UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SK HYNIX INC.,
Petitioner,

v.

ADVANCED MEMORY TECHNOLOGIES, LLC,
Patent Owner.

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Case IPR2025-01451
Patent 7,969,231

**PATENT OWNER'S**
**DISCRETIONARY DENIAL BRIEFING PURSUANT**
**TO THE DIRECTOR'S MARCH 26, 2025 MEMORANDUM**

***Mail Stop "PATENT BOARD"***
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

# EXHIBIT LIST

| Exhibit | Description |
|---|---|
| 2001 | Complaint for Patent Infringement, *Advanced Memory Techs., LLC v. SK Hynix Inc.*, No. 2-24-cv-01078, Dkt. No. 1, filed Dec. 30, 2024 (E.D. Tex.) |
| 2002 | Amended Complaint for Patent Infringement, *Advanced Memory Techs., LLC v. SK Hynix Inc.*, No. 2-24-cv-01078, Dkt. No. 25, filed April 2, 2025 (E.D. Tex.) |
| 2003 | Second Amended Docket Control Order, *Advanced Memory Techs., LLC v. SK Hynix Inc.*, No. 2-24-cv-01078, Dkt. No. 27, filed April 11, 2025 (E.D. Tex.) |
| 2004 | Complaint for Patent Infringement, *Advanced Memory Techs., LLC v. Micron Tech. Inc.*, No. 1-25-cv-01036, Dkt. No. 1, filed June 30, 2025 (W.D. Tex.) |
| 2005 | Order Denying Motion for Stay Pending *Inter Partes* Review, *Advanced Memory Techs., LLC v. SK Hynix Inc.*, No. 2-24-cv-01078, Dkt. No. 79, filed Sept. 3, 2025 (E.D. Tex.) |
| 2006 | United States District Courts — National Judicial Caseload Profile (including data through June 30, 2025), https://www.uscourts.gov/sites/default/files/document/fcms_na_distprofile0630.2025.pdf (accessed October 10, 2025). |
| 2007 | Defendant SH Hynix's Preliminary Invalidity Contentions Cover Pleading, *Advanced Memory Techs., LLC v. SK Hynix Inc.*, No. 2-24-cv-01078, served June 25, 2025 (E.D. Tex.) |
| 2008 | Omnibus Obviousness Chart C-OB for U.S. Patent No. 7,969,231, *Advanced Memory Techs., LLC v. SK Hynix Inc.*, No. 2-24-cv-01078, served June 25, 2025 (E.D. Tex.) |
| 2009 | June 17, 2016 Notice of References Cited during prosecution of Application No. 14/698,542 |
| 2010 | U.S. Patent No. 9,690,317 to SK Hynix Inc. |
| 2011 | Docket Navigator Time To Trial Statistics for Judge Rodney Gilstrap for October 20, 2024 through October 20, 2025 |
| 2012 | Lex Machina Time to Trial Statistics for Judge Rodney Gilstrap for October 20, 2024 through October 20, 2025 |

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## I. Introduction

Patent Owner Advanced Memory Technologies, LLC ("AMT" or "PO") respectfully requests that the Director discretionarily deny SK Hynix Inc.'s ("Petitioner" or "Hynix") Petition to institute *inter partes* review of U.S. Patent No. 7,969,231 (the "'231 Patent"). In support of discretionary denial, AMT submits this briefing—limited in scope to discretionary denial issues—pursuant to the Director's March 26, 2025 Memorandum.

First, the parallel District Court lawsuit will address the same invalidity grounds that are at issue in this proceeding, and the resolution of the lawsuit will likely conclude well before a final written decision in this proceeding. AMT sued Hynix for infringement of the '231 Patent in the Eastern District of Texas on December 30, 2024, and trial is scheduled to start on October 5, 2026. Conversely, the projected final written decision deadline in this IPR is not until March 1, 2027.

Furthermore, PO's strong settled expectations in the '231 Patent (as well as the other patents challenged by Petitioner) also firmly supports discretionary denial. The '231 Patent has been in effect for more than 14 years, and Petitioner has been on notice of the '231 Patent since at least June 17, 2016 when the patent application publication (2010/0007408) for the '231 Patent was identified as prior art during prosecution of SK Hynix's patent application 14/698,542. EX2009; EX2010 at (73), (56). Despite this, Petitioner waited nearly 8 months after the start of the parallel

District Court proceeding to file its Petition—nearly 5 months after it received PO's infringement contentions and 2 months after serving its invalidity contentions asserting the same invalidity grounds. As discussed in more detail below, both the *Fintiv* factors and additional considerations bearing on the Director's discretion strongly support denying the Petition.

