

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM SERVICES LLC,

Petitioner,

v.

SMART SPEAKER LLC,

Patent Owner.

Patent No. 12,401,721

Filing Date: May 8, 2025

Issue Date: August 26, 2025

Inventors: Yehuda Binder and Benjamin Maytal

Title: SYSTEM AND METHOD FOR SERVER BASED CONTROL

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

Case No. IPR2026-00276

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LIST OF EXHIBITS

Exhibit No.	Description of Document
2001	Memorandum from John A. Squires, Director of USPTO, entitled “Additional Discretionary Institution Considerations – U.S. Manufacturing and Small Business Use of AIA Proceedings,” dated March 11, 2026
2002	Plaintiff’s Disclosure of Asserted Claims and Infringement Contentions in <i>Smart Speaker LLC v. Amazon.com Servs. LLC</i> , Case No. 2:25-cv-00707-JRG (E.D. Tex.), dated September 16, 2025
2003	Photograph of the underside of an Amazon Echo Dot sold in the United States
2004	Article entitled “Watchdog criticizes conditions at Chinese factory that builds Amazon Echo speakers” by Matt Day, The Seattle Times, published June 9, 2018
2005	Article entitled, “Alexa is Infecting All Electronic Devices Near You,” dated June 25, 2018
2006	Article from Amazon Jobs entitled “Devices Operations and Supply Chain,” accessed May 4, 2026
2007	Second Amended Docket Control Order (Dkt. 33) in <i>Smart Speaker LLC v. Amazon.com Servs. LLC</i> , Case No. 2:25-cv-00707-JRG (E.D. Tex.), dated October 29, 2025
2008	Defendant’s Invalidity and Subject Matter Eligibility Contentions in <i>Smart Speaker LLC v. Amazon.com Servs. LLC</i> , Case No. 2:25-cv-00707-JRG (E.D. Tex.), dated December 9, 2025
2009	Appeal Statistics, Patent Trial and Appeal Board, dated October 31, 2025
2010	Patent Trial and Appeals Board (PTAB) data at a glance December 2025

I. INTRODUCTION

Pursuant to the Director’s March 26, 2025 Memorandum Regarding Interim Processes for PTAB Workload Management (“Process Memorandum”), Smart Speaker LLC (“Patent Owner”) files this Request for Discretionary Denial of Institution.

On February 28, 2026, Amazon.com Services LLC (“Petitioner”) submitted a Petition (Paper 2, “Petition,” or “Pet.”) requesting *inter partes* review (“IPR”) of U.S. Patent No. 12,401,721 (Ex. 1001, the “’721 Patent”), challenging Claims 1-15, 17-31, and 33 (the “Challenged Claims”). The Petition identifies co-pending district court litigation *Smart Speaker LLC v. Amazon.com Servs. LLC*, No. 2:25-cv-00707 (E.D. Tex.) (the “District Court Litigation”). Pet. at 103.

The Director should exercise discretion to deny the Petition under 35 U.S.C. § 314(a) for at least the following reasons: (i) the Accused Products are not manufactured in the United States, and the considerations identified in Director Squires’s March 11, 2026 Memorandum strongly favor denial; (ii) trial in the District Court Litigation will occur approximately three months before the projected statutory deadline for any FWD; (iii) the parallel District Court Litigation and the Petition involve the same parties; (iv) the District Court Litigation involves the same patent and the same claims; (v) the Petition is weak and overly reliant on expert

testimony, and Petitioner does not contend any error was made during prosecution; (vi) a motion to stay the District Court Litigation has not been filed and would not likely be granted; (vii) the PTAB's resources are better spent on *ex parte* appeals; and (viii) no changes in the law support reconsideration of patentability.

For the reasons set forth herein, the Director should exercise discretion to deny the Petition.

