

Petitioner's Opposition to Patent Owner's
Request for Discretionary Denial of Institution
U.S. Patent No. 8,117,639

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FORTINET, INC.,
Petitioner,

v.

NETSKOPE, INC.,
Patent Owner.

Case No. IPR2026-00025

U.S. Patent No. 8,117,639

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION**

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TABLE OF EXHIBITS

Exhibit No.	Document
1001	U.S. Patent No. 8,117,639 ("the '639 patent")
1002	Declaration of Kevin C. Almeroth.
1003	U.S. Patent Publication No. 2003/0152067 ("Richmond")
1004	WIPO Publication WO 01/11452A2 ("Wood")
1005	U.S. Patent No. 5,623,492 ("Teraslinna")
1006	Enterasys Personalized User Network Whitepaper ("Enterasys Whitepaper")
1007	Excerpts from File History of Richmond
1008	Curriculum Vitae of Kevin Almeroth
1009	Excerpts from A. Tannenbaum, <i>Computer Networks</i> (3d ed., 1996)
1010	<i>Sotera</i> Plus Stipulation filed in <i>Netskope, Inc. v. Fortinet, Inc.</i> , Case No. 4:25-cv-02360-HSG
1011	August 13, 2012 Assignment of '639 patent from Rocksteady Technologies LLC to RPX Corporation ("RPX")
1012	July 1, 2024 Assignment of '639 patent from RPX to Netskope
1013	Webpage from RPX website, available at http://rpxcorp.com/about (last accessed, Jan. 7, 2026)
1014	RPX Corporation Form 10-K for fiscal year 2017
1015	Netskope's Preliminary Infringement Contentions in <i>Netskope, Inc. v. Fortinet, Inc.</i> , Case No. 4:25-cv-02360-HSG
1016	Netskope's Preliminary Disclosure of Damages Contentions in <i>Netskope, Inc. v. Fortinet, Inc.</i> , Case No. 4:25-cv-02360-HSG
1017	U.S. District Court Time-to-Trial Statistics for NDCA
1018	June 26, 2025 Bibliographic Data for the '639 patent
1019	Petition to Accept Unintentional Delayed Payment of Maintenance Fee (37 CFR 1.378(b)) for '639 patent
1020	Excerpt of '639 patent file history (June 25, 2007 Terminal Disclaimer)

I. INTRODUCTION

The Director should deny Netskope, Inc.'s ("PO's") request for discretionary denial (Paper 7) ("Request") because PO has no settled expectations, the district court litigation involves a large number and vast scope of patents, and the *Fintiv* factors weigh heavily against denial.

The settled-expectations doctrine does not apply because PO only recently purchased the '639 patent from a third-party broker, RPX Corporation ("RPX"), for the sole purpose of asserting it against Fortinet, Inc. ("Fortinet" or "Petitioner"). RPX had owned the '639 patent for twelve years, from 2012 through 2024. RPX is a defensive patent aggregator—its business model is to effectively take patents off the market so those patents cannot be asserted in litigation. In its public SEC filings, RPX has confirmed that it does *not* assert the patents it acquires. And, consistent with its business model, RPX let the '639 patent expire in February 2024 when its 11.5-year maintenance fee came due. Petitioner had no reason to expect that the '639 patent would be asserted and no reason to challenge its validity.

PO similarly had no reason to expect the '639 patent would go unchallenged when it acquired the patent on July 1, 2024 to assert it against Petitioner shortly thereafter. PO acquired the patent after RPX kept it off the market for twelve years, and after RPX allowed the patent to expire for failure to pay maintenance fees.

Moreover, PO has readily admitted in district court that it does not practice the '639 patent, nor has it licensed or otherwise commercialized the patent. There are no settled expectations that support discretionary denial.

The *Fintiv* factors also weigh heavily against discretionary denial. Petitioner has moved for a stay of the district court litigation and PO has admitted that the Judge presiding over the Northern District of California case regularly grants stay motions. No trial date has been set, and any trial would occur long after a final written decision is issued. Petitioner has filed a "*Sotera Plus*" stipulation. And, contrary to PO's mischaracterizations, Petitioner's '639 IPR petition (the "Petition") is strong on the merits. The Richmond reference cited in the Petition squarely anticipates the large majority of the challenged claims; the few claims that are not anticipated are directed to obvious variations on the system disclosed in Richmond and the other cited prior art. For these reasons, and as discussed below, the Request should be denied.

