

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FANDUEL, INC.,  
Petitioner,

v.

WINVIEW IP HOLDINGS, LLC,  
Patent Owner.

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Case IPR2026-00245  
U.S. Patent No. 12,005,349

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**PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL**

**TABLE OF CONTENTS**

|                                                                                                                                                                                        | Page |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| I. INTRODUCTION .....                                                                                                                                                                  | 1    |
| II. ARGUMENT .....                                                                                                                                                                     | 3    |
| A. WinView’s Direct Notice to FanDuel of the ’349 Patent Family<br>Creates Strong Settled Expectations .....                                                                           | 3    |
| B. Judicial Economy, System Efficiency, and Fairness Favor<br>Discretionary Denial.....                                                                                                | 9    |
| 1. <i>Petitioner Strategically Delayed Review While<br/>            Attempting to Stall the District Court Action and Block<br/>            the Preservation of Key Evidence</i> ..... | 9    |
| 2. <i>Institution Would Not Simplify the Dispute and<br/>            Undermines Efficiency Through Fragmented, Piecemeal<br/>            Challenges</i> .....                          | 12   |
| III. CONCLUSION.....                                                                                                                                                                   | 15   |

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

|                                                                                                                    |         |
|--------------------------------------------------------------------------------------------------------------------|---------|
| <i>Amazon.com, Inc. v. Audio Pod IP, LLC</i> ,<br>No. IPR2025-00768, Paper 15 (P.T.A.B. Aug. 14, 2025).....        | 3, 4    |
| <i>Amazon.com, Inc. v. SoundClear Techs. LLC</i> ,<br>No. IPR2025-01080, Paper 15 (P.T.A.B. Oct. 17, 2025) .....   | 11      |
| <i>iRhythm Techs., Inc. v. Welch Allyn, Inc.</i> ,<br>No. IPR2025-00363, Paper 10 (P.T.A.B. June 6, 2025) .....    | 6, 7, 8 |
| <i>Kahoot! AS v. Interstellar Inc.</i> ,<br>No. IPR2025-00696, Paper 12 (P.T.A.B. July 31, 2025) .....             | 11      |
| <i>Murata Mfg. Co. v. Georgia Tech Rsch. Corp.</i> ,<br>No. IPR2025-00383, Paper 14 (P.T.A.B. July 29, 2025) ..... | 6, 7    |
| <i>NVIDIA Corp. v. Neural AI, LLC</i> ,<br>No. IPR2025-00608, Paper 16 (P.T.A.B. July 31, 2025) .....              | 6, 7, 8 |

**Statutes**

|                          |      |
|--------------------------|------|
| 35 U.S.C. § 314(a) ..... | 1, 9 |
| 35 U.S.C. § 315(b) ..... | 9    |

**Other Authorities**

|                                                                                                                                                 |        |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 37 C.F.R. § 42.1(b) .....                                                                                                                       | 11, 13 |
| Changes to Implement Inter Partes Review Proceedings,<br>77 Fed. Reg. 48,680 (Aug. 14, 2012) (codified at 37 C.F.R. §§<br>42.100 et seq.) ..... | 10, 11 |
| 77 Fed. Reg. 48,680 .....                                                                                                                       | 13     |
| 90 Fed. Reg. 48,335, 48338 (Oct. 17, 2025).....                                                                                                 | 14     |

