

Filed on behalf of Meta Platforms, Inc.

Filed: June 22, 2026

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

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

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1004	Curriculum Vitae of Andrew Cockburn, Ph.D (“Cockburn”)
1005	U.S. Patent No. 7,310,612 to McQueen, III et al. (“McQueen”)
1006	U.S. Patent No. 7,047,030 to Forsyth (“Forsyth”)
1007	U.S. Pre-grant Publication No. 2002/0069105 to de Rosario Botelho et al. (“de Rosario Botelho”)
1008	U.S. Pre-grant Publication No. 2002/0152114 to Shumaker et al. (“Shumaker”)
1009	U.S. Pre-grant Publication No. 2003/0189592 to Boresjo (“Boresjo”)
1010	14/664,178 FH, 10-30-2015 Arguments
1011	U.S. Patent No. 7,293,074 to Jellinek et al. (“Jellinek”)
1012	U.S. Pre-grant Publication No. 2004/0136510 to Vander Veen (“Vander Veen”)
1013	U.S. Pre-grant Publication No. 2002/0091775 to Morehead et al. (“Morehead”)
1014	U.S. Pre-grant Publication No. 2003/0233422 to Csaszar et al. (“Csaszar”)

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1015	U.S. Patent No. 7,080,139 to Briggs et al. (“Briggs”)
1016	U.S. Patent No. 7,136,915 to Rieger, III (“Rieger”)
1017	U.S. Patent No. 6,769,010 to Knapp et al. (“Knapp”)
1018	U.S. Pre-grant Publication No. 2003/0103603 to Kurita et al. (“Kurita”)
1019	Cockburn, A. and Greenberg, S. <i>Making contact: getting the group communicating with groupware. In Proceedings of the conference on Organizational computing systems (COCS '93)</i> (1993)
1020	Cockburn, A., et. al. <i>WebView: A Graphical Aid for Revisiting Web Pages OzCHI'99: Australian Conference on Computer-Human Interaction</i> , (1999)
1021	Schatz, Bruce R. <i>Building an electronic community system</i> (1991)
1022	Engelbart, Douglas C. and English, William K. <i>A research center for augmenting human intellect</i> (1968)
1023	Borenstein, Nathaniel S. and Thyberg, Chris A. <i>Cooperative work in the Andrew message system</i> (1988)
1024	Greenberg, Saul and Rounding, Michael. <i>The notification collage: posting information to public and personal displays. In Proceedings of the SIGCHI Conference on Human Factors in Computing Systems (CHI '01)</i> (2001)
1025	U.S. Patent No. 5,854,893 to Ludwig (“Ludwig”)
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1034	U.S. Patent No. 9,524,090 File History
1035	Meta Platforms, Inc. – Building Backbone Network Infrastructure, available at https://engineering.fb.com/2019/03/02/connectivity/fiber-optic-cable/ (last accessed June 19, 2026)
1036	Meta Platforms, Inc. – Take a Tour of Our Data Center in Eagle Mountain, Utah, available at https://tech.facebook.com/engineering/2021/8/eagle-mountain-data-center/ (last accessed June 19, 2026)
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I. PTAB IS MOST EFFICIENT AND A TRUE ALTERNATIVE FORUM

The PTAB is the most efficient and best-equipped forum to adjudicate the patentability of expired U.S. Patent No. 9,817,562 (the “’562 Patent”), and will serve as a true, “effective *alternative* to district court patent litigation for resolving [the parties’] disputes over patent validity.” *Magnolia Med. Tech., Inc. v. Kurin, Inc.*, IPR202-00097, Paper 17, at 2 (Director May 14, 2026). The patent was never enforced during its active life and only asserted after expiration due to a lapse in maintenance fees. Furthermore, the Office issued the patent based on subject matter previously found in prior art considered during the prosecution of the parent—prior art that the Examiner inexplicably failed to apply during the prosecution of the ’562 Patent. The patent is now being asserted against software run on Meta’s backend servers operated in data centers that Meta has spent billions to maintain domestically. There is no trial date in the Parallel Litigation and Meta has entered into a broad stipulation mitigating any concerns of duplication. Thus, PTAB is the true alternative forum for patentability, and institution is appropriate.

