

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIRD BUDDY, INC.,

Petitioner

v.

WOODSTREAM CORPORATION

Patent Owner

IPR2026-00141

Patent US11,627,242

Petitioner's Opposition to Discretionary Denial Brief

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LIST OF EXHIBITS

Exhibit Number	Exhibit	Short Name for Exhibit
1001	Declaration of William W. Clark	Expert Declaration
1002	C.V. of William W. Clark	
1003	U.S. Pat. No. 11,627,242	‘242 Patent
1004	U.S. Pat. No. 11,627,242 Prosecution History	Prosecution History
1005	U.S. Pat. Pub. 2016/0106072	Bennett
1006	U.S. Pat. Pub. 2012/0048203	Bonham
1007	U.S. Pat. Pub. 2007/0295277	Kin
1008	U.S. Pat. No. 8,683,947	Humphries
1009	U.S. Pat. Pub. 2009/0006677	Rofougaran
1010	Declaration of Mina Ching	Raspberry Pi 2 Model B/Bevan
1011	<i>Intentionally Left Blank</i>	
1012	U.S. Pat. Pub. No. 2014/0355446	Altman
1013	U.S. Pat. Pub. No. 2016/0156989	Lovett
1014	Raspberry Pi Mechatronics Projects	Yamanoor
1015	Programming Your Home: Automate with Arduino, Android, and Your Computer	Riley
1016	<i>Intentionally Left Blank</i>	
1017	U.S. Pat. No. 1,592,493	Kelly
1018	U.S. Pat. No. 7,111,582	Rich
1019	U.S. Pat. Pub. No. 2015/0373945	Sung
1020	U.S. Design Pat. No. D426,352	Zernov

1021	Farm Show Magazine, Vol. 24, No. 2	FSM or Farm Show Magazine
1022	C. Kraning, et al, <i>Stays Pending IPR In Del. District Courts are Here to Stay</i> , Law360 (March 11, 2022)	
1023	Motion to Amend Scheduling Order Statistics, DocketNavigator	
1024	Motion to Stay Statistics, DocketNavigator	
1025	Time to Trial Statistics, DocketNavigator	

TABLE OF AUTHORITIES

Cases

<i>Advanced Bionics, LLC v. MED-EL Elektromedizinische Gerate GmbH</i> , IPR2019-01469, Paper 6	5, 8, 9
<i>Alliance Laundry Systems, LLC v. Payrange LLC</i> , IPR2025-00950, Paper 11	19
<i>Amgen Inc. v. Bristol-Myers Squibb Co.</i> , IPR2025-00601, -602, -603, Paper 9	19
<i>Apple Inc. v. Apex Beam Tech. LLC.</i> , IPR2025-911, Paper 10	13
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 11	12
<i>Arthrex, Inc. v. Medshape, Inc.</i> , IPR2025-00053, Paper 11	15
<i>Ascentcare Dental Productions, Inc., v. Solmetex, LLC</i> , IPR2025-01104, -1175, Paper 11	5, 20
<i>Becton, Dickinson, & Co. v. Braun Melsungen AG</i> , IPR2017-01586, Paper 8	10
<i>Dabico Airport Solutions Inc. v. AXA Power APS</i> , IPR2025-00408, Paper 21	18, 20
<i>Liberty Energy, Inc. v. U.S. Well Servs., LLC</i> , IPR2025-00031, Paper 9	16
<i>NHK Sprng Co. Ltd. v. Intri-Plex Techs., Inc.</i> , IPR2018-00752, Paper 8	12
<i>Orca Security Ltd. v. Wiz. Inc.</i> , IPR2025-01083, -1084, -1085, -1086, -1087, Paper 10	18, 20
<i>Padagis US LLC v. Neurelis, Inc.</i> , IPR2025-00464, -465, -466, Paper 12	10, 14, 18
<i>Samsung Elec. Co. Ltd. v. CM HK Limited</i> , IPR2025-01023, -1071, Paper 12	20

ARGUMENT

Bird Buddy, Inc. (“Bird Buddy” or “Petitioner”) submits this brief requesting that the Board exercise its discretion to grant institution of *inter partes* review of Patent Owner Woodstream Corporation’s (“Patent Owner” or “PO”) U.S. Patent No. 11,627,242 (the “‘242 Patent”). The ‘242 Patent covers a simple bird feeder with a standard camera and electronics. Institution should be granted because the invalidating prior art was not considered or was improperly considered by the Examiner, because there are no settled expectations, because PTAB’s decision will precede any district court trial, and because the *Fintiv* factors, on balance, favor institution.