## II. Factual Background

### A. AMT's Lawsuit is Scheduled for Trial on October 5, 2026

AMT sued Hynix for infringement of the '231 Patent[1]—along with U.S. Patent Nos. 7,777,557; 7,920,318; and 8,593,888—in the Eastern District of Texas on December 30, 2024. EX2001 at 9, 29. On April 2, 2025, AMT amended its complaint to assert infringement of U.S. Patent No. 8,400,835 as well. EX2002 at 9, 40. Trial in the District Court for each of the asserted patents is scheduled to start on October 5, 2026. EX2003 at 1. Conversely, the projected final written decision deadline in this IPR is not until March 1, 2027 (nearly 5 months after the scheduled district court trial date).

[1] AMT also sued Micron Technology, Inc. for infringement of the '231 Patent on June 30, 2025 in *Advanced Memory Technologies, LLC v. Micron Technology, Inc.*, Case No. 1:25-cv-01036 (W.D. Tex.). EX2004 (Complaint) at 26.

### B. Hynix Filed IPRs Challenging the AMT Patents Asserted Against It

Hynix has filed IPRs challenging each of the patents AMT has asserted against it in the District Court, as summarized in the chart below:

| Patent | IPR | Filing Date | POPR Deadline | Institution Decision Deadline |
|---|---|---|---|---|
| 7,777,557 | IPR2025-01452 | 2025-08-29 | 2025-12-08 | 2026-03-08 |
| 7,920,018 | IPR2025-01450 | 2025-08-29 | 2025-12-08 | 2026-03-08 |
| 7,969,231 | IPR2025-01451 | 2025-08-27 | 2025-12-01 | 2026-03-01 |
| 8,400,835 | IPR2025-01453 | 2025-08-25 | 2025-12-01 | 2026-03-01 |
| 8,593,888 | IPR2025-01449 | 2025-08-22 | 2025-12-01 | 2026-03-01 |

As shown in the table above, institution decisions for all challenged patents are expected around the beginning of March 2026, meaning that a final written decision in each of the proceedings challenging AMT's patents would likely not issue until around March of 2027—approximately 5 months after the scheduled trial date. EX2003 at 1.

### C. All Challenged Patents Have Been in Effect For At Least 11 Years

Each of the AMT Patents challenged by Hynix has been in effect for at least 11 years, as shown in the table below:

| Issue Date | Patent No. | IPR | Projected Expiration |
|---|---|---|---|
| Aug. 17, 2010 | 7,777,557 | IPR2025-01452 | 2028-06-12 |
| Apr. 5, 2011 | 7,920,018 | IPR2025-01450 | 2028-01-17 |
| Jun. 28, 2011 | 7,969,231 | IPR2025-01451 | 2029-07-24 |
| Mar. 19, 2013 | 8,400,835 | IPR2025-01453 | 2030-01-03 |
| Nov. 26, 2013 | 8,593,888 | IPR2025-01449 | 2030-12-21 |

Furthermore, two of the challenged patents are projected to expire within the next three years, with the remaining patents projected to expire by the end of 2030.

## III. Argument

### A. The *Fintiv* Factors Support Discretionary Denial

The USPTO should deny the Petition under *Fintiv* because the same issues will be resolved in the parallel District Court proceeding well before the USPTO will issue a final written decision in this proceeding. PO sued Petitioner for infringement of the '231 Patent on December 30, 2024 in *Advanced Memory Technologies, LLC v. SK Hynix Inc.*, Case No. 2:24-cv-01078 (E.D. Tex.) (the "District Court Proceeding"). EX2001 (Complaint). Trial in the District Court Proceeding is scheduled to start on October 5, 2026. EX2003 (Second. Am. Docket Control Order) at 1. Yet the projected Final Written Decision deadline in this IPR is not until March 1, 2027, almost 5 months later. *See* Paper 5 (Notice of Filing Date); 35 U.S.C. §§ 314(b), 316(a)(11).