PO’s attempt to invoke discretionary denial fails. First, PO erroneously asserts that denial is mandated by 37 CFR § 42.104(b)(4), but this argument fundamentally misconstrues the law. Meta properly maps the claims to the prior art, and the use of expert testimony to establish a motivation to combine is expressly sanctioned. Second, while PO asserts that the Petition is weak on the merits, its

arguments highlight the exact opposite—that the Examiner materially erred during prosecution. Finally, PO's reliance on U.S. Government funding is entirely irrelevant. Indeed, the documents upon which PO relies confirm the Government's interest was based on features not recited in the challenged claims.

Ultimately, the '562 Patent represents the exact type of low-quality, non-commercialized patent, only allowed through clear material error, the Office should review. To prevent the ongoing disruption of legitimate domestic technology infrastructure by an invalid patent, Meta respectfully requests that the Director refer its Petition for consideration on the merits.

II. INSTITUTION IS WARRANTED

PO purports to follow the Director's guidance on "Interim Processes for PTAB Workload Management." DDR, 1. But PO either omits or incorrectly analyzes key considerations under that guidance. Each of these considerations weigh decisively in favor of institution.

A. There Are No Settled Expectations

PO has no settled expectations with respect to the expired '562 Patent. Neither PO nor its predecessors have ever licensed or commercialized the patent. As recognized in *Home Depot U.S.A., Inc. v. H2 Intellect LLC*, IPR2025-00480, Paper 11, at 2 (Sept. 4, 2025) (informative), settled expectations do not arise where a "challenged patent has not been commercialized, asserted, marked, licensed, or

otherwise applied in its technology space.” And the ’562 Patent has never been asserted in litigation previously. *Id.*

Critically, PO asserted the ’562 Patent only after it had expired. Discretionary denial is inappropriate under such circumstances because a patent owner cannot artificially manufacture settled expectations after patent expiration, a principle affirmed in *Apple Inc. v. Ferid Allani*, IPR2025-00856, Paper 11, at 3 (Sept. 4, 2025). Further, PO affirmatively abandoned the patent by failing to pay the required maintenance fees, allowing it to lapse. EX1033. PO attempts to dismiss this abandonment in its brief—perplexingly arguing that the circumstances surrounding the expiration of a completely different patent, the “’141 Patent” (*see* DDR, footnote 8), should be given minimal weight. Clear precedent states otherwise. Under *Ford Motor Co. v. AutoConnect Holdings LLC*, IPR2025-01342, Paper 10, at 3 (Dec. 4, 2025), there are no settled expectations where patent owner “fail[ed] to timely pay maintenance fees” allowing “the challenged patent[] to lapse.” Accordingly, Meta reasonably expected non-enforcement of the patent. *See Google LLC v. Sandpiper CDN, LLC*, IPR2025-00806, Paper 13, at 2 (Sept. 12, 2025) (challenged patents asserted after expiration, and therefore petitioner “expected non-enforcement”); *Globus Medical, Inc. v. Spinelogik, Inc.*, IPR2025-00225, Paper 8, at 2 (June 12, 2025) (“expected non-enforcement of the challenged patent” asserted after challenged patent expired “due to non-payment of maintenance fees”).

PO's reliance on *Omnivision* and *K. Mizra* to argue that expiration enhances settled expectations mischaracterizes those decisions. *See* DDR, 8. In *Omnivision*, the petitioner had filed a declaratory judgment action against the challenged patent establishing strong settled expectations. *Omnivision Tech., Inc. v. Re Secured Networks, LLC*, IPR2025-01019, Paper 14, at 2 (Director Oct. 10, 2025). Similarly, in *Google LLC, v. K. Mizra LLC*, IPR2025-01437, Paper 15 (Director January 27, 2026), the patent owner had put the petitioner on notice before the expiration of the patent. Because PO here provided no pre-expiration notice and engaged in no active enforcement before the patent lapsed, it cannot retroactively claim the equitable protections of discretionary denial.

B. IPR is Necessary To Correct A Material Error By The Office

The challenged claims of the '562 Patent should have never issued. As the Examiner found, the core point of novelty—addressing “information [] represented in different formats” by “introducing a standardized information format that represents a piece of information in an abstract way and links to the original piece of information” (EX1001, 2:64-3:7)—was already known. EX1034, 74. To overcome the prior art, the applicant added nominal communication features such as messaging and voting. But during prosecution of U.S. Patent No. 9,524,090 (the “'090 Patent”), the '562 Patent parent, the Examiner had already expressly found these features were disclosed in U.S. Pat. Pub. 2004/0199514 to Rosenblatt et al.

