

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD., and
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner

v.

ZOPHONOS INC.,
Patent Owner

Case IPR2026-00085
U.S. Patent No. 11,900,016

**PATENT OWNER'S BRIEF ON
DISCRETIONARY DENIAL**

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U.S. Patent and Trademark Office
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PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	File History of U.S. Application No. 18/084,081
2002	Invalidity Contentions, <i>Zophonos Inc. v. Samsung Elecs. Co., Ltd.</i> , Case No. 2:25-cv-00752 (E.D. Tex. Jan. 19, 2026)
2003	Goldstein Comparison Chart

I. INTRODUCTION

The *inter partes* review petition presents exactly the type of case the Office has repeatedly indicated is not an appropriate use of the Board’s limited resources. Petitioner seeks *inter partes* review of U.S. Patent No. 11,900,016 while the same claims are being litigated between the same parties in the Eastern District of Texas on a parallel timeline, with a jury trial scheduled to occur within weeks of the projected Final Written Decision. *See Zophonos Inc. v. Samsung Elecs. Am., Inc.*, Case No. 2:25-cv-00752, Dkt. No. 30 (E.D. Tex. Dec. 10, 2025) (“DCO”).

The Petition asserts obviousness challenges that are redundant of those likely to be asserted in the district court, and expressly reserves the right to challenge the validity of the asserted patents on other statutory grounds, such as §§ 101 and 112. Pet. at 2 n.1. The Petition also reserves the right to raise alternative claim construction disputes in district court. Pet. at 10 n.2. The Petition thus presents the kind of duplicative challenge to a patent asserted in litigation that is routinely denied under the current discretionary denial framework.

On the merits, the Petition presents strained multi-reference obviousness grounds that do not identify any particular error in the patent’s otherwise thorough examination. It does not present any unique reason to tax the Board’s limited resources, especially where the same claims and challenges are being litigated by the same parties on a similar trajectory in district court and will be resolved around

the same time. While Petitioner will likely argue that some of the Office’s discretionary denial considerations weigh in favor of institution, it is clear that—on balance—this Petition does not present one of the “best kinds of cases” for which *inter partes* review is currently reserved. *See* Acting Director’s Memo (September 16, 2025).¹ The Director should exercise discretion to deny institution of the Petition.

II. BACKGROUND

Inventor Levaughn Denton is an electrical engineer who hails from a family of musicians. Born and raised in New York, he was surrounded by artists, loud music, and noise pollution. He has drawn from this background throughout his decade-long career in media communications and entertainment technology. His passion for invention has been inspired not only by the auditory needs he saw among those around him, but also by a gap he saw in the market for audio technology. He applied his education in computer and electrical design to develop

¹ Available at

https://www.uspto.gov/sites/default/files/documents/Memo_re_prior_findings_of_fact_and_conclusions_of_law_9_16_25.pdf?utm_campaign=subscriptioncenter&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.

a line of smart and comprehensive systems for sensing and adjusting audio signals in mobile devices. Mr. Denton started preparing and filing U.S. patent applications on his inventions in 2014, and established a company, Zophonos Inc., to commercialize this groundbreaking technology. *See Zophonos Video.*²

The challenged patent addresses a pervasive modern problem: sound is everywhere, yet environments are dynamic and unpredictable, making it difficult to deliver intelligible, safe, and pleasing audio to each listener in real time. The specification explains that even with significant human and capital investment, conventional systems struggle with improper calibrations, unwanted reflections, and venue-driven variability, which can force one-size-fits-most tradeoffs and expose individuals to sound levels that contribute to stress and hearing loss. EX1001, 1:43-2:19, 9:7-18. The invention recognizes that audio should be filtered and personalized for the listener, and teaches that smart devices can sense audio and, in real time, analyze, report, and/or control outputs to meet safety thresholds and listening preferences. EX1001, Abstract.

