

IPR2026-00247
Patent No. 9,817,562

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.
Petitioner,

v.

COGMEDIA LLC
Patent Owner.

Case No. IPR2026-00247
U. S. Patent No. 9,817,562

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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LIST OF PATENT OWNER'S EXHIBITS

Exhibit No.	Description
2002	U.S. Patent No. 10,664,141
2003	U.S. Patent No. 11,036,371
2004	Plaintiff's Original Complaint
2005	Plaintiff's Response to Defendant's Motion to Transfer Venue
2006	July 31, 2025 PTAB Memorandum
2007	PTAB Proposed Rulemaking
2008	March 26, 2025 Interim Processes for PTAB Workload Management
2009	Excerpt of Office of Naval Research Website
2010	Signal Article on Balancing Warfighter Support with Program Goals
2011	Order Denying Petitioner's Motion to Transfer Venue
2012	Scheduling Order in the District Court Proceeding
2013	District Court's Notes from Scheduling Conference 12.15.2025
2014	Order Denying Petitioner's Motion to Dismiss
2015	Patent Owner's Preliminary Infringement Contentions
2016	Petitioner's Non-Infringement and Invalidity Contentions
2017	Petitioner's Non-Infringement Charts
2018	Petitioner's Discovery Requests
2019	Joint Claim Construction Statement

Patent Owner, Cogmedia LLC (“Patent Owner”), submits this paper requesting discretionary denial of Meta Platforms, Inc.’s (“Petitioner”) Petition(s) for Inter Partes Review (“Petition” or “Petitions”) of Patent Owner’s U.S. Patent Nos. 9,817,562 (“the ‘562 Patent”), 10,664,141 (“the ‘141 Patent”)¹, and 11,036,371 (“the ‘371 Patent”)² (collectively the “Challenged Patents”) pursuant to the Board’s guidance on “Interim Processes for PTAB Workload Management,” dated March 26, 2025, other guidance and proposed rulemaking provided by the USPTO, and denial decisions interpreting the same. To limit the burden on the Director, Patent Owner endeavors to address the discretionary considerations pertinent to each of Petitioner’s serial Petitions (IPR Nos. 2026-00247-49) in one uniform brief.

I. INTRODUCTION

After failing to gain any traction with either its motion to dismiss or motion to transfer venue to their home district in the parallel district court proceeding, Petitioner now files three serial Petitions for *inter partes* review against the Challenged Patents. Not only does Petitioner ask the Director and Board to expend substantial resources and time reviewing the validity of three expired patents which claim inventions made with United States Government support, but Petitioner does so with merits insufficient to support institution.

¹ Ex. 2002.

² Ex. 2003.

As will be shown in greater detail below, Petitioner's failure to comply with 37 CFR § 42.104(b)(4) in its challenge as to the '562 Patent mandates denial of this Petition, and the settled expectations between the parties, government support of the claimed inventions, weak merits of the Petitions, and *Fintiv* factors all weigh heavily in favor of discretionary denial of all three Petitions.

II. FACTUAL BACKGROUND

The first named inventor of the Challenged Patents is Dr. Paul Keel ("Dr. Keel"). Exs. 1001, 2002, and 2003, at p. 1. Dr. Keel is an inventor with a lifelong passion to explore ways of communicating complex concepts and ideas more effectively. Ex. 2004 at p. 9, ¶ 20. Dr. Keel is also the sole member of Cogmedia LLC,³ the owner of the Challenged Patents by way of Assignment.

Dr. Keel's background includes a Ph.D. in Architectural Design and Computation from The Massachusetts Institute of Technology ("MIT") followed by over twenty years of consulting and research, which includes work related to military intelligence processing. Ex. 2004 at p. 9, ¶ 20. Dr. Keel joined MIT's newly established Design and Computation program in 1994 and focused his research efforts around inventing a tangible improvement to existing systems and methods for collaborative sharing. *Id.* at ¶ 21. During Dr. Keel's time at MIT, he developed

³ Ex. 2005 at p. 1.

and converged some of his concepts and tools into a unified collaboration platform that he named “EWall.” *Id.* at ¶ 22. After securing funding from the Office of Naval Research (“ONR”), the EWall project focused toward intelligence analysis and aspired to facilitate communication across agencies and organizations working on separate but related investigations. *Id.* at ¶ 24. The Government’s funding and continued interest in the inventions is reflected in the specification of the Challenged Patents.⁴ *See* Exs. 1001, 2002, and 2003 at Col. 1, L. 35-42. The Challenged Patents have since been asserted against Petitioner in a co-pending district court litigation in the District of Massachusetts. Ex. 2004.

