

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOPSOE, INC.,
Petitioner

v.

CASALE,
Patent Owner

IPR2025-01454
U.S. Patent No. 11,286,168

AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST

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I. Introduction

The Office instituted this inter partes review on February 10, 2026, finding that Petitioner had shown a reasonable likelihood of prevailing and that no non-discretionary consideration warranted denial. Paper 15. Discovery is complete and most briefing is done.

Three independent reasons support denying review. First, review is unwarranted because the trial has progressed meaningfully, the same condition that governs extensions of the Director Review deadline. *Light & Wonder, Inc. v. Evolution Malta Ltd.*, IPR2025-01072, Paper 30 at 3 (Director June 22, 2026) (precedential). Second, there is no violation. The operative district court grounds are three ammonia synthesis plants asserted as known or used by others and on sale, grounds that could not have been raised in any inter partes review, and the reservation sentence Patent Owner attacks is conditional and has never operated. EX2016 at 3-4, 6-10. Third, even a legitimate scope dispute would not warrant vacating an instituted trial, and Patent Owner retains its district court remedies, which it has expressly reserved. EX1062 at 6 n.4.

Patent Owner's case has shifted. To the panel it asserted two *Sotera* violations: that Petitioner incorporated the IPR grounds by reference, and that Petitioner used a "prior art system" label to assert publication grounds. Paper 39 at 4, 8. Paper 47 does not renew the second. It adds one the panel never saw, that a footnote enlarged the

stipulation. Paper 47 at 4. Petitioner's contentions have not changed since April 29, 2026. Patent Owner's theory of violation has. The footnote it now relies on described the stipulation in shorthand while answering a sandbagging accusation, Paper 9 at 13 & n.3, and dropping the words that define the stipulation's scope did not enlarge the stipulation printed on the same page.

Nor is the relief Patent Owner seeks proportionate to what it alleges. A *Sotera* stipulation directs invalidity grounds to one forum rather than eliminating them. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020) (precedential as to § II.A). Patent Owner reads this one to eliminate them, surrendering validity review everywhere. And Patent Owner presses that reading as the party that created the invalidity case in the first place, by counterclaiming after the stipulation was given. EX2013 at 22.

Petitioner preserves its objection that Paper 47 introduces two unentered district court filings that 37 C.F.R. § 42.75(c)(3) bars. See *infra* § III.

II. Review Is Not Warranted Because the Trial Has Progressed Meaningfully

The standard for extending the Director Review deadline is conjunctive: the Office may extend that deadline “in exceptional circumstances ... so long as the trial has not progressed meaningfully.” *Light & Wonder*, Paper 30 at 3. A violation of a *Sotera* stipulation appears on that page as an example of an exceptional circumstance. *Id.* at 3-4. Patent Owner satisfies neither half. There is no violation,

as Sections IV through VI show, and the trial has progressed meaningfully.

The Office instituted on February 10, 2026. Paper 15. Patent Owner filed its Response and contingent Motion to Amend on May 11. Papers 33, 34. Petitioner's expert sat for deposition on April 30, and Patent Owner's on July 23. Petitioner opposed the Motion to Amend on July 28, Paper 48, and filed its Reply on August 3. Paper 49. Patent Owner's Sur-Reply and its Motion to Amend Reply are due September 8, and Petitioner's Sur-Reply is due October 20. A final written decision is due around February 10, 2027. 35 U.S.C. § 316(a)(11); 37 C.F.R. § 42.100(c). Briefing is not finished, but nearly six months of trial and two expert depositions lie behind this request.

Light & Wonder itself shows why the posture matters. The district court there had already held the challenged claims ineligible under 35 U.S.C. § 101, so the claims stood invalid and continuing the reviews accomplished nothing. Paper 30 at 4-5. The Director also observed that the reply was still pending and that the Board had spent nothing on oral argument or a final written decision. *Id.* at 5. Nothing comparable is true here. No tribunal has passed on the validity of the '168 patent, nothing has mooted this review, and Petitioner's Reply is filed. Paper 49. This proceeding also carries a second track that *Light & Wonder* did not: Patent Owner's contingent Motion to Amend, which Petitioner has opposed in full. Papers 34, 48. Terminating now would discard that work along with everything else.