The ‘242 Patent is a simple patent with only six claims, each of which recites standard features of bird feeders that existed in the prior art. The parties should not waste resources in costly and protracted litigation when *inter partes* review (IPR) is the most efficient way to resolve this dispute. Furthermore, IPR would allow the PTAB to address material errors made by the Examiner during the Examination of the ‘242 Patent, and would allow the PTAB to consider prior art that was never before the Examiner.

During prosecution of the ‘242 Patent, the Patent Office materially erred in its consideration of prior art. In one instance, the Examiner relied on a reference that was not prior art to the ‘242 Patent, which is a clear error and which required

an appeal to address. In another instance, the Examiner failed to consider the full scope of the prior art by only relying on Bennett as a secondary reference. By instituting IPR the PTAB can address these errors and render a relatively quick decision on validity.

PO barely contests the strong merits of the Petition. PO does not dispute the disclosures of the Bonham and Kin prior art references. Instead, PO argues, incorrectly, that Bonham and Kin are cumulative. Similarly, PO does not dispute that Bennett discloses nearly every element of the independent claim. Instead, PO argues, unpersuasively, that Bennett does not have the claimed camera.

PO also presents an incomplete analysis of the *Fintiv* factors. PO fails to consider statistics showing the high likelihood of a stay in the district court should the PTAB institute IPR. A stay would avoid parallel proceedings during the pendency of IPR, and would move the trial date back even further. PO also ignores the District of Delaware statistics that indicate the average time to trial is likely much longer than the scheduling order suggests. The likely time of trial in Delaware is nearly **six months** after the resolution of IPR.

Lastly, there are no settled expectations because the '242 Patent issued only two years ago. Two years is well below the six years normally required for expectations to meaningfully settle.

Accordingly, because institution would simplify issues, reduce costs, and cure material errors by the Office, institution should be granted. The PTAB is the best venue to resolve the invalidity of the patent.

I. *Inter Partes* Review Should be Instituted in Light of 35 U.S.C. § 325(d)

Bird feeders are well-known devices, with bird feeder patents dating back decades. (*See, e.g.*, EX1008). Furthermore, it was well-known to incorporate cameras and other standard electronics into bird feeders to facilitate the transmission of video of birds feeding at the feeder. (*See, e.g.*, EX1005, EX1020). The ‘242 Patent is no more than the combination of conventional elements that were well-known before the filing date of the ‘242 Patent. (EX1001 ¶¶ 59-72). As a result, this is a simple IPR, involving a mere six claims. The parties should not waste resources litigating this simple patent when it is clear that the patent claims are invalid.

The Petition relies on multiple grounds that include new prior art. Two of the three primary references are new and were never considered by the Office. These references are Kin and Bonham, which are not cited on the face of the ‘242 Patent and which the Examiner was unaware of during prosecution. Furthermore, none of the secondary references—Roufougaran, Bevan, Humphries, or Raspberry Pi 2 Model B—were considered by the USPTO during Examination. The one primary reference, Bennett, which was considered by the Office, was not fully considered

because the Examiner relied upon Bennett only as a secondary reference. Bennett is relied on in the Petition for far more than the Examiner appreciated, including for showing the elements of the independent claim of the ‘242 Patent. (Paper 3 §§ VIII-XVIII). Thus, institution of IPR represents a chance to correct the material errors and omissions made during prosecution.

Accordingly, IPR should be instituted.

A. The USPTO Materially Erred in its Consideration of Bennett

The Examiner materially erred by failing to fully consider the scope of Bennett (U.S. Pat. Pub. 2016/0106072). The Examiner overlooked specific teachings of Bennett that materially impact patentability of the ‘242 Patent claims.