The Director has discretion to deny institution under 35 U.S.C. § 314(a). *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2140 (2016). The USPTO should exercise such discretion here and deny the Petition because the same invalidity arguments will be addressed, and resolved, in the co-pending District Court Proceedings nearly 5 months before the Board would likely issue a final written decision in this proceeding.

The USPTO considers the presence and status of parallel district court litigation in determining whether to deny institution. *See NHK Spring Co. Ltd. v.*

*Intri-Plex Techs. Inc.*, IPR2018-00752, Paper 8 at 20 (PTAB Sept. 12, 2018) (precedential); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 17 (PTAB May 13, 2020) (informative) [hereinafter "*Fintiv*"]; *see also Gen. Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16–17 (PTAB Sept. 6, 2017) ("[W]e recognize that an objective of the AIA is to provide an effective and efficient alternative to district court litigation . . . ."). *Fintiv* "sets forth factors that balance considerations of system efficiency, fairness, and patent quality when a patent owner raises an argument for discretionary denial due to the advanced state of a parallel proceeding." *Fintiv*, Paper 15 at 7–8.

The factors are:

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court's trial date to the Board's projected statutory deadline for a final written decision;
3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. other circumstances that impact the Board's exercise of discretion, including the merits.

*Id.* "[T]he Board examines these factors, which relate to whether efficiency, fairness, and the merits support the exercise of authority to deny institution. In evaluating the

factors, the Board takes a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review." *Id.* (internal citations omitted). As detailed below, these factors strongly favor discretionary denial under § 314(a).

### 1. Factor 1: whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted

Factor 1 favors discretionary denial because the District Court Proceeding denied Petitioner's motion for stay and is unlikely to grant any subsequent motion. On September 2, 2025, Hynix filed a motion to stay the District Court Proceeding in light of its pending IPR Petitions. The very next day, and without waiting for the motion to be fully briefed, the District Court denied that motion, noting that it was the "universal practice" of the district not to consider such motions when IPR proceedings had not been instituted by the USPTO.[2] EX2005.

Furthermore, as noted above, in the District Court Proceeding PO has asserted infringement of four other patents in addition to the '231 Patent. EX2002 (Am.

[2] To the extent Petitioner asserts that the Order supports a finding that the District Court will reconsider the request if institution occurs, Petitioner is incorrect. The Order merely notes that the request was not considered because it was untimely—it did not address the question of whether Petitioner's request (or any subsequent request) would have any chance of being granted on the merits.

Complaint) ¶38. In the federal district where the case is pending, "[i]t has been [the District Court's] consistent and long established practice to deny motions to stay pending IPR . . . when the PTAB . . . [has] instituted review on less than **all** asserted claims of **all** asserted patents." *AGIS Software Development LLC v. Google LLC*, No. 2:19-cv-361-JRG, 2021 U.S. Dist. LEXIS 24195, at *9 (E.D. Tex. Feb. 9, 2021) (emphasis added); *see Force Mos Tech., Co. Ltd. v. Asustek Computer, Inc.*, No. 2:22-cv-460-JRG, 2024 U.S. Dist. LEXIS 66423, at *10 (E.D. Tex. Apr. 11, 2024) (similar). Thus, any speculative future motion for a stay would almost certainly be denied unless each of the Petitions in IPR2025-01449 to -01453 are not only instituted but instituted as to all of the asserted claims. Accordingly, "there is insufficient evidence that the district court is likely to stay its proceeding even if the Board were to institute trial." *Coretronic Corp. v. Maxell, Ltd.*, IPR2025-00474, Paper 11 at 2 (PTAB Jul. 10, 2025) (Acting Dir. Stewart, C.M.). Thus, this factor favors discretionary denial.