To solve these problems, the '016 patent discloses a listener-centric, mobile-based platform that includes the ability to marshal the sensors (e.g., microphones) of smart devices and enable them to sense, identify, isolate, and alter sounds,

² Available at <https://www.zophonos.com/>.

among other features. The '016 patent specifically provides a novel preventive approach: real-time analysis of hazardous sound environments combined with alerts delivered through wearable and mobile devices. Understanding the high potential for his invention, Zophonos founder Mr. Denton has worked to apply his technologies to serve everyone from concertgoers to military servicemembers.

III. THE CHALLENGED PATENT

The '016 patent describes and claims devices, systems, and methods of sensing noise, such as ambient noise or conversation, and altering the sensed noise prior to outputting sound. This technology has applications in sensing, isolating, manipulating, and presenting sounds to human ears. In particular, the patented technology overcomes challenges in delivering audio through speakers or headphones.

It is difficult to manage user-friendly audio outputs in real time to account for fluctuations in surrounding noise. Calibrating sound levels and compensating for ambient soundwave reflections were unaddressed needs in the field of personal audio electronics. Prior to the patented technology, a user would need to manually adjust audio to selectively perceive and interpret specific sounds originating from the ambient environment. In one embodiment, loud and potentially harmful sounds originating from the ambient environment such as heavy traffic, are mitigated while preserving contextual and situational awareness of relevant ambient sounds.

The systems and methods claimed in the '016 patent solve those problems by sensing certain audible and non-audible waves, and providing an automated way of dynamically monitoring and presenting sound to a user. For instance, a computer system like a mobile phone or MP3 player can coordinate with wired or wireless earbuds to monitor ambient sounds and adjust the sound output to compensate for and balance environmental sounds.

Depending on how the audio delivery is managed, the claimed system can also protect the user's situational awareness to perceive potentially dangerous or important circumstances. Nothing like this dynamic and autonomous system existed prior to the filing date of the '016 patent and its family members. Nothing in the prior art discloses the relationships among the computing device and audio output devices, or the ambient sound monitoring, frequency balancing, and transmitting alerts.

IV. PERSON OF ORDINARY SKILL IN THE ART

Only for purposes of this Discretionary Denial Brief, Patent Owner does not dispute Petitioner's defined person of ordinary skill in the art.

V. REASONS THE BOARD SHOULD EXERCISE ITS DISCRETION TO DENY INSTITUTION

The patent challenged in this Petition, and the patents challenged in related proceedings IPR2026-00083 and IPR2026-00084, are concurrently asserted against Petitioner in parallel litigation in the Eastern District of Texas. *See Zophonos Inc.*

v. Samsung Elecs. Am., Inc., Case No. 2:25-cv-00752, Complaint, ¶3 (E.D. Tex. Jul. 30, 2025). A jury trial is set for May 2027, within weeks of the projected date for a Final Written Decision in this proceeding. *See* DCO at 3. The Petition expressly reserves the right to pursue various invalidity theories and inconsistent claim constructions in district court, Pet. at 10 n.2, and does not identify any particular error in the Office’s examination of the challenged patent. The *Fintiv* factors thus weigh in favor of discretionary denial, as do the weaknesses of the Petition’s arguments on the merits, the settled expectations of the parties, 37 C.F.R. § 42.104(b)(4), and the Office’s express policy prioritizing efficiency. Accordingly, the Director should use his discretion under 35 U.S.C. § 314(a) to deny institution.