II. THE PETITION SHOULD BE DENIED IN THE DISCRETION OF THE DIRECTOR UNDER 35 U.S.C. § 314(a)

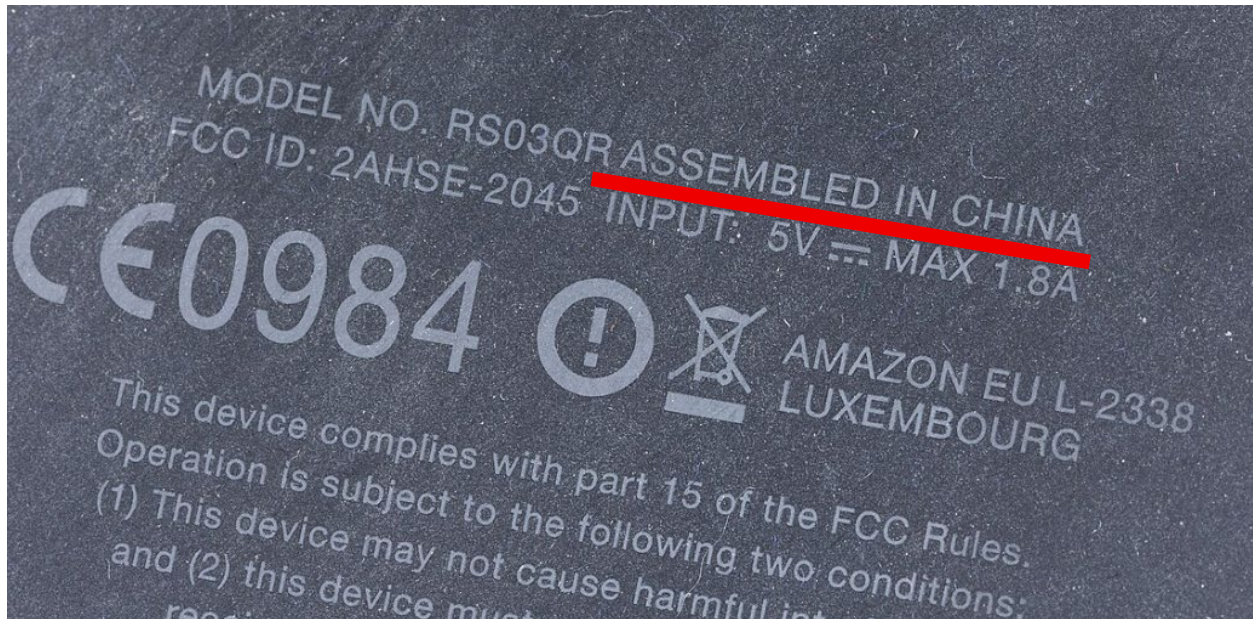
The circumstances of the parallel District Court Litigation necessitate denial of the Petition under the Board's precedent, as every factor considered in relation to efficiency, fairness, and the merits supports denial. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (P.T.A.B. Mar. 20, 2020) (precedential) (considering (a) "whether the petitioner and the defendant in the parallel proceeding are the same party"; (b) "overlap between issues raised in the petition and in the parallel proceeding"; (c) "proximity of the court's trial date to the Board's projected statutory deadline for a final written decision"; (d) "investment in the parallel proceeding by the court and the parties"; (e) "whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted"; and (f) "other circumstances that impact the Board's exercise of discretion, including the merits.").

As set forth below, these factors along with the Process Memorandum collectively demonstrate that efficiency and integrity of the AIA are best served by denying review. *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8, at 20 (P.T.A.B. Sept. 12, 2018) (quoting *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19, at 16–17 (P.T.A.B. Sept. 6, 2017) (precedential)) (denying Petition because institution would not be consistent with the objective of the AIA to “provide an effective and efficient alternative to district court litigation.”).

A. The Accused Products Are Not Manufactured in the United States, and Director Squires’s March 11, 2026 Memorandum Strongly Favors Discretionary Denial

On March 11, 2026, Director Squires issued a memorandum identifying three additional discretionary institution considerations tied to domestic manufacturing and small-business status. Ex. 2001. The Squires Memorandum applies to all IPRs “in which the due date for a patent owner discretionary brief has not yet elapsed.” *Id.* at 3. The first consideration asks whether “any products accused of infringement in a parallel proceeding are manufactured in the United States or are related to investments in American manufacturing operations.” *Id.* at 2. Neither is true here. The second and third considerations are neutral and are strongly outweighed by the first, which favors discretionary denial.

