

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

Petitioner,

v.

SECURE COMMUNICATION TECHNOLOGIES, LLC,

Patent Owner.

Case IPR2026-00098

U.S. Patent No. 11,995,685

PATENT OWNER'S BRIEF IN SUPPORT OF DISCRETIONARY DENIAL

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND.....	2
III.	SUMMARY OF ARGUMENT.....	6
IV.	LEGAL STANDARD	7
V.	THE DIRECTOR SHOULD EXERCISE DISCRETION TO DENY INSTITUTION UNDER THE INTERIM PROCESS MEMO.....	8
A.	Google’s Previously Filed IPR Petitions Based on the Same Prior Art, for Closely Related Patents in the Same Patent Family, Were Denied on the Merits	9
B.	The Parties Have Settled Expectations Because of Google’s Prior Knowledge of the Challenged Patents’ Family	12
VI.	THE DIRECTOR SHOULD EXERCISE DISCRETION TO DENY INSTITUTION UNDER 35 U.S.C. § 325(d).....	15
VII.	CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases:	Page(s):
<i>Advanced Bionics, LLC v. Med-El Electromedizinische Geräte GmbH</i> , IPR2019-01469, Paper 6 (P.T.A.B. Feb. 13, 2020).....	<i>passim</i>
<i>Amazon.com, Inc. v. Audio Pod IP, LLC</i> , IPR2025-00757, Paper 15 (P.T.A.B. Aug. 14, 2025).....	14
<i>Cuozzo Speed Techs., LLC v. Lee</i> , 579 U.S. 261 (2016).....	8
<i>Google LLC v. Mullen Indus. LLC</i> , IPR2025-00227, Paper 14 (P.T.A.B. Jun. 25, 2025)	12, 16
<i>Google LLC v. Secure Commc’ns Techs., LLC</i> , IPR2025-01181, IPR2025-01182, IPR2025-01183, Paper 3 (P.T.A.B. July 10, 2025).....	5, 6, 10
<i>Harmonic Inc. v. Avid Tech., Inc.</i> , 815 F.3d 1356 (Fed. Cir. 2016)	8
<i>iRhythm Techs., Inc. v. Welch Allyn, Inc.</i> , IPR2025-00363, IPR2025-00374, IPR2025-0076, IPR2025-00377, IPR2025-00378, Paper 10 (P.T.A.B. June 6, 2025)	15
<i>Samsung Electronics Co., Ltd. v. Secure Commc’ns Techs., LLC</i> , IPR2025-01049, IPR2025-01050, IPR2025-01051, Paper 6 (P.T.A.B. June 18, 2025)	5
<i>SAS Inst. Inc. v. Iancu</i> , 584 U.S. 357 (2018).....	8

Rules, Statutes and Regulations:

35 U.S.C. § 314 1, 7

35 U.S.C. § 325 *passim*

PATENT OWNER’S EXHIBIT LIST

Exhibit #	Description
2001	Declaration of James Proctor, Jr.
2002	Mr. Proctor’s November 2011 Correspondence with Google
2003	LinkedIn Profile – Kyle Enright (Google)
2004	Mr. Proctor’s February 2012 Correspondence with Google
2005	LinkedIn Profile – Amar Mehta (Google)
2006	Application Data for Google’s U.S. Patent Application No. 13/716,675
2007	December 2012 IDS from U.S. Patent Application No. 13/716,675
2008	Application Data for Google’s U.S. Patent Application No. 12/969,291
2009	May 2012 IDS from U.S. Patent Application No. 12/969,291
2010	Application Data for Motorola Mobility’s U.S. Patent Application No. 13/738,384
2011	May 2014 Notice of References Cited from U.S. Patent Application No. 13/738,384
2012	Application Data for Google’s U.S. Patent Application No. 17/305,266
2013	July 2021 IDS from U.S. Patent Application No. 17/305,266
2014	Complaint from <i>Secure Commc’n Techs., LLC v. Samsung Elecs. Co., Ltd. et al.</i> , No. 2:24-cv-484-JRG (E.D. Tex.)
2015	Redacted Version of Samsung’s Motion to Transfer Venue from <i>Secure Commc’n Techs., LLC v. Samsung Elecs. Co., Ltd. et al.</i> , No. 2:24-cv-484-JRG (E.D. Tex.)
2016	Complaint from <i>Secure Commc’n Techs., LLC v. Google, LLC</i> , No. 1:25-cv-1207 (W.D. Tex.)
2017	First Amended Complaint from <i>Secure Commc’n Techs., LLC v. Google, LLC</i> , No. 1:25-cv-1207 (W.D. Tex.)
2018	Google blog article concerning Nearby Share
2019	Article from Techcrunch.com concerning Google Fast Pair
2020	Article from Techcrunch.com concerning Android Device Manager (precursor to Google Find Hub)
2021	Google blog article concerning generations of Pixel phones