III. The Director Must Deny Institution as to the ‘562 Patent

Petitioner’s challenge as to the ‘562 Patent fails to comply with 37 CFR § 42.104(b)(4) (“Rule 104(b)(4)”) and under the Acting Director’s recent guidance, the Director *must* deny institution as to this Petition challenging the ‘562 Patent.

Under Rule 104(b)(4), a petition “must specify where each element of the claim is found in the prior art patents or printed publication relied upon[.]” And on July 31, 2025, the Acting Director emphasized that the USPTO will “enforce and no longer waive” this requirement. Ex. 2006 at p. 1. As a practical matter such

⁴ While Cogmedia LLC retains all right, title, and interest to the claimed inventions, the United States Government has a non-exclusive, non-transferable, irrevocable, paid up license to the claimed inventions.

enforcement means that “expert testimony, common sense, and other evidence that is not ‘prior art consisting of patents or printed publications’” “*may not be used to supply a missing claim limitation.*” *Id.* (emphasis added).⁵ The Acting Director subsequently made clear that “[p]er 35 U.S.C. § 312(a)(4), the Board *shall deny* an IPR petition that fails to comply with Rule 104(b)(4).” *Id.* This is consistent with the Board’s previous guidance that extensive reliance on expert testimony “may suggest that the questions are better resolved in an Article III court.” *See* FAQs for Interim Processes for PTAB Workload Management, Q.22.

Here, the ‘562 Patent’s sole independent claim contains a limitation requiring the presence of “a vote indicator that displays a number of votes associated with the information object”⁶ and Petitioner’s own words expressly concede that neither of its references disclose it.

Instead of identifying a teaching in Petitioner’s primary or secondary reference that discloses the limitation, Petitioner resorts to the use of expert testimony to modify the teachings of McQueen to supply the missing claim limitation. Petitioner does so by stating that (1) “*McQueen renders this limitation obvious*”; (2) “it would have been obvious to display a ‘current tally of the votes’ (a vote indicator)”; and (3) “[a] POSITA indeed would have appreciated that the

⁵ All emphasis added unless otherwise noted.

⁶ Ex. 1001 at Cl. 1(c.vi).

configuration for displaying a ‘tally of the votes’ for reviews as disclosed by McQueen would have just as easily and helpfully applied to a tally of total votes for a blurb[.]” Paper 1 at p. 36.

In other words, Petitioner admits that neither of its references disclose the claimed “vote indicator that displays a number of votes associated with the information object”, and that it can only supply this missing limitation through expert testimony.

In order to mask their clear violation of the rule, Petitioner dresses up their modification of McQueen as a part of their motivation to combine section. *Id.* at p. 16-17. But Petitioner’s first sentence in that portion of their motivation to combine section states that “[a] POSITA also would have had good reason to modify McQueen to display the number of votes for a given blurb.” *Id.* at p. 16. Once again, Petitioner’s own language confirms that rather than using expert testimony for a permitted purpose such as to support a motivation to combine rationale between its references or to explain how the combination of its references teach the limitation,⁷ it is using its expert to supply the claim limitation absent from both McQueen and Forsyth. Because this is the precise defect that Rule 104(b)(4) and the July 31 memo

⁷ Ex. 2006 at p. 1

forbid, Petitioner has left the Director with no choice but to deny institution of their challenge as to the ‘562 Patent.

As will be explained further below, while Petitioner’s failure to comply with Rule 104(b)(4) as to the ‘562 Petition is not per se fatal to Petitioner’s challenges as to the ‘141 and ‘371 Patents, it does have a substantial impact on the efficiency considerations surrounding their institution because Petitioner’s violation ensures that institution of the remaining Petitions will not “serve as a complete substitute for at least some phase of the litigation” as intended. Ex. 2007 at p. 4.