During prosecution, Bennett was used only as a secondary reference, and only against dependent claims 3 and 12 of the application underlying the ‘242 Patent. Claim 3 was analogous to the present claim 3 of the ‘242 Patent, and claim 12 was directed to solar power but did not survive prosecution. (EX1004 at 217, 245, 347). Claim 3 covered a gravity fed feed-compartment with a feed compartment separator disposed inside the feed compartment. (EX1004 at 245) The feed compartment separator was used to separate electronics in the feed compartment from the feed itself. Claim 12 covered distributing electricity from both a solar panel and a battery to the computer of the ‘242 Patent. (*Id*).

The examiner failed to recognize that Bennett discloses far more than just dependent claim 3 and 12 of the ‘242 Patent. Bennett fully discloses claim 1 and 3 of the ‘242 Patent, and further discloses portions of at least claim 4. When combined with the secondary references presented in the Petition, Bennett discloses all 6 claims of the ‘242 Patent. (Paper 3 §§ VIII-X).

As the PTAB has held, when an “[e]xaminer misapprehended or overlooked specific teachings in the relevant prior art such that the error by the Office was material to the patentability of the challenged claims” this is material examiner error. (*Advanced Bionics, LLC v. MED-EL Elektromedizinische Gerate GmbH*, IPR2019-01469, Paper 6 (Feb. 13, 2020)). Furthermore, the PTAB has recognized examiner error where an examiner allowed a dependent claim but evidence indicated that the reference relied upon by the examiner disclosed the dependent claim. (*Ascentcare Dental Productions, Inc., v. Solmetex, LLC*, IPR2025-01104, -1175, Paper 11 at 2-3 (Oct. 17, 2025) (“Petitioner provides persuasive reasoning, supported by evidence, that the Office materially erred during prosecution, and accordingly discretionary denial is not appropriate. Specifically... the patent examiner rejected the claims over Hirsch, but indicated that a dependent claim recited [allowable subject matter]. Petitioner presents evidence, however, that Hirsch appears to teach this limitation.”) (nonprecedential)).

Here, the Examiner failed to consider Bennett as a primary reference and the Examiner overlooked the teachings of Bennett that provide a basis to reject claims 1-6 of the '242 Patent. Petitioner presents new arguments concerning the scope of Bennett in the Petition, all of which demonstrate how the Examiner failed to fully consider the scope of Bennett and which demonstrate that the Examiner could have rejected the independent claim and other claims of the '242 Patent in view of Bennett. Specifically, the arguments concerning claims 1, 2, and 4-6 are all new and were never made or considered by the Examiner because the Examiner applied Bennett only against dependent claims 3 and 12.

PO makes a fruitless argument that the Examiner fully considered Bennett. The crux of PO's argument is that the dependent claims include the limitations of independent claims, and therefore the Examiner must have considered Bennett with respect to the elements of the independent claims. However, the record does not support this argument. The Examiner never applied Bennett against an independent claim, and the Patent and Trial Appeal Board observed as much. (EX1004 at 349). Instead, the Examiner used Lovett (U.S. Pat. Pub. 2016/0156878) when rejecting the independent claims under section 102. The Examiner never considered whether Bennett also applied to the already anticipated elements of claim 1, nor does the record show that the Examiner applied Bennett to an independent claim because the Examiner did not. (*See generally* EX1004).

Likewise, the PO misrepresents the scope of the decision of the Appeal involving Bennett. Bennett was never found to be incorrectly applied in and of itself. Instead, Lovett was found not to disclose a feed port because Lovett used a feed bowl. (EX1004 at 348). Accordingly, PO's argument that the Examiner fully considered Bennett does not stand up to scrutiny.

PO also makes futile arguments concerning the merits of Bennett. First and foremost, the PO does not contest that Bennett discloses elements 1(pre)-1(d), and 1(f)-1(h) of the '242 Patent independent claim. Instead, PO focuses its attack on only element 1(e), arguing that the camera of Bennett is not internally mounted. (Paper 8 at pg. 8). PO's argument is without merit. First, Bennett discloses multiple cameras that are internally mounted, as shown in Fig. 1A. Second, a POSITA explains that the black arrows shown in FIG. 1A of Bennett indicate the camera is tethered to the controller, which is a form of internal mount. (EX1001 ¶ 101). Additionally, the expert testimony also explains that it would be obvious to mount the cameras internally so as to protect the cameras from the weather and animals that might otherwise damage them. (EX1001 ¶ 102). PO offers no contrary expert testimony and relies entirely on attorney argument. (Paper 8 at pg. 8).

