

FILED ON BEHALF OF:
SHANGHAI JINKO GREEN ENERGY ENTERPRISE MANAGEMENT
Co., LTD. AND ZHEJIANG JINKO SOLAR Co., LTD.

IPR2026-00230
U.S. Patent 11,824,136

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SEG MANUFACTURING INC., NEW ENERGY IMPORTS INC., SEG SOLAR
INC., PT. SEG SOLAR MANUFAKTUR INDONESIA, and SEG ENERGY
SINGAPORE PTE. LTD.

Petitioners,

v.

SHANGHAI JINKO GREEN ENERGY ENTERPRISE MANAGEMENT CO.,
LTD. and ZHEJIANG JINKO SOLAR CO., LTD.

Patent Owners.

Case No. IPR2026-00230

U.S. Patent No. 11,824,136

PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL

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EXHIBIT LIST

Exhibit No.	Description
2001	Non-Final Office Action mailed Aug. 19, 2025, in U.S. Patent Application No. 18/888,868.
2002	Non-Final Office Action mailed Apr. 10, 2024, in U.S. Patent Application No. 18/367,235.
2003	Non-Final Office Action mailed Nov. 13, 2023, in U.S. Patent Application No. 18/132,796.
2004	Non-Final Office Action mailed June 30, 2023, in U.S. Patent Application No. 18/071,430.
2005	Non-Final Office Action mailed May 12, 2023, in U.S. Patent Application No. 17/964,190.
2006	PDF printout of SunHub, “HJT Vs. TOPCon Solar Panels: Key Differences Explained,” https://www.sunhub.com/blog/hjt-vs-topcon-solar-panels-whats-the-difference/
2007	Order, Arc Medical Design Ltd. v. Medivators Inc., No. 4:21-CV-929, Dkt. 36 (S.D. Tex. June 24, 2021) (Bennett, J.)
2008	Order, Sandbox Logistics LLC v. Grit Energy Solutions LLC, No. 3:16-CV-012, Dkt. 147 (S.D. Tex. Feb. 23, 2018) (Hanks, J.)
2009	Joint Stipulation of Dismissal, Shanghai Jinko Green Energy Enterprise Management Co. v. Vietnam Sunergy Joint Stock Co., No. 3:24-cv-08828, Dkt. 81 (N.D. Cal.)
2010	JinkoSolar (U.S.) Industries Inc., “Jacksonville,” https://jinkosolar.us/jax
2011	JinkoSolar Holding Co., Ltd., First Quarter 2024 Financial Results (Apr. 2024)

Exhibit No.	Description
2012	https://www.solarpowerworldonline.com/2022/09/seraphim-division-seg-solar-says-its-opening-a-2-gw-module-manufacturing-plant-in-houston/
2013	Declaration attaching complaint in RG19022089

I. Introduction

Patent Owner Jinko Solar is the world's leading manufacturer of TOPCon solar cells, the dominant next-generation photovoltaic technology. The '136 Patent protects the cell architecture that made this technology commercially viable. Industry participants have licensed the '136 Patent but Petitioner has not. Instead, it files a Petition marred with numerous defects warranting denial.

First, the Petition's merits are substantially weak. Petitioner presents two main grounds, one based on Ye and another based on Sakai. Petitioner's Ye-based grounds are heavily reliant on expert gap-filling for numerous claim limitations. As an example, a specific claimed numerical limitation is missing from the art. Yet, its expert "assumes" that this claim limitation ("less than or equal to 45 μm ") means "non-zero." Petitioner's strategy effectively deletes claim limitations.

Petitioner's Sakai-based grounds rely on art that has already been examined. Rather than identify mistake, Petitioner re-states USPTO-rejected arguments, e.g., arguing that Sakai's self-described "pyramid-shaped" textures satisfy the claimed "non-pyramid shaped" limitation. The facially weak merits warrant denial.

Second, denial is appropriate under 35 U.S.C. § 325(d) because Petitioner recycles already-examined art. The Examiner evaluated Sakai six times across the patent family and distinguished it each time. Petitioner is unable to identify any error in the Examiner's analysis and fundamentally misrepresents Sakai's teachings

(calling it TOPCon technology when it is a heterojunction back contact solar cell) while presenting substantively weak arguments.