**2. Factor 2: proximity of the court's trial date to the Board's projected statutory deadline for a final written decision**

Factor 2 strongly favors discretionary denial given the much earlier district court trial date. A brief overview of certain relevant dates is shown in the table

below.[3] Dates from the District Court Proceeding are highlighted in yellow, and dates for this IPR are highlighted in green.

| Date | Event |
|---|---|
| 2024-12-30 | District Court Proceeding Complaint Filed |
| 2025-08-27 | IPR Petition Filed |
| 2025-08-29 | Notice of Filing Date Accorded |
| 2025-10-29 | PO Discretionary Denial Brief Deadline |
| 2025-12-01[4] | PO Preliminary Response Deadline |
| 2026-02-13 | District Court Proceeding Claim Construction Discovery Deadline |
| 2026-02-27 | District Court Proceeding Opening Claim Construction Brief Deadline |
| 2026-03-01 | Projected Institution Decision Deadline |
| 2026-04-10 | District Court Proceeding Markman Hearing |
| 2026-10-05 | District Court Proceeding Trial Begins |
| 2027-03-01 | Projected Final Written Decision Deadline |

As shown above, trial in the District Court Proceeding is scheduled for October 5, 2026. EX2003 at 1. If the Board reaches its institution decision within three months of the preliminary response deadline, 35 U.S.C. § 314(b), and issues a final written decision within one year of institution, 35 U.S.C. § 316(a)(11), a final written decision would likely not issue in this proceeding until around March 1,

[3] The other IPRs filed by Petitioner are on similar schedules, all falling within 1–2 weeks of the dates listed in the table (as addressed in the respective discretionary denial briefs).

[4] November 29, 2025 is a Saturday and 35 U.S.C. § 21(b) extends the deadline to the next business day.

2027—approximately 5 months after the projected trial date. Thus, given the much earlier trial date in the District Court Proceeding, there is no efficiency to be gained by trying a duplicative IPR proceeding in parallel. This factor weighs in favor of denial.

Time to trial statistics further support the conclusion that trial will occur in the District Court Proceeding before any final written decision would likely issue in this proceeding. The District Court Proceeding is pending before Judge Rodney Gilstrap in the Eastern District of Texas. For patent cases before Judge Gilstrap that went to trial between October 20, 2024 to October 20, 2025, Docket Navigator calculates the median time to trial to be 24 months, and Lex Machina calculates the median time to trial to be 672 days (approximately 22 months). EX2011; EX2012. The District Court Proceeding was filed on December 30, 2024, EX2001 at 29, therefore those statistics would suggest a trial date in the range of October 2026 to December 2026. Thus, those statistics further confirm that trial is likely to occur well before the projected March 1, 2027 final written decision deadline.

Even the less specific median time to trial statistics for the Eastern District of Texas as a whole further confirm that trial in the District Court Proceeding will likely occur well before a final written decision could issue in this proceeding. The most recent statistics for the district show a median time from filing to trial of 25.1 months. EX2006 at 35. The District Court Proceeding was filed on December 30, 2024,

EX2001 at 29, which would suggest a trial date around the beginning of February 2027. Thus, even the median time to trial data from uscourts.gov supports a conclusion that the trial will occur before a final written decision would issue in this proceeding.

In light of the much earlier scheduled trial date, this factor strongly supports discretionary denial.

### 3. Factor 3: investment in the parallel proceeding by the court and the parties

Factor 3 favors discretionary denial given the investment in the parallel proceeding that has occurred already and the further investment scheduled to occur prior to the projected institution decision deadline. The USPTO "consider[s] the amount and type of work already completed in the parallel litigation by the court and the parties at the time of the institution decision." *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 9 (PTAB March 20, 2020) (precedential). In this case, the District Court and the parties have already invested significant resources in the parallel proceeding. For example, the parties have already served infringement and invalidity contentions in the litigation. EX2003 at 5–6. By the projected institution decision deadline of March 1, 2026, the parties will have identified their proposed terms for claim construction, completed claim construction discovery, and submitted their opening claim construction briefs. *Id*. at 4–5. Given the significant investment in the parallel District Court Proceeding, this factor favors denial.

**4. Factor 4: overlap between issues raised in the petition and in the parallel proceeding**

Factor 4 favors discretionary denial because there is total overlap between the Petition grounds and the invalidity grounds asserted in the District Court Proceeding.

