

**From:** [Trials](#)  
**To:** [Fuller, Jenna](#); [Usman Khan](#); [Hannah, James](#); [Kastens, Kris](#); [Price, Jeffrey H.](#); [Eng, Jeffrey](#); [Santos, Elisa](#); [IPR42342-0155IP1](#); [David Holt](#)  
**Cc:** [Trials](#)  
**Subject:** RE: IPR2026-00295, -00296, -00297 (Microsoft v. ToutVirtual): Requesting Authorization to File Pre-Institution Brief in response to POPR  
**Date:** Thursday, July 9, 2026 10:47:22 AM  
**Attachments:** [image001.png](#)

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Counsel,

Further to the Board's email of July 6, 2026 granting Petitioner briefing in IPR2026-00295, IPR2026-00296, and IPR2026-00297, Petitioner's deadline for filing a 5 page preliminary reply is now set to July 14, 2026. Petitioner's preliminary reply may additionally address the issues raised in the emails below. Patent Owner is authorized to file a 5-page preliminary sur-reply in IPR2026-00295, IPR2026-00296, and IPR2026-00297, due no later than July 17, 2026, limited to addressing the same issues.

The parties should file their briefs as papers in P-TACTS.

Regards,

Andrew Kellogg,  
Deputy Chief Clerk, Trials  
Patent Trial and Appeal Board  
USPTO  
[andrew.kellogg@uspto.gov](mailto:andrew.kellogg@uspto.gov)  
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**From:** Fuller, Jenna <jenna.fuller@hsfkramer.com>  
**Sent:** Friday, July 3, 2026 8:55 AM  
**To:** Usman Khan <khan@fr.com>; Director\_Discretionary\_Decision <Director\_Discretionary\_Decision@uspto.gov>; Director\_DI <Director\_DI@uspto.gov>; Trials <Trials@USPTO.GOV>  
**Cc:** Hannah, James <james.hannah@hsfkramer.com>; Kastens, Kris <kris.kastens@hsfkramer.com>; Price, Jeffrey H. <jeffrey.price@hsfkramer.com>; Eng, Jeffrey <jeffrey.eng@hsfkramer.com>; Santos, Elisa <elisa.santos@hsfkramer.com>; IPR42342-0155IP1 <IPR42342-0155IP1@fr.com>; David Holt <DTH@fr.com>

**Subject:** RE: IPR2026-00295, -00296, -00297 (Microsoft v. ToutVirtual): Requesting Authorization to File Pre-Institution Brief in response to POPR

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Honorable Director Squires:

ToutVirtual's position, which it provided to Microsoft during a meet and confer and in preparation of a promised joint email, is provided below. ToutVirtual's position identifies threshold deficiencies in Petitioner's request for additional briefing that were also provided during the meet and confer. Its citations to case law identify the procedural thresholds governing Petitioner's request, not the merits of the underlying issue.

ToutVirtual opposes Petitioner's request to submit a pre-institution brief in response to the Patent Owner Preliminary Responses ("POPRs") because:

1. The Director's recent decision in *Apple, Inc. v. WeCrevention, Inc.*, indicates there is nothing "untimely and improper" with addressing Microsoft's inconsistent claim construction positions in the Preliminary Response. See IPR2026-00239, Paper 11 at 3 (Director June 24, 2026) (citing Paper 9 (Preliminary Response) at 9-10).
2. Petitioner has not formally sought to amend its preliminary invalidity contentions before the District Court or submitted any binding representation to the Court regarding withdrawal of its numerous indefiniteness contentions. Accordingly, it is unclear how Petitioner could represent there have been material developments before the District Court that "may have a material impact" here.
3. There are no POPR mischaracterizations. The prosecution record—which forms the basis for Petitioner's request—was cited in ToutVirtual's Discretionary Denial Requests ("DDR's"), which Microsoft could have responded to in its Opposition but chose not to. Compare IPR2026-00296, Paper 8 at 14-16 with IPR2026-00296, Paper 11 at 9-10. Moreover, alleged mischaracterizations do not satisfy the "good cause" standard for additional briefing. *Tex. Instruments Inc. v. ParkerVision, Inc.*, IPR2024-00934, Paper 9 at 3-4 (P.T.A.B. Sept. 26, 2024).

To the extent the Director grants additional briefing on any of the topics, ToutVirtual respectfully requests a corresponding reply limited to the same topics. Additionally, if the Director grants Petitioner's Topic 3 request, ToutVirtual requests additional briefing to address Petitioner's mischaracterizations of ToutVirtual's DDRs, including Petitioner's representations regarding (1) whether the DDRs "fail[] to identify" claimed features present in the VirtualIQ technology that contributed to the praise; (2) praise of the VirtualIQ technology; and (3) third-party praise of the VirtualIQ technology as "ToutVirtual's own press releases." See, e.g., IPR2026-00296, Paper 11 at 17-18.

