

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACCELIGHT TECHNOLOGIES, INC.,

Petitioner,

v.

APPLIED OPTOELECTRONICS, INC.,

Patent Owner.

Case IPR2026-00093

Patent No. 9,523,826

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

I. INTRODUCTION

Denial of the petition (Paper 1) (“Petition”) for *inter partes* review of U.S. Patent No. 9,523,826 (the ’826 Patent) was proper because “the agency’s decision to deny a petition is a matter committed to the Patent Office’s discretion.” *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (citing 35 U.S.C. § 314(a)) (emphasis added); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016). As the Supreme Court has stated, the statute contains “no mandate to institute review.” *Id.* “The Director is permitted, but never compelled, to institute an IPR. And no petitioner has a right to such institution.” *Mylan Laboratories Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1382 (2021) (emphasis added).

Petitioner’s Request for Director Rehearing (Paper 11) (“Request”) does not identify any abuse of discretion, any erroneous finding of fact, any erroneous conclusion of law, or policy issues that would warrant a rehearing by the Director of the Director’s Discretionary Denial (Paper 10). *See* USPTO Director Review Process at <https://www.uspto.gov/patents/ptab/decisions/director-review-process> (“Director Review may be requested...[when] a final decision implicates potential (a) abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.”)

Instead, the Request asks for the “Director’s reconsideration of the

discretionary denial decision...in view of the Director’s March 11, 2026 memorandum titled ‘Additional Discretionary Institution Considerations – U.S. Manufacturing and Small Business Use of AIA Proceedings’ (‘March 11 Memo’), which issued after the denial and provides new guidance directly relevant to the discretionary analysis...Petitioner had no opportunity to address that guidance in its February 13, 2026 opposition to discretionary denial (Paper 9)...Petitioner respectfully requests reconsideration of the denial in light of the intervening guidance in the March 11 Memo.” *See* Paper 12 at p. 1.

However, the March 11 Memo specifically says it “applies to all IPRs and PGRs in which the due date for a patent owner discretionary brief has not yet elapsed.” *See* March 11 Memo at p. 3. Patent Owner’s due date for filing a discretionary brief in response to the Petition was on or about January 13, 2026. *See* Paper 7. Indeed, on February 13, 2026, Petitioner filed an opposition to Patent Owner’s discretionary brief. *See* Paper 9. And, on March 3, 2026, the Director issued a discretionary decision denying institution of the Petition. *See* Paper 10. All of these occurred before the March 11 Memo became applicable to the discretionary analysis. Thus, there is no intervening change in the guidance for discretionary denial considerations as to the Petition based on the March 11 Memo.

Therefore, the March 11 Memo is not applicable, and further Director

Review of the discretionary denial decision is not warranted.

II. THE DIRECTOR’S DENIAL OF INSTITUTION OF *INTER PARTES* REVIEW SHOULD BE MAINTAINED

The Director should deny the Request for rehearing of the decision denying the Petition for at least the following reasons.

A. Petitioner’s Status as an Alleged Small Business is Irrelevant to the Petition and Petitioner’s Request

As already discussed, the March 11 Memo is not applicable to the Petition as Patent Owner’s due date for its discretionary brief was on or about January 13, 2026. *See* Paper 7. The March 11 Memo specifically says it “applies to all IPRs and PGRs in which the due date for a patent owner discretionary brief has not yet elapsed.” *See* March 11 Memo at p. 3. Therefore, Petitioner’s alleged status as a small business and its arguments related to the same in the Request are irrelevant and not a proper basis under which to request director review. *See* Request at pp. 1-4 (asserting “Petitioner respectfully requests reconsideration of the denial in light of the intervening guidance in the March 11 Memo...[u]nder the Office’s new guidance, institution is favored because Petitioner is a small business that has been sued for infringement of the challenged patent.”); *see also* USPTO Director Review Process at <https://www.uspto.gov/patents/ptab/decisions/director-review-process>.