The timing in *ASUSTeK* cuts the same way. Sua sponte review was appropriate there because the alleged violation surfaced “shortly after the patent owner’s response.” *Id.*, Paper 30 at 3 (describing *ASUSTeK Computer Inc. v. Nokia Techs. OY*, IPR2025-01153, Paper 27 (Director May 27, 2026)). Patent Owner raised this issue on May 6, 2026, Ex. 3002, but it did not bring its request for Director Review then. It took the question to the panel, which denied the motion on July 14. Paper 45. Only then, on July 22, did Patent Owner ask the Office to reopen institution. Paper 47.

Patent Owner never engages any of this. Neither its July 15, 2026 email nor Paper 47 addresses whether the trial has progressed meaningfully. Terminating now would discard the Office’s and parties’ investment without resolving validity in any forum.

III. The Request Introduces Evidence That Rule 42.75(c)(3) Does Not Permit

Paper 47 rests in part on two district court filings never entered in this proceeding: Dkt. 265 (July 16, 2026), block quoted at page 9, and Dkt. 258 (July 10, 2026), cited at page 3 n.3. Both postdate the close of briefing on the motion to vacate and terminate, Paper 44 (June 30, 2026), and the panel’s order denying it, Paper 45 (July 14, 2026). The rule is explicit: “Absent Director authorization, a request for Director Review may not introduce new evidence.” 37 C.F.R. § 42.75(c)(3); *see also id.* § 42.63(a). Patent Owner never sought authorization. The July 21, 2026 email

gave it additional time and nothing more: “Patent Owner may file its request for Director Review no later than July 24th.”

Calling the cited district court filings argument rather than evidence does not help. Patent Owner quotes Dkt. 265 for what Petitioner supposedly conceded about the reach of its own stipulation, which is an evidentiary use. The Office’s Director Review guidance forecloses the alternative: “[t]he Director will not consider new evidence or new arguments not part of the official record.” U.S. Patent & Trademark Office, Director Review Process § 3.E, <https://www.uspto.gov/patents/ptab/decisions/director-review-process> (last visited Aug. 1, 2026). The panel had also closed the record on this dispute before either filing existed. Paper 38 authorized additional evidence with the motion and the opposition “only as necessary to support the allegations therein,” and none with the reply absent further leave. Paper 38 at 2. Briefing closed with Petitioner’s sur-reply. Paper 44.

Petitioner seeks no exception for itself. It told the Office on July 22, 2026 that its response would rely solely on the existing record, and this paper does. Petitioner answers the substance of the Dkt. 265 quotation in § VI.B without waiving the objection. Dkt. 258 needs no answer. Paragraph 6 of Petitioner’s amended answer identified the Patent Office as the forum for cancellation, EX1060 at 14 ¶6, and Patent Owner moved to strike it as stating no cognizable district court defense, EX1062 at 5-6. Its withdrawal proves nothing about the stipulation.

IV. Petitioner Gave the Standard *Sotera* Stipulation, and Nothing More

Patent Owner's first argument depends on Petitioner having given something other than the ordinary stipulation, and Patent Owner says exactly that. Petitioner "did more than submit a 'standard' *Sotera* stipulation," it "went further," and it "bolstered its stipulation, going even further to say" what Patent Owner treats as a separate and broader promise. Paper 47 at 2, 4. Patent Owner thus concedes that the ordinary form does not reach the district court grounds. Patent Owner quoted footnote 3 to the panel, Paper 39 at 2-3, but neither violation it asserted there treated the footnote as a promise broader than the stipulation itself. That theory appears for the first time in Paper 47 § II.A, after the panel had ruled. The stipulation Petitioner filed reads:

To eliminate any theoretical concerns of overlap, Topsoe hereby stipulates that, if this IPR is instituted, Topsoe will not pursue in any district court litigation or ITC proceeding any invalidity ground that was raised or reasonably could have been raised in this IPR.

Paper 9 at 13. That is standard *Sotera*. See *Sotera Wireless*, Paper 12 at 18-19. Patent Owner's own motion reproduced the text and labeled it "Petitioner's '*Sotera* stipulation.'" Paper 39 at 2-3. Nowhere does Patent Owner contend that those words reach further than the ordinary form. The enlargement it needs must come from elsewhere, and Patent Owner points to footnote 3.