("Rosenblatt") and U.S. Pat. Pub. 2003/0115023 to Nickerson et al. ("Nickerson"), references the Examiner failed to apply during the prosecution of the '562 Patent.

As the lack of enforcement of the patent effectively acknowledges, the '562 Patent was "improvidently granted" and should not "continue to be recognized." *Magnolia*, IPR2026-00097, Paper 17, at 7. Institution is appropriate to correct this material error—the Examiner overlooked his own previous finding in the parent that these nominal features are disclosed in the prior art.

1. The Office allowed the '562 Patent based on nominal communication features

During the parent '090 Patent prosecution, the Examiner repeatedly found the pending independent claims as anticipated by Nickerson, which disclosed a system that collected information through a web crawl, rendered them in a uniform format, and allowed users to comment and vote on the collected information. EX1034, 131-138. To overcome this, the applicant added a "message function" limitation, resulting in a Notice of Allowance. EX1034, 300; *see also id.*, 342.

Later during the '562 Patent prosecution, the Examiner issued a double patenting rejection based on the parent '090 Patent but otherwise allowed the claims. EX1002, 204. The applicant then amended the claims to include a "vot[ing] function" as well as other nominal communication limitations including a "replicate function" to exchange information between users and "link function" to link to the original source. *Id.*, 224. Based on these additions, the Office issued a Notice of

Allowance on July 10, 2017, with no reasons for allowance. *Id.*, 321.

2. The Office overlooked that it had found the allowable nominal features in prior art applied to the parent

The Examiner overlooked that he had expressly found these features in the references applied to the parent '090 Patent. For “messaging,” the Examiner found that “Rosenblatt teaches . . . causing an information object to be shared with another user via an instant message sent through an integrated instant messaging system.” EX1034, 137. For “voting,” the Examiner found “Nickerson further discloses rating or voting.” *Id.*, 133. For “replicate,” the Examiner found Rosenblatt teaches “[s]haring, via copying . . . information file, through a communications program.” *Id.*, 136. For “link,” the Examiner found that the U.S. Pat. Pub. 2002/0087602 to Masuda et al. teaches that the “extracted data including . . . a hyperlink.” *Id.*, 192.

Critically, while the same Examiner considered and applied these references to the parent '090 Patent, the Examiner failed to apply these references during the prosecution of the '562 Patent.¹ *See generally* EX1002.

3. Correcting a material error by the Office is an appropriate and worthwhile use of Board resources

The Director has repeatedly emphasized that the Office institutes review specifically to reconsider its own decisions and correct possible errors made in the

¹ Nickerson, Rosenblatt, and Masuda do not appear on the face of the '562 Patent.

original patent grant, a principle affirmed in *Magnolia*, IPR2026-00097, Paper 17, at 6. Precedent confirms that a substantial showing of apparent examiner error can overcome other factors that suggest discretionary denial, as demonstrated in *Apple Inc. v. Advanced Coding Technologies LLC*, IPR2025-01103, Paper 11, at 2 (Oct. 17, 2025), and *Anthony Inc. v. ControlTec LLC*, IPR2025-00559, Paper 12 (July 16, 2025), where a material error by the Office justified the use of resources for review. This policy is reinforced by *Xencor, Inc. v. Merus N.V.*, IPR2025-00605, Paper 12, at 2-3 (July 17, 2025), which held that “discretionary denial under 35 U.S.C. § 325(d) is not appropriate because the Office materially erred during prosecution of the challenged patent.” Because the Office allowed the challenged claims based solely on the addition of limitations that it previously found in the prior art applied against the parent of the ’562 Patent—prior art not applied during the prosecution of the ’562 Patent itself, the Board should intervene to correct this material error.

C. Domestic Investment Confirms Institution Is Appropriate

Institution would protect Meta’s massive investment in domestic operations and infrastructure. Recognizing that “the availability of IPRs and PGRs is important to protect American manufacturers,” on March 11, 2026, Director Squires issued a memorandum setting forth additional considerations related to U.S. manufacturing in determining whether to institute post-grant proceedings. Under this policy, the Director considers “the extent to which any products accused of infringement in a

parallel proceeding are manufactured in the United States or are related to investments in American manufacturing operations” and “the extent to which any products made, sold, or licensed by the patent owner that compete with the accused products are manufactured in the United States.” March 11 Memo, at 2. Crucially, the memorandum explicitly dictates that “[i]n the case of method claims, the relevant products for the purposes of this memo are the devices used to carry out the method.” *Id.* at 3. Here, Meta has invested billions in the exact physical devices used to execute the accused functionality—namely, the domestic data centers that host and operate the backend infrastructure for the accused Facebook website and mobile application. In contrast, PO has no competing products, no manufacturing presence, and no domestic operations whatsoever.