The Accused Products are various generations and models of the Amazon Echo, Echo Dot, Echo Pop, Echo Show, Echo Studio, Echo Spot, Echo Auto, Echo Frames, and Fire TV Cube. *See* Ex. 2002 at 2-3. None of those Accused Products are manufactured in the United States. To the contrary, public information confirms that the Accused Products sold in the United States are manufactured abroad—overwhelmingly in China. The underside of every Amazon Echo Dot sold in the United States bears the marking “Assembled in China.”



Ex. 2003. Amazon’s primary manufacturing partner for Echo devices is Foxconn (formerly Hon Hai Precision Industry Co., Ltd.), which produces Echo devices at its Hengyang plant in China’s Hunan province. Ex. 2004; Ex. 2005. The Hengyang facility was developed under an \$870 million Foxconn investment, dedicated to

producing Amazon devices. Ex. 2004. The Squires Memorandum asks whether the Accused Products “are manufactured” in the United States—present tense. Ex. 2001 at 2. They are not. Amazon has not publicly announced any plans, investments, or supplier arrangements to manufacture Echo devices, or any of their material components, in the United States.

The Squires Memorandum specifically directs the Director to consider “not only assembly of the final product in the United States, but also the extent to which components of a product are made in the United States and the extent to which products made in the United States are sent for further processing outside the United States.” *Id.* at 2-3. Here, the Echo devices are not assembled in the United States and, based on public information, there are no U.S. sources for the components of the Echo devices. Public reporting on the Echo’s manufacture confirms that assembly and component integration occur at Foxconn’s Chinese plants. *See* Ex. 2004; Ex. 2005.

Petitioner is also not making investments in American manufacturing operations related to the Accused Products. The Squires Memorandum requires that any “investments in American manufacturing operations” be “related to” the accused products. Ex. 2001 at 2. Amazon has not publicly identified any such related investments. Indeed, while Amazon publicly describes its Devices Operations and

Supply Chain team as overseeing “planning, supplier selection, production, and logistics for products such as Echo devices, Kindle e-readers, Fire tablets, Fire TVs, and Astro consumer robots,” Ex. 2006 at 1, the actual production sites identified in public reporting are abroad. *Id.*; Ex. 2004; Ex. 2005.

The second consideration of the Squires Memorandum is neutral because Patent Owner does not manufacture any products in the United States that compete with the accused products. Ex. 2001 at 2. As to the third consideration, Petitioner Amazon is among the largest companies in the world and is not a small business, and thus this consideration is likewise neutral. *Id.* Amazon is, however, precisely the type of “large company” the Squires Memorandum identifies—a frequent IPR petitioner that lacks a significant U.S. manufacturing presence—that relies on proceedings like this one to obtain a “tactical advantage” in patent litigation while continuing to manufacture its accused products abroad. *Id.* at 1-2.

Accordingly, the additional considerations identified in the March 11, 2026, Squires Memorandum weigh strongly in favor of discretionary denial.

B. Proximity of the District Court’s Trial Date

The proximity of the District Court Litigation’s trial date to the Board’s projected statutory deadline for a Final Written Decision also strongly weighs in favor of discretionary denial. The parties’ trial is scheduled for June 7, 2027. Ex.