II. PETITIONER'S *SOTERA PLUS* SIPULATION

On January 9, 2026, Petitioner filed a *Sotera Plus* Stipulation in the district court litigation. EX1010. The stipulation broadly confirms that Petitioner will not pursue in the parallel litigation the grounds it raised or could have reasonably raised or a combination of system prior art with the prior art asserted in the Petition. *Id.*

Accordingly, there is no risk of overlapping issues.

III. SETTLED EXPECTATIONS HEAVILY WEIGH AGAINST DENIAL

There are compelling reasons why the Director should find that there are no "settled expectations" for the '639 patent: (1) RPX, a *defensive* patent aggregator, owned the '639 patent until July 1, 2024, when PO acquired it for purposes of asserting it; (2) PO admits that the '639 patent has not been practiced, commercialized, asserted, marked, or licensed; and (3) the '639 patent expired in February 2024 for a failure to pay maintenance fees and was not revived until July 2025 (months after the district court litigation was filed). For each of these reasons, the settled-expectations doctrine does not apply. *See Intel Corp. v. Proxense LLC*, No. IPR2025-00327, Paper 12 at 2-3 (P.T.A.B. June 26, 2025) ("*Proxense*").

A. RPX Owned the '639 Patent From 2012-2024, Effectively Taking the '639 Patent off the Market

RPX owned the '639 patent from 2012 until assigning it to PO on July 1, 2024. *See* EX1011; EX1012. RPX is a *defensive* patent aggregator. As RPX explains, it "offer[s] a platform that includes defensive buying of patent rights . . . to mitigate and manage the risk of potential patent assertions for our growing client network." EX1013 at 1. RPX represents in SEC filings and public press releases that it *never* asserts its patents in litigation. *See, e.g.*, EX1014 at 11 ("We have not asserted and *will not assert* our patents. We have *never* initiated patent infringement litigation,

and our clients receive guarantees that we will never assert patents against them.").

The '639 patent was effectively taken off the market by RPX and PO only recently acquired the patent, so PO should not be able to argue that it had settled expectations. If anything, **Petitioner** had a reasonably settled expectation that the '639 patent would **not** be asserted. Petitioner therefore should not be faulted for failing to challenge the '639 patent earlier. *See, e.g., Home Depot U.S.A. v. H2 Intellect LLC*, IPR2025-00480, Paper 11 at 2-3 (Sep. 4, 2025). In *Home Depot*, the Petitioner "did not have reason to anticipate assertion of the patent against it" because PO had "only previously targeted smartphones, tablets, and watches, whereas Petitioner, Home Depot, is the proprietor of a chain of hardware stores." *Id.* The Acting Director found that "[t]hese considerations weigh against Patent Owner's settled expectations and weigh in favor of Petitioner's expectations and outweigh the considerations favoring discretionary denial." *Id.* The same reasoning applies here: because the patents were assigned to RPX, who does not target *anyone*, there was no reason for Petitioner to anticipate assertion of the '639 patent against it.

B. PO Readily Admits it Has Not Commercialized, Licensed, Marked, or Previously Asserted the '639 Patent

Moreover, PO has alleged it has not commercialized, licensed, marked, or previously asserted the '639 patent. In its infringement contentions, and throughout the district court case, PO has repeatedly confirmed it "does not allege that it

practices the Asserted Claims," EX1015 at 7, and did not produce any documents related to alleged licensed products. The '639 patent was never previously asserted. PO has confirmed it has never licensed the '639 patent either. EX1016 at 6. And PO has not identified any products that were marked or that should have been marked. *See* EX1015 at 9 (identifying no documents for Patent L.R. 3-2(i), which requires a production of documents sufficient to show marking).