Accordingly, because the Examiner materially erred in failing to consider the full scope of Bennet, institution is warranted. Institution of IPR is the best solution for correcting this error.

B. The PTAB Never Analyzed Art Analogous to Bonham

The PTAB has never considered art like Bonham (U.S. Pat. Pub. 2012/0048203). PO points to Boehm as substantially similar art, however, Boehm was “made of record and not relied upon” by the Examiner. (EX1004 at 52 (emphasis added)). A reference that was not relied upon, even if considered pertinent, is not substantially similar art. There is no record in the prosecution of the ‘242 Patent that would establish which elements, if any, the Examiner considered Boehm to disclose. This is consistent with the approach in *Advanced Bionics*, where substantial similarity was determined on an element-by-element basis.

In *Advanced Bionics*, the PTAB performed an element-by-element analysis of the claims to determine whether the prior art was substantially the same. In particular, the Board considered the Charvin reference in light of Zimmerling and the prior rejection made by the examiner. The Board observed that the petitioner in *Advanced Bionics* relied on Charvin to disclose elements that were also disclosed by Zimmerling:

Accordingly, we are not persuaded by the Petitioner that, because Charvin was not of record during prosecution of the ‘909 patent, there are significant and material differences between the prior art asserted in this Petition and the prior art evaluated during prosecution. Rather,

because Ground 1 relies on at least Zimmerling to disclose almost all of the limitations of the claims, and relies on Charvin solely to disclose limitations that the Examiner previously found disclosed in Zimmerling in the same manner that the Examiner relied on Zimmerling, based on the totality of the evidence presented, we agree with Patent Owner that Ground 1 includes only the same or substantially the same prior art that was presented to the office.

(*Advanced Bionics*, at 16-17) (emphasis added, internal citations and quotations omitted). Thus, it was only because Charvin was relied on in the exact same way as Zimmerling that the Board found the prior art to be substantially the same.

Here, the situation is completely different. The Examiner never relied on or analyzed Boehm, (EX1004 at 52), and in fact presented no position as to what Boehm discloses. (*Id*). As a result, this is the first time the PTAB is considering arguments presented based on any reference like Bonham. Given the novelty and strength of the arguments based on Bonham, discretionary denial would be inappropriate.

C. The USPTO Never Properly Considered Art Analogous to Kin

PO contends that Sung is substantially similar to Kin, and PO further argues that Sung was considered on appeal by the Board and found wanting. (Paper 8 at

11-13). However, this misses the point because the issue with Sung was its priority date, which made it unavailable as prior art. (EX1004 at 207-208).

It is clear error for the Examiner to rely on a reference that is not prior art. (*Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464, -465, -466, Paper 12 (July 16, 2025) (finding that when an examiner relied on art previously found to not be prior art, this was error by the examiner and could be cured in an IPR)). No reasonable examiner could believe that the Examiner properly considered a reference if that reference does not qualify as prior art. As is explained more fully below, Sung (U.S. Pat. Pub. 2015/0373945) was determined not to be prior art under Section 102, and, as a result, the Examiner clearly erred when he considered Sung. (EX1004 at 207-208; *see also Becton, Dickinson, & Co. v. Braun Melsungen AG*, IPR2017-01586, Paper 8 at 17-18 (Dec. 15, 2017)).

During the First Appeal, the Applicant contended that Sung could only be asserted as of its June 26, 2015, filing date, and therefore Sung was not prior art to the patent application underlying the '242 Patent. Sung claimed priority to U.S. Provisional Application 62/017,461, which was filed June 26, 2014, and which defined the term "pet" to mean only a dog or a cat. (EX1004 at 207). The Board found that "[c]ontrary to the [argument of the] Examiner, the Sung provisional is explicitly limited to cats and dogs, but not birds." (*Id.*, at 208). Thus, Sung, could not be asserted against the '242 Patent as prior art with respect to birds because the

provisional was explicitly limited to cats and dogs. This prevented the Examiner from sustaining the rejection based on Sung.