**PATENT OWNER'S EXHIBIT LIST**

| <b>Exhibit</b> | <b>Description</b>                                                                                                                                                                        |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2001           | Declaration of David Lockton in Support of Patent Owner's Request for Discretionary Denial                                                                                                |
| 2002           | Intentionally omitted                                                                                                                                                                     |
| 2003           | First Amended Complaint for Patent Infringement, <i>WinView IP Holdings, LLC v. FanDuel, Inc.</i> , No. 21-cv-13807, Dkt. No. 8 (D.N.J.), filed on July 28, 2021                          |
| 2004           | Letter from counsel for Petitioner to Honorable Judge Castner, <i>WinView IP Holdings, LLC v. FanDuel Inc., et al.</i> , No. 25-cv-01146, Dkt. No. 66 (D.N.J.), filed on February 3, 2026 |
| 2005           | Text Order Staying Motion to Dismiss, <i>WinView IP Holdings, LLC v. FanDuel Inc., et al.</i> , No. 25-cv-01146, Dkt. No. 68 (D.N.J.), filed on March 2, 2026                             |
| 2006           | Text Order Regarding Mr. Lockton's Deposition, <i>WinView IP Holdings, LLC v. FanDuel Inc., et al.</i> , No. 25-cv-01146, Dkt. No. 73 (D.N.J.), filed on March 13, 2026                   |
| 2007           | Complaint for Patent Infringement, <i>WinView IP Holdings, LLC v. DraftKings Inc., et al.</i> , No. 3:25-cv-01143, Dkt. No. 1 (D.N.J.), filed on February 10, 2025                        |
| 2008           | Proposed Rule § 42.108(e), 90 Fed. Reg. 48,335, 48338 (Oct. 17, 2025)                                                                                                                     |

## **I. INTRODUCTION**

WinView IP Holdings, LLC (“WinView”) respectfully requests that the Director exercise his discretion under 35 U.S.C. § 314(a) to deny institution. A holistic review of the circumstances—including FanDuel’s long-standing knowledge of the patent family, its years-long delay in seeking review, its strategic manipulation of parallel district-court proceedings, and its fragmented, estoppel-avoiding petition strategy—shows that this IPR is not the efficient, streamlined alternative to litigation envisioned by the AIA. Rather, it is an attempt to leverage PTAB resources as a tactical delay mechanism that all but guarantees the litigation overlapping validity issues before the PTAB and District Court.

WinView reached out to FanDuel nine years ago to negotiate a partnership or patent license. After FanDuel signed an NDA with WinView seven years ago, it conducted diligence into its patents. WinView provided FanDuel with full disclosures of its patent holdings, including the parent of U.S. Patent No. 12,005,349 (Ex. 1001, “the ’349”) Patent and related patents. When FanDuel ultimately declined to partner with WinView, WinView put FanDuel on notice that it would enforce its patents, filing a first suit in 2021. WinView then filed a second suit in 2025 to assert patents that issued after it filed the first suit. Despite having known about WinView and its patents for nine years, FanDuel waited more than eleven months after WinView asserted the ’349 Patent to file this Petition. Under recent

Director guidance and decisions, petitioners like FanDuel who have long been on notice of a patent family's technology, disclosures, and significance cannot wait until the final days of the statutory deadline to seek *inter partes* review. FanDuel's delay weighs heavily in favor of discretionary denial.

Institution would also undermine efficiency. To evade the consequences of IPR estoppel, FanDuel coordinated with DraftKings, the defendant in another case filed by WinView asserting the same patents, to distribute petitions while leaving large portions of asserted claims—and entire asserted patents—unaddressed. Institution would not simplify the broader dispute; it would multiply proceedings and create the very piecemeal, duplicative litigation the AIA sought to prevent. Indeed, FanDuel has not filed any stipulation to prevent avenues for parallel, substantially identical invalidity attacks between the District Court and PTAB.

FanDuel's conduct before the District Court confirms these concerns. After filing this Petition near the end of the statutory window, FanDuel urged the District Court to delay ruling on fully-briefed motions to dismiss and sought to halt discovery—including an effort to block testimony from the 89-year-old inventor, who is in declining health—while shifting only a minor subset of the validity issues to be addressed in the District Court to this forum. The District Court has since rejected FanDuel's attempt to block the preservation of the inventor's testimony as not “at all persuasive,” underscoring FanDuel's gamesmanship.

For these reasons, and consistent with the Director's focus on settled expectations, fairness, and efficient use of PTAB resources, institution should be denied.

## **II. ARGUMENT**

### **A. WinView's Direct Notice to FanDuel of the '349 Patent Family Creates Strong Settled Expectations**

The parties' settled expectations overwhelmingly favor discretionary denial. For seven years before FanDuel filed this Petition, it had direct, detailed, and repeated notice of the patent family from which the '349 Patent issued and of its relevance to FanDuel's own products. That longstanding awareness, combined with FanDuel's decision to wait until the final days of its statutory deadline, strongly supports denial. Ex. 1004 (Complaint), ¶¶ 111-112.