The Acting Director refused to discretionarily deny petitions under facts similar to those here. *E.g., Shenzen v. Stratsys, Inc.*, No. IPR2025-00438, Paper 10 at 3 (P.T.A.B. July 17, 2025) ("The patent challenged in [IPR2025-00531] has been in force for approximately 10 years, creating strong settled expectations for Patent Owner. Petitioner, however, presents evidence that the challenged patents have never been 'commercialized, asserted, marked, licensed, or otherwise applied' in Petitioner's 'particular technology space.'" (quoting *Proxense*, Paper 12 at 2-3). Similar to the *Shenzen* matter and for the reasons provided in *Proxense*, the Director should find no settled expectations and deny the Request.

C. A Finding of No Settled Expectations Is Also Appropriate Because the '639 Patent Expired for Failure to Pay Fees

The '639 patent expired *prior* to PO's acquisition of the patent from RPX for failure to pay the 11.5 year-maintenance fee. EX1018. PO did not revive the patent until over a year later, in July 2025, and the patent then expired again on October

10, 2025 because of a terminal disclaimer. *See* EX1020. That the '639 patent was allowed to expire as its maintenance fee came due (and has since expired again) is another independent reason why discretionary denial is not appropriate here. *Globus Med., Inc. v. Spinelogik, Inc.*, No. IPR2025-00225, Paper 8 at 2 (P.T.A.B. July 12, 2025) ("Patent Owner argues that it has settled expectations because 'the claims of the . . . Patent have been in force for almost 8 years.' . . . Petitioner, on the other hand, persuasively argues that the challenged patent expired almost four years ago due to non-payment of maintenance fees, and, accordingly, it expected nonenforcement of the challenged patent. . . . As such, based on Petitioner's arguments, discretionary denial is not appropriate.").

D. PO's Discretionary Denial Request Does not Address, or Even Acknowledge, the Ownership History of the '639 Patent, *Proxense*, or the '639 Patent's Expiration

In its Request, PO wholly fails to acknowledge, let alone address (1) the assignment history of the '639 patent, (2) the fact it was owned by RPX for a dozen years, (3) PO's own admissions in district court as to the lack of commercialization or licensing of the '639 patent, and (4) the '639 patent's expiration. Instead, the decisions PO cites only stand for the proposition that settled expectations may apply for patents of similar vintage. *See* Request at 3-4 (citing decisions where settled expectations apply but notably failing to address any of the analysis under

Proxense).

Because RPX effectively removed the '639 patent from the market for 12 years and PO only recently acquired the patent in July 2024, PO cannot argue it has "settled expectations" that the '639 patent (*which was expired when PO acquired it*) would not be challenged.

IV. THE DISTRICT COURT CASE INVOLVES A LARGE NUMBER OF PATENTS WITH DIVERSE SUBJECT MATTER

In the district court litigation, PO originally asserted 176 claims across nine patents from eight different patent families. Although PO has since dropped one patent and a handful of other claims, there are still eight asserted patents and 135 asserted claims in the district court litigation. The fact that this is a complex and diverse litigation also weighs against discretionary denial. *See Tesla, Inc., v. Intell. Ventures II LLC*, IPR2025-00217, Paper 9 at 2-3 (P.T.A.B. June 13, 2025) ("*Tesla*") (denying discretionary denial petitions for a nine-patent-family case because "[t]he large number and vast scope of the patents asserted in the district court litigation . . . weighs against discretionary denial, as the Board is better suited to review a large number of patents involving diverse subject matter.").

V. THE *FINTIV* FACTORS HEAVILY WEIGH AGAINST DENIAL

The *Fintiv* factors heavily weigh against denial as well. There is no trial date set in the district court action. In fact, there is no schedule at all in that case beyond

the February 6, 2026 *Markman* hearing. Most of the work in the parallel case still needs to occur. Petitioner filed a *Sotera* Plus stipulation. And the Petition is strong on the merits.