Kin (U.S. Pat. Pub. 2007/0295277), by contrast, is prior art and cures the defects of Sung. Kin is directed toward pets; Kin does not limit itself to cats, dogs, or any other specific animals. (*See generally* EX1007). Accordingly, since POSITA understands “pet” to encompass “birds,” Kin discloses birds. This point is supported by testimony of a POSITA. (EX1001 ¶ 165).

As a result, Kin represents an opportunity to consider the prior art on the merits. In this way, Kin cures the Examiner’s error when the Examiner relied on a reference that was not prior art to the ‘242 Patent.

Accordingly, discretionary denial would be inappropriate given the clear error by the Examiner in considering a reference that was not prior art.

D. Petitioner Presents New Secondary References that are not Substantially Similar to the Prior Art

In addition to the foregoing reasons that the Board should consider Bennett, Bonham, and Kin on the merits, Petitioner also relies upon new secondary art that was never considered by the PTAB. These secondary references are accompanied by novel arguments that fully address the dependent claims. Such references include Roufougaran, (EX1009), which presents a USB WiFi dongle, Raspberry Pi 2 Model B, (EX1010), which includes every component of claims 4-6, and Bevan, (EX1010), which teaches how to build a WiFi bird feeder. These references were

not relied upon or considered by the PTAB, and they represent important material challenges to the '242 Patent claims. Accordingly, institution is warranted.

II. The *Fintiv* Factors and § 314(a) Favor Institution of *Inter Partes* Review

The *Fintiv* factors weigh in favor of instituting IPR.

A. A Stay Will Likely be Granted by the District Court if IPR is Instituted

There is substantial evidence that a stay will be granted by the district court should IPR be instituted. Under the Board's approach, a district court stay of litigation pending IPR heavily weighs *against* denying institution under *NHK*. (*Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6-9 (March 20, 2020); *see also NHK Sprng Co. Ltd. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 (September 12, 2018)).

In the District of Delaware, the general trend has been to grant stays when IPR is instituted. The District of Delaware grants a high percentage of motions to stay, well above the national average, in cases where an IPR was instituted. (EX1022). Recently, in 2024, 32 motions to stay pending IPR were granted out of 49 total such motions (65%), in 2025, 21 motions to stay pending IPR were granted out of 33 (64%). (EX1024). It is likely that a stay will be granted in this case should IPR be instituted as that is demonstrably the common practice in the District of Delaware.

This factor therefore weighs in favor of institution.

B. The Board's Expected Decision Will Occur Before the Projected Trial Date in the District Court

Institution is warranted because a district court trial will be after the expected date of the Final Written Decision. The Board has observed that where the FWD date is before the trial date, this “reduc[es] the concern of inconsistent outcomes or significant duplication of efforts”. (*Apple Inc. v. Apex Beam Tech. LLC.*, IPR2025-911, Paper 10 (Sept. 3, 2025) (nonprecedential) at 2). This counsels in favor of institution.

The Petition was filed on November 21, 2025. Assuming an 18-month period to the Final Written Decision (FWD) date, this would place the FWD on May 21, 2027. This is a full month **before** the scheduled trial date of June 21, 2027, and thus the decision in the IPR would be issued before trial.

Furthermore, district court scheduling orders are frequently amended in full or part (over 60% of the time in the District of Delaware in 2024 and 2025) and, at this time, litigation is barely underway, which strongly suggests that the scheduling order will be amended as implied by the statistics indicating the average time to trial for patent cases. (EX1023; EX1025)

Over the past 5 years, the average time to trial for patent cases in the District of Delaware is 38 Months. (EX1025). The Complaint was filed on November 8, 2024. This means the expected trial date is January 8, 2028. This projected trial date is over 6 months after the projected FWD date of June 1, 2027, for the IPR.

Given the possibility of an appeal in the litigation, a fully final disposition of the litigation could take months or years beyond the FWD.