I. INTRODUCTION

Pursuant to 35 U.S.C. §§ 314 and 325 and the Director’s Interim Processes for PTAB Workload Management (“Interim Process Memo”), Patent Owner Secure Communication Technologies, LLC (“SCT”) respectfully requests that the Director exercise discretion to deny institution of this Petition. Discretionary denial is appropriate because (i) the Board has already recently denied institution of IPR petitions filed by Petitioner Google LLC (“Google”) against related patents (also asserted in the parallel district court action), in which Google raised the same combinations of art in this Petition, and (ii) Google has been on notice of the patent family to which the challenged patents¹ belong for more than 13 years, creating settled expectations as to the validity of the challenged patents and their family members.

In addition, Google’s Petition relies on the same or substantially the same prior art as was considered by the Examiner during prosecution of the challenged patents. The Director should thus also exercise discretion to deny institution under

¹ The “challenged patents” refers to the patent challenged in this proceeding, as well as the patents challenged in Google’s now-denied petitions in IPR2025-01181, IPR2025-01182, and IPR2025-01183, as well as the patent challenged in its recently-filed petition in IPR2026-00099.

35 U.S.C. § 325(d) because Google has not (and cannot) explain how the Office erred in a manner material to the patentability of the challenged claims as required by *Advanced Bionics, LLC v. Med-El Electromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (P.T.A.B. Feb. 13, 2020).

II. FACTUAL BACKGROUND

The challenged patent claims priority to two provisional applications (Nos. 61/095,001, filed September 8, 2008, and 61/095,359, filed September 9, 2008), as well as to a series of continuation applications, beginning with U.S. Patent Application No. 12/364,828 (the “’828 application”), filed February 3, 2009, which issued as U.S. Patent No. 8,090,359 (the “’359 patent”). On February 3, 2009, the inventors also filed three additional non-provisional applications based on the same disclosures, including U.S. Patent Application Nos. 12/364,823, which issued as U.S. Patent No. 8,090,616 (the “’616 patent”), 12/364,897, which issued as U.S. Patent No. 7,936,736 (the “’736 patent”), and 12/364,938, which issued as U.S. Patent No. 8,116,749 (the “’749 patent”). The inventors also later filed a continuation of the ’828 application: U.S. Patent Application No. 13/213,028 (the “’028 application”), filed August 18, 2011, which issued as U.S. Patent No. 8,369,842 (the “’842 patent”).

In November 2011, Mr. James Proctor, Jr., one of the inventors of the challenged patents, emailed Kyle Enright, then Head of Business Development for

Mobile Payments at Google, about the inventions disclosed in the challenged patents' family. *See* Exs. 2001-2003. On February 9, 2012, Mr. Proctor emailed Amar Mehta, then Senior Counsel at Google, concerning the challenged patents' family and specifically identified the '736, '359, '616, and '749 patents to Mr. Mehta. *See* Exs. 2001, 2004, 2005. Mr. Proctor also indicated that, at the time, there were nine total patent applications in the patent family. *See* Ex. 2004.

Google has also had knowledge of the challenged patents' family since 2012 through Google's own patent prosecution activities. Google cited the '749 patent during prosecution of Google's U.S. Patent Application No. 13/716,675 (which issued as U.S. Patent No. 9,185,148), via a December 17, 2012 Information Disclosure Statement. *See* Exs. 2006-2007. Google also cited U.S. Patent Application Publication No. 2010/0061294 (the publication that led to the '736 patent) during prosecution of Google's U.S. Patent Application No. 12/969,291 (which issued as U.S. Patent No. 8,364,172) via a May 3, 2012 Information Disclosure Statement, and the Examiner of Motorola Mobility's (owned by Google at the time) U.S. Patent Application No. 13/738,384 (which issued as U.S. Patent No. 8,923,831) cited it in a May 7, 2014 Notice of References Cited. *See* Exs. 2008-2011. Google also cited U.S. Patent Application Publication No. 2011/0300802 (the publication that led to the '842 patent) during the prosecution of Google's U.S. Patent Application No. 17/305,266 (which issued as U.S. Patent No. 11,395,356) as

the very first reference in a July 2, 2021 Information Disclosure Statement. *See* Exs. 2012-2013. Notably, this last cited application was not identified in Mr. Proctor’s correspondence with Google.