IV. The Director Should Exercise Discretion to Deny Institution of All Three Petitions under 35 U.S.C. §314(A) and/or 35 U.S.C. § 325(d)

The Director should exercise his discretion to deny institution as to all three Petitions pursuant to the Memorandum titled “Interim Processes for PTAB Workload Management,” dated March 26, 2025 (Ex. 2008). The Memorandum sets forth several considerations for whether discretionary denial is appropriate including the “settled expectations of the parties,” the “strength of the unpatentability challenge;” the “extent of the petition’s reliance on expert testimony;” “[c]ompelling economic, public health, or national security interests,” and “[a]ny other considerations bearing on the Director’s discretion.” *See id.* The Board has also affirmed that whether a petitioner has filed a *Sotera* or *Sand* stipulation should be considered in whether discretionary denial is appropriate. *See e.g. Samsung*

Electronics Co. Ltd. et al. v. Staton Techiya, LLC, IPR2022-00302, Paper 13, at 16-17 (P.T.A.B. July 11, 2022).

Patent Owner will begin by addressing the settled expectations between the parties, subsequently address the inefficiency of reviewing patents funded by the ONR as well as the weak merits of the Petitions, walk through the *Fintiv* factors, and conclude by discussing the general inefficiency of institution.

A. Settled Expectations Weigh in Favor of Denying Institution

Each of the Challenged Patents are expired, and either at or closely approaching the presumptive age for settled expectations to apply. As the Director has explained, “in general, the longer the patent has been in force, the more settled expectations should be.” *Dabico Airport Solutions Inc., v. AXA Power APS*, IPR2025-00408, Paper 21 at 3 (Director June 18, 2025). And the Director has repeatedly applied settled expectations to patents approximately six years of age. *See Intel Corporation, v. Advanced Cluster Systems, Inc.*, IPR2025-00794, Paper 13 at 2 (Director August 14, 2025) (finding settled expectations for patent owner where the challenged patent had been in force for approximately six years); *Yangtze Memory Technologies Company, Ltd. v. Micron Technology, Inc.*, IPR 2025-00498, Paper 10 at 2 (Director August 14, 2025) (finding settled expectations for patent owner where the challenged patents were six, six, and ten years old); *Kahoot! AS, v. Interstellar Inc.*, IPR 2025-00696, Paper 12 at 2 (Director July 31, 2025) (finding

settled expectations for patent owner where the challenged patent was in force for over six years).

Here, Patent Owner's '562 Patent issued on November 14, 2017, approximately eight and a half years ago and is past the presumptive age for settled expectations to apply; '141 Patent issued on May 26, 2020, approximately six years ago, and is at the presumptive age for settled expectations to apply; and '371 Patent issued on June 15, 2021, approximately five years ago, and is closely nearing the presumptive age for settled expectations to apply. *See* Exs. 1001, 2002, and 2003 at p. 1. Further, Patent Owner's settled expectations are enhanced by the fact that each of the Challenged Patents are expired.⁸ *Omnivision Technologies, Inc. v. Re Secured Networks, LLC*, IPR2025-01019 Paper 14 at 2 (Director October 10, 2025); *Google LLC, v. K. Mizra LLC*, IPR2025-01437, Paper 15 at 1 (Director January 27, 2026) (discretionarily denying institution of an expired nine-year old patent).

Because each of the Challenged Patents are now expired due to term and at or approaching the presumptive age for settled expectations to apply, the settled expectations between the parties weigh heavily in favor of discretionary denial.

⁸ While Petitioner may argue that the '141 Patent's expiry due to fees (a mere fifteen months before expiry due to term) weighs in favor of institution, Petitioner has not indicated that it had notice of the Challenged Patents or that it based any decisions thereon. Thus, the circumstances surrounding the '141 Patent's expiration should be given minimal if any weight.

B. The Government Support of the Claimed Inventions Weighs in Favor of Discretionary Denial

The Director explicitly stated that a discretionary consideration bearing on whether institution is appropriate is whether there are any “[c]ompelling economic, public health, or national security interests” associated with institution. Ex. 2008. Here, the opposite is true.