The challenged claims are method claims that PO alleges Meta performs through its “‘Wall’, ‘Timeline’, ‘Profile’, ‘Feed’, and/or ‘Newsfeed’ features and functionality that is accessible via, and provided through, [the] Facebook website platform and/or software/mobile application versions of Facebook.com.” EX2015, 3. Specifically, PO alleges that Meta’s “backend server equipment” performs the claimed methods. *Id.*, 5. These servers are operated as part of Meta’s 28 U.S. data centers that support its apps and technologies. EX1035, 1; EX1036, 1 (“This is our data hall. This is where all the magic happens that makes Facebook...work”).

Meta’s data centers represent a monumental investment of billions of dollars

and tens of thousands of jobs in the American infrastructure. For example, Meta recently broke ground on its Indiana Data Center in 2026, committing a massive investment of more than \$10 billion in this data center alone. EX1037. This project includes \$75 million in public water and wastewater infrastructure projects alongside \$45 million for public road improvements and environmental restoration along the nearby Deer Creek riparian corridor. *See* EX1039. Nationwide, Meta's data center operations have supported over 30,000 skilled trade jobs and 5,000 operational jobs since 2010 directing billions of dollars to American subcontractors, steel workers, pipefitters, electricians, fiber technicians, and other skilled workers. *See* EX1038; *see also* EX1040. Furthermore, in January 2026, Meta announced an up to \$6 billion multi-year agreement with Corning to supply fiber optic cables for Meta data centers. *See* EX1040. This substantial domestic agreement enables Corning to expand its manufacturing operations in North Carolina and supports a 15 to 20 percent increase in jobs at Corning's North Carolina facilities. *Id.*

Conversely, PO has made no investment in any domestic operations. PO recently formed an entity, organized on August 12, 2024, with a principal place of business that is nothing more than the office of its counsel, Sunstein LLP. EX1041. Importantly, neither PO nor its predecessors have ever made, sold, or licensed a commercial product under the '562 Patent. EX1042, 9-10.

To protect Meta's U.S. operations and its continued investment in domestic

manufacturing and jobs, institution is appropriate.

D. *Fintiv* Confirms That Institution Is Warranted

No trial date has been set, the FWD will almost certainly issue before trial in the Parallel Litigation, and Meta has entered a broad *Sotera* stipulation. Thus, the *Fintiv* factors support institution and will further the Board's objectives to advance "efficiency, fairness, and the merits." *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, at 5-6 (Mar. 20, 2020).

Factor 1 (stay) favors institution because stay is likely. *Imperative Care, Inc. v. Inari Medical, Inc.*, IPR2025-00289, Paper 9, at 2 (June 12, 2025) ("evidence that the district court is likely to grant a stay if this proceeding is instituted" weighs against discretionary denial). Although Judge Murphy (the presiding judge in the Parallel Litigation) has not previously ruled on a motion to stay pending post-grant proceedings, the District of Massachusetts routinely grants such motions. Indeed, since 2024,² the District of Massachusetts granted all six motions to stay pending

² There were seven motions to stay pending IPR filed in the District of Massachusetts since 2024, but one was denied as moot. *SiOnyx, LLC v. Apple, Inc.*, No. 1:24-cv-12354, Dkt. 73 (D. Mass. May 27, 2025). Another was granted as to patents with instituted IPRs, but denied as to patents without instituted IPRs. *Progenics Pharms., Inc. v. MIM Software Inc.*, No. 1:24-cv-10437, Dkt. 102 (D. Mass. May 13, 2025).

IPR that were considered. EX1043.³

Factor 2 (proximity to trial) strongly favors institution because there is no trial date pending. *RØDE Microphones, LLC, et al. v. Zaxcom, Inc.*, IPR2025-00557, Paper 11, at 2 (July 17, 2025) (denying request for discretionary denial noting “there is no scheduled trial date in the co-pending district court litigation”). Even if a trial date were to be set, as PO acknowledges, a trial will likely not occur until December 2027 (DDR, 17), well after the deadline for the Final Written Decision on September 19, 2027. Further, the median time-to-trial statistics for the District of Massachusetts suggest trial would not occur until May 2028 (EX1044, 1). *See Amazon.com, Inc. et al. v. NL Giken Inc.*, IPR2025-00250, Paper 14, at 2 (May 16, 2025) (denying request for discretionary denial based, in part, on time-to-trial statistics suggesting trial would occur six months after final written decision).