A. Factor 1: Evidence Confirms Petitioner's Pending Stay Motion Is Likely to Be Granted

Petitioner filed a motion to stay the parallel Northern District of California case (*Netskope, Inc. v. Fortinet, Inc.*, Case No. 4:25-cv-02360-HSG) on October 22, 2025. Although the Court denied that motion pre-institution, the denial was *without* prejudice, and, if the IPRs are instituted, there is a high likelihood that the case will be stayed. The litigation is before Judge Gilliam, who routinely stays cases pending IPR decisions. *See, e.g., DSS Tech. Mgmt., Inc. v. Apple, Inc.*, No. 14-CV-05330-HSG, 2015 WL 1967878 (N.D. Cal. May 1, 2015); *Finjan, Inc. v. Symantec Corp.*, 139 F. Supp. 3d 1032 (N.D. Cal. 2015); *Google LLC v. EcoFactor, Inc.*, No. 21-CV-03220-HSG, 2024 WL 88003 (N.D. Cal. Jan. 8, 2024). Even PO admits that Judge Gilliam "has demonstrated propensity to stay the litigation pending IPR institution." Request at 5.

The Northern District of California Court considers three factors in determining whether to grant a stay: "(1) whether discovery is complete and whether a trial date has been set; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether a stay would unduly prejudice or present a clear

tactical disadvantage to the non-moving party." *DSS Tech.*, 2015 WL 1967878, at *2 (citation omitted). All three factors weigh heavily in favor of a stay.

Stage of the litigation. The early stage of this litigation weighs heavily in favor of a stay. *See, e.g., Google*, 2024 WL 88003, at * 2. In the district court case, the Court has not issued a scheduling order covering events after the *Markman* hearing or set a trial date, a partial motion to dismiss is still pending, Petitioner only recently answered the complaint in October 2025, PO and Petitioner have barely engaged in fact discovery (no fact depositions have even been scheduled), and the Court has not issued a claim construction order—all circumstances the Court consistently finds warrant granting a stay. *See id.* (finding first factor weighed in favor of stay when the Court had not yet issued a claim construction order or set a trial date, and the parties had "engaged in virtually no discovery"); *see also Finjan*, 139 F. Supp. 3d at 1035-36 (granting stay even though claim construction briefing and hearing had been completed).

Simplification of the issues. As PO admits, Judge Gilliam routinely grants motions to stay pending IPRs under similar circumstances because of the likelihood that the litigation issues will be narrowed. *See DSS Tech.*, 2015 WL 1967878, at *4 ("Were the Court to deny the stay until a decision on institution is made, the parties and the Court would expend significant resources on claim construction proceedings

that could eventually be mooted by the IPR decision.").

No undue prejudice. As described above, PO has repeatedly admitted it does not practice the '639 patent (or any of the other patents at issue in the district court case). EX1015 at 7. And Petitioner filed its IPR petitions approximately seven months after the complaint, well within the statutory period. As such, PO has no claim to prejudice. *See DSS Tech.*, 2015 WL 1967878, at *4; *see also CF Traverse LLC v. Amprius, Inc.*, No. 20-CV-00484-RS, 2020 WL 6820942, at *1 (N.D. Cal. Nov. 6, 2020) (granting motion to stay based in part because the court "struggle[d] to imagine any 'undue prejudice'" from a stay when non-moving party did not practice the asserted patents); *Evolutionary Intel. LLC v. Yelp Inc.*, No. C-13-03587-DMR, 2013 WL 6672451 (N.D. Cal. Dec. 18, 2013), at *8 ("If the parties are not competitors (meaning that the plaintiff does not market any products or services covered by the claims of the patents-in-suit and does not seek a preliminary injunction), the plaintiff does not risk irreparable harm by the defendant's continued use of the accused technology and can be fully restored to the *status quo ante* with monetary relief.").

B. Factor 2: No Scheduled Trial Date

There is no trial date in the district court case. This factor weighs heavily against denial. Even if the Northern District of California Court schedules a trial

date, it will be long after the Board's expected Final Written Decision ("FWD") date. EX1017 (time-to-trial average for N. D. Cal. of 34.5 months). PO admits that Judge Gilliam's average time to trial is about 35 months. Request at 6. Moreover, as PO acknowledges, Judge Gilliam also has a propensity to stay cases pending IPR (*id.* at 5), which further confirms that any trial date would be after a FWD. *See, e.g., Google LLC v. Brodti Inc.*, No. IPR2025-00472, Paper 19 at 2 (P.T.A.B. June 25, 2025) (weight towards referral when no trial date is scheduled and median time to trial statistics suggest trial would begin significantly after the projected FWD).