2007 at 1. Pursuant to 35 U.S.C. §§ 314(b)(1) and 316(a)(11), the projected statutory deadline for a Final Written Decision of this Petition is September 5, 2027.¹ “If a district court’s trial date is earlier than the Board’s projected statutory deadline for a final written decision, the Board generally has weighed this fact in favor of exercising discretion to deny institution.” *T-Mobile USA, Inc. v. Wireless Alliance, LLC*, IPR2024-00608, Paper 16 (P.T.A.B. Sept. 3, 2024) (denying institution). As the District Court Litigation’s trial will be ***over three months before*** the projected statutory deadline, this factor weighs in favor of denying institution. *See, e.g., EClinicalWorks, LLC v. Decapolis LLC*, IPR2022-00229, Paper 10 at 9 (P.T.A.B. Apr. 13, 2022); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 13 (P.T.A.B. May 13, 2020) (informative); *Samsung Elecs. Co. v. Secure Wi-Fi LLC*, IPR2024-01367, Paper 10 at 12-13 (P.T.A.B. Mar. 24, 2025) (finding that proximity to the

¹ Patent Owner will file a timely preliminary response on June 5, 2026. The statutory deadline for institution is September 7, 2026, “three months after receiving a preliminary response to the petition under section 313.” *See* 35 U.S.C. § 314(b)(1). If instituted, the statutory deadline for a Final Written Decision is September 7, 2027, “not later than 1 year after the date on which the Director notices the institution of a review.”

district court's trial date weighed heavily in favor of denial and recognizing Judge Gilstrap's time-to-trial statistics as lending credibility to scheduled trial date, which was set to occur months before final written decision deadline). As noted, as of the earliest date the parties could theoretically expect a Final Written Decision on this Petition, the District Court Litigation's trial will be long since over. Ex. 2007. There will thus be no efficiencies gained whatsoever with respect to costs expended by the parties and court in having a Final Written Decision well after trial.

Accordingly, this factor strongly weighs in favor of discretionary denial.

**C. The Parallel District Court Litigation and the Petition
Involve the Same Parties**

As Petitioner notes, there exists a parallel District Court Litigation between the same parties regarding the same subject patent (the '721 Patent). Pet. at 103. As noted above, the District Court Litigation involves Accused Products including various generations and models of the Amazon Echo, Echo Dot, Echo Pop, Echo Show, Echo Studio, Echo Spot, Echo Auto, Echo Frames, and Fire TV Cube. *See* Ex. 2002 at 2-3. *Fintiv*, IPR2020-00019, Paper 15 at 15 (when "the petitioner and the defendant in the parallel proceeding are the same party," that fact weighs in favor of discretionary denial).

Accordingly, this factor weighs strongly in favor of discretionary denial.

D. The District Court Litigation Involves Substantially the Same Claims and Petitioner's Stipulation Does Not Mitigate These Concerns

There is substantial overlap between the claims and grounds at issue in this Petition and the District Court Litigation because the Petition challenges the same claims asserted in the District Court Litigation under the same grounds. *See* Ex. 2008 at 1-2; Pet. at 1. For example, each of the sixteen Grounds raised in the Petition is also raised as invalidity defenses in Petitioner's invalidity contentions served in the District Court Litigation. *See* Ex. 2008 at 117-141; Pet. at i-vi. "In at least these ways, the parallel proceedings would duplicate effort. This is an inefficient use of Board, party, and judicial resources and raises the possibility of conflicting decisions." *Cisco Sys., Inc. v. Ramot at Tel Aviv Univ. Ltd.*, IPR2020-00122, Paper 15 at 10 (P.T.A.B. May 15, 2020).

Accordingly, this factor weighs strongly in favor of discretionary denial.

E. The Petition Is Weak and Overly Reliant on Expert Testimony

Separately, the Petition's unpatentability challenge is weak, supporting denial. The Petition does not assert any anticipation. *See* Pet. at 7; *see also Fintiv*, IPR2020-00019, Paper 15 at 8 (considering "other circumstances that impact the Board's exercise of discretion, including the merits."). Rather, the Petition asserts a patchwork of *sixteen* obviousness grounds combining *nine* different references,