Footnote 3 appears on the same page as the stipulation, in Petitioner's opposition to Patent Owner's discretionary-denial brief, and it answered Patent

Owner's charge that Petitioner had "sandbagged" the Office. Paper 6 at 1. The footnote states that the charge "lacks support and is legally irrelevant to discretion where, as here, there is no parallel validity case, Petitioner has stipulated, if instituted, not to pursue district-court invalidity grounds, and the Petition presents new, non-cumulative art contradicting the stated reasons for allowance." Paper 9 at 13 n.3. Patent Owner lifts one clause from the middle of that sentence and treats it as a freestanding stipulation. Paper 47 at 1, 4.

The footnote's wording defeats that reading. It is descriptive and past tense: Petitioner "has stipulated." It reports the stipulation printed on the same page rather than making a second promise. And it is shorthand, dropping the clause that defines the promise's scope, "any invalidity ground that was raised or reasonably could have been raised in this IPR." A description that omits the words fixing a promise's scope cannot enlarge the promise.

The chronology confirms it. Petitioner gave the stipulation on December 1, 2025, when no party had put validity in issue anywhere. The footnote says so: "there is no parallel validity case." Paper 9 at 13 n.3. Patent Owner created one eight days later by counterclaiming for infringement. EX2013 at 22. On Patent Owner's reading, the footnote waived every invalidity and unenforceability defense Petitioner had, including defenses under 35 U.S.C. §§ 101 and 112 and defenses resting on system art, against counterclaims that did not yet exist and that Patent Owner alone

controlled whether to file. Nothing in Paper 9 suggests Petitioner offered that, and no *Sotera* stipulation works that way. *Sotera Wireless*, Paper 12 at 18-19.

Had Petitioner meant to give more, the Office's decisions show what that looks like. The stipulation in *Tesla* covered any ground that reasonably could have been raised in an inter partes review "and any other ground based on a combination of system art with any prior art reference asserted as the basis of a ground in each IPR." *Tesla, Inc. v. Bulletproof Prop. Mgmt., LLC*, IPR2026-00204, Paper 14 at 2-3 (Director June 15, 2026). The Office credited that breadth expressly. *Id.* On Patent Owner's reading the plus clause would be surplusage, because a standard stipulation would already reach system-art combinations. Patent Owner cited *Tesla* itself. Paper 43 at 1 n.1.

Nor does the institution record supply the enlargement. Paper 15 granted institution after review of the merits, and after discretionary considerations were separately resolved, referred, and reconsidered in view of the recusal. Papers 12, 15. It contains no reasoning and does not characterize the stipulation. That is the decision Patent Owner asks the Office to vacate.

V. No Operative District Court Ground Was or Could Have Been Raised in This IPR

Petitioner's contentions identify three operative obviousness grounds and no others: the IFFCO Aonla-1, QAFCO, and Tata Babrala ammonia synthesis plants, each asserted as known or used by others and on sale before the earliest priority date.

EX2016 at 6-10, 14-28, 42-68, 70-90. The contentions disclaim reliance on “any invalidity grounds in these invalidity contentions that could have been raised in the IPR.” EX2016 at 3-4. None was available here. A ground in this proceeding may rest only on patents or printed publications, 35 U.S.C. § 311(b); *Qualcomm Inc. v. Apple Inc.*, 24 F.4th 1367, 1374-76 (Fed. Cir. 2022), and documents evidencing a known, used, or on-sale system do not thereby become the ground, *Ingenico Inc. v. IOENGINE, LLC*, 136 F.4th 1354, 1366-67 (Fed. Cir. 2025). The stipulation reaches grounds raised or reasonably capable of being raised in this IPR, not grounds no inter partes review could hear.

The proof behind the district court plant grounds confirms they could not be raised in any IPR. Those grounds rest on process flow diagrams, design documents, and plant-specific engineering material bearing confidentiality and trade secret legends, EX1046-EX1051, together with QAFCO test-run and performance-guarantee evidence, EX1052. Paper 41 reproduces examples at 13-14. Patent Owner urged an unusually demanding public-accessibility standard against Petitioner’s 2007 IFA reference. Paper 8 at 14-21. But even under an ordinary standard, none of Petitioner’s primary reference material in the district court is a printed publication. The secondary patents and publications cited alongside the plants do not change the analysis, because Petitioner asserts them with the plant systems rather than as standalone grounds. EX2016 at 6-10. Patent Owner’s contrary

rule would leave the plant grounds with no forum at all, since the Board cannot take system art and the stipulation on Patent Owner's reading would bar them in district court and the ITC. Paper 41 at 17-18.