Factor 3 (investment in parallel litigation) favors institution. Party and judicial investment in the Parallel Litigation have been limited. *Am. Airlines, Inc. v. Intellectual Ventures I LLC*, IPR2025-00785, Paper 11, at 2-3 (Aug. 29, 2025) (“evidence that there has been little investment in the district court proceedings” weighs against discretionary denial). A claim construction order has not issued, and

³ PO argues that the “district court has not granted a stay light of the Petitions” (DDR, 16) but no motion has been filed. A motion will be filed shortly.

a deadline for the close of fact discovery has not been set. *Snap, Inc. v. SRK Tech. LLC*, IPR2020-00820, Paper 15, at 10 (Oct. 21, 2020) (finding “the District Court proceeding was in its early stages” where “no claim construction orders have issued”). PO argues that a motion to dismiss and motion to transfer venue have already been decided. DDR, 17. But the motion to dismiss was decided based on a text order with no analysis (EX2014), and the motion to transfer venue was procedural with little, if any, patent analysis (EX2011).

Factor 4 (overlap) favors institution. As discussed above, the District of Massachusetts will almost certainly stay the litigation, granting all motions to stay on patents with instituted IPRs since 2024. But for the avoidance of doubt, Petitioner has entered a broad *Sotera* “plus” stipulation that will eliminate overlap between the district court litigation and the instant proceeding if instituted. *See Samsung Elec. Co., v. Wilus Institute of Standards and Tech. Inc.*, IPR2025-00933, Paper 11, at 3 (Oct. 10, 2025) (“Petitioner has filed a broad stipulation that reduces the concern of inconsistent outcomes or significant duplication of efforts.”); *Tesla, Inc. v. United States*, IPR2025-00341, Paper 12, at 2 (June 13, 2025) (“Petitioner has filed a broad stipulation” that counsels against discretionary denial). With the broad *Sotera* “plus” stipulation, if instituted, Meta has committed not to pursue any combination that includes a reference listed in the grounds, even when combined with any other prior art that could not have been raised, such as system prior art. *See* EX1045.

Factor 5 (same party) is neutral. The Board considers “whether the petitioner and the defendant in the parallel proceeding are the same party” because the Board may exercise its discretion where institution would mean “redoing the work of another tribunal” on the same or substantially same issues for the same parties. Here, even though the same parties are involved in this proceeding and Parallel Litigation, there is little danger of redoing the work of the district court since Meta has entered a broad stipulation. *Snap*, Paper 15, at 17 (“there is not substantial overlap . . . [thus] we regard the consideration of the fifth *Fintiv* factor as neutral”).

Factor 6 (other considerations) strongly favors institution.⁴ *First*, as discussed *infra*, the Petition presents strong arguments for unpatentability. *See Samsung Elecs. Co. v. Dynamics Inc.*, IPR2020-00505, Paper 11, at 14 (Aug. 12, 2020) (finding case merits favor institution). *Second*, institution is consistent with the significant public interest against “leaving bad patents enforceable.” *Thryv, Inc.*

⁴ PO argues that Meta is engaging in inconsistent claim construction practice (DDR, 19) but fails to identify a single example. PO cannot because Meta applies the same constructions here as in district court. To the extent PO alleges that any construction is inconsistent, Meta will stipulate to use the same construction solely to remove any perceived discrepancy between forums. *See Caption Health, Inc. v. Univ. of British Columbia*, IPR2025-01422, Paper 15, at 3 (Director Dec. 18, 2025).

v. Click-To-Call Techs., LP, 590 U.S. 45, 55 (2020). Meta has a significant patent portfolio of its own, and institution here would further the intent of the AIA to prevent the “diver[sion of] resources from the research and development of inventions.” H.R. Rep. No. 112-98, pt. 1, at 48 (2011). EX1042, 7. The failure to remove low-quality patents damages the integrity of the patent system and diverts Meta’s resources from developing true innovation, such as U.S Government-funded Meta projects related to AI. EX1047. *Third*, this Petition is the sole challenge to the ’562 Patent before the Board—a “crucial fact” favoring institution. *Google LLC v. Uniloc 2017 LLC*, IPR2020-00115, Paper 10, at 6 (May 12, 2020).

