

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MAGNOLIA MEDICAL TECHNOLOGIES, INC.,
Petitioner,

v.

KURIN, INC.,
Patent Owner.

IPR2026-00097
Patent 12,138,052

**PETITIONER'S SUR-REPLY BRIEF AGAINST
DISCRETIONARY DENIAL**

PETITIONER’S LIST OF EXHIBITS

Previously Filed:

- Ex. 1001: U.S. Patent No. 12,138,052 (“the ’052 Patent”)
- Ex. 1002: Expert Declaration of Karl Leinsing
- Ex. 1003: Curriculum Vitae of Karl Leinsing
- Ex. 1004: Certified Prosecution History of U.S. Patent No. 12,138,052 (“ the ’052 Patent”)
- Ex. 1005: Certified Prosecution History of U.S. Patent No. 10,010,282 (“ the ’282 Patent”)
- Ex. 1006: Certified Prosecution History of U.S. Patent No. 10,143,412 (“ the ’412 Patent”)
- Ex. 1007: Certified Prosecution History of U.S. Patent No. 11,185,266 (“ the ’266 Patent”)
- Ex. 1008: Certified Prosecution History of U.S. Patent No. 11,963,769 (“ the ’796 Patent”)
- Ex. 1009: Certified Prosecution History of U.S. Patent No. 11,832,944 (“ the ’944 Patent”)
- Ex. 1010: Certified Prosecution History of U.S. Patent No. 12,357,209 (“ the ’209 Patent”)
- Ex. 1011: Certified Prosecution History of U.S. Patent No. 12,390,137 (“ the ’137 Patent”)
- Ex. 1012: WO Pub. No. 2014/085800 (“Bullington800”)
- Ex. 1013: U.S. Patent App. Pub. No. 2014/0336536 (“Brancazio”)
- Ex. 1014: U.S. Patent App. Pub. No. 2012/0245042 (“Liu”)

- Ex. 1015: U.S. Patent No. 5,286,279 (“Wu”)
- Ex. 1016: U.S. Patent No. 6,103,271 (“Morrison”)
- Ex. 1017: U.S. Patent App. Pub. No. 2014/0208978 (“Sunder”)
- Ex. 1018: U.S. Patent No. 7,923,053 (“Kitching”)
- Ex. 1019: U.S. Patent No. 10,039,483 (“Bullington483”)
- Ex. 1020: *Reserved*
- Ex. 1021: *Reserved*
- Ex. 1022: U.S. Patent No. 7,087,047 (“Kraus”)
- Ex. 1023: *Reserved*
- Ex. 1024: *Reserved*
- Ex. 1025: U.S. Patent No. 12,357,209 (“the ’209 Patent”)
- Ex. 1026: U.S. Patent App. Pub. No. 2014/0155782 (“Bullington782”)
- Ex. 1027: U.S. Patent App. Pub. No. 2015/0032067 (“Bullington067”)
- Ex. 1028: U.S. Patent App. Pub. No. 2014/0039348 (“Bullington348”)
- Ex. 1029: The American Heritage Dictionary, Office Edition, Houghton Mifflin Company, (4th Ed. 2001)
- Ex. 1030: The New Oxford American Dictionary, Oxford University Press (2001)
- Ex. 1031: Defendant’s Second Amended Answer and Counterclaims, *Magnolia Medical Techs. v. Kurin, Inc.*, C.A. No. 24-1124-CFC, Dkt. 95 (D. Del. Nov. 21, 2024)
- Ex. 1032: U.S. Patent No. 3,882,026 (“McPhee”)
- Ex. 1033: U.S. Patent No. 9,694,304 (“Perreault”)
- Ex. 1034: U.S. Patent No. 4,832,034 (“Pizziconi”)