A. The *Fintiv* factors weigh against institution.

Fintiv factors 1, 2, 5, and 6 weigh *strongly* in favor of discretionary denial and factor 3 also weighs in favor of denial. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (PTAB Mar. 20, 2020). Factor 4 is neutral. Thus, on balance, *Fintiv* supports denying institution. *See also* Interim Process Memo (March 26, 2025) (renewing the Office’s priority of discretionarily denying institution based on the *Fintiv* factors).³

³ Available at

Fintiv factor 1 – There is no stay of proceedings in the district court and there is no evidence that a stay is likely. *See* DCO. This factor therefore weighs heavily in favor of discretionary denial. *See, e.g., Samsung Elecs. Co. v. GenghisComm Holdings, LLC*, IPR2025-00899, Paper 10 at 2 (PTAB Sept. 26, 2025) (denying institution based on *Fintiv* where the time of trial was close to the projected issuance date of the FWD and the co-pending litigation had insufficient evidence of stay); *Samsung Elecs. Co. v. Telcom Ventures LLC*, IPR2025-00957, -972, -973, -974, -975, -976, -977, -978, Discretionary Decision (PTAB Oct. 10, 2025) (same).

Fintiv factor 2 – The projected statutory deadline for issuing an FWD in this IPR is May 19, 2027. Trial in the co-pending litigation is also scheduled to be completed in May 2027, nearly the same time. The Board’s decision in this case will therefore not be received in time to create any efficiency in the co-pending litigation, as all discovery, motion practice, trial preparation, travel arrangements, and pretrial rulings will be complete before a decision is rendered. Indeed, the Office has previously found similar trial date proximities to be a basis to deny review. *See Samsung Elecs. Co. v. VB Assets, LLC*, IPR2025-00870, -871,

<https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf>.

Discretionary Decision (PTAB Oct. 10, 2025) (explaining that even where the FWD will issue slightly before trial, it does not outweigh the efficiencies gained by avoiding parallel proceedings). Thus this factor weighs strongly in favor of denial.

Fintiv factor 3: “[T]he amount and type of work already completed in the parallel litigation by the court and the parties at the time of the institution decision” favors denial. *Fintiv*, 9. The institution decision is expected around May 19, 2026. By that time, the parties will have completed significant fact discovery and exchanged final contentions.

Fintiv factor 4: Petitioner has filed a *Sotera* stipulation in the parallel district court litigation. *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 18-19 (PTAB Dec. 1, 2020) (precedential as to § II.A). While the filing of a *Sotera* stipulation can weigh in favor of institution, the benefit of that stipulation is mitigated by the timing of the co-pending trial. On balance, this factor is therefore neutral.

Fintiv factor 5: The parties are identical between the two parallel proceedings, which favors discretionary denial.

Fintiv factor 6: Factor 6 weighs in favor of denying institution. There are numerous weaknesses in the merits of the Petition. As will be explained in the POPR, the Petition fails to establish a reasonable likelihood that the challenged claims are unpatentable. Patent Owner asks the Director to consider its briefing

presented in the POPR. *See* Interim Process, § II.C.i (patent owner may direct attention to an anticipated POPR and evidence for a discussion of the merits).⁴

B. The settled expectations of the parties weigh against institution.

Settled expectations weigh in favor of denying institution of this Petition for two reasons: (1) Petitioner’s awareness of the challenged patent and its relevance to Petitioner’s products and (2) the patent’s family’s age. First, at least as early as March 18, 2025, a patent examiner cited the ’016 patent as a reference during the examination of a patent assigned to Petitioner titled “Method and System for Mitigating Unwanted Audio Noise in a Voice Assistant-Based Communication Environment” (U.S. Application No. 18/084,081). EX2001, 231. Thus, Petitioner has had actual knowledge of the ’016 patent for nearly a year.

The Office has previously found that Petitioner’s actual knowledge of the challenged patent for a significant period of time creates settled expectations that favor discretionary denial, even for a patent that has not been in force long. *See Murata Mfg. Co. v. Georgia Tech. Research Corp.*, IPR2025-00383, -384, Discretionary Decision (PTAB July 29, 2025) (finding Petitioner’s knowledge of challenged patent created settled expectations weighing in favor of denial); *Google*

⁴ Available at <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>.