E. The PTAB Is The Most Efficient Forum And A True Alternative To The Parallel Litigation

“The absence of a scheduled trial date and Petitioner’s broad stipulation reduces the concern of inconsistent outcomes or significant duplication of efforts, and allows this AIA review to function as an alternative to the co-pending litigation.” *Tesla, Inc. v. Bulletproof Property Mgmt., LLC*, IPR2026-00204, Paper 14, at 2-3 (Director June 15, 2026). This is particularly the case here—not only is there no scheduled trial date and a broad stipulation beyond *Sotera*, but also as discussed, the District of Massachusetts has granted every requested stay on an instituted IPR since 2004. *See* Section II.D.

Importantly, the PTAB would serve as a true and more efficient alternative. The Parallel Litigation is Judge Murphy’s first patent case, and he has consistently

noted that he “do[es] not have a deep well of experience with patents.” EX1046, 5:8-9. Accordingly, the PTAB is a far more efficient forum to decide the invalidity of the '562 Patent given its specialized knowledge and familiarity with patent law.

III. PO'S ASSERTIONS THAT DISCRETIONARY DENIAL IS WARRANTED CONFIRM THE OPPOSITE

A. The Prior Art Discloses Each And Every Limitation Of The Challenged Claims And Rule 104(b)(4) Does Not Apply

PO argues “the Director *must* deny institution” because the Petition allegedly uses “expert testimony . . . to supply [a] missing claim limitation.” DDR, 3. (emphasis in original). PO alleges McQueen does not disclose the “vote indicator that displays number of votes associated with the information object.” *Id.*, 4. Incorrect. As PO acknowledges, the Petition expressly identifies a “configuration for displaying a ‘tally of the votes’ for reviews [] disclosed by McQueen” that meets this limitation. *Id.*, 5 (citing Pet., 36). Thus, the Petition has no expert gap-filling as prohibited under Rule 104(b)(4) and the Director's July 31, 2025 Memorandum.

PO attempts to twist the motivation to combine section into an admission that the limitation is missing, but this misconstrues fundamental patent law. Explaining how a POSITA would utilize a reference's internal teachings is a standard requirement, not an admission of a defect. It is well established that even when “combining multiple embodiments from a single reference . . . there must be a motivation to make the combination and a reasonable expectation that such a

combination would be successful” as held in *In re Stepan Co.*, 868 F.3d 1342, 1346 n.1 (Fed. Cir. 2017) and *Meta Platforms, Inc. v. Angel Tech. Grp. LLC*, IPR2023-00057, Paper 40, at 19 (May 7, 2024). Petitioner's expert testimony serves this exact legal purpose by supporting the rationale to combine within McQueen, as was expressly sanctioned by the Director. July 31 Memo, at 1 (“General knowledge may still be used in an IPR to support a motivation to combine”).

PO's attempt to recharacterize Petitioner's expert testimony as gap-filling is entirely baseless.

B. The Government Only Had Interest In Features Not Recited In The '562 Patent

PO erroneously argues that it is not “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.” DDR, 10. But the evidence confirms quite the opposite—that the Board should protect the integrity of the patent system by reconsidering its decision to issue a patent on technology that the U.S. Government evaluated and chose not to use despite having a license to practice.

While PO touts that the inventor's technology was examined at the Naval Postgraduate School, the underlying documentation reveals that the examined features have nothing to do with the claimed features of the '562 Patent. DDR, 9. The article that PO relies upon expressly identifies the features examined—“team

participants input their thoughts and information *so algorithms* can arrange and prioritize them” and the “Web-enabled technology [allows] team members [to] *query* for the latest information on a specific topics.” EX2010, 4. Crucially, the challenged claims include no such prioritization algorithms nor query function.

C. The Petition Is Exceptionally Strong And Confirms Material Errors Made by the Examiner

1. The Office allowed the '562 Patent based on nominal communication features

As discussed in Section II.B.1, the Examiner only allowed the parent '090 Patent after the claims were amended to include a “messaging function.” PO argues that the Petition is weak because the primary reference McQueen is cumulative of the “*nineteen* distinct references related to instant messaging which Petitioner’s expert has affirmed was well known at the time.” DDR, 12. However, this argument only underscores that institution is necessary to correct this clear Examiner error, matching the principle in *Padagis US LLC v Neurelis, Inc.*, IPR2025-00464, Paper 12, (Director July 16, 2025) (informative), where an examiner’s failure to properly handle known art justified the use of Office resources for review.