On July 3, 2024, SCT filed a complaint in the U.S. District Court for the Eastern District of Texas, asserting three family members of the challenged patents, U.S. Patent Nos. 11,334,918 (the “’918 patent”), 11,443,344 (the “’344 patent”), and 11,687,971 (the “’971 patent”), against Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”). *See* Ex. 2014. In that complaint, SCT accused features of Samsung’s phones, tablets, and laptops of infringing claims of the ’918, ’344, and ’971 patents. *See id.* Among the infringing features were the Nearby Share/Quick Share and Fast Pair features of Samsung’s phones and tablets, which Samsung alleged were developed by Google. *See* Ex. 2015. Google then filed IPR petitions against the ’918, ’344, and ’971 patents on July 2, 2025, one day before the statutory bar date based on SCT’s lawsuit against Samsung.² *See Google LLC v. Secure Commc’ns Techs., LLC*, IPR2025-01181,

² Samsung also filed IPR petitions concerning the challenged patents. *See Samsung Electronics Co., Ltd. v. Secure Commc’ns Techs., LLC*, IPR2025-01049, IPR2025-01050, IPR2025-01051, Paper 6 (P.T.A.B. June 18, 2025). In August 2025, SCT

IPR2025-01182, IPR2025-01183, Paper 3 (P.T.A.B. July 10, 2025). On December 23, 2025, the Director denied institution for all three of Google’s IPR petitions on the merits. *Id.*, Paper 14 at 1.

On August 4, 2025, SCT filed a complaint against Google in the U.S. District Court for the Western District of Texas. *See* Ex. 2016. SCT filed a First Amended Complaint (“FAC”) in that action on September 8, 2025. *See* Ex. 2017. In the FAC, SCT accuses Google of infringing not only the challenged patents, but also the ’685 patent and the patent Google then challenged in IPR2026-00099. *See id.*

As Google’s Petition references, others have also filed IPR petitions concerning family members of the challenged patents. *See* Pet. at 1-4. However, as discussed in Patent Owner’s Preliminary Responses to IPR2025-01181, -01182, and -01183 (*see Google v. SCT*, IPR2025-01181, Paper 7, IPR2025-01182, Paper 7, IPR2025-01183, Paper 8), and as will be discussed in Patent Owner’s Preliminary Response to the present Petition, there are several differences between the claims at issue in those prior IPR proceedings and those challenged here. Google’s Petition admits many of these differences by discussing ten such IPR petitions but only alleging collateral estoppel as to two of them. *E.g.*, Pet. at 26; Exs. 1014-1033. Even

reached a settlement with Samsung, and the district court action and all three IPR proceedings involving Samsung have all been terminated.

as to those two though, key differences in the claims exist, as Patent Owner will discuss in its Preliminary Response.

III. SUMMARY OF ARGUMENT

In this Petition, Google presents the same prior art and combinations that the Board has already found do not warrant institution of IPR against closely related patents and claims. This fact heavily favors exercising discretion to deny institution for several reasons. First, from a practical standpoint, it does not make sense for the Board to consider this Petition in light of the Director's recent decisions in those other IPR proceedings. Moreover, those denials of institution mean that instituting this IPR proceeding will not resolve the parties' dispute because the district court will have to decide the validity of the three patents as to which the Director has already denied institution. And, the merits of any IPR petition (a longstanding consideration in the discretionary denial analysis) are just as weak here as they were in the petitions as to which the Director has already denied institution.

In addition, Google has known of the inventions in the challenged patents since at least 2012, yet chose to commercialize infringing functionalities—e.g., Nearby Share, Fast Pair, and Find Hub—without ever seeking a license or timely challenging validity. During more than a decade of awareness, Google repeatedly cited members of the same patent family in its own prosecution, reinforcing the parties' settled expectations that the claims are valid.