Here, the scheduled and projected trial date is after the Board's expected FWD, so the timing does not favor discretionary denial. In any event, even where trial timing might weigh against institution, the Board has declined denial where "the Petitioner appears to show a material error by the Office, and it is an appropriate use of Office resources to review the potential error." (*Padagis US LLC v. Neurelis, Inc.*, Paper 12 at 3). As in *Padagis*, the Petition identifies material examination error regarding Bennett and presents prior art never substantively evaluated, making institution appropriate. (*Id.*).

Accordingly, this factor weighs heavily in favor of institution as the IPR is likely to resolve issues well in advance of trial, thereby significantly simplifying issues at trial and saving the parties substantial resources.

C. Investment in Parallel District Court Proceedings is Low

Very little has occurred in the district court litigation. The most recent filings are a Second Amended Complaint, filed by PO on January 30, 2026, and an answer filed by Petitioner on February 13, 2026. Thus, the district court litigation remains in the early pleading stages. Discovery remains in the early stages, with preliminary disclosures having been served, along with initial discovery requests. No claim construction has occurred. Thus, the case remains in a nascent state.

The Board has consistently held that cases in the early stages, as is the situation here, weighs in favor of institution. (*Fintiv*, Paper 11 at 9-10 (holding that district court claim construction orders may indicate that the court and parties have invested sufficient time in the parallel proceedings to favor denial, and that if, 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 in favor of institution); *Arthrex, Inc. v. Medshape, Inc.*, IPR2025-00053, Paper 11 at 11 (April 25, 2025) (nonprecedential)).

This factor therefore favors institution of IPR.

D. Petitioner has Filed a *Sotera* Stipulation which Minimizes Overlapping Issue Concerns

Petitioner has filed a *Sotera* stipulation, which is “highly relevant” to instituting an IPR (EX2010 at 2-3). As a result of the stipulation, Petitioner “will not pursue against the ‘242 Patent in the litigation (i) the specific invalidity grounds raised in IPR2026-00141, or (ii) any other invalidity ground that was raised or could have reasonably been raised in IPR2026-00141,” which means if IPR is instituted there will be no overlapping invalidity considerations in the litigation. (*Sotera Wireless Inc. v. Masimo Corporation*, IPR2020-01019, Paper 12 (Dec. 1, 2020) (holding that *Sotera* stipulation mitigates any concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions)).

Unlike cases where a stipulation fails to ensure that the IPR will serve as a “true alternative” to the district court litigation, Petitioner’s *Sotera* stipulation meaningfully narrows overlap and mitigates duplicative efforts, supporting institution under *Fintiv* factor 4. (See *Liberty Energy, Inc. v. U.S. Well Servs., LLC*, IPR2025-00031, Paper 9 at 18-19 (Apr. 29, 2025)). When considered with the other *Fintiv* factors which weigh heavily in favor of institution, it is clear that the *Sotera* stipulation also weighs in favor of institution.

E. Petitioner and Defendant are the Same Party

Petitioner is the Defendant in the underlying litigation against the Patent Owner.

F. Other Circumstances Warrant Institution

1. The Merits are Strong

The merits of the Petition strongly favor institution. Bennett, as explained above, is a strong reference that the Examiner erroneously failed to fully consider. Bennett discloses the elements of claim 1 of the ‘242 Patent. Kin discloses a pet feeder that automatically distributes food to the pet and which includes cameras and microphones for monitoring the pet. Kin cures fatal defects in the priority of the Sung reference, and introduces material not present in Sung. Likewise, no reference like Bonham was ever relied upon by the PTAB, meaning Bonham represents a novel avenue to challenge the ‘242 Patent.

PO's arguments to the contrary are without merit. PO ignores that Boehm was not relied upon, ignores that the appeal involving Sung was decided on a technicality concerning a priority date, and ignores the contents of Bennett.