C. Factor 3: Little Investment in the Litigation

Factor 3 weighs against discretionary denial because the district court proceedings are still in their early stages. Investment in the related proceedings has been minimal, as there is no scheduling order. Per *Fintiv*, "[i]f, at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising discretion to deny institution" *Apple Inc. v. Fintiv, Inc.*, No. IPR2020-00019, Paper 11 at 10 (P.T.A.B. Mar. 20, 2020).

Here, the Court has not yet issued any decisions related to the '639 patent. Petitioner's motion to dismiss PO's second amended complaint remains pending. The Court's *Markman* hearing is not until February 6, 2026. And, in any event, no

claim terms from the '639 patent are at issue in the *Markman* briefing.

As PO readily acknowledges in its Request, the work done in the litigation has been primarily limited to the exchange of contentions under the local patent rules, and some initial fact discovery. Request at 7. Aside from the deposition of PO's *Markman* expert, no other depositions have occurred. There is no schedule for the close of fact discovery, expert discovery, or for trial.

D. Factor 4: Petitioner's Broad *Sotera* Plus Stipulation

Petitioner has filed a broad *Sotera* Plus stipulation, and therefore this factor weighs against denial and addresses any concerns raised by PO regarding redundancy risks or divergent results. See Request at 7-8; March 24, 2025 Boalick Memo ("[A] timely-filed *Sotera* stipulation . . . is highly relevant"); see, also, e.g., *Tesla*, Paper 9 at 2 (finding that Tesla's broad *Sotera* Plus stipulation "counsel[s] against discretionary denial"). Especially because there is no trial date in the Northern District of California, there is no risk of overlapping issues. Moreover, none of the references relied on in the Petition were found by, cited by, or relied on by the Examiner during the original prosecution of the patent.

E. Factor 5: Overlapping Parties

Factor 5 does not outweigh the other factors.

F. Factor 6: The Merits of the Petition Are Strong

PO's arguments on the merits would be better suited for review during the

merits consideration of the Director's review of the Petition, not during consideration of discretionary denial. Regardless, PO's arguments are wrong. The Petition does not "fail[] to distinguish between Petitioner's § 102 and § 103 challenges." Request at 2. Rather, the Petition clearly explains how the Richmond prior-art reference discloses and thus anticipates the large majority of challenged claims. To the extent that Petitioner relies on obviousness for a small number of limitations (as an alternative ground should PO make specific arguments in its response), the Petition clearly identifies such arguments. Moreover, contrary to PO's contention, the Petition does not "rel[y] on the knowledge of a [POSITA] for limitations" of the challenged claims. *Id.* Instead, the Petition explains in detail how each and every element of the challenged claims is squarely disclosed in the Richmond prior art, or in the other cited prior art. PO's challenges to the merits of the Petition are unfounded and should be rejected.

a) The Petition Clearly Distinguishes Between §102 and §103 Grounds (*i.e.*, Grounds 1 and 2).

The Petition clearly delineates Petitioner's §102 and §103 Grounds based on Richmond (*i.e.*, Grounds 1 and 2), and PO's argument to the contrary is an attempt to prevail by elevating form over substance. In effect, PO is arguing that an IPR petition that clearly demonstrates the unpatentability of its patent should nonetheless be rejected simply because of how the petition is organized. The Director should

decline to do so.

As stated in the Petition, Ground 1 on which IPR should be instituted is that Claims 1-3, 5-20, and 22-25 (hereinafter, "the Anticipated Claims") are disclosed by, and thus anticipated by, prior art U.S. Patent Publication No. 2003/0152067 ("Richmond"). *See* Petition at 3. Separately, as also stated in the Petition, Ground 2 on which IPR should be instituted is that Claims 1-20, and 22-25 (*i.e.*, the Anticipated Claims plus Claim 4, collectively referred to hereinafter as "the Single-Reference Obvious Claims") are rendered obvious over Richmond alone.¹ *See id.*