LLC v. SoundClear Techs., LLC, IPR2025-00344, -345, Discretionary Decision (PTAB Aug. 4, 2025) (same); *see also RegenX Science, Inc. v. NextGen Biologics*, IPR2025-00620, -621, Discretionary Decision (PTAB July 31, 2025) (finding settled expectations favoring denial where Petitioner monitored the challenged patents); *Nvidia Corp. v. Neural AI, LLC*, IPR2025-00606, -608, Discretionary Decision (PTAB Jul 31, 2025).

Second, the challenged patent here is a continuation of various parent applications in which issued family members have been in force for a significant amount of time—since at least 2018. Even where the challenged patent itself has not been in force for many years, its membership in a portfolio that has been in force or was known to Petitioner can nonetheless create settled expectations that favor Patent Owner. *See, e.g., NKT Photonics Inc. v. Omin Continuum LLC*, IPR2025-00839, Paper 10 (PTAB Sept. 4, 2025) (finding settled expectations favoring denial based on awareness of challenged patent’s portfolio); *Datadome S.A. v. Arkose Labs Holdings, Inc.*, IPR2025-00693, -694, Discretionary Decision (PTAB Aug. 14, 2025) (denying institution based, in part, on Patent Owner’s portfolio in general); *Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, -602, -603, Paper 9 (July 24, 2025) (identifying reasons a patent owner can nonetheless have settled expectations in a patent that has been in force for only three years). The challenged subject matter is fully supported by the specification

of the parent application that has been in force since 2018, and settled expectations regarding that portfolio favor denial here.

C. The Petition violates 37 C.F.R. § 42.104(b)(4).

The Petition improperly uses alleged knowledge of a POSA and state of the art to fill missing limitations in the grounds. The statutory basis for *inter partes* review limits invalidity grounds to prior art “consisting of patents or printed publications.” 35 U.S.C. § 311(b). The corresponding regulation requires a petition to “specify where each element of the claim is found in the prior art patents or printed publications relied upon.” 37 C.F.R. § 42.104(b)(4); *see also* 35 U.S.C. § 312(a)(3); *Henny Penny Corp. v. Frymaster LLC*, 938 F.3d 1324, 1331-32 (Fed. Cir. 2019). The Petition here fails to do this. Compounding this error, the expert testimony on which the Petition relies to fill these gaps is conclusory, and provides no analysis, evidence, or explanation.

For instance, limitation 32[e][ii]—transmitting, to the at least one output device, an alert—is missing entirely from the cited art. Petitioner does not attempt to map this feature to any prior-art reference, instead arguing that “[a] POSITA would have recognized that it would have been obvious to provide an audible warning via the speakers of earpieces 100.” *See* Pet. at 59-60 (citing only to EX1002 (expert declaration), ¶195). The cited expert testimony contains no evidentiary citations.

The Petition earlier maps the output device to the “master” earpiece of Newham (for limitation 32/39[c]) but does not use this disclosure as part of the grounds for limitation 32[e][ii]. *See* Pet. at 18-25, 53. Indeed, none of the references explicitly shows transmitting an alert to an earpiece. While Goldstein873 discloses an alert, it does not disclose that the alert is transmitted to an earpiece, and the Petition does not argue otherwise. Accordingly, the Petition relies entirely on unsubstantiated expert testimony to supply a limitation that is missing from the prior art. That flaw cuts across all challenged claims and renders the Petition fundamentally deficient.

Petitioner also inappropriately attempts to fill gaps in Goldstein873 through flawed expert testimony that relies on teachings in Goldstein864—a different reference that is not part of the challenge. For example, for limitation 32/39[b][i], Petitioner acknowledges Goldstein873 does not disclose how it monitors sound pressure levels. Pet. at 16. Petitioner then attempts to meet this limitation, which it acknowledges is *not* present in the asserted art, by relying on expert testimony that points to an *example* formula in Goldstein864 (again, a different reference not used in the challenge). *See id.* The Petition similarly relies on Goldstein864, which is again not part of the grounds, for claim 43’s smart speaker. *See* Pet. at 44.