WinView informed FanDuel about the WinView patent portfolio—including the family that produced the '349 Patent—in early 2019, giving rise to strong settled expectations between the parties that dictate denial on discretionary ground. *Id.*, ¶ 112. Under similar facts, the Board denied institution and found that proceeding with IPR “would be an inefficient use of Board resources.” *Amazon.com, Inc. v. Audio Pod IP, LLC*, No. IPR2025-00768, Paper 15 at 2-3 (P.T.A.B. Aug. 14, 2025). In *Amazon*, the challenged patent was less than five years old, but, as is the case here, the petitioner previously knew of the patent portfolio and earlier related patent. *Id.* In denying institution, the Board also relied on the fact that the district court

would be considering the validity of the other older asserted patents separately from the younger patent, which is the same situation here as discussed in Section II.B.2. *Id.* at 3.

WinView Inc. and FanDuel commenced discussions regarding a potential business relationship involving WinView's technology in early 2017. Ex. 2001 (Lockton Decl.), ¶ 6. Those discussions led to direct communications during which FanDuel's CEO acknowledged there were "[l]ots of similar interests here" with regards to the two companies and the patented technology. *Id.* After FanDuel's change in leadership, WinView Inc. and FanDuel resumed discussions, which included a meeting with FanDuel's new CEO, Matt King, under an NDA. *Id.*; Ex. 1004 (Complaint), ¶ 112.

FanDuel investigated WinView Inc. and its business, including its patents. To assist FanDuel with its due diligence, in early 2019, WinView Inc. provided disclosures identifying its patent portfolio, including the technology underlying the '349 Patent and its parent patents and applications. Ex. 1004 (Complaint), ¶ 112; Ex. 2001 (Lockton Decl.), ¶¶ 6-7. Additionally, WinView Inc. provided FanDuel with a presentation that identified WinView Inc.'s intellectual property, including the technology underlying the '349 Patent invention. *Id.*

WinView then provided FanDuel with detailed disclosures identifying WinView's patent portfolio, including an intellectual property Status Report that

identified the '349 Patent's parents and other ancestral patents in the same family. Ex. 2001 (Lockton Decl.), ¶ 7; Ex. 1004 (Complaint), ¶ 112.<sup>1</sup> Thus, FanDuel was on notice of the '349 Patent's family for years before filing this Petition.

After concluding diligence, FanDuel declined to partner with WinView or take a license to its patents. Ex. 1004 (Complaint), ¶ 113; Ex. 2001 (Lockton Decl.), ¶ 6. FanDuel continued operating the gaming platforms that WinView accuses of infringement without obtaining a license. Ex. 1004, ¶ 113.

WinView's litigation provided FanDuel with further notice of the '349 Patent's family and its relevance to FanDuel's products. WinView filed suit against FanDuel in 2021, asserting four patents, including two patents related to the '349

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<sup>1</sup> WinView disclosed the '349 Patent's parents, U.S. Patent No. 8,149,530, which issued fourteen years ago (April 3, 2012), and U.S. Patent No. 9,511,287, issued nine years ago (December 6, 2016), as well as additional ancestral patents, including U.S. Patent No. 8,717,701, issued nearly twelve years ago (May 6, 2014), U.S. Patent No. 8,705,195, issued twelve years ago (April 22, 2014), U.S. Patent No. 9,672,692, issued nearly nine years ago (June 6, 2017), U.S. Patent No. 9,919,210, issued eight years ago (March 20, 2018), and U.S. Patent No. 10,137,369, issued seven years ago (November 27, 2018). Ex. 2001 (Lockton Decl.), ¶ 7.

Patent, U.S. Patent No. 9,878,243 (the “’243 Patent”) (issued January 30, 2018), and U.S. Patent No. 9,993,730 (the “’730 Patent”) (issued June 12, 2018), and identified U.S. Patent No. 8,149,530, which issued more than fourteen years ago (April 3, 2012) and to which the ’349 Patent claims priority. *WinView IP Holdings, LLC v. FanDuel, Inc.*, No. 21-cv-13807 (D.N.J.) (“*WinView I*”). *See, e.g.*, Ex. 2003 (WinView I Amended Complaint), ¶¶ 9-11, 20-21, 28-29.