For simplicity of organization, the Petition sequentially addresses each claim that is the subject of a Richmond-only Ground (whether anticipation or single-reference obviousness). Thus, the subsection discussing Claim 4 (which is a Single-Reference Obvious Claim only) is discussed immediately following the subsection discussing Claim 3 (which is an Anticipated Claim). But the Petition expressly states in the heading for Claim 4 that it applies to "Ground 2 Only," *i.e.*, Richmond does not anticipate Claim 4, but only renders it obvious. Petition at 46. For the Anticipated Claims (in contrast to Claim 4), the Petition expressly states that Richmond discloses each limitation. Specifically, for each of the Anticipated

¹ The Petition raises additional obviousness Grounds based on combinations of Richmond with other prior art, which are not at issue in Patent Owner's Discretionary Denial Brief and thus are not addressed here.

Claims, in the first paragraph of the subsection corresponding to each limitation, the Petition expressly states that "Richmond discloses" the corresponding limitation, and specifically identifies the individual numbered items in the Richmond reference that correspond to each element.² Thus, the Petition leaves no ambiguity whatsoever as to its argument: Richmond discloses and thus anticipates each of the Anticipated Claims, and separately renders obvious Claim 4. In any event, combining analysis like this is common and multiple recently instituted petitions have used similar analysis. *See CentralSquare Techs., LLC v. Carbyne, Limited*, No. IPR2025-01179 (P.T.A.B. filed June 27, 2025), Paper 1 (Grounds 1A and 1B); *Imperative Care, Inc. v. Inari Medical, Inc.*, No. IPR2025-01264 (P.T.A.B. filed July 8, 2025), Paper 1 (Grounds 1 and 2).

PO faults the Petition for including, at the start of each Anticipated Claim, a "boilerplate" statement that "Richmond discloses and renders obvious" that claim. Request at 10. But of course, because Richmond discloses each Anticipated Claim, it necessarily follows that Richmond also renders obvious each Anticipated Claim. *See Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983) ("[A]

² *See, e.g.*, Petition at 19 (stating, for the first limitation of Claim 1, that "**Richmond discloses**, at a control device (*e.g.*, network entry devices 114, 116, 120, 124, 144, and 1504), receiving a packet originating from a user device (*e.g.*, user devices 102, 104, 110, 133, 150, and 1502) in a first network (*e.g.*, Network 100), wherein the first network is connected to a second network (*e.g.*, Internet 148) . . . ").

disclosure that anticipates under § 102 also renders the claim invalid under § 103, for 'anticipation is the epitome of obviousness.'"). The fact that the Petition includes such an uncontroversial statement does not "impel the Board . . . to analyze multiple unarticulated invalidity grounds under multiple legal standards." Request at 11. Rather, each invalidity ground is expressly articulated.

The Petition only includes distinct anticipation and obviousness grounds for two dependent claims (Claims 2 and 3), and states expressly that it raises distinct arguments. The Petition clearly articulates both grounds, including the particular circumstances in which the obviousness ground is applicable, and applies the relevant legal standard.

For Claim 2, the Petition first explains how Richmond discloses this claim under the claim's plain meaning. *See* Petition at 40-43. However, the Petition goes on to state that, "[t]o **the extent** that the claim limitation is interpreted to require different rules are to be applied to different interfaces based on the different protocols/media used for each interface (*e.g.*, different interface-specific rules for dedicated wired interfaces versus shared wireless interfaces), such an implementation would have been obvious to a POSITA." *Id.* at 42-43. The Petition then explains in detail why a POSITA would have been motivated to include such an implementation, based on both their experience with common challenges in the

field, and based on Richmond's express teachings. *See id.* at 43. This is a proper obviousness argument. And in any event, if PO **does not** argue for this interpretation, the obviousness argument is mooted and can be disregarded by the Board.