Third, Petitioner fails to identify “[h]ow the challenged claim is to be construed” as required by 37 C.F.R. § 42.104(b)(3) and in contravention with the Board’s precedential *Revvo* decision. The Petition refuses to commit to constructions, instead vaguely applying Patent Owner’s “apparent” interpretation while reserving the right to take different positions in district court.

Fourth, the Petition is reliant on expert gap filling for claim limitations, warranting denial under director memorandums and 37 C.F.R. § 42.104(b)(4).

Fifth, denial is warranted under *Fintiv*. Fatal to Petitioner, its *Sotera* stipulation fails to cover an RPI and district court defendant.

Sixth, Jinko manufactures patent-embodying products in Jacksonville, weighing in favor of denial in view of Director Squires’ Mar. 11, 2026 memo.

Finally, the Petition advances fifteen grounds (disguised via variant markers “A”), constituting waste justifying denial.

All these that independently warrant denial are described below.

II. The Merits are Substantially Weak

The Petition advances two main grounds on the independent claims, one based on Ye and another based on Sakai. (Pet. at 5-6.) The weakness of these grounds is apparent at the discretionary stage and this warrants denial. *Apple Inc. v. Haptic, Inc.*,

IPR2024-01475, Paper 11 at 16 (PTAB Apr. 4, 2025) (“we cannot conclude that the Petition presents particularly strong merits. Therefore, this factor weighs in favor of exercising our discretion to deny institution in a balanced assessment of all the circumstances.”).

Petitioner’s Ye-based grounds rely on expert gap-filling. *See* § V, *infra* (describing in detail). Fatally, one of those gaps Petitioner attempts, e.g., Pet. at 24, to fill is their expert “assum[ing] for purposes of this proceeding that the claimed size limitation of ‘less than or equal to 45 μm ’ refers to a non-zero size.” (EX1003 ¶ 90.) Petitioner gap-fills by having its expert read this limitation out of the claim.

Further, Petitioner’s Sakai-based grounds rely on already-examined art; Petitioner argues that Sakai’s “truncated quadrangular pyramid-shaped” textures satisfy the claimed “non-pyramid” texture structures. (Pet. at 71.) This is wrong; a structure described as “pyramid-shaped” cannot also be “non-pyramid” shaped. Moreover, the declaration mirrors the Petition offering no extra evidence. (*Compare* Pet. at 71-74 with EX1003 at ¶¶262-264.) This verbatim repeat is deficient. *See Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 (PTAB Aug. 24, 2022) (precedential) (giving little weight to experts that repeat, verbatim the petition). Tellingly, the Examiner addressed this limitation and concluded that “Sakai does not clearly show non-pyramid-shaped microstructures.” (EX2001 at 5.)

III. Denial is Warranted Under § 325(d)

Denial is warranted when “the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). This exists here; Petitioner relies extensively on Sakai grounds while failing to demonstrate USPTO error. *Advanced Bionics LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (PTAB 2020) (precedential) (for already-examined art a “[p]etitioner must demonstrate USPTO error”).

During prosecution, the Examiner (Golam Mowla) identified Sakai as the closest prior art, analyzed it in detail, and distinguished it both in rejection and notice of allowance. (EX1018 at 15-16 (Reasons for Allowance); EX1007 (same in parent App. No. 17/459,689).) The same Examiner provided this consistent analysis in family applications as well. (EX2001-2005.)

The Examiner examined the same exact disclosures Petitioner relies on. (*Compare* Pet. at 71 (citing EX1009 at [0045]-[0047] for Sakai’s texture) *with* EX1018 at 15-16 (Examiner citing Sakai at [0045]-[0047] describing it as “pyramid form and truncated four-sided pyramidical rugged structure”).)

Despite extensive examination, Petitioner seeks a PTAB do-over, arguing that the Examiner was confused in (i) identifying the claims and (ii) understanding the reference because it was in Japanese. Neither argument withstands scrutiny.

First, Petitioner’s argument that the wrong claim was analyzed does not

comport with the prosecution history. While one line of the Examiner’s analysis described stacking, the whole of his reasons for allowance described core substantive features of Claim 1. The Examiner described Sakai’s textures as “*pyramid form* and truncated four-sided *pyramidical* rugged structure.” (EX1018 at 15-16 (emphasis added).) Something that is a pyramid does not satisfy the claimed “non-pyramid shaped,” and the Examiner properly concluded Sakai fails.