The claimed inventions were conceived with U. S. Government financial support through various grants awarded by the ONR which are reflected on the face of the patents. Ex. 1001, 2002, and 2003, at Col. 1, L. 35-42. Since the ONR’s inception in 1946, the ONR has been tasked with fostering scientific research “related to the maintenance of future naval power, and the preservation of national security” through the “discovering, developing, and delivering new technology for the Navy and Marine Corps.” Ex. 2009 at p. 1. By dedicating important federal resources on multiple occasions to the development of Dr. Keel’s inventions, the ONR repeatedly acknowledged their importance and relationship to the ONR’s goals of preserving national security. In fact, Dr. Michael Letsky, a program manager at the ONR, stated in a May 2005 article that Dr. Keel’s EWALL technology was being examined at the Naval Postgraduate School in furtherance of the U.S. Navy’s work on the Global Information Grid, assessed at the Naval Air Systems command, and being explored for use by Navy SEAL teams. Ex. 2010 at p. 4.

It simply cannot be said to be an efficient use of the Board's limited time and resources to review the validity of expired patents which the U. S. Government previously invested in, retains a non-exclusive license to, and deemed important to their goal of preserving national security.

C. The Unpatentability Challenge Set Forth by Petitioner is Weak and Cumulative of Art Set forth by the Examiner

While Patent Owner believes the Petitions should be denied on settled expectations grounds, the merits of the Petitions are weak and do not justify the Board's review because Petitioner's challenges (1) rely on art cumulative of art cited by Patent Owner during prosecution; (2) rely heavily on a combined 408 pages of expert testimony required to cure material deficiencies in the disclosure of the cited references; and (3) provide no anticipatory art, merely relying on obviousness.

a. Petitioner's Challenges are based on Cumulative Art

In determining whether to deny institution under 35 U.S.C. § 325(d), the Board applies a two-part framework to determine: "(1) whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if either condition of [the] first part of the framework is satisfied, whether the Petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims." *Advanced Bionics, LLC v. Med-El*

Elektromedizinische Geräte GmbH, IPR2019-01469, Paper 6 at 8 (P.T.A.B. Feb. 13, 2020) (precedential). To apply this framework, the *Becton, Dickinson* factors “provide useful insight.” *Id.* at 9-10.

The *Becton, Dickinson* factors are (1) the similarities and material differences between the asserted art and the prior art involved during examination; (2) the cumulative nature of the asserted art and the prior art evaluated during examination; (3) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection; (4) the extent of the overlap between the arguments made during examination and the manner in which Petitioner relies on the prior art or Patent Owner distinguishes the prior art; (5) whether Petitioner has pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art; and (6) the extent to which additional evidence and facts presented in the Petition warrant reconsideration of the prior art or arguments. *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 at 17-18 (P.T.A.B. Dec. 15, 2017) (precedential as to §III.C.5, first paragraph).

Petitioner’s challenge is based on cumulative art. Petitioner’s challenge boils down to a modification of U.S. Patent No. 7,310,612, (“McQueen”)’s so-called “blurbs”, which Petitioner likens to Patent Owner’s claimed “information objects”, to incorporate instant messaging-based teachings from U.S. Patent No. 7,047,030 (“Forsyth”). But Petitioner’s challenge brings nothing new to the table.

During the prosecution of Patent Owner’s ‘371 Patent, Patent Owner cited McQueen,⁹ Petitioner’s primary reference in each of its Petitions, to examiner Hailu who also examined Patent Owner’s ‘141 and ‘562 Patents. *See* Exs. 1001, 2002, and 2003 at p. 1. During the prosecution of the ‘371 Patent, the USPTO also considered *nineteen* distinct references related to instant messaging which Petitioner’s expert has affirmed was well known at the time. *See* e.g. Ex. 1003 at p. 47, ¶ 78.

But in view of McQueen and a host of instant messaging related references, the examiner did not put forward a single prior art-based rejection during the prosecution of the ‘371 Patent, which shares a highly similar claim structure and many of the same limitations as the ‘562 and ‘141 Patents. Because Petitioner’s challenge does little more than pair the previously considered McQueen with a “new” instant messaging reference and Petitioner does not so much as assert that the examiner erred in their evaluation of McQueen or the related instant messaging references, Petitioner’s Challenges are ripe for denial under 325(d).

b. The Merits of Petitioner’s Challenges are Weak

Unsurprisingly, in view of Patent Owner’s previous knowledge of and the examiner’s previous consideration of McQueen, Petitioner’s reliance on McQueen leaves substantial gaps Petitioner has attempted to fill through expert testimony.