For Claim 3, the Petition explains that "Patent Owner has contended in the district-court litigation that 'global stage' in this claim should be construed as 'a global stage, distinct from the client discrimination stage and distinct from the user specific stage.'" *Id.* at 44. The Petition then explains Petitioner's view that this construction was inappropriate, as the term is used according to its plain and ordinary meaning such that no construction is needed, *see id.* at 9. The Petition further explains that even under this construction, Claim 3 is still unpatentable because "[i]t would also be an obvious implementation detail to process these global rules in a separate stage from the user-specific rules," for the reasons explained in the Petition. *Id.* at 46. Thus, the Petition makes clear that the obviousness argument for Claim 3 has only been raised as a fallback in case PO were to raise this claim-construction argument in its Preliminary Response. But as it turned out, PO abandoned its narrowing construction in the district court action, and thus presumably will not advance this construction here. Accordingly, this obviousness argument is moot, and the Board need not consider it.

PO finally asserts that the Petition "lacks any articulation of the second

Graham factor (ascertaining the differences between the claimed invention and the prior art)." Request at 11. Not so. As discussed above, the Petition expressly states that—under the correct understanding of the claims—*there are no differences* between the disclosure of the Richmond prior art and the claimed invention. But as discussed, to the extent that PO argues a narrow interpretation of these two specific claims that is different from the disclosure of Richmond, the Petition properly explains why the claims as so interpreted are nonetheless an obvious modification of Richmond. There is nothing improper about this.

**b) The Petition Does Not Rely On a POSITA's
Knowledge Instead Of A Disclosure In The Prior Art**

Contrary to PO's assertion, the Petition does not "impermissibly rel[y] on the knowledge of a POSITA to substitute for missing '639 patent claim limitations in the cited references, namely Richmond." Request at 13. Instead, the Petition explains at length why Richmond discloses a system that includes each and every limitation of the Challenged Claims.

First, PO contends that "the Petition fails to show that Richmond discloses, teaches, or suggests Claim 1's limitation of 'associating the packet with user specific traffic control rules and user specific firewall rules.'" Request at 13 (quoting Petition at 30). But this is plainly false upon a reading of the full Petition (as opposed to the narrow excerpts cited by PO in its brief). The Petition expressly states that

Richmond meets the limitation, and explains why and how. Specifically, the Petition explains that, in Richmond's system, "the authentication database retrieves the role ID corresponding to [a] user," Petition at 29, and then, "[g]iven a role ID of a valid user, the network entry device then associates *the packet with user-specific traffic control rules and user-specific firewall rules* by using the role associated with that user to search for matching user-based rules in a rule database 1514," *id.* at 30. PO disregards this express statement.

Second, PO contends that the Petition "impermissibly relies on a POSITA, not Richmond, for the particular claimed limitations of 'user specific traffic rules' and 'user specific firewall rules,'" and that allegedly "[t]he Petition does not map these particular 'user specific' rules to the role-based packet rules discussed by Richmond." Request at 14. Again, this is plainly false upon a reading of the full Petition. The Petition expressly states that Richmond discloses both types of rules, and identifies where in Richmond those rules are disclosed. Specifically, the Petition states that "Richmond discloses that rule entry 502 in rule data structure 500 may contain a '[r]ate limit field 520' that 'store[s] a value representing a rate limit to be applied to a packet if it satisfies the rule,'" and that "*/s/uch rules are exemplary 'user specific traffic rules.'*" Petition at 33 (quoting EX1003 (Richmond) at [0158], EX1002 ¶¶99-100). Moreover, the Petition states that "Richmond discloses that rule data structure

500 may include a 'Deny field 518' that 'may specify that a packet is to be dropped,'" and that "*[s]uch rules are exemplary 'user specific firewall rules.'*" Petition at 34-35 (quoting EX1003 (Richmond) at [0157], EX1002 ¶¶101-102). Again, PO simply disregards these express statements as to how Richmond meets the claims. The Petition makes proper arguments, which should be evaluated on their merits, rather than discretionarily denied.

VI. CONCLUSION

For the above reasons, Petitioner respectfully requests that the Director refrain from exercising his discretion to deny this petition and instead consider the merits.

Respectfully submitted,

Dated: January 9, 2026

/s/ Andrew D. Gish
Andrew D. Gish (Reg. # 67,562)

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that on January 9, 2026 the foregoing document was served via email on the following counsel of record:

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ATTORNEY FOR PETITIONER