Any doubt about the Examiner’s understanding of this limitation is resolved by the examination of the ’136 Patent’s continuation. In the August 2025 Office Action for App. No. 18/888,868, the same Examiner again described Sakai’s texture as “pyramid form and truncated four-sided pyramidical rugged structure” (EX2001 at 4-5) and then found that “Sakai does not clearly show non-pyramid-shaped microstructures.” (*Id.* at 5.)

Second, Petitioner’s argument that the Examiner was confused by the lack of an official translation fails. Principally, Petitioner makes this argument, generically, without specifically identifying any supposed misapprehension. Nonetheless, the Examiner’s analysis contradicts Petitioner’s argument; he provided substantive review of Sakai, accurately describing its features. (EX1018 at 15-16 (Examiner citing Sakai at [0025]-[0112], [0224], [0028]-[0029], [0039], [0030], [0041]-[0042], [0031], [0043], [0038], [0078], and [0045]-[0047])).) This is not a case where an abstract was merely viewed and the reference discarded; the Examiner engaged with

Sakai's substance across numerous paragraphs, providing substantive analysis and emphasizing missing limitations.

Tellingly, the certified translation that Petitioner submitted (EX1009) reaches the same result. Petitioner cannot show where the Examiner erred in his technical analysis or where a translation would make any difference. At most, Petitioner disagrees with the Examiner; but that is facially deficient. *Ecto World v. RAI Strategic Holdings*, IPR2024-01280, Paper 13 at 6 (PTAB May 19, 2025) (precedential as to Section A) (“[i]f reasonable minds can disagree ... it cannot be said that the Office erred in a manner material to patentability”).

The full translation confirms what the Examiner found: Sakai lacks “non-pyramid-shaped microstructures.” (EX2001 at 5.) And a translation reveals additional structural mismatches that further undermine the Petition: Sakai is a heterojunction back contact (HBC) cell, not a TOPCon cell (EX1009 at [0004], [0032]-[0033], [0171]-[0172]). The Examiner was not confused by a lack of an official translation. Half of Petitioner's grounds rely on already-examined art that lacks essential features of the challenged claims. This independently warrants denial.

IV. Petitioner's Failure to Provide Construction Warrants Denial

The Petition fails to state how the challenged claims are to be construed, and its approach is the exact deficiency the Director has identified as warranting denial in the precedential *Revvo* decision and in numerous other decisions. *See Revvo*

Technologies v. Cerebrum Sensor Technologies, IPR2025-00632, Paper 20 (Nov. 3, 2025) (precedential); *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 (PTAB Nov. 5, 2025) (informative); *Sun Pharm. Indus. v. Nivagen Pharmaceuticals*, IPR2025-00893, Paper 18 (PTAB Sept. 19, 2025) (informative); *Cambridge Mobile Telematics v. Sfara*, IPR2024-00952, Paper 12 (PTAB Dec. 13, 2024) (informative); *Infineon Techs. Ams. Corp. v. MOSAID Techs. Inc.*, IPR2025-01171, Paper 27 at 3-5 (PTAB Feb. 19, 2026) (Director Review); *Generac Power Sys., Inc. v. Champion Power Equip., Inc.*, IPR2025-00805, Paper 40 (PTAB Feb. 3, 2026) (Director Review).

A petition must identify “[h]ow the challenged claim is to be construed.” 37 C.F.R. § 42.104(b)(3). Both the PTAB and the district courts apply the same *Phillips* standard, and because there is no difference in standards across forums, unexplained inconsistencies between a petitioner’s IPR and district court positions are indefensible. *See Revvo*, IPR2025-00632, Paper 36 at 3 (Jan. 26, 2026) (a petitioner “can’t have it both ways and certainly not without a sufficient explanation”).

Rather than committing to a construction, the Petition hedges at every turn. The Petition purports to apply the “ordinary meaning,” but for some terms it applies a construction Petitioner seems to disagree with: “Patent Owner’s apparent interpretation of those terms in its infringement contentions.” (Pet. at 20.) Worse still, Footnote 4 expressly “reserve[s] all rights to challenge claims under Section

112 and/or seek additional or different constructions of terms in other proceedings.”
(Pet. at n.4.)