Petitioner asserts the following four grounds in this IPR:

| Ground | Reference(s) | Claims |
|---|---|---|
| 1 | U.S. Pat. No. 6,473,321 ("Kishimoto") + U.S. Pat. No. 8,102,157 ("Abe") | 1, 3, 4, 6, 7, and 8 |
| 2 | Abe | 1, 3, 4, 6, 7, and 8 |
| 3 | U.S. Pat. No. 5,941,990 ("Hiiragizawa") | 3, 4, 6, 7, and 8 |
| 4 | U.S. Pat. No. 6,836,177 ("Ito") | 1, 3, 4, 6, 7, and 8 |

Petitioner has asserted the same grounds in its invalidity contentions in the District Court Proceeding. EX2007 (Invalidity Contention Cover Pleading) at 4, 12; EX2008 ('231 Patent "Omnibus Obviousness Chart").

Despite this total overlap, the Petition itself offered no stipulation (*Sotera* or otherwise) to attempt to mitigate the duplication of effort that would occur if this IPR was instituted. Rather than offer such a stipulation "as soon as practicable,"[5] Petitioner instead delayed doing so until shortly before PO's discretionary denial brief was due. *See* Paper 8. Furthermore, the belated limited stipulation Petitioner

[5] *See* https://www.uspto.gov/patents/ptab/interim-director-discretionary-process at I.D (accessed on October 15, 2025) [hereinafter "Interim Director Discretionary Process"]

did offer reserved the right to assert combinations including system prior art in the District Court Proceeding, *id*. at 2, meaning Petitioner intends to try validity based on purported prior art in both the District Court Proceeding and this IPR. Therefore, Petitioner's stipulation is "not [] particularly meaningful because the efficiency gained in an AIA proceeding will be limited,"[6] and this factor favors discretionary denial.

**5. Factor 5: whether the petitioner and the defendant in the parallel proceeding are the same party**

Petitioner SK Hynix and Patent Owner Advanced Memory Technologies are both parties to the District Court Proceeding. EX2001 at 1. When the parties are the same—like in this case—this factor supports denying institution. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 19 (PTAB Dec. 1, 2020) (precedential).

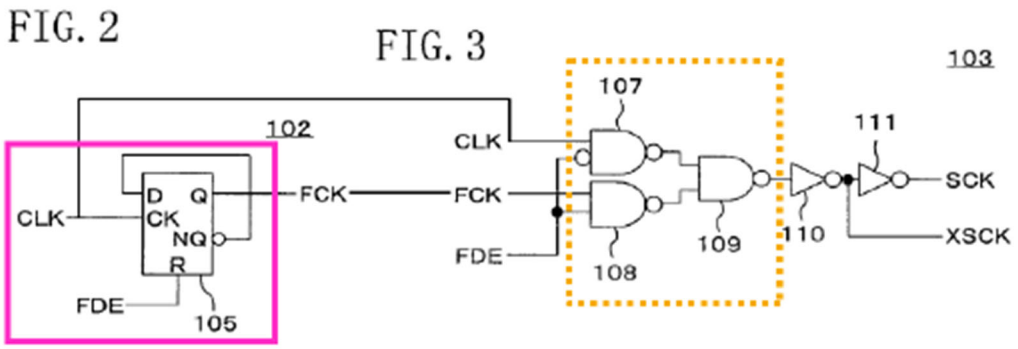
**6. Factor 6: other circumstances that impact the Board's exercise of discretion, including the merits.**

Factor 6 weighs in favor of discretionary denial. In this case, the merits of the Petition are weak. For example, the Petition misrepresents the disclosure of the '231 Patent in its attempt to erase the structural limitation of the recited "buffer circuit." Petitioner's grounds only address the selection function that the buffer circuit is

[6] *See* Interim Director Discretionary Process at I.D.

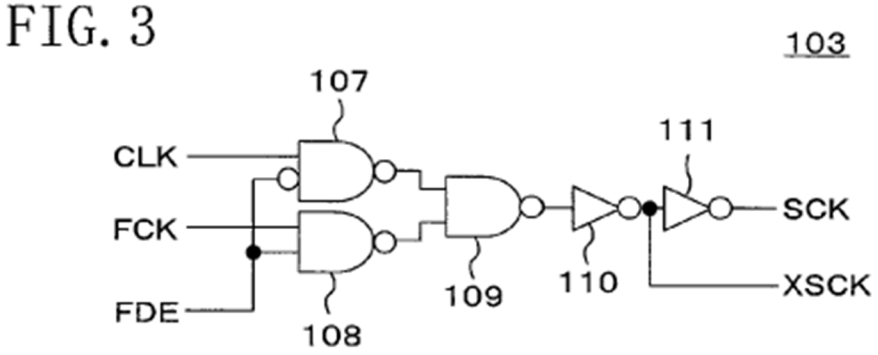
"configured to" perform, all while ignoring that "buffer circuit" refers to a structure, independent of the "configured to" limitations.