Patent Owner's label-swap theory, which argued that the plant labels disguise printed-publication grounds, was the second violation it asserted to the panel. Paper 39 at 8. Paper 47 does not renew it. The theory would require the publications and the plants to be the same grounds under two names, but Patent Owner told the panel the opposite, describing the publications as "unrelated" to the alleged system art. Paper 39 at 11 n.6; Paper 43 at 5. Publications unrelated to the plant grounds are not those grounds relabeled. That concession also defeated what the Office calls the "tell-tale sign" of a misused review, present where "a petitioner asserts system art in the litigation that overlaps with the patents or printed publications asserted in the AIA review." *Magnolia Med. Techs., Inc. v. Kurin, Inc.*, IPR2026-00097, Paper 17 at 3 (Director May 14, 2026) (precedential). Patent Owner cites *Magnolia* itself. Paper 47 at 9-10.

VI. The Conditional Reservation Is Not a Violation

A. The reservation sentence is conditional, and the condition has not occurred.

Every *Sotera* stipulation is conditioned on institution, including the one in *Sotera* itself. Paper 9 at 13 ("if this IPR is instituted"); *Sotera*, Paper 12 at 13-14, 19. A condition has a complement: no institution, no waiver. Paper 44 at 2. And

de-institution is an institution determination made anew, unreviewable as such. 35 U.S.C. § 314(d); *Medtronic, Inc. v. Robert Bosch Healthcare Sys., Inc.*, 839 F.3d 1382, 1386 (Fed. Cir. 2016); *In re Motorola Sol'n., Inc.*, 159 F.4th 30, 36 (Fed. Cir. 2025).

The Office has taken that position itself. In briefing to the Federal Circuit it explained that the *Sotera* stipulations *Motorola* filed “were conditioned on institution of its petitions for IPR,” and that because the Office “ultimately did not institute IPR, *Motorola* has waived no unpatentability defenses in the district court.” EX1061 at 33-34 & n.6, 38-39. Striking the reservation sentence would leave Petitioner’s legal position unchanged, showing that Patent Owner attacks a sentence with no operative effect. Patent Owner’s rule would work differently: a moment of institution, later nullified, would permanently extinguish Petitioner’s §§ 102 and 103 defenses, even though the law treats that institution as never having occurred and the Office has withdrawn the adjudication the stipulation bought. 35 U.S.C. § 311(b), *Ingenico*, 136 F.4th at 1366-67. A *Sotera* stipulation is an exchange, where grounds are surrendered because the Office will hear them. Patent Owner’s version keeps the consideration and returns nothing.

Patent Owner tries but fails to distinguish *Motorola*. It says *Motorola*’s stipulation was “expressly conditional.” Paper 43 at 3. But so is Petitioner’s: “if this IPR is instituted.” Paper 9 at 13. Patent Owner’s own motion called Petitioner’s

stipulation a “conditional stipulation.” Paper 39 at 11. There is no such thing as an unconditional *Sotera* stipulation; conditionality on institution defines the form.

B. *AMD* addressed different contentions and a different problem.

The petitioner in *AMD* charted the inter partes review art as operative grounds and expressly incorporated its petitions by reference. The Director emphasized that it “expressly incorporated the same art and same arguments from its Petitions into its invalidity contentions after these IPRs were instituted.” *Advanced Micro Devices, Inc. v. XtreamEdge, Inc.*, IPR2025-00223, Paper 29 at 2, 5 (Director May 12, 2026). Critically, the petitioner’s conditional language appeared only *after* the patent owner moved to terminate. *AMD*, EX1053 at 1-2.

Petitioner’s contentions here did the opposite. They identified only plant-system grounds as operative, carried the conditional language from the outset, acknowledged the stipulation, and expressly disclaimed IPR-eligible grounds. EX2016 at 3-4. A petitioner concealing a violation does not disclose it in the same paragraph. The *AMD* holding is also narrower than Patent Owner needs to prevail. What *AMD* rejected was conditionality offered as a cure for an incorporation that was already operative. *AMD*, Paper 29 at 4-5. It did not address conditional language present from the start and attached to contentions whose operative grounds are all ineligible for inter partes review. *AMD* itself acknowledges that parties may “legitimately dispute” whether contentions violate a *Sotera*-style stipulation. *Id.* at

5. Violations should not be found on contestable readings.

That leaves burden and deterrence. Paper 47 § II.C. Both arguments fail on the facts. The reserved grounds are not operative, and nothing Petitioner does can make them operative. They could materialize only if the Office de-institutes, and then only after whatever contention amendment and scheduling the district court allows, on that court's timetable. *AMD*'s concern about petitioner optionality has no purchase where the trigger belongs to the government rather than the petitioner. Patent owners do not prepare against grounds that are not operative, and district courts manage this kind of contingency as a matter of routine.