The Petition never articulates what the “apparent interpretation” is or whether Petitioner believes it is correct. The only elaboration appears deep in the claim-by-claim analysis, where the Petition references Patent Owner’s infringement contentions for specific terms. For the term “two or more first substructures at least partially stacked on one another,” the Petition excerpts images from the complaint without providing any discussion of what the term means or what construction should apply. (Pet. at 24-25; *see also* Pet. at 56.) For the term “a first passivation layer located on the second texture structure,” the approach is the same providing images from the contentions and no construction. (Pet. at 28-30; *see also* Pet. at 45.) The Petition conditions arguments on Patent Owner’s positions no fewer than six times, using formulations such as “based on Patent Owner’s interpretation” (Pet. at 25, 30, 42, 44) and “to the extent” (Pet. at 22, 25, 30). The practical effect is to avoid committing to any construction while preserving maximum flexibility across forums.

The Petition’s evasive approach extends even further to reading a claim limitation out of the claims entirely. For the requirement that a dimension be “less than or equal to 45 μm ,” the Petition relies exclusively on Dr. Schubert. (Pet. at 24 (citing EX1003 at ¶¶ 89-90).) But Dr. Schubert states that he “assume[s] for

purposes of this proceeding that the claimed size limitation of ‘less than or equal to 45 μm ’ refers to a non-zero size.” (EX1003 at ¶ 90.) Although its case depends on this analysis for a critical limitation, the Petition never discloses this construction to the Board, never explains why it is correct, and through Footnote 4 reserves the right to take a different position in district court.

The Director has held that approaches like Petitioner’s warrant denial.

In *Revvo* the Director vacated institution and remanded where a petitioner adopted the patent owner’s district court constructions without independently committing to those constructions or explaining why its own district court positions were consistent. *Revvo*, IPR2025-00632 at 2, 5-6. The Director held that a petitioner must provide a clear, committed construction for each disputed term or explain why different positions across forums are justified. *Id.* at 4. When the Board re-instituted on remand, the Director intervened a second time, vacating again and denying institution outright. IPR2025-00632, Paper 36 (Jan. 26, 2026). The Director’s willingness to overrule the same petition twice underscores how seriously this deficiency is treated.

Other Board decisions confirm the pattern. The Director has denied institution where petitioners advanced broader constructions at the Board than in district court, relegated construction discrepancies to footnotes, or argued indefiniteness in district court while applying plain and ordinary meaning before the Board. *Sun Pharm.*

Indus. v. Nivagen Pharmaceuticals, IPR2025-00893, Paper 18 (PTAB Sept. 19, 2025) (informative); *Cambridge Mobile Telematics v. Sfara*, IPR2024-00952, Paper 12 (PTAB Dec. 13, 2024) (informative); *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 (PTAB Nov. 5, 2025) (informative); *Carbyne, Inc. v. Tritech Software Systems*, IPR2025-00959, Paper 20 (PTAB Feb. 19, 2026) (Director Review). In *Caption Health v. University of British Columbia*, IPR2025-01422, Paper 15 (PTAB Dec. 18, 2025), Director Squires held that a petitioner could cure a *Revvo* deficiency by stipulating to use the same construction in both forums. The Petition contains no such stipulation. Footnote 4 and Petitioner's repeated hedges do the opposite.

Petitioner's conduct is indistinguishable from the petitioners in these cases. Petitioner adopts Patent Owner's supposed interpretations without committing to them, relegates its reservation of rights to a footnote, and has not stipulated to use the same constructions in both forums. The Petition does not identify how any challenged claim term is to be construed. Instead, it treats Patent Owner's factual infringement allegations, which are assertions about whether an accused product meets a claim limitation and not legal determinations of what the claim means, as a substitute for the construction the regulation requires. Denial is warranted.

V. Petitioner's Reliance on Expert Testimony to Gap Fill Warrants Denial

The Petition repeatedly depends on expert assertions rather than on what the

cited prior art discloses to gap-fill missing claim limitations. This triggers two independent bases for denial: (1) discretionary denial under the Director’s Workload Management Memo, and (2) petition insufficiency under 37 C.F.R. § 42.104(b)(4) and Coke Morgan Stewart, USPTO Memorandum – *Enforcement and Non-Waiver of 37 C.F.R. § 42.104(b)(4) and Permissible Uses of General Knowledge in Inter Partes Reviews* (July 31, 2025).