WinView’s additional public disclosures further reinforce FanDuel’s notice of the ’349 Patent family. WinView Inc. publicly identified its patent portfolio on its website by December 2015 and continued to update those disclosures as new patents issued. Ex. 1004 (Complaint), ¶¶ 109-110. FanDuel therefore had both actual and constructive notice of the relevant patent family for years before filing the present Petition.

These facts mirror those supporting discretionary denial in *Neural AI, Murata*, and *iRhythm*, where actual notice—whether through commercial relationships, portfolio presentations, or ongoing discussions—was instrumental in finding strong settled expectations and denying institution. *See NVIDIA Corp. v. Neural AI, LLC*, No. IPR2025-00608, Paper 16 at 2-3 (P.T.A.B. July 31, 2025) (denying institution where petitioner had a prior commercial relationship with the original patent owner, received a presentation discussing the patent portfolio, had actual notice of the relevant patents, and failed to seek early review); *Murata Mfg. Co. v. Georgia Tech*

*Rsch. Corp.*, No. IPR2025-00383, Paper 14 at 2-3 (P.T.A.B. July 29, 2025) (petitioner's discussions with patent owner regarding the relevant technology, and its resulting awareness of patent owner's work in that space for a significant amount of time before filing, supported denial because petitioner's failure to seek early review outweighed other considerations); *iRhythm Techs., Inc. v. Welch Allyn Inc.*, No. IPR2025-00363, Paper 10 at 3 (P.T.A.B. June 6, 2025) ("Petitioner's awareness of Patent Owner's applications and failure to seek early review of the patents favors denial and outweighs the [other]-discussed considerations.").

FanDuel cannot claim surprise or lack of awareness to excuse its late action. The USPTO published the '349 Patent application four years ago (January 20, 2022) and issued it nearly two years ago (June 11, 2024). The '349 Patent application claims priority, through a chain of continuation and continuation in part applications to WinView's April 12, 2006, and October 3, 2005, provisional applications. Ex. 1001 at (60), (65). Accordingly, the length of time the '349 Patent family members were published and Petitioner's knowledge of WinView and WinView's patents create settled expectations that the Office should not disturb. *See, e.g., Neural AI*, Paper 16 at 2-3 (denying institution because prior relationship, portfolio presentation, actual notice, and delay tipped the balance toward denial).

In *Neural AI*, the Director denied institution as to a patent that reissued in 2023 with different claims from the original patent. The Director recognized that, "[w]hile

ordinarily such circumstances would counsel against discretionary denial,” denial was still warranted because the petitioner and the original patent owner had a commercial relationship, the patent owner had sent the petitioner a presentation discussing its patent portfolio, including the original patent from which the reissue issued, and petitioner therefore had actual notice yet failed to seek early review. *Id.*

As in *Neural AI*, FanDuel had a prior commercial relationship with Patent Owner, received detailed information regarding Patent Owner's portfolio and underlying technology, and had direct notice of the family from which the challenged patent issued well before filing its Petition. Despite this extensive notice, FanDuel waited years—through confidential diligence, public disclosures, patent issuance, and litigation involving the same family—before seeking review. And, as in *Neural AI*, FanDuel nevertheless delayed seeking review. *Neural AI* thus directly supports denial here because settled expectations favor denial when the petitioner had earlier actual or constructive notice of the patent and failed to act. *See Neural AI*, Paper 16 at 2-3; *see also iRhythm*, Paper 10 at 3 (finding that awareness of Patent Owner's applications and failure to seek early review favored denial).

Under these circumstances, the parties' settled expectations favor denying institution.

**B. Judicial Economy, System Efficiency, and Fairness Favor Discretionary Denial**

Institution should also be denied under 35 U.S.C. § 314(a) because proceeding with this IPR would undermine judicial economy, create inefficiencies, and reward FanDuel's litigation gamesmanship. A holistic review of the circumstances—including FanDuel's delayed filing, its strategic manipulation of the District Court schedule, and its fragmented petitioning strategy—confirms that this IPR would not operate as a true alternative to litigation and would instead multiply proceedings and increase burdens on the Board and District Court.