Finally, Google’s Petition simply repackages arguments based on substantially the same art the Examiner and prior IPR panels already considered—*e.g.*, Eagle, Behrens, and Jones—and rejected, including as recently as last month. Olkkonen was considered in each of IPR2025-01181, -01182, and -01183, and Jones was considered in IPR2025-00181, all of which were denied institution on the merits. Google only adds one reference, Kallio, for a single limitation of four dependent claims. The addition of Kallio does not alter the analysis here because the SCT attacked Google’s allegations regarding the subject patents’ independent claims in the now-denied IPR2025-01181, -01182, and -01183, and those same attacks apply to the independent claims at issue here. Google does not identify any material error in the PTO’s prior findings that the challenged claims are allowable over this art. *Advanced Bionics* and § 325(d) therefore compel denial.

IV. LEGAL STANDARD

35 U.S.C. § 314 provides the Director with discretion regarding whether to institute an IPR proceeding. *See Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (“[T]he agency’s decision to deny a petition is a matter committed to the Patent Office’s discretion.”); *SAS Inst. Inc. v. Iancu*, 584 U.S. 357, 366 (2018) (“[Section] 314(a) invests the Director with discretion on the question whether to institute review”) (emphasis omitted); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he PTO is permitted, but never compelled, to

institute an IPR proceeding.”).

As discussed in the Interim Process Memo, among the criteria that the Director may consider in determining whether to exercise discretion to deny institution are “[s]ettled expectations of the parties,” “[t]he strength of the unpatentability challenge,” and “[a]ny other considerations bearing on the Director’s discretion.”

In addition, 35 U.S.C. § 325(d) provides the Director with discretion to deny institution if the challenge to the patent involves the same or substantially the same prior art or arguments previously considered by the USPTO. *Advanced Bionics*, Paper 6 at 8. In such a situation, the petitioner must show that the USPTO erred in evaluating the art or arguments, and if a petition fails to do so, the Director may exercise her discretion not to institute. *Id.* Further, if reasonable minds can disagree regarding the purported treatment of the art or arguments by the PTO, then it cannot be said that the PTO erred in a manner material to patentability. *Id.* at 9.

V. THE DIRECTOR SHOULD EXERCISE DISCRETION TO DENY INSTITUTION UNDER THE INTERIM PROCESS MEMO

Several facts support exercising discretion to deny institution of Google’s IPR petition under the Director’s Interim Process Memo.

First, the Director has already recently denied institution of IPR challenges to closely related patents based on petitions raising the same art and arguments presented in this Petition. From a practical standpoint, it does not make sense to

Patent Owner’s Brief in Support of
Discretionary Denial

spend the Office’s resources considering the merits of this Petition given those prior decisions.

Second, Google has been on notice of the challenged patent family since 2012, creating settled expectations.

Third, even if Google’s IPR challenge here was successful, it would not resolve the entire dispute between SCT and Google, as the related patents for which institution was denied on the merits in IPR2025-01181, -01182, and -01183 are asserted in the pending parallel district court action in the Western District of Texas.

Fourth, the merits of Google’s unpatentability challenge are weak—as the Director found in IPR2025-01181, -01182, and -01183 with respect to the same prior art and same arguments by Google pertaining to related patents in the same family, “the petitioner has failed to show a reasonable likelihood of prevailing with respect to at least one of the claims challenged in the petition, or that it is more likely than not that at least one of the claims challenged in the petition is unpatentable.” *Google v. SCT*, IPR2025-01181, IPR2025-01182, IPR2025-01183, Paper 14 at 1.

For at least these reasons, the Director should exercise discretion to deny institution.

A. Google’s Previously Filed IPR Petitions Based on the Same Prior Art, for Closely Related Patents in the Same Patent Family, Were Denied on the Merits

It is not an efficient use of the Office’s resources to consider this Petition,

given that the Director has already denied institution of Google’s recent IPR petitions on three related patents.³ Not only did those three rejected petitions concern patents in the same family, but they asserted the same prior art (*i.e.*, Eagle, Behrens, Olkkonen, and Jones), asserted the same combinations of—and motivations to combine—those references, used the same expert, and suffer from the same flaws as this Petition. *Compare* Pet. at 6 *with, e.g.*, IPR2025-01181, Paper 2 at 6 (identifying art and showing grounds). *Compare* Pet. at 10-26 *with, e.g.*, IPR2025-01182, Paper 2 at 10-28 (describing art and alleged motivations to combine). *Compare* Ex. 1003 *with, e.g.*, IPR2025-01181, Ex. 1003 (same expert). *See also, e.g.*, IPR2025-01181, Paper 7 (SCT’s POPR, discussing, *inter alia*, missing claim elements from prior art and flaws in Petitioner’s motivations to combine); *see also* SCT’s forthcoming POPR.