As another example, the limitations of claim 38 are also missing from the prior art. There is no showing of the claimed “in-ear device” in the art cited for this

claim. Instead, the Petition relies entirely on expert testimony to completely rewrite the claim, making the in-ear device limitation part of the output device. *See* Pet. at 67-69. There is no support in the claim itself, the specification, or the cited art for this interpretation. This is another violation of the Office’s guidance regarding 37 C.F.R. § 42.104(b)(4).

D. Petitioner “reserve[s]” the “right” to take inconsistent positions in district court, in contravention of Office policy.

Petitioner clearly expresses its intent to raise inconsistent claim construction positions in the parallel district court litigation. Doing so is strongly disfavored by Office policy and undermines the efficiency of *inter partes* review. That is reason alone for the Director to discretionarily deny this IPR.

The Office has made clear that allowing petitioners to propose different constructions at the Board and the district court, such as seeking narrower constructions in litigation to avoid infringement liability, is contrary to the goal of “providing greater predictability and certainty in the patent system.” *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 at 4 (PTAB Nov. 3, 2025) (Squires, Director) (precedential) (internal citations omitted). “The Board’s claim construction rules are designed to ensure that the Board correctly construes claim terms and to minimize inconsistency in claim construction between forums.” *Id.*

Notwithstanding the clear guidance from the Office on inconsistent claim construction positions, Petitioner has “reserve[d] all rights” to advance alternative (and, thus, inconsistent) claim construction positions in the parallel district court litigation for exactly the reasons that are contrary to the Board’s rules and precedent. *Compare* Pet. at 10 n.2 (reserving the right to raise inconsistent constructions to compare claims to accused products, i.e., for non-infringement position), *with Revvo*, IPR2025-00632, Paper 20 at 4; *see also Sun Pharms. Indus., Inc. v. Nivagen Pharms., Inc.*, IPR2025-00893, Paper 18 (PTAB Sept. 19, 2025) (denying institution where Petitioner takes a narrower claim construction position in district court).

Petitioner also expressly indicates it does not concede the claims “satisfy requirements for patentability that cannot be raised in IPR.” Pet. at 2 n.1. Indeed, Petitioner has submitted extensive invalidity contentions in district court that include § 101 theories and multiple § 112 theories. *See generally* EX2002. Yet again, this demonstrates lack of respect for the Office’s guidance that a petitioner’s inability to raise indefiniteness challenges in an *inter partes* review is not a sufficient justification for an inconsistent construction because it amounts to an assertion that a petitioner should be permitted to raise inconsistent invalidity challenges in the two forums. *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 at 2-4 (PTAB Nov. 5, 2025) (informative); *see also Am. Airlines*,

Inc. v. Intellectual Ventures I LLC, IPR2025-01055, Paper 11 at 13 (PTAB Nov.

21, 2025) (explaining the difficulty for the Board to determine how petitioner proposes to construe limitations that when it contends the limitations are indefiniteness in district court). Petitioner's clear intent to raise inconsistent claim constructions and competing invalidity challenges in district court, while asserting plain and ordinary meaning here, should not stand. Accordingly, the Director should deny the Petition.

E. Compelling public interests weigh against institution.

The inventor here is the kind of individual inventor and entrepreneur that the patent system was designed to protect. The challenged claims include embodiments that address a persistent problem in public health and safety arising from noise pollution and the increasing ubiquity of consumer electronic devices with audio features (e.g., wearables and smartphones). Protecting the inventor's ability to recoup his investment and support the business he built on this technology is essential to ensuring that Patent Owner and all small businesses continue to take on risk and innovate technology that benefits society.