⁹ *See* ex. 2003 at p. 2.

Petitioner uses its expert declarations to contort the RSS-based teachings of McQueen to fit Dr. Keel’s claimed extraction step,¹⁰ which is present in every independent claim of the Challenged Patents,¹¹ and causes configuring of a “data item[] into a distinct information object by *extracting*, from each data item, extracted data including a picture and a heading[.]” Ex. 1001 at Cl. 1(a). But Petitioner’s attempt to equate McQueen’s RSS-based teachings to extraction cannot stand in view of the distinctions drawn by the Challenged Patents between the two methods and the fact that McQueen *never* uses the word extract, or any form of it, anywhere in its disclosure.

The Challenged Patents set forth multiple distinct methods of creating information objects which are described as flexible data structures that can include data files as well as metadata. Ex. 1001 at Col. 9, L. 6-8. One method is the creation of information objects via the extraction of metadata from data items. Another method is the creation of information objects via the visualization of RSS feeds. The specifications of the Challenged Patents help to illustrate the differences between these two methods.

For example, when describing his extraction embodiment, Dr. Keel explains that when a user drags a URL from a web browser, his invention “will create an IO

¹⁰ See e.g. Ex. 1003 at ¶¶ 94-98.

¹¹ See Exs. 1001 at Cl. 1(a); Ex. 2002 at Cl. 1(b), 17(b); and Ex. 2003 at 1(b), 15(b).

that hyperlinks to that URL and *automatically extracts* (from the URL destination) a picture and a heading that is displayed in the IO's picture and heading bar." Ex. 1001 at Col. 25, L. 44-47. Keel further explains that "[t]he IO picture and the IO heading are added automatically if an appropriate picture and heading can be *extracted*"¹² and that his invention "provides the information object by filtering a web page associated with a URL to create the information object by automatically *extracting meta-data including at least one of a heading, a picture, and a link to the URL.*" *Id.* at Col. 26, L. 36-40.

In contrast to the active step of extraction, Dr. Keel describes his passive RSS embodiment differently. Dr. Keel explains that RSS feeds can be used to "create an IO that visualizes the most recent item in the RSS file/s and that continuously updates itself." *Id.* at Col. 25, L. 48-50. Keel also notes that "user[s] can drag one or more RSS URLs onto a News View row which will add and displays the content of RSS URLs on the News View row as a sequence of IOs." *Id.* at Col. 26, L. 6-10. In doing so, Dr. Keel teaches a second method of creating information objects that instead of requiring the active extraction of metadata from a data item, can simply create information objects via the visualization and display of RSS feeds.

¹² *Id.* at Col. 25, L. 25-29.

McQueen's teachings further confirm Dr. Keel's distinction. McQueen teaches that its "blurbs" are obtained through RSS feeds and explains that an RSS feed is "an XML format for syndicating web content – so that blog aggregators and other types of web sites can re-publish the content contained in such blogs." Ex. 1005 at Col. 1, L. 61-63; Col. 4, L. 44-48. McQueen further explains that "[t]he use of RSS to share and license web content across web sites is well known in the art." *Id.* at Col. 4, L. 48-50. As explained by McQueen, rather than using an extraction-based method of sharing content, it is the RSS feed itself that provides a format for facilitating re-publishing and sharing of web content. *Id.* at Col. 4, L. 44-48. In this way, the visualization of RSS feeds allows for the facilitation of content without the need for Dr. Keel's extraction step. Not only is McQueen's description consistent with Dr. Keel's use of RSS feed visualization to create information objects, but it is also meaningfully distinct from what is set forth in the claims of the Challenged Patents.