Discretionary denial is appropriate here. The Director previously found that “the petitioner has failed to show a reasonable likelihood of prevailing with respect to at least one of the claims challenged in the petition, or that it is more likely than not that at least one of the claims challenged in the petition is unpatentable.” *Google*

³ SCT requested that Google withdraw this Petition given the Director’s decision deny institution in IPR2025-01181, -01182, and -01183. However, Google refused to withdraw this Petition.

v. SCT, IPR2025-01181, IPR2025-01182, IPR2025-01183, Paper 14 at 1. The same is true with respect to the challenged patent, and the Office need not expend resources considering this related IPR petition. *See, e.g., Google LLC v. Mullen Indus. LLC*, IPR2025-00227, Paper 14 at 4 (discretionarily denying institution when patent “was the subject of an earlier proceeding in which the Board denied institution of *inter partes* review based on the merits”).

In addition, SCT’s operative district court complaint accuses Google of infringing not only the challenged patent here, but also the three patents for which the Director has already denied institution, and a fifth patent that is the subject of a recent petition from Google (in IPR2026-00099). *See* Ex. 2017. Given the close relationship between the ’918, ’344, and ’971 patents and the challenged patent, it is not an efficient use of the Office’s resources to consider Google’s Petition when the district court is still be left to consider the validity of the ’918, ’344, and ’971 patents. *See Amazon-Audio Pod*, Paper 15 at 3 (concluding that when “the district court will be considering the validity of [five related] patents . . . along with the validity of [an additional] patent . . . referring [an IPR petition concerning the additional patent] to the Board would be an inefficient use of Board resources and tips the balance to discretionary denial as to that patent too”).

Moreover, as will be detailed in SCT’s forthcoming Preliminary Response, there are fundamental flaws in the merits of Google’s Petition. The fact that the

same flaws were present in Google's earlier IPR petitions (*see, e.g.*, IPR2025-01181, Paper 7) and that the Board denied institution of those petitions (*see, e.g., id.*, Paper 14), favors exercising discretion to deny institution here.

For all of these reasons, the Director should therefore exercise discretion to deny institution of this Petition.

B. The Parties Have Settled Expectations Because of Google's Prior Knowledge of the Challenged Patents' Family

Google had knowledge of the challenged patents' family through Mr. Proctor's discussions with Google in November 2011 and February 2012. *See* Exs. 2001-2005. In addition, Google continued to evidence its knowledge of the challenged patents' family for many years through its repeated disclosure (and examiner citation) of members of the challenged patents' family in Google's own patent applications, including prosecution activity as recent as 2021. *See* Exs. 2006-2013. Until Google's since-rejected petitions in IPR2025-01181, -01182, and -01183, at no point during the thirteen years since Google learned of the challenged patents' family did Google contend any patents in the family were invalid or otherwise challenge the validity of any member of the family, through an IPR petition, other USPTO proceeding, or through a declaratory judgment action in district court.

Google cited the '749 patent, the subject of Google's co-pending petition in IPR2026-00099, during prosecution of Google's U.S. Patent Application No.

13/716,675 (which issued as U.S. Patent No. 9,185,148), via a December 17, 2012 Information Disclosure Statement. *See* Exs. 2006-2007. And while the challenged patent here issued in 2024, the Director has recognized that settled expectations can result from a petitioner’s knowledge of earlier patents in the same family as the challenged patents. *See Amazon.com, Inc. v. Audio Pod IP, LLC*, IPR2025-00757, Paper 15 at 2-3 (PTAB Aug. 14, 2025); *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, IPR2025-00374, IPR2025-0076, IPR2025-00377, IPR2025-00378, Paper 10 (P.T.A.B. June 6, 2025) (Petitioner “cited the then-pending application that issued as the challenged patent in an Information Disclosure Statement Petitioner filed in its own patent application—settled expectations favor denial of institution [and] Patent Owner’s argument is persuasive. Petitioner’s awareness of Patent Owner’s applications and failure to seek early review of the patents favors denial and outweighs the above-discussed considerations.”). Moreover, not only did Google cite (in its own patent prosecution) the family members Mr. Proctor expressly identified in his February 2012 correspondence with Google, but Google also cited a different family member in a 2021 information disclosure statement that Mr. Proctor did not identify in his correspondence with Google, demonstrating that Google had investigated and had knowledge of the patent family beyond the patents listed in Mr. Proctor’s February 2012 correspondence. *See* Exs. 2006-2013.