The March 11 Memo and Petitioner's alleged status as a small business is not applicable to the Petition and further Director Review of the discretionary denial decision is not warranted in light of the March 11 Memo.

B. There Are Settled Expectations in the '826 Patent.

The '826 Patent was issued on December 20, 2016. The patent has been in force for *nine* years, almost one-half of the life of the patent. Thus, there are settled expectations that the '826 Patent is valid and enforceable.

C. A Prior Petition for IPR of the '826 Patent has Already been Discretionarily Denied for Similar Reasons

The '826 Patent was the subject of a prior petition for IPR filed by another party, Cambridge Industries USA, Inc. ("CIG"). CIG's petition, IPR2025-00433, was filed on January 17, 2025. In that proceeding, AOI filed a request for discretionary denial, similar to this request, which was granted on June 27, 2025. *See* Exhibit 2003. CIG then filed a request for rehearing by the Director, which was denied on August 21, 2025. *See* Exhibit 2004. On October 10, 2025, CIG filed a petition for writ of mandamus in the Court of Appeals for the Federal Circuit, and, on December 9, 2025, the petition was denied. *See* Exhibit 2010. Thus, a prior request for IPR of the '826 Patent has already been denied twice and mandamus relief denied on similar grounds.

D. The Petition is Based in Part on Art Considered by the Office.

One of Petitioner's three grounds for invalidity of claims 1–7 relies on Mizue. In an Office Action, the Examiner rejected several claims based on Mizue and another reference. *See* File History, Exhibit 1002, pp. 76-78. As further explained in Patent Owner's Preliminary Response, Petitioner has not shown that the Office made a material error in evaluating Mizue as Mizue fails to disclose all limitations of Claims 1-7 of the '826 Patent. *See* Paper 8 (Patent Owner's Preliminary Response) at pp. 15-25.

E. Petitioner's Arguments on Unpatentability are Weak.

Petitioner alleges anticipation based on Mizue (Ground 1) and obviousness based on Li in view of Liu (Ground 2) or Li alone (Ground 3). However, Petitioner is unlikely to succeed on the merits under any of these grounds because none of these references discloses all of the limitations of any claim of the '826 Patent or renders any claim obvious. *See id.* (Ground 1); *see also id.* at pp. 25-27 (Ground 2) and pp. 27-29 (Ground 3).

F. Other Factors Also Support Discretionary Denial

The following factors also support the discretionary denial.

- There is significant overlap between the issues in the Petition and in the Accelight Litigation. The same claims are challenged, and some of the grounds, key art, and arguments are substantially the same.

- There has been significant investment in the Accelight Litigation in that substantive issues have already been addressed by the parties.
- Petitioner and the defendant are the same party.
- There are no relevant changes in the law that affect patentability.
- The Accelight Litigation must go forward because not all asserted patents are subject to petitions for IPR.
- Any Search Disclosure Declaration (“SDD”) filed by Petitioner pursuant to the Director’s November 17, 2025 Memorandum entitled “Voluntary Search Disclosure Declarations as a Favorable Factor in Institution Decisions” (“Director’s SDD Memo,” Exhibit 2009) is at a most a neutral, rather than favorable, factor with respect to this Petition because Petitioner relies only on patents for its invalidity arguments in the Petition.

IV. CONCLUSION

For the reasons set forth above, the Director should deny the Request for rehearing of the decision denying the Petition for *inter partes* review.

Dated: April 9, 2026

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CERTIFICATE OF SERVICE

The undersigned hereby certifies service on the Petitioner, pursuant to 37 C.F.R. §42.6(e) and by agreement of counsel, by electronic (e-mail) delivery of a true copy of the foregoing PATENT OWNER'S OPPOSITION TO PETITIONER'S REQUEST FOR DIRECTOR REVIEW OF DISCRETIONARY DENIAL, which was served on April 9, 2026 to the following Counsel for Petitioner via e-mail:

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