***1. Petitioner Strategically Delayed Review While Attempting to Stall the District Court Action and Block the Preservation of Key Evidence***

Petitioner's conduct reflects a deliberate procedural strategy to multiply proceedings, delay adjudication of the merits, and block the preservation of critical testimony. WinView filed its complaint in *WinView II* in 2025. Eight months later, FanDuel moved to dismiss the case. The parties completed briefing on that motion, but before the court issued a ruling, FanDuel filed this Petition at the end of the statutory window set by 35 U.S.C. § 315(b). *See* Pet. (filed February 3, 2026).

After filing, FanDuel notified the District Court that it had filed this Petition and intimated that additional petitions would follow, although none did. *See* Ex. 2004 at 1-2 ("FanDuel further notes that the deadline for FanDuel or DraftKings . . . to file additional IPR petitions relating to the patents-in-suit has not yet

elapsed.”). Shortly thereafter, the District Court stayed FanDuel’s motion to dismiss pending the conclusion of this IPR proceeding. Ex. 2005.

As FanDuel delayed resolution of the parties’ disputes, it also opposed efforts to preserve critical inventor testimony. David Lockton, WinView’s President, founder, and the primary inventor of the asserted patents, will soon turn 89, and he was recently diagnosed with a severe health issue. See Ex. 2006 (order granting WinView’s request to take the *de bene esse* deposition of a witness “who’s age and health conditions may affect his availability for trial”). Considering the substantial risk that key testimony could be lost if it is not preserved promptly, WinView sought leave to take a *de bene esse* deposition of Mr. Lockton, its founder and the primary inventor of its asserted patents. FanDuel opposed that request while continuing to maintain the stay that would prevent Mr. Lockton’s deposition through regular discovery. The District Court rejected its arguments, holding that FanDuel “offer a number of responses as to why the deposition should not proceed at this time. None are at all persuasive.” *Id.*

FanDuel’s decision to delay the District Court action while shifting only a minor subset of the issues to be determined to the Board for determination directly contravenes Congress’ intent to create “a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.” See Section II.B.2., *infra*; Changes to Implement Inter Partes

Review Proceedings, 77 Fed. Reg. 48,680 (Aug. 14, 2012) (codified at 37 C.F.R. §§ 42.100 et seq.). It also conflicts with the Board's goal of "secur[ing] the just, speedy, and inexpensive resolution of every proceeding" because it all but guarantees serial consideration of substantially similar issues across multiple forums. 37 C.F.R. § 42.1(b). These problems, which are all of Petitioner's making, promise to leave the parties' broader dispute unresolved for years to come.

The Board has denied institution even where a parallel district court case was stayed, confirming that a stay does not outweigh other considerations, including petitioner delay, system efficiency, or strong settled expectations. *See Amazon.com, Inc. v. SoundClear Techs. LLC*, No. IPR2025-01080, Paper 15 at 2-3 (P.T.A.B. Oct. 17, 2025) (denying institution despite a stay in the parallel district court proceeding); *Kahoot! AS v. Interstellar Inc.*, No. IPR2025-00696, Paper 12 at 2-3 (P.T.A.B. July 31, 2025) (same). Notably, FanDuel refuses to participate in discovery until the motions to dismiss are decided, which it asked the District Court to postpone resolving for at least four months (in the event institution is denied) and sixteen months (if institution is granted).

Allowing institution under these circumstances would reward a litigation strategy that delays adjudication while placing the integrity of the evidentiary record at risk. These considerations weigh strongly against institution.

**2. *Institution Would Not Simplify the Dispute and Undermines Efficiency Through Fragmented, Piecemeal Challenges***

The Director should also deny the Petition because institution would not promote judicial economy or system efficiency. Instead, it would create duplicative proceedings, fragment validity issues across forums, and allow FanDuel to evade estoppel through coordinated, selective challenges. The petitions arise in the context of coordinated litigation involving the same patents with WinView asserting the same nine patents across three related patent families against both the DraftKings and FanDuel defendant groups.