Further, Google’s knowledge of the challenged patents’ family predates its development of the products and features accused in the parallel district court action. For example, based on publicly available information, Google’s Nearby Share feature was not released until 2020, Google’s Fast Pair feature was not released until 2017, and the precursor to Google’s Find Hub feature was not released until 2013. *See* Exs. 2018-2020. In addition, the first Google Pixel smartphones (recent generations of which are accused products in the parallel district court action) were not released until 2016. *See* Ex. 2021. Thus, Google developed the accused products and accused features with full knowledge of the challenged patents’ family but failed to either license the patents or challenge their validity in any manner.

In addition, the Director’s denial of institution of Google’s earlier IPR petitions concerning related patents only further enhances SCT’s settled expectations. *See Google v. Mullen*, Paper 14 at 4 (discretionarily denying institution of petitions on several patents based on one such patent being “the subject of an earlier proceeding in which the Board denied institution of *inter partes* review based on the merits” and finding that “Patent Owner’s settled expectations” favor discretionary denial).

Google’s failures in this regard—and the settled expectations of the parties—thus favor exercising discretion to deny institution of Google’s IPR Petition.

VI. THE DIRECTOR SHOULD EXERCISE DISCRETION TO DENY INSTITUTION UNDER 35 U.S.C. § 325(d)

In addition, or in the alternative, the Director should exercise discretion and deny institution of Google’s IPR Petition under 35 U.S.C. § 325(d) because the same or substantially the same prior art was already considered during prosecution of the challenged patent. Google’s IPR Petition relies primarily on the Eagle and Behrens references, with the addition of Kallio and/or Jones for select dependent claims. *See* Pet. at 6. Eagle, Behrens, and Jones were all unquestionably considered by the Examiner during prosecution. *See* Ex. 1001. Moreover, as Google’s Petition recognizes, the Eagle and Behrens references were the subject of earlier IPR petitions of other members of the challenged patent family—and the pleadings from those IPR proceedings were also unquestionably considered by the Examiner during prosecution. *See id.* Further, all three of Eagle, Behrens, and Jones were considered in the IPR proceedings for the closely related ’918, ’344, and ’971 patents. Google’s only references that were not considered during prosecution are Olkkonen and Kallio, which Google admits it only relies on for the single limitations of “service identifiers and their use in filtering search results,” and “MAC-address-formatted numbers as identifiers,” respectively. Pet. at 5. Given those references’ minimal utilization, the asserted combinations meet *Advanced Bionics*’ requirement of “the same or substantially the same art or arguments.”

Despite knowing that it was relying on previously considered references,

Patent Owner’s Brief in Support of
Discretionary Denial

Google's Petition makes no effort to explain how its grounds do not present the same or substantially the same prior art as was considered during prosecution. Because Google's Petition relies on the same or substantially the same art that was previously considered during prosecution, it is incumbent upon Google to demonstrate that the Office erred in a manner material to the patentability of the challenged claims. *See Advanced Bionics*, Paper 6 at 8. Google has failed to do so.

In light of Google's reliance on already-presented art and its failure to demonstrate that the Office erred in a manner material to the patentability of the challenged claims, the Director should exercise discretion to deny institution under 35 U.S.C. § 325(d).

VII. CONCLUSION

For at least the reasons above, the Director should exercise discretion to deny institution of Google's IPR petition.

Dated: January 20, 2026

By: /Brent Bumgardner/

Brent Bumgardner

Registration No. 48,476

NELSON BUMGARDNER

CONROY P.C.

3131 W. 7th Street, Suite 300

Fort Worth, Texas 76107

Telephone: (817) 377-3486

Email: brent@nelbum.com

Attorney for Patent Owner

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Patent Owner's Brief in Support of Discretionary Denial was served on January 20, 2026, to Lead and Back-up Counsel for Petitioner at the service address provided in Petitioner's Mandatory Notices:

Email: SMcKeown-PTAB@wolfgreenfield.com

Elizabeth.DiMarco@WolfGreenfield.com

VCheung-PTAB@wolfgreenfield.com

Dated: January 20, 2026

By: / Brent Bumgardner /

Brent Bumgardner

Registration No. 48,476

NELSON BUMGARDNER

CONROY P.C.

3131 W. 7th Street, Suite 300

Fort Worth, Texas 76107

Telephone: (817) 377-3486

Email: brent@nelbum.com

Attorney for Patent Owner