PO further asserts that the claims are patentable because the Examiner did not put forward prior art “in view of McQueen and a host of instant messaging related references . . . during the prosecution of the '371 Patent.” DDR, 12. Yet, the absence of rejections reveals a lack of meaningful evaluation of the references.

The Examiner's search records expose highly constrained review times that preclude any meaningful prior art evaluation. On September 28, 2020, the Examiner ran 16 searches in 25 minutes, averaging less than two minutes per search string. EX1048, 130-32. While the final search returned 68 hits at 12:35, the Examiner finalized the workspace five minutes later at 12:40:05, a brief interval that makes a thorough review of those references impossible. *Id.* at 132. A subsequent session on February 4, 2021, was similarly rushed, logging 14 searches in roughly 35 minutes. *Id.*, 566-68. The final search string yielded 15 hits at 11:30, yet the Examiner saved the record less than two minutes later at 11:31:55, reinforcing the inference that these result sets were never substantively reviewed. *Id.*, 568. Crucially, the Examiner completely omitted any searches related to messaging during this entire February session. *Compare id.*, 566-68 with *id.*, 549 (examiner's reasons for allowance).

Critically, the Examiner had previously rejected a dependent claim in the parent '090 Patent finding that "Rosenblatt teaches . . . causing an information object to be shared with another user via an instant message sent through an integrated instant messaging system." EX1034, 137. The applicant never traversed Rosenblatt, nor did the Examiner ever address why he withdrew this rejection. Most striking, Rosenblatt does not appear on the face of the '562 Patent as considered during prosecution, confirming the Examiner overlooked messaging disclosures in

references that he had previously identified. *See supra* Section II.B.

Thus, contrary to PO's assertions, the vast number of well-known instant messaging references does not establish patentability. Rather, it confirms that the Examiner overlooked the teachings of Rosenblatt (and similar references like McQueen) which disclosed the allowable subject matter of the challenged claims. *Bulletproof*, IPR2026-00204, Paper 14, at 3-4 ("In the child applications, Joos was cited in an IDS, but the examiner did not apply Joos in any rejection . . . Petitioner persuasively argues that the examiner overlooked certain teachings in Joos that appear to disclose allowable subject matter of the challenged claims.").

2. The Petition uses expert testimony for context as contemplated in the July 31 Memo

The Petition establishes that McQueen discloses the "extract" limitation of the challenged claims by teaching a "system [that] converts or saves each 'blog,' which may be in a different 'RSS' format, as one or more 'blurbs' or blurb posts." Pet., 23. Petitioner's expert Dr. Cockburn explains how an "RSS" format works, particularly in the context of the McQueen system. "[A]n RSS feed is a standardized file used to syndicate web context, including metadata." Cockburn Decl, ¶95. "By 'ingesting' these standardized XML entries and translating them into discrete 'blurbs' within a centralized database 44 (database system), McQueen's configuration of raw data transforms into a distinct information object." *Id.*

PO contends that Dr. Cockburn's explanations "contort the RSS-based

teaching of McQueen to fit Dr. Keel's claimed extraction step." DDR, 13. Not so. *First*, Dr. Cockburn's explanation is exactly the type of expert testimony allowed under the July 31 Memo—"to demonstrate how a skilled artisan would have understood a prior art reference's disclosure as teaching a claim limitation." *Id.*, 2. *Second*, PO concedes that this exact embodiment is disclosed in the '562 Patent. DDR, 14 ("Dr. Keel explains that RSS feeds can be used to 'create an IO that visualizes the most recent items in the RSS file/s and that continuously updates itself.'"). If anything, this limitation demonstrates the strength of the Petition.

Indeed, to the extent that PO argues that the RSS embodiment disclosed in the '562 Patent is an unclaimed or disclaimed embodiment, this is a legal argument that is best decided by the Board. This is particularly true here, where Judge Murphy has consistently explained that he is still learning patent law given that the Parallel Litigation is his first patent case.

IV. CONCLUSION

Petitioner respectfully requests that the Board reach the merits of the Petition.

Dated: June 22, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2026, a true and correct copy of the foregoing
**PETITIONER'S OPPOSITION TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL** is being served by electronic mail on PO's counsel
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