Critically, both McQueen and Dr. Keel's discussion of the visualization of RSS feeds are devoid of any mention of the extraction step described and claimed by Keel. Because each of the Challenged Patents' independent claims explicitly require that the claimed distinct information object be configured "by *extracting*, from each data item, extracted data including a picture and a heading", the claims demand an active extraction step that is absent from McQueen's RSS-based

disclosure. And because the merits of Petitioner's challenges are weak and largely based on expert testimony, discretionary denial is appropriate.¹³

D. The *Fintiv* Factors Heavily Support Discretionary Denial

In addition to the discretionary considerations set forth above, the *Fintiv* factors also support Patent Owner's request for discretionary denial. *See Apple v. Fintiv*, IPR2020-00019, Paper 11 at 5-6 (PTAB March 20, 2020) (precedential) (setting forth six non-dispositive factors to determine whether efficiency, fairness, and the merits support denial.).

a. Factor 1: Whether the Court Granted a Stay or Evidence Exists that one may be Granted if a Proceeding is Instituted

The district court has not granted a stay in light of the Petitions and is unlikely to do so. In denying Petitioner's motion to transfer venue,¹⁴ Judge Murphy has shown an interest in proceeding in the District of Massachusetts. Further, Petitioner's failure to comply with Rule 104(b)(4) guarantees that were the Director to institute Petitioner's second and third Petitions, there would be remaining issues for the district court to decide, regardless of the outcome of the remaining *inter*

¹³ *See SAP Am. Inc. v. Cyandia, Inc.*, IPR2024-01496, Paper 13 at 10-11 (PTAB Apr. 7, 2025) (declining institution where the merits were insufficiently strong to overcome other factors).

¹⁴ Ex. 2011.

partes review proceedings, which weighs against a stay of the district court proceeding. Thus, the first *Fintiv* factor weighs in favor of discretionary denial.

b. Factor 2: Proximity of the Court’s Trial Date to the Board’s Projected Statutory Deadline for a Final Written Decision

The Board will not be required to issue a Final Written Decision regarding these Petitions until September 18, 2027. While it is not Judge Murphy’s practice to issue a trial date until later in the proceedings, the Court’s scheduling order requires that trial be held within two years of the Scheduling Conference,¹⁵ which occurred on December 15, 2025.¹⁶ In light of this and the pace at which the parties have been litigating, it is likely that trial will be scheduled at approximately the same time or shortly after the Board is required to issue its decision. Thus, the second *Fintiv* factor weighs slightly in favor of discretionary denial.

c. Factor 3: Investment in the Parallel Proceeding by the Court and the Parties

Both the Court and the parties have invested heavily in the parallel proceeding and will have invested even more by the time a decision on institution would be reached. The parties have already had a motion to dismiss and motion to transfer venue decided in Patent Owner’s favor after substantial briefing. Exs. 2014 and 2011. Patent Owner served voluminous, 149-page, infringement contentions

¹⁵ Ex. 2012 at p. 2.

¹⁶ Ex. 2013.

illustrating how Petitioner practices Patent Owner's claims. Ex. 2015. Petitioner has served 178-page invalidity contentions¹⁷ as well as 111-page non-infringement charts.¹⁸ The parties have also served voluminous discovery requests¹⁹ including a total of 113 requests for production and 23 interrogatories.²⁰ The parties have also produced documents pursuant to various local rule requirements, exchanged claim construction positions, and filed their opening claim construction briefs.

By the time the Board is required to issue its institution decision, the parties will have finished claim construction briefing, engaged in more written discovery, and made substantial document productions. For all of these reasons, the third *Fintiv* factor weighs heavily in favor of discretionary denial.

d. Factor 4: Overlap Between Issues Raised in the Petition and in the Parallel Proceeding

There is substantial overlap between issues raised in the Petition and in the parallel proceeding which weighs in favor of discretionary denial.²¹ But it is also noteworthy that in view of Petitioner's failure to comply with Rule 104(b)(4) as to

¹⁷ Ex. 2016.

¹⁸ Ex. 2017.

¹⁹ Ex. 2018.

²⁰ Patent Owner has not attached its discovery requests to Petitioner out of an abundance of caution as they have references to Petitioner's AEO materials.

²¹ See *Apple, Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 12 (PTAB Mar. 20, 2020) (precedential)(holding denial is favored if parallel proceeding includes substantially same arguments and evidence)

the ‘562 Patent, institution of the remaining Petitions will not obviate the need for the resolution of the parallel proceeding or “serve as a complete substitute for any phase of the litigation” as intended. Ex. 2007 at p. 4.