From the beginning, the Petition inaccurately conflates the '231 Patent's buffer circuit with selection circuits. *See* Petition at 4 (referring to "Buffer (Selection) for a Boost Circuit" in a section heading). Petitioner uses this early discussion to introduce the following annotated amalgamation, in which Petitioner incorrectly identifies a ***part*** of the '231 patent's buffer circuit 103 as the whole. *See id.* at 6–8.




**Petition at 6–8 (modifying and annotating EX1001, FIGS. 2, 3)**

The '231 Patent describes the entire structure depicted in Figure 3 (reproduced below) as the "buffer circuit 103." EX1001 at 5:3–4, 6:7–8. The selection logic is only one part of that structure. *See id.* at 6:8–17. The inverters (110, 111) are also part of the buffer circuit disclosed in the '231 Patent.




**EX1001, FIG. 3**

By focusing solely on the selection logic as the purported buffer, Petitioner ignores the plain claim language, which recites "a buffer circuit configured to select" between clock signals. In every ground, the Petition relies on a "switching circuit," "selector," or "selector circuit" in the cited art for the *configured to select* limitation. Petition at 22–23, 51–53, 69, 86–87. In every instance, the Petition asserts that the cited disclosure is a "buffer" solely because it allegedly performs the selection function. *See id.* By doing so, Petitioner fails to present any evidence that the cited art discloses the recited structure of a "***buffer*** circuit," as opposed to a different kind of circuit component configured to perform a selection function.

In addition, AMT will provide more detailed arguments in its Patent Owner's Preliminary Response for why the Petition should be denied on its merits. AMT refers the Director to those arguments and incorporates them by reference herein.

On balance, the *Fintiv* factors and additional considerations discussed below strongly favor discretionary denial.

**B. Additional Considerations Also Support Discretionary Denial**

In addition to the *Fintiv* factor analysis discussed above, there are additional considerations that support discretionary denial.

First, settled expectations of the parties strongly supports discretionary denial. The ’231 Patent issued on June 28, 2011—more than 14 years ago. EX1001 at (45). Further, Petitioner has been on notice of the ’231 Patent since at least June 17, 2016, when the patent application publication (2010/0007408) for the ’231 Patent was identified as prior art during prosecution of Hynix’s patent application 14/698,542. EX2009; EX2010 at (73), (56). Thus, despite being aware of the ’231 Patent for more than eight years prior to the filing of the complaint in the District Court Proceeding, Petitioner made no effort to challenge the patent prior to the current Petition.

Petitioner’s lack of diligence in filing its Petition even after the District Court Proceeding was initiated further supports discretionary denial. PO asserted the ’231 Patent against Petitioner in the District Court Proceeding on December 30, 2024. EX2001 at 29. Yet Petitioner waited nearly 8 months after the start of the proceeding (until August 27, 2025) to file its Petition—nearly 5 months after it received PO’s infringement contentions and 2 months after serving its invalidity contentions asserting the same invalidity ground. Petition at 107; EX2003 (DCO) at 5–6.

## IV. Conclusion

AMT respectfully requests that the Director discretionarily deny institution of *inter partes* review for the reasons stated herein.

Dated: October 29, 2025

Respectfully submitted,

By: */ Michael F. Heim /*
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Advanced Memory Technologies, LLC

## CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing was served via email to lead and backup counsel of record for Petitioner as follows:

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Dated: October 29, 2025 Respectfully submitted,

By: */ Michael F. Heim /*
Michael F. Heim (Reg. No. 32,702)
Attorney for Patent Owner
Advanced Memory Technologies, LLC

## CERTIFICATE OF SERVICE

Pursuant to the Interim Director Discretionary Process, the undersigned hereby certifies that this brief complies with the type-volume limitation of Section II.C.iii because this brief contains 16 pages.

Dated: October 29, 2025

Respectfully submitted,

By: */ Michael F. Heim /*
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