The Coke Morgan Stewart, *Interim Processes for PTAB Workload Management* (Mar. 26, 2025) directs the Board to evaluate “[t]he extent of the petition’s reliance on expert testimony.” FAQ 22 explains that expert testimony which fills gaps in the prior art weighs against institution because such disputes “may suggest that the questions are better resolved in an Article III court.”¹ Separately, the Stewart Memorandum (Jul. 31, 2025) directs that expert testimony may not be used “to supply a missing claim limitation,” grounding this directive in § 311(b) which limits IPR challenges to “prior art consisting of patents or printed publications”² and § 42.104(b)(4) which requires that petition grounds “specify

¹ <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management>.

² <https://ptacts.uspto.gov/ptacts/public-informations/petitions/1558478/download-documents?artifactId=K1-Nz5PDCBWUdZ0oScSBnBumnRemOCiJHY64vjO3eX5yRT0qQ4Cfh9M>

where each element of the claim is found in the prior art patents or printed publications relied upon.”

The Petition’s expert, Dr. Schubert, does not merely explain the prior art or provide context. He supplies the substance of critical claim limitations that no cited reference discloses, and the Petition relies heavily on the supposed “understanding” of a POSITA supplied by Dr. Schubert lacking from the prior art.

Gap 1: The ≤ 45 um size limitation (Claim 1[b]). Claim 1[b] requires that “a one-dimensional size of the top surface of the outermost first substructure is less than or equal to 45 um.” Ye describes “backside alkaline polishing” of an n-type silicon wafer (EX1004 at [0038]) and shows a microscope image of the resulting rear-surface texture (*Id.* at Fig. 3) but provides no numerical dimension for those structures. The Petition concedes the absence of any sizing disclosure, stating only that “POSITAs would have recognized that the top surfaces of these substructures are smaller than 45 μm .” (Pet. at 24 (citing EX1003 at ¶¶ 89-90).) There is no citation to Ye or to any printed publication for this limitation.

Petitioner relies exclusively on tenuous expert testimony to fill this gap. Dr. Schubert asserts that Ye’s rear-surface structures are “crystallographically equivalent and indistinguishable” from front-surface pyramids and must have “approximately the same dimensions.” (EX1003 at ¶ 90.) He then states that he “assume[s] for purposes of this proceeding that the claimed size limitation of ‘less

than or equal to 45 μm ’ refers to a non-zero size.” *Id.*

The expert does not point to any disclosure in Ye for a dimension of 45 μm or less. He assumes the limitation requires only that the structures exist. A specific numerical claim limitation cannot be assumed away as “non-zero,” and Petitioner identifies no printed publication that teaches it.

Gap 2: The “stacked” structures (Claim 1[b]). Claim 1[b] also requires “two or more first substructures at least partially stacked on one another.” Ye does not describe stacking. The Petition itself acknowledges that “at least some adjacent texture substructures (e.g., ‘W’ and ‘X’) do not stack on one another.” (Pet. at 24.) Rather than pointing to a disclosure in Ye that teaches stacking, Dr. Schubert conditions his opinion entirely on Patent Owner’s litigation position: “To the extent the structures labeled A and B ... are ‘at least partially stacked,’ then structures in Figure 3 of Ye ... also would be.” (EX1003 at ¶ 92; Pet. at 25.) Petitioner relies exclusively on expert gap-filling.

The phrase “to the extent” from Petitioner’s expert is an express hedge. He does not independently opine that Ye teaches stacking. He conditions his conclusion on an interpretation from Patent Owner’s infringement theory, which is not prior art or claim construction. This is gap-filling through conditional assertion.

The prior art lacks literal teachings, and the PTAB must wade through dense material to evaluate whether the expert’s theoretical inferences bridge the gaps.

Google LLC v. Sec. First Innovations, LLC, IPR2024-00213, Paper 8 at 13–15 (PTAB June 6, 2024) (denying institution as a “fatal flaw” where the petition and expert declaration “never address[ed]” a claim limitation not disclosed in the prior art); *see also TQ Delta, LLC v. Cisco Sys., Inc.*, 942 F.3d 1352, 1358-59 (Fed. Cir. 2019). This is a significant undertaking that amounts to waste of Board resources. This is precisely the kind of expert reliance that the Workload Management Memo and the Stewart Memorandum identify as warranting denial.