Further, Petitioner has not indicated it intends to file a *Sand* or *Sotera* type stipulation and has instead served invalidity contentions which cite to McQueen and Forsyth as prior art to each of the Challenged Patents. See Ex. 2016 at pp. 61, 63, and 66. Thus, the fourth *Fintiv* factor weighs heavily in favor of discretionary denial.

e. Factor 5: Whether the Petitioner and the Defendant in the Parallel Proceeding are the Same Party

Petitioner and the Defendant in the parallel proceeding are the same party. Therefore, the fifth *Fintiv* factor weighs in favor of discretionary denial.

f. Factor 6: Other Circumstances that Impact the Board’s Exercise of Discretion, Including the Merits

Petitioner is also engaging in inconsistent claim construction practice by “seeking broader constructions at the Board to support a patentability challenge while seeking narrower constructions in litigation to avoid infringement liability”²² which the Director has previously cautioned against²³ and should also weigh in favor

²² Compare Ex. 2019 at p. 2-3 to Paper 1 at p. 12.

²³ See *Revvo Technologies, Inc., v. Cerebrum Sensor Technologies, Inc.*, IPR2025-00632, Paper 20 at 4 (Director November 3, 2025) (precedential).

of discretionary denial. Thus, the sixth *Fintiv* factor weighs in favor of discretionary denial.

V. CONCLUSION

As set forth in detail above, discretionary denial of all three Petitions is appropriate because (1) Petitioner's failure to comply with Rule 104(b)(4) in its challenge to the '562 Patent undermines any efficiency considerations surrounding institution of Petitioner's other challenges; (2) the merits of the Petitions are weak, heavily reliant on expert testimony, and cumulative of art previously presented to the examiner; (3) Patent Owner has settled expectations in the Challenged Patents due to their age and expiration and (4) the ONR's investment and continued interest in the claimed inventions as well as their determination that they related to national security cut against institution being an efficient use of the Board's finite time and resources.

In view of the foregoing, Patent Owner respectfully requests discretionary denial of all three Petitions.

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Patent No. 9,817,562

Dated: May 15, 2026.

Respectfully submitted,

By: /Alexander N. Yow/

Alexander N. Yow
Registration No. 82,236

Lead Counsel:
Alexander N. Yow
Reg. No. 82,236
Friedman, Suder & Cooke
604 E. Fourth Street, Suite 200
Fort Worth, TX 76102
Phone: (817) 334-0400
Fax: (817) 334-0401
ayow@fsclaw.com

Back-up Counsel:
Dave R. Gunter (*pro hac vice*)
Friedman, Suder & Cooke
604 E. Fourth Street, Suite 200
Fort Worth, TX 76102
Phone: (817) 334-0400
Fax: (817) 334-0401
gunter@fsclaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of May, 2026, a true and correct copy of the foregoing PATENT OWNER'S DISCRETIONARY DENIAL BRIEF was served via electronic mail upon counsel of record for Petitioner at the following address:

Lead Counsel Lisa K. Nguyen (Reg. No. 58,018) Paul Hastings LLP 1117 S. California Avenue Palo Alto, CA 94303 Telephone: 650.320.1800 Fax: 650.320.1900 Email: PH-META- CogmedialPR@paulhastings.com	Backup Counsel David M. Tennant (Reg. No. 48,362) Paul Hastings LLP 2050 M St., N.W. Washington, DC 20036 Telephone: 202.551.1700 Fax: 202.551.1705 Email: PH-META- CogmedialPR@paulhastings.com Diane Ghrist (<i>pro hac vice</i> to be filed)
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	Paul Hastings LLP 2050 M St., N.W. Washington, DC 20036 Telephone: 202.551.1700 Fax: 202.551.1705 Email: PH-META- CogmediaIPR@paulhastings.com Michelle H. Zhang (pro hac vice to be filed) Paul Hastings LLP 1117 S. California Avenue Palo Alto, CA 94303 Telephone: 650.320.1800 Fax: 650.320.1900 Email: PH-META- CogmediaIPR@paulhastings.com
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Dated: May 15, 2026.

By: /Alexander N. Yow/
Alexander N. Yow
Reg. No. 82,236