Thank you,  
Jenna Fuller  
Counsel for Patent Owner (ToutVirtual)

**Jenna Fuller**  
Associate

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Further information is available on our website [www.HSFKramer.com](http://www.HSFKramer.com), including our [privacy policy](#) which describes how we handle personal information.

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**From:** Usman Khan <[khan@fr.com](mailto:khan@fr.com)>  
**Sent:** Thursday, July 2, 2026 10:46 PM  
**To:** [Director\\_Discretionary\\_Decision@uspto.gov](mailto:Director_Discretionary_Decision@uspto.gov); [Director\\_DI@uspto.gov](mailto:Director_DI@uspto.gov); Trials <[trials@uspto.gov](mailto:trials@uspto.gov)>  
**Cc:** Hannah, James <[jhannah@kramerlevin.com](mailto:jhannah@kramerlevin.com)>; Kastens, Kris <[kkastens@kramerlevin.com](mailto:kkastens@kramerlevin.com)>; Price, Jeffrey H. <[jprice@kramerlevin.com](mailto:jprice@kramerlevin.com)>; Eng, Jeffrey <[jeng@kramerlevin.com](mailto:jeng@kramerlevin.com)>; Fuller, Jenna <[jfuller@kramerlevin.com](mailto:jfuller@kramerlevin.com)>; Santos, Elisa <[esantos@kramerlevin.com](mailto:esantos@kramerlevin.com)>; IPR42342-0155IP1 <[IPR42342-0155IP1@fr.com](mailto:IPR42342-0155IP1@fr.com)>; David Holt <[DTH@fr.com](mailto:DTH@fr.com)>  
**Subject:** [EXTERNAL] IPR2026-00295, -00296, -00297 (Microsoft v. ToutVirtual): Requesting Authorization to File Pre-Institution Brief in response to POPR

Honorable Director Squires:

Petitioner (Microsoft) requests authorization to submit a pre-institution brief in response to Patent

Owner's Preliminary Response (POPR) in each of the above-noted IPR proceedings. Keeping in mind the Board's preference for not including arguments in email requests, Petitioner briefly notes the following reasons for why good cause exists for Petitioner's request:

1. Patent Owner improperly raised discretionary denial arguments (alleging that Petitioner applied inconsistent claim constructions in parallel proceedings) in the POPR, thereby denying Petitioner a chance to provide a response in Petitioner's opposition. *See* Interim Director Discretionary Process Guidelines, Section I.C. Petitioner would like the opportunity to address the untimely and improper arguments.
2. Petitioner would like to update the Director and the Board on important developments regarding the preliminary invalidity contentions in the District Court that may have a material impact on the Director's decision to institute. Petitioner also requests authorization to submit an exhibit providing evidence of the District Court litigation development.
3. Petitioner would like to address Patent Owner's unforeseeable mischaracterizations of the prosecution history of the challenged patents. For example, Patent Owner characterizes the '050 Patent Prosecution History by stating "[t]he Examiner rejected the original claim on the grounds that the 'provisioning manager executed by a processor' limitation is a means-plus-function with no corresponding structure disclosed in the written description" and "the Applicant amended the claim to identify the corresponding structure." *See* '050 POPR, 19-20. Petitioner respectfully requests the opportunity to address Patent Owner's characterization to assist the Director's resolution of the issue raised by Patent Owner.

Petitioner requests 8 pages to address the three topics noted above. If the Director is inclined to authorize briefing on a subset of the topics identified above, Petitioner respectfully requests authorization to submit a brief on the authorized topic(s).

Petitioner met and conferred with Patent Owner, who objects to Petitioner's request. To the extent the Director grants Petitioner's request, Patent Owner requests authorization to submit a responsive paper of equal length.

Petitioner had communicated with Patent Owner to include Patent Owner's response in this email. Despite Petitioner's counsel reminding Patent Owner's counsel of the Board's instructions not to include substantive arguments and case law in emails, Patent Owner's response included numerous case law and arguments, contrary to the Office's guidelines. Moreover, Patent Owner raised new issues that had not been the subject of any meet and confer, contrary to Office guidelines. Petitioner informed Patent Owner that Petitioner will not include Patent Owner's response due to concerns of the non-compliant content in Patent Owner's email response.

If the Director or a panel of judges believes a call would be helpful to address this request, Petitioner is available at a time of the Office's convenience.

Regards,

**Usman Khan, Ph.D., J.D.**

Principal ■ Fish & Richardson P.C.

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