*First*, FanDuel and DraftKings structured their petitions to fragment, rather than streamline, its validity challenges. WinView is asserting patents from three families against FanDuel and DraftKings. Ex. 1004 (Complaint), ¶¶ 5, 23-31; Ex. 2007 (DraftKings Complaint), ¶¶ 5, 32-40. In *WinView II*, DraftKings filed petitions challenging U.S. Patent Nos. 11,451,883 and 11,338,189, while FanDuel filed a petition directed to the '349 Patent. *DraftKings Inc. v. WinView IP Holdings, LLC*, No. IPR2026-00175, Paper 2 (P.T.A.B. Jan. 16, 2026); *DraftKings Inc. v. WinView IP Holdings, LLC*, No. IPR2026-00140, Paper 3 (P.T.A.B. Jan. 16, 2026).

Collectively, FanDuel's and DraftKings' petitions target one patent from each asserted family, and the parties coordinated to the extent that the petitions balanced out and covered the three families of WinView's asserted patents. This structure allows Petitioners to mount a coordinated, portfolio-spanning attack while limiting

the estoppel consequences that would attach if a single petitioner challenged all patents. By distributing petitions across multiple defendants and limiting each to selected patents, each petitioner incurs estoppel only for its own filing, leaving the other defendant group free to pursue additional (or even identical) invalidity theories against the same patent in District Court. DraftKings will obtain the benefit of this IPR if it is successful in invalidating claims of the '349 Patent but will not be subject to estoppel if it fails, and FanDuel will similarly benefit from DraftKings' two IPR petitions if they succeed without being subject to estoppel if they fail.

This type of piecemeal approach is fundamentally inconsistent with the purpose of *inter partes* review, which was designed to provide a streamlined alternative to litigation—not to an additional layer of fragmented, overlapping proceedings, and FanDuel and FanDuel have crafted. *See* 77 Fed. Reg. 48,680 (establishing a system to “limit unnecessary and counterproductive litigation costs”); 37 C.F.R. § 42.1(b) (proceedings must secure “the just, speedy, and inexpensive resolution” of disputes).

*Second*, FanDuel's Petition does not meaningfully simplify the dispute with respect to the '349 Patent itself. FanDuel challenges only 22 of the 41 asserted claims. Thus, even if the Board were to institute review and ultimately invalidate every challenged claim, a substantial portion of the asserted claims would remain unaddressed. The Petition therefore cannot resolve the validity of the '349 Patent

and would leave significant issues for adjudication outside this proceeding when the District Court case resumes.

*Third*, FanDuel has not filed any stipulation to prevent avenues for parallel, substantially identical invalidity attacks between the District Court and PTAB. Therefore, this IPR will not serve as an alternative to invalidity adjudication in parallel proceedings. *See* Ex. 2008 (Proposed Rule § 42.108(e)), 90 Fed. Reg. 48,335, 48338 (Oct. 17, 2025) (“Under the proposed revisions, . . . the Office will not institute an IPR when a petitioner intends to pursue invalidity challenges under §§ 102 or 103 in other venues . . .”). Moreover, the Director<sup>2</sup> instructs petitioners to “file [a *Sotera* stipulation] as soon as practicable, so that the patent owner may address the impact of the stipulation in its discretionary denial brief.” Thus, the Director should disregard any subsequently filed stipulation as untimely.

Taken together, these facts demonstrate that institution would not simplify the parties’ dispute, but would instead multiply proceedings, fragment issues, and undermine the efficiency goals of the inter partes review system.

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<sup>2</sup>Section I.D, <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>

### III. CONCLUSION

For all of these reasons, WinView accordingly requests that the Board deny institution of *inter partes* review of the Challenged Claims of the '349 Patent.

Respectfully submitted,

Date: April 13, 2026

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**CERTIFICATE OF SERVICE**

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), that service was made on Petitioner as detailed below.

|                          |                                                                                                           |
|--------------------------|-----------------------------------------------------------------------------------------------------------|
| <i>Date of service</i>   | April 13, 2026                                                                                            |
| <i>Manner of service</i> | Electronic Mail<br>(richard.berman@afslaw.com;<br>janine.carlan@afslaw.com;<br>kevin.spinella@afslaw.com) |
| <i>Documents served</i>  | PATENT OWNER'S REQUEST FOR<br>DISCRETIONARY DENIAL                                                        |
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