward Petitioner for presenting cumulative art while punishing the Patent Owner. The Board should deny institution and allow the district court to resolve validity challenges that replicate the prosecution record.

VII. LIMITED NOTE ON MERITS STRENGTH

Patent Owner will fully address the merits in the POPR. However, to the extent the Director considers merit strength now, the Petition fails because it does not explain how the cited art teaches: (1) receiving VRF-separated data streams at the OLT (Ahn places VRF “at the OLT level,” Ex. 1015 at 3), (2) OLT aggregation of those data streams, or (3) distributing the common data feed to ONUs. These gaps—requiring hundreds of Petitioner’s expert paragraphs to bridge—confirm the art does not teach the claimed method.

VIII. CONCLUSION

The Director should deny institution under § 325(d). This is precisely the case § 325(d) and *Advanced Bionics* were designed to address: a Petition seeking a “do-over” of a thorough examination by presenting substantially the same art and arguments the Examiner already considered and rejected, without showing material error in that determination.

Both *Advanced Bionics* prongs strongly favor denial. Prong One is met

because Ahn and the associated references (RFC 4364, G.984.x) present the same general approach as the prosecution references: combining VRF standards with PON standards using OLT-resident router functionality. The Examiner considered Cheng, Schmidtke, Zheng, and Rarick/Doiron – all of which, like Ahn, place routing/VRF functionality at the OLT—and found this architecture insufficient. Ahn is cumulative and fails for the same reason.

Prong Two is met because the Petition identifies no error in the Examiner's finding that the prior art does not teach the method recited in the claims: (1) VRF separation before OLT receipt, (2) OLT aggregation of those data streams, and (3) distribution to ONUs. Instead, the Petition re-argues the same insufficient combination the Examiner considered during prosecution and found insufficient (Ex. 1005 at 105-06), using extensive expert testimony to supply what the prior art lacks, in an improper and failed attempt to supplement the prior art.

The *Becton, Dickinson* factors (a–f) likewise weigh in favor of denial. Allowing this Petition would undermine prosecution finality, burden the Board with reconsidering issues the Examiner already considered and resolved, and waste PTAB resources.

Accordingly, under § 325(d), *Advanced Bionics*, the *Becton, Dickinson* factors and the Process Memorandum, the Director should deny institution.

Dated: October 27, 2025

Respectfully submitted,

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing PATENT OWNER'S DISCRETIONARY DENIAL BRIEF UNDER 35 U.S.C. § 325(d), DECLARATION OF MARK H. BLOOMBERG IN SUPPORT OF PATENT OWNER'S DISCRETIONARY DENIAL BRIEF, and supporting exhibits have been served on Petitioner via email on the following counsel of record for Petitioner:

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