- Ex. 1035: Joint Claim Construction Brief, *Magnolia Medical Techs. v. Kurin, Inc.*, C.A. No. 24-1124-CFC, Dkt. 153 (D. Del. Mar. 10, 2025)
- Ex. 1036: Letter to Deputy Clerk, District of Delaware regarding construction of term “housing that defines”, *Magnolia Medical Techs. v. Kurin, Inc.*, C.A. No. 24-1124-CFC, Dkt. 339 (D. Del. Jul. 9, 2025)
- Ex. 1037: Hackh’s Chemical Dictionary (McGraw-Hill, Inc. 1969)
- Ex. 1038: Random House Webster’s College Dictionary (Random House, Inc. 2005)
- Ex. 1039: Membrane, Cambridge Advanced Learner’s Dictionary (Cambridge Univ. Press), archived at <https://web.archive.org/web/20150914225839/https://dictionary.cambridge.org/dictionary/english/membrane>
- Ex. 1040: Petitioner’s Search Disclosure Declaration (filed under seal)
- Ex. 1041: Letter from Gregory Bullington (Magnolia) to Bob Rogers (Kurin), February 23, 2023.
- Ex. 1042: Examiner Search History excerpted from Certified Prosecution History of the ’052 Patent (Ex. 1004).
- Ex. 1043: Excerpts from Trial Transcript, *Magnolia Medical Technologies, Inc. v. Kurin, Inc.*, C.A. No. 24-1124-CFC, Dkt Nos. 447 and 449 (D. Del. December 8 and 10, 2025).

Filed Herewith:

- Ex. 1044: Table Illustrating the Distinct Patent Families Included in the Letter from Gregory Bullington (Magnolia) to Bob Rogers (Kurin), February 23, 2023 (Ex. 1041).

Petitioner submits this authorized sur-reply to Patent Owner's reply ("PO Reply"). Ex. 3102.

Petitioner's letter to Mr. Rogers, the first named inventor on the '052 Patent, listed 24 distinct utility patent families including the PCT application that published as Bullington800 (as well as two design patent families). Ex. 1041. Patent Owner (PO) disclosed **23 of the 24** distinct utility patent families represented in the letter to the USPTO but **neglected to disclose the critical Bullington800 patent family that invalidates the '052 Patent.** Ex. 1044. PO argues that the letter to Mr. Rogers was "not meant to point out prior art." PO Reply, pp. 5-6. But the letter *does* point out noncumulative prior art which was not cited to the USPTO.

PO attempts to mitigate its failure to cite Bullington800 during prosecution by noting that U.S. Pat. No. 9,155,495 ("the '495 Patent") was cited. PO Reply, pp. 4-5. **But, as PO concedes, the '495 Patent does not disclose Figs. 16/17 of Bullington800 or the accompanying description, shown in the Petition to invalidate PO's patent.** PO Reply, p. 5. PO characterizes the material absent from the '495 Patent as merely "a relatively small insertion," but this material is the very material that invalidates the '052 Patent. *Id.* As evidenced throughout the Petition, Figs. 16/17 and the accompanying description teach, alone (Grounds A-B) or in combination with other references (Grounds C-D), every claim of the '052 Patent.

Petitioner's founder, Mr. Bullington, considered Mr. Rogers an advisor,

offered him a seat on Petitioner's board, and later sent him the letter listing the PCT application that published as Bullington800. Pet. Opp., pp. 3-4. Despite these contacts, PO failed to disclose the singular utility patent family from the letter that included the most material art. That PO disclosed less-pertinent patents, such as the '495 Patent, does not erase this failure or the fact that the '052 Patent would not have been allowed, had Bullington800 been identified during prosecution. With the loss of interference proceedings, complex priority issues between two small competitors are best resolved in an IPR proceeding. Institution of the Petition is necessary to remedy PO's failure to file key prior art in its possession.

Dated: March 10, 2026

By: /Frederic M. Meeker/

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CERTIFICATION UNDER 37 CFR §42.24(d)

Pursuant to the authorization granted by the Board in their March 5, 2026 email authorizing additional briefing, the undersigned hereby certifies that the page limit for the foregoing Petitioner's Brief Against Discretionary Denial totals 1.5 pages, which is equal to the allowed pages under the Interim Director Discretionary Process.

Pursuant to 37 C.F.R. §42.24(a)(1), this count does not include the table of contents, the table of authorities, mandatory notices under §42.8, the certificate of service, this certification of word count, the claims listing appendix, or appendix of exhibits.

Dated: March 10, 2026

By: /Frederic M. Meeker/

Frederic M. Meeker
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that I caused a true and correct copy of this **PETITIONER'S SUR-REPLY BRIEF AGAINST DISCRETIONARY DENIAL** in connection with IPR2026-00097 to be served via e-mail on March 10, 2026, in its entirety on the following counsel of record for Patent Owner:

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Dated: March 10, 2026

By: /Carlos Goldie/

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