One potential harm that embodiments of the challenged claims can address is that regular exposure to loud noises, both direct and ambient, leads to stress and hearing loss. EX1001, 9:7-32. Loud music and other forms of loud sounds have put

approximately 1.1 billion young people at risk of suffering from hearing loss. *Id.*

Certain frequencies and volumes can even cause stress in pets. *Id.*

Additionally, hearing loss is a source of service-connected disability in military veterans. Military veterans are 30% more likely to suffer from severe hearing loss than non-veterans. EX1001, 9:7-32. In fact, according to the DoD's Hearing Center for Excellence (HCE), hearing loss is the most widespread injury among returning veterans, driving hearing loss payments to exceed \$2 billion in 2016. Embodiments of the challenged claims can provide for an interdisciplinary and technologically advanced approach to hearing loss prevention. *Id.*

Providing dynamic adjustments and alerts using mobile devices creates an opportunity to implement preventive measures, ultimately reducing hazardous exposure time and thus injury. EX1001, 9:57-64. The challenged claims include embodiments that mitigate hearing loss injury by (1) analyzing hazardous sounds in real-time and (2) generating a responsive auditory output through wearable mobile devices. *Id.*, 9:64-10:3.

The use of earphones by pedestrians on public walkways, riders on public transit, and people in other public spaces continues to increase. The environment of large numbers of people dividing their attention between multiple sources of audio sensory input gives rise to health and security concerns, as it compromises the ability of crowds to respond to sirens, alarms, or instructions from police or other

emergency responders. The claimed technology can allow earphones to detect sirens or vocal commands from the user's environment and automatically adjust the volume of the audio output of the device. *See, e.g., Zophonos*, Case No. 2:25-cv-00752, Complaint at ¶5.

Rewarding the inventor for his important contributions to public health and safety thus furthers the public's interest in strong patent rights, especially for start-up companies. Petitioner here is a large, sophisticated company with a prior awareness of Patent Owner and the challenged patent. The parties here are well suited to settle their dispute in district court. It is not a good use of the Office's limited resources to act as a second forum for Petitioner to litigate aspects of this larger dispute, especially where the Petition does not identify any error in examination. Rather, the balance of economic and public-interest considerations favor giving the inventor his day in court.

F. Discretionary Denial is supported under 35 U.S.C. § 325(d).

The Board has discretion to deny review where "the same or substantially the same prior art or arguments previously were presented to the Office." 35 U.S.C. § 325(d). The Board's two-part framework considers: (1) whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if so, whether the petitioner has demonstrated that the Office erred in a

manner material to the patentability of challenged claims. *Advanced Bionics, LLC v. Med-El Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential March 24, 2020); *see also Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 at 17–18 (PTAB Dec. 15, 2017) (informative).

Here, Petitioner relies on U.S. Publication No. 2008/0137873 to Goldstein (“Goldstein873”) as the primary reference for all challenges. The Office already effectively considered this teaching during prosecution. Specifically, the Office considered U.S. Publication No. 2008/0037797 to the same Goldstein (“Goldstein797”). Goldstein797 was submitted in an IDS to the office after the first Non-Final Office Action. *E.g.*, EX1004 (’016 File History), 198. The Examiner considered the Goldstein797 reference and filed a Notice of Allowance thereafter. Goldstein873 and Goldstein797 are cumulative in all relevant respects. *See* EX2003 (comparing (a) Petitioner’s mapping of the claim limitations to Goldstein873 with (b) cumulative teachings in Goldstein979). The Petition does not identify any material error in prosecution.

VI. CONCLUSION

The Director should discretionarily deny the Petition.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH PAGE LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

1. This Discretionary Denial Brief complies with the 20-page limitation, excluding the parts exempted by 37 C.F.R. § 42.24(a).
2. This Discretionary Denial Brief complies with the general format requirements of 37 C.F.R. § 42.6(a) and has been prepared using Microsoft® Word 2014 in 14 point Times New Roman.

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PATENT OWNER'S BRIEF ON
DISCRETIONARY DENIAL** and associated Exhibits 2001-2003 were served in
their entireties on January 20, 2026, upon the following parties via electronic mail:

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