strongly weighing in favor of discretionary denial. Pet. at 7. Further, the Petitioner relies on an expert declaration spanning **323 pages, 529 paragraphs**, and over **60,000 words** in an effort to backfill the many gaps in those nine references. Ex. 1002. Discretionary denial is routinely granted even where far fewer grounds and references are offered in a Petition. *See, e.g., Hisense USA Corp. v. Light Guide Innovations LLC*, IPR2025-01537, Paper 7 at 3 (P.T.A.B. Nov. 21, 2025) (granting discretionary denial where petition relied on seven combinations of six references), Paper 10 (P.T.A.B. Jan. 16, 2026); *Hisense USA Corp. v. Light Guide Innovations LLC*, IPR2025-01526, Paper 7 at 2-3 (P.T.A.B. Nov. 21, 2025) (granting discretionary denial where petition relied on four combinations of five references), Paper 10 (P.T.A.B. Jan. 16, 2026).

Moreover, Petitioner's assertion that "the Examiner did not conduct a thorough examination" because "[t]he Examiner never issued any prior art-based rejections" and relied on the allowance of parent patents is wrong. Pet. at 1. Simply because the prior art that the Examiner did review did not provide a basis to issue a rejection does not mean that the Examiner's search was not thorough. Notably, the '721 Patent issued from a continuation of the application that issued as U.S. Patent No. 11,128,710 (the "'710 Patent"). *See* '721 Patent. As Petitioner admits, "[t]he [parent '710 Patent] application **underwent lengthy examination**, including six

Office Actions.” *See Amazon.com Servs. LLC v. Smart Speaker LLC*, IPR2026-00145, Paper 2 at 3 (P.T.A.B. Nov. 22, 2025) (emphasis added); IPR2026-00145, Ex. 1002, ¶ 40 (accord). The Petitioner, however, relies on the same types of ideas the Examiner already confronted during prosecution (*e.g.*, capturing human voice data, sending and receiving the captured human voice data over a wireless network between a client device and server device, and using messages to operate actuators)—yet the Petitioner merely swaps in different references for these same ideas without introducing any fundamentally different teaching that undercuts the Examiner’s reasoning. *See, e.g.*, Pet. at 8-46, and 69-92.

For example, the Examiner previously searched for and analyzed prior art directed to systems and methods for server-based control of client and controlled devices, including *Beliles*, *Basir*, *Lobo*, and *Tomitaka*, and the Examiner issued explicit reasons for allowance explaining that even the closest art, alone or in combination, did not teach or motivate the methods claimed in the ’721 Patent. Ex. 1003, 175. The Petition’s new references—*Lim*, *Williams*, *Wittenberg*, *Gruber*, *Benesty*, *Goldsmith*, *Chatterjee*, *Rosenberger*, and *Rossing*—fit within that same technical space and confirm only that the field was at best beginning to experiment with server-based control of actuators in devices using human voice data. However, none of the new references provide a direct teaching of the particular client devices

the Examiner found nonobvious.

Under the precedential *Advanced Bionics* framework, when the same or substantially the same prior art and arguments have already been considered by the Office, the petitioner must identify how the Office erred in a manner material to patentability. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Gerate GmbH*, IPR2019-01469, Paper 6 at 7-10 (P.T.A.B. Feb. 13, 2020). Here, Petitioner does not point to any concrete examination error. Petitioner does not contend that the Examiner misunderstood the core references, misapplied the law, or overlooked a teaching in the new references that tracks the allowed claims. At most, the Petition asserts that a different combination of cumulative references—and *significant* expert hindsight—would have produced a different outcome. That is not the type of material error that justifies reopening patentability in a parallel IPR.