Patent Owner's last item is a sentence from Petitioner's July 16, 2026 district court brief, block quoted as an admission that Petitioner reads its own stipulation more narrowly than it argues here. Paper 47 at 9. Petitioner objects that Dkt. 265 is not properly before the Director, see *supra* § III, and answers it without waiving that objection. Read in context, the quoted sentence responds to Patent Owner's district court argument that its *Sotera* estoppel already applies in full and that this review offers no further narrowing. Petitioner's brief cited Paper 44 for the proposition quoted, and Patent Owner's block quotation drops that citation. Paper 47 at 9 (“(citations omitted)”). Institution is the operative condition; it was in effect when that brief was filed and remains so now. Petitioner told the Office the same that day: the reservation language takes effect only if this IPR is de-instituted. The stipulation

binds Petitioner now, and Petitioner is complying.

Patent Owner also warns that a conditional reading would incentivize petitioners to violate stipulations, provoke de-institution, and recover surrendered grounds. That is a policy argument that cannot rewrite the words the parties used. The incentive also runs backward: de-institution takes away the adjudication the petitioner gave the stipulation to obtain. If misconduct occurred, the Office would address it rather than reinterpret the stipulation. 37 C.F.R. §§ 42.11(d), 42.12; *Apple Inc. v. Voip-Pal.com, Inc.*, 976 F.3d 1316, 1323-24 (Fed. Cir. 2020). The concern is misdirected here, where Patent Owner is the party asking the Office to de-institute. Patent Owner cannot press for termination while invoking its consequences as a reason to grant it.

VII. Termination Would Be Disproportionate, and Patent Owner’s Construction Closes Every Forum

Disputes about the scope of a *Sotera* stipulation have historically been left to the district court in which the stipulation operates. *Samsung Elecs. Co., Ltd. v. Netlist, Inc.*, IPR2022-00639, Paper 26 at 2 (PTAB Jan. 18, 2023); *Lightspeed Com. Inc. v. CloudfChange, LLC*, IPR2022-00779, Paper 28 at 3 (PTAB July 25, 2023); *Apple Inc. v. Maxell, Ltd.*, IPR2020-00204, Paper 21 at 10 (PTAB Dec. 15, 2020); *but cf. AMD*, Paper 29 at 4-5. Patent Owner retains those remedies and told the district court it “may seek additional relief” for the alleged violation after receiving guidance from the Office. EX1062 at 6 n.4. No prejudice flows from a condition that

has never been triggered.

Patent Owner's construction closes every forum. It asks the Office to terminate the forum for the publication grounds while arguing that the same stipulation bars the plant-system grounds the Board cannot hear. Paper 43 at 5. Read that way, the stipulation surrenders validity review altogether for an institution Patent Owner is working to revoke. That inverts the ordinary consequence of denial, where "private litigants retain the right to challenge a patent on any ground in district court and lose no substantive rights when an AIA review is denied institution." *Magnolia*, Paper 17 at 6. Here, termination would strip Petitioner's publication defenses in the one forum left, and against infringement claims Patent Owner chose to bring after the stipulation was given. EX2013 at 22. The present arrangement raises no such problem. The publication grounds are before the Office under a binding stipulation, and the plant-system grounds are in district court because no inter partes review can hear them. Whatever duplication exists, Patent Owner created it through the termination motion, this request, and the reserved district court motion.

VIII. Conclusion

Petitioner respectfully requests that the Director deny review or, alternatively, deny the relief Patent Owner seeks. The proceeding should and is ready to proceed to a decision on the merits.

Dated: August 4, 2026

Respectfully submitted,

/ Jeffrey A. Andrews /

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on August 4, 2026, a true and correct copy of the foregoing Authorized Response to Director Review Request was served by electronic mail on Patent Owner's lead and backup counsel at the following email addresses:

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