2. There are No Settled Expectations

There are no settled expectations with respect to the '242 Patent. The '242 Patent issued on April 11, 2023, meaning the claims have been in force for slightly more than two years. This is well below the six year period that is normally required for expectations to become even remotely settled. Furthermore, the instant challenge to the '242 Patent is an early challenge, and early challenges favor robust, predictable patent rights. (*See Padagis US LLC v. Neurelis, Inc.*, Paper 12 (finding no settled expectations in a patent that issued in 2022 and was challenged in 2025, a three-year period); *see also Orca Security Ltd. v. Wiz. Inc.*, IPR2025-01083, -1084, -1085, -1086, -1087, Paper 10 at 2 (Oct. 17, 2025) (“In addition, the challenged patents have not been in force for a significant period of time (issued in 2023 and 2024). Accordingly, Patent Owner has not developed strong settled expectations that favor discretionary denial. Additionally, early challenges favor robust, predictable patent rights and weigh against discretionary denial”) (nonprecedential); *Dabico Airport Solutions Inc. v. AXA Power APS*, IPR2025-00408, Paper 21 at 3 (emphasizing the longer a patent has been “in force,” the more settled the expectations)).

Furthermore, PO offers no reason for shortening the time for settled expectations. PO did not suggest or argue that it has invested an extraordinary amount of time or resources into research, development, trials, or regulatory approval of the product underlying the ‘242 Patent. (*See Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, -602, -603, Paper 9 (July 24, 2025)). Nor can PO do so because the ‘242 Patent covers an obvious bird feeder design that required minimal resources to develop.

Instead, PO contends that the mere offer of a license to Petitioner, and an actual license to PO, should create settled expectations. They do not. For one thing, Petitioner rejected a license offer for the ‘242 Patent, indicating that Petitioner did not view the ‘242 Patent as worthwhile due to its invalidity, which creates expectations for Petitioner that the ‘242 Patent is invalid.

Secondly, while the existence of a license can help to settle expectations, the mere creation of a third-party license does not automatically give rise to settled expectations. (*Alliance Laundry Systems, LLC v. Payrange LLC*, IPR2025-00950, Paper 11 at 2-3 (Sept. 19, 2025) (denying institution when petition was the **third** petition to challenge the patent **and** the patent had been licensed)). Moreover, PO’s argument would mean that PO could artificially structure a license deal to try to avoid IPR. This would obviously defeat the purpose of the IPR statute by giving patent owners an easy way to manipulate facts in an effort to defeat institution.

Thirdly, as the Board has held before, settled expectations depend on time: “the longer the patent has been in force, the more settled expectations should be. This approach aligns with other approaches to settled expectations and incentives, for example, for filing infringement lawsuits.” (*Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 (June 18, 2025)). Only two years have passed since the ‘242 Patent issued. Consistent with the approach in *Dabico*, two years is not enough time to give rise to settled expectations. (*See also Orca Security Ltd; Samsung Elec. Co. Ltd. v. CM HK Limited*, IPR2025-01023, -1071, Paper 12 at 2 (Oct. 17, 2025) (holding that patents issued in 2020 and 2023 did not give rise to settled expectations) (nonprecedential); *Ascentcare Dental Productions, Inc., v. Solmetex, LLC*, IPR2025-01104, -1175, Paper 11 at 2 (Oct. 17, 2025) (holding that patents issued in 2024 and 2025 did not give rise to settled expectations) (nonprecedential))

In short, not enough time has passed for expectations to settle, and the lack of settled expectations weighs in favor of institution.

3. Institution will have a Minimal Impact on the PTAB’s Workload

The issues in this Petition are straightforward. The ‘242 Patent claims a wireless bird feeder. At the time of filing, wireless bird feeders already existed, the standard components were well known, and combining them was obvious to

POSITA. Thus, should the Board institute IPR, this IPR will require relatively little effort as the case for invalidity is clear and there are only six claims.

III. Conclusion: The Balance of the Circumstances favors Institution

Taken together, the *Fintiv* factors favor institution. Given the strong merits of the Petition, the high likelihood proceedings in the District Court will be stayed, the lack of settled expectations, and the fact that Board adjudication of the invalidity of the ‘242 Patent will substantially simplify issues in the underlying litigation, institution is warranted.

Respectfully,

Date: February 26, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), I hereby certify that on November 21, 2025, I caused a copy of the foregoing Petitioner's Opposition to Discretionary Denial Brief to be served via electronic mail on Woodstream Corporation at the following email addresses:

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