The weakness of the Petition's merits is further confirmed by its heavy reliance on expert testimony. Petitioner submits more than **323 pages, 529 paragraphs**, and over **60,000 words** of expert declaration to supply motivations to combine, map disparate disclosures onto the claim language, and bridge gaps that the references do not and cannot fill. *See* Ex. 1002. Discretionary denial is also routinely granted in this circumstance, where a Petitioner overly relies on expert testimony to fill in holes in the prior art. *See, e.g., CrowdStrike, Inc. v. Skysong*

Innovations, LLC, IPR2025-01399, Ex. 2010 at 17-18 (P.T.A.B. Dec. 6, 2025) (discretionary denial request granted where Petition relied on 150-paragraph, 20,000-word expert declaration), Paper 12 (P.T.A.B. Jan. 16, 2026); *BOE Tech. Grp. Co. v. Paneltouch Techs. LLC*, IPR2025-01483, Paper 7 at 8 (P.T.A.B. Nov. 24, 2025) (discretionary denial request granted where Petition relied on 201 pages of expert testimony), Paper 10 (P.T.A.B. Jan. 16, 2026). Indeed, that level of expert reconstruction is a sign that the prior art does not speak for itself and that the obviousness case is, at best, a close and highly fact intensive dispute. The USPTO's own Interim Processes recognize that such expert-driven contests, particularly when built on cumulative art already considered in substance, are better resolved in the advancing District Court Litigation rather than through a duplicative PTAB proceeding. *See* FAQs for Interim Processes for PTAB Workload Management, #22.

F. A Motion to Stay Has Not Been Filed and Is Unlikely to Be Granted

Amazon has not sought a stay of the District Court Litigation pending IPR proceedings, and any future stay motion is unlikely to be granted because the timing of any future stay request ensures that the motion would not be resolved until after the parties have invested substantial additional resources, and likely not before the *Markman* hearing. Ex. 2007. In this posture, a stay is also unlikely.

At best, the likelihood of a stay would require serial speculation that: the Petitioner files a stay motion, and the district court grants that motion despite having likely already held a *Markman* hearing, opened fact discovery, and set a firm trial date. That stack of contingencies is the opposite of the straightforward, schedule-based assessment called for by *Fintiv*. See *Samsung Elecs. Co. v. Vasu Holdings, LLC*, IPR2025-00446, Paper 12, 2 (P.T.A.B. July 10, 2025) (granting discretionary denial where, *inter alia*, “there is insufficient evidence that the district court is likely to stay its proceeding even if the Board were to institute trial”).

Accordingly, this factor weighs strongly in favor of discretionary denial.

G. PTAB Resources Are Better Spent on *Ex Parte* Appeals

The Director should also deny institution because its limited resources are better spent on the growing backlog of *ex parte* appeals. In 35 U.S.C. § 6(b)(1), the PTAB is tasked with “review[ing] adverse decisions of examiners upon applications for patents pursuant to section 134(a).” Congress also tasked the PTAB with reviewing appeals of reexaminations, derivation proceedings, IPRs, and PGRs. 35 U.S.C. § 6(b)(2)-(4). Current Office policy is to focus on *ex parte* appeals “[t]o ensure that the PTAB continues to meet its statutory obligations as to *ex parte* appeals, while continuing to maintain its capacity to conduct AIA proceedings, the Director will exercise her discretion on institution of AIA proceedings” Process

Memorandum. The Board should exercise that discretion here because the pendency of *ex parte* appeals has increased over the last year and year-over-year since Fiscal Year 2022. *See* Ex. 2009 at 7; Ex. 2010 at 2. The PTAB should focus its efforts on the pending *ex parte* appeals—not this IPR.

Accordingly, this factor strongly weighs in favor of discretionary denial.

H. No Changes in the Law Support Reconsideration of Patentability

No change in law justifies reconsidering the '721 Patent claims' validity.

When viewing all of these factors collectively together, the Petition should be denied in the Director's discretion under 35 U.S.C. § 314(a).

III. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that the Director exercise discretion to deny institution of the Petition in its entirety.

Respectfully submitted,

Dated: May 5, 2026

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the portions of the above-captioned PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION has 3,135 words in compliance with the 14,000 word limit set forth in 37 C.F.R. § 42.24. This word count was prepared using Microsoft Word for Office 365.

May 5, 2026

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CERTIFICATE OF SERVICE

A copy of the foregoing Patent Owner's Request for Discretionary Denial of Institution and Exhibits 2001 through 2010 have been served on Petitioner's counsel of record as follows:

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