Beyond gap-filling, additional deficiencies further warrant denial. Both the Petition (Pet. at 15) and the expert (EX1003 at ¶¶ 75, 308, 348, 353) repeatedly identify Sakai as a “TOPCon” reference. Sakai is not a TOPCon cell. Sakai describes a heterojunction back contact solar cell (EX1009 at [0004], [0171]-[0172]), which is a fundamentally different architecture, as Petitioner’s own evidence confirms. The Shah textbook Petitioner submitted treats TOPCon as a distinct “Homojunction Cell[] with Fully Passivated Contact” using “Tunnel Oxide Passivation Contact” (EX1015 at 133, § 5.5.2), while addressing HJT cells in a separate chapter co-authored by different specialists (*id.* at 163, ch. 7; *see also id.* at 146, § 6.1.3 (“Using Amorphous Silicon Layers in Heterojunction Solar Cells”); 169, § 7.2.2 (“The Basic Structure of a Heterojunction Cell”)); *see also* EX2006 (TOPCon uses “a thin tunnel oxide layer and a passivated contact made of doped polycrystalline silicon”; heterojunction uses “thin layers of amorphous silicon” on a crystalline silicon wafer

which uses different materials, different passivation mechanisms, different manufacturing processes). Petitioner presents is an inaccurate representation of its key piece of (already-examined) prior art.

VI. All Six Fintiv Factors Warrant Denial

The *Fintiv* framework authorizes denial when parallel litigation makes IPR review an inefficient use of Board resources. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB 2020) (precedential). Here, the factors favor denial.

Factor 1: The first *Fintiv* factor asks whether the district court is likely to stay the litigation pending the IPR. Judge Bennett, who presides over the litigation in the Southern District of Texas, has denied motions to stay pending pre-institution IPR. (EX2007.) Judge Hanks, who presides over the parallel Waaree litigation, has denied motions to stay even pending instituted IPRs. (EX2008.) Without a stay, both proceedings will advance simultaneously, creating the duplication *Fintiv* targets. This factor favors denial.

Factor 2: The second *Fintiv* factor examines trial date proximity. Where the district court trial is scheduled to occur before or within months of the projected FWD, institution creates the inefficiency and risk of inconsistent outcomes that *Fintiv* targets. *See Apple Inc. v. Haptic, Inc.*, IPR2024-01475, Paper 11 at 9-10 (PTAB Apr. 4, 2025). Here, the projected FWD is August 2027 and trial is December 2027, a margin of only four months. By the FWD deadline, the district

court will have completed claim construction, dispositive motions briefing, and expert discovery. The Board would be issuing a decision after the court has already invested substantially in resolving the same questions. This factor favors denial.

Factors 3 and 4: Petitioner here is the defendant in the litigation, and the same claims are asserted. By institution, the court will have held a Markman hearing. By FWD, both parties will have completed claim construction, expert discovery, and dispositive motions briefing. These factors favor denial.

Factor 5: Petitioner filed a deficient *Sotera* stipulation. (EX1041.) Petitioner's stipulation only covers a sub-set of its RPIs and, moreover, lacks RPI and named litigation defendant, SEG Solar Jiangsu Co. Ltd. As a result, this entity is free to pursue any ground in district court, making this stipulation deficient. This deficiency alone warrants denial. Nonetheless, even if this stipulation were given any weight, it is but one factor to consider. *Nikon Corp. v. Optimum Imaging Techs.*, IPR2024-01374, Paper 19 (PTAB Apr. 29, 2025). This favors denial.

Factor 6: The sixth *Fintiv* factor is a catch-all that permits consideration of equitable and case-specific circumstances. *Apple Inc. v. Haptic, Inc.*, IPR2024-01475, Paper 11 at 16 (PTAB Apr. 4, 2025) (considering merits strength under factor 6). Several additional circumstances independently support denial.

1. Settled Expectations

The March 26, 2025 Workload Management Memo identifies “settled

expectations of the parties” as a discretionary consideration.³ The Director has denied institution where a patent has been commercialized, asserted, and licensed reasoning that a late IPR would “unfairly disrupt reasonable reliance interests.” *Intel Corp. v. Proxense*, IPR2025-00327, Paper 12 (PTAB 2025); *DataDome v. Arkose Labs Holdings*, IPR2025-00693, Paper 13 (PTAB 2025); *Alliance Laundry v. PayRange*, IPR2025-00950, Paper 11 (PTAB 2025) (informative).

