

From: [Trials](#)
To: [Morlock, Michael](#); [Nightingale, Joshua R.](#); [Cook, Adam J.](#); [Johnson, Matthew W.](#); [Leah, Chris](#); [Glushchak, Karina](#)
Cc: [Trials](#)
Subject: RE: IPR2026-00158; -00159; -00160 - Request to strike POPRs
Date: Monday, March 23, 2026 4:16:47 PM
Attachments: [image001.png](#)

Counsel,

Petitioner's request to strike the POPRs is denied. Petitioner is authorized to file a 10-page reply in each of IPR2026-00158, IPR2026-00159, and IPR2026-00160 to address any arguments for discretionary denial raised in the POPR in each proceeding. Petitioner's replies are due no later than March 31, 2026.

Regards,

Andrew Kellogg,
Deputy Chief Clerk, Trials
Patent Trial and Appeal Board
USPTO
andrew.kellogg@uspto.gov
(571) 272-5366



From: Morlock, Michael <MMorlock@ktslaw.com>
Sent: Tuesday, March 10, 2026 8:55 AM
To: Director_DI <Director_DI@uspto.gov>; Trials <Trials@USPTO.GOV>
Cc: Nightingale, Joshua R. <jrnightingale@jonesday.com>; Cook, Adam J. <acook@jonesday.com>; Johnson, Matthew W. <mwjohnson@jonesday.com>; Leah, Chris <CLEah@ktslaw.com>; Glushchak, Karina <KGlushchak@ktslaw.com>
Subject: RE: IPR2026-00158; -00159; -00160 - Request to strike POPRs

CAUTION: This email has originated from a source outside of USPTO. **PLEASE CONSIDER THE SOURCE** before responding, clicking on links, or opening attachments.

Wybotics v. Zodiac Pool Systems LLC
IPR2026-00158; -00159; -00160

Honorable Director Squires and Trials:

Counsel for Patent Owner is mindful of the Board's prohibition against argumentative emails to *Trials*. Thus, during the process of meeting and conferring with Petitioner, counsel for Patent Owner requested that Petitioner agree to sending a brief email jointly, which would follow the Board's FAQ and thus only identify the dispute, state "whether the parties disagree, **the nature of the disagreement**, and provide times that are mutually agreeable for a conference call." [PTAB AIA Trials FAQ](#). Petitioner refused to send an email without including its arguments. Thus, Patent Owner would not join in the email. Patent Owner responds briefly to Petitioner's arguments below.

The premise of Petitioner's request to strike is incorrect. The current PTAB FAQs, expressly state that the POPR "is an opportunity for a patent owner ... to argue that the Board should not institute an AIA trial **based on discretionary factors**." [PTAB AIA Trials FAQ](#) (*Institution Phase* "Q. Is a patent owner required to file a preliminary response to a petition? A....The patent owner preliminary response is an opportunity for a patent owner to point out if he or she believes that the petition's evidence or reasoning is insufficient or mistaken, to point out if the petitioner is too late (has a "time bar"), or to argue that the Board should not institute an AIA trial based on discretionary factors...."). Further, during the meet and confer, Patent Owner requested that Petitioner provide any authority for the Director or Board having struck all or a portion of a POPR for presenting arguments on discretionary factors. Petitioner identified no such authority, and counsel for Patent Owner is similarly unaware of any decision granting such a request.

This aside, the issues Petitioner raises, such as 325(d), the scope of the claims, and the weight to be accorded Petitioner's expert testimony are properly addressed in a POPR. Petitioner's final point regarding its proposed *Sotera* stipulation highlights that Petitioner improperly waited a full month after Patent Owner filed its Request for Discretionary Denial to submit a *Sotera* stipulation. The stipulation should be disregarded due to Petitioner's delay, but at a minimum, Patent Owner should be allowed to address this late filed stipulation in its POPR. See Interim Director Discretionary Process, FAQ Section I(D) ("If a petitioner chooses to file a stipulation, such as a *Sotera* stipulation, they should file it as soon as practicable, **so that the patent owner may address the impact of the stipulation in its discretionary denial brief**." (emphasis added)).

Petitioner's request to strike Patent Owner's POPRs should be denied.

Respectfully,

Michael Morlock (Lead Counsel for Patent Owner)

Michael Morlock

MMorlock@ktslaw.com

Kilpatrick Townsend & Stockton LLP

1100 Peachtree Street NE | Suite 2800 | Atlanta, GA 30309-4528

T 404 815 6003 | M 336 608 2745 | F 336 734 2756

[My Profile](#) | [vCard](#)

From: Johnson, Matthew W. <mwjohanson@jonesday.com>

Sent: Monday, March 9, 2026 5:03 PM

To: Director_DI@uspto.gov; Trials <trials@uspto.gov>

Cc: Nightingale, Joshua R. <jrnightingale@jonesday.com>; Cook, Adam J. <acook@jonesday.com>; Morlock, Michael <MMorlock@ktslaw.com>; Leah, Chris <CLEah@ktslaw.com>; Glushchak, Karina <KGlushchak@ktslaw.com>

Subject: IPR2026-00158; -00159; -00160 - Request to strike POPRs

Director Squires:

In the above-captioned IPRs, Petitioner Wybotics, Co. Ltd. (“Wybotics”) respectfully requests Patent Owner Zodiac Pool Systems, LLC’s (“Zodiac”) POPRs be stricken because they improperly argue for discretionary denial.

The Board has mandated that “if a patent owner wishes to raise any applicable bases for discretionary denial, it must do so in a discretionary denial brief.” <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>. **A patent owner “should not present discretionary considerations in the ... [POPR].”** *Id.*

Here, Zodiac’s POPRs consist almost exclusively of improper discretionary considerations, without raising any merits arguments, and should be stricken accordingly:

POPR Section	Discretionary Denial Argument
III.A	Section 325(d)
III.B	Alleged inconsistent claim-scope positions
III.C	Expert declarations allegedly parrot the Petitions
III.D	Alleged inconsistent claim-scope positions
III.E	Alleged settled expectations

The POPRs should also be stricken because they improperly expand Zodiac’s space for arguing discretionary issues by 20+ pages, which Zodiac used to raise new discretionary issues to which Wybotics cannot respond. For instance, Zodiac argues for the first time that Wybotics has taken inconsistent claim-scope positions between the PTAB and copending litigation. Wybotics has not taken inconsistent claim-scope positions. But to alleviate any doubt, Wybotics agrees to supplement its *Sotera*-plus stipulation to additionally drop the indefiniteness arguments in the district court should IPR be instituted, something Wybotics would have readily done had Zodiac made these arguments in its Discretionary Denial

Requests.

For these reasons, Wybotics respectfully requests that the Board strike Zodiac's POPRs.

Wybotics has contacted Zodiac in this regard, and on March 9, 2026, the parties met and conferred. Zodiac indicated that it opposes Wybotics' request, and the parties were unable to reach agreement. Zodiac declined to provide its position to include in this email.

If a call is deemed necessary, the parties can be available at the Director's convenience.

Respectfully,
Joshua Nightingale
Matthew Johnson
Adam Cook

Counsel for Petitioner

Matthew Johnson
Partner
[JONES DAY® - One Firm WorldwideSM](#)
One Mellon Center
500 Grant Street
Pittsburgh, PA 15219-2502
+1.412.394.9524
+1.412.394.7959 (facsimile)
mwjohnson@jonesday.com

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

,

Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at 404 815 6500, and destroy the original transmission and its attachments without reading or saving in any manner.

,