Jinko has asserted the '136 Patent in three separate district court actions: against VSUN/Toyo (N.D. Cal., now settled); against Waaree Energies (S.D. Tex., pending); and against SEG (S.D. Tex., pending). VSUN settled. (EX2009.) Neither VSUN/Toyo nor Waaree Energies filed invalidity proceedings against the '136 patent, despite progressing further in litigation than SEG. Those parties are proceeding regarding the settled expectations.

2. The Petition’s RPI Disclosure Is Deficient

Petitioner does not properly name RPIs. Under 35 U.S.C. § 312(a)(2), a petition must identify “all real parties in interest.” The Petition names five RPIs, then states that RPIs “further may include” six additional entities, including SEG Solar Jiangsu Co. Ltd. and a named individual, Jun Zhuge. Pet. at 1. A petitioner must

³ <https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf>

know its own corporate structure. Further, the relationship between Jun Zhuge and the SEG entities is detailed in a complaint asserting fraudulent conduct by Jun Zhuge and Seraphim Energy Group, Inc. (abbreviated as S-E-G). (EX2013 at ¶¶ 5, 65; EX2012 (stating that SEG is a rebrand of Seraphim).) It is reasonably inferred that Jun Zhuge has served as the nexus among the various SEG entities, including the named RPIs.

The phrase “may include” is not affirmative disclosure; it is speculative hedging that fails to satisfy § 312(a)(2). Further compounding the problem, Petitioner’s *Sotera* stipulation failed to include SEG Solar Jiangsu Co. Ltd. (which is a defendant in the litigation). (EX1041.)

The Board has shown it will unwind even an *instituted* review over RPI failures. In *Yangtze Memory v. Micron*, IPR2025-00098, Paper 38 (PTAB 2026) (informative), Director Squires vacated institution and denied petitions where the petitioner failed to provide clarity about its corporate identity. The Director held that the petitioner’s “failure to provide clarity as to its actual identity is fatal to its petitions.” *Id.* Petitioner’s “may include” disclosure of its own corporate entity raises the same concern. All *Fintiv* factors, on balance, favor denial.

VII. Domestic Manufacturing Factors Favor Denial

Director Squires’ March 11, 2026 Memorandum on “Additional Discretionary Institution Considerations: U.S. Manufacturing and Small Business Use of AIA

Proceedings” directs the Board to consider whether the accused and patented products are manufactured domestically.⁴ Each factor weighs against institution. Jinko operates a manufacturing facility in Jacksonville, Florida, producing TOPCon modules embodying the patented technology at 2GW of N-type production capacity. (EX2010 (Jinko Jacksonville page identifying plant as its U.S. solar-module facility employing more than 700 American workers); EX2011 at 3 (Jinko’s “1 GW N-type module capacity in the U.S. has started production and another 1 GW is expected to start production in the second quarter of 2024”). As a multinational enterprise, Jinko may restructure its corporate ownership to adjust to the global trend, but it remains committed to significant investment in its U.S. manufacturing operations and supply chain. SEG’s accused products include TOPCon solar cells that appear manufactured at its Indonesian facility, with corporate management coordinated through Singapore. (Pet. at 1.) And SEG is not a small business, it operates a global enterprise well beyond any applicable threshold.

VIII. The Petition’s Redundant Grounds Independently Support Denial

Finally, the Petition advances fifteen grounds, seven of which are “A” variants

⁴https://www.uspto.gov/sites/default/files/documents/Additional_Discretionary_Institution_Considerations_US_Manufacturing_and_Small_Business_Use_of_AIA_Proceedings.pdf

that differ from their base ground only by adding Yun. The “A” variants contain no independent analysis; Ground 3A consists of exactly two sentences. (Pet. at 59.) The Board has discretion to deny where a petition presents an excessive number of grounds that the petitioner has not prioritized. *Adaptics Ltd. v. Perfect Co.*, IPR2018-01596, Paper 20, at 24 (PTAB 2019) (informative). This is not an efficient use of Board resources.

IX. Conclusion

Patent Owner respectfully requests that the Petition be denied.

Dated: April 27, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to the Interim Director Discretionary Process, the undersigned hereby certifies that this brief complies with the type-volume limitation of Section II(C)(iii) of the Interim Director Discretionary Process guidelines.

Dated: April 27, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that a true copy of the foregoing Patent Owners' Request for Discretionary Denial and Exhibits 2001-2001 pursuant to 37 C.F.R. § 42.8 have been served electronically via email on counsel for Petitioner at the following addresses:

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