UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UBER TECHNOLOGIES, INC AND UBER FREIGHT US LLC,
Petitioners,

v.

CARMA TECHNOLOGY, LTD.,
Patent Owner

Case IPR2026-00308
Patent 11,017,668

PATENT OWNER'S OPPOSITION TO PETITIONER'S REQUEST FOR DIRECTOR REVIEW

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PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	First Amended Complaint, *Carma Tech., Corp. v. Uber Tech., Inc.*, Civ. No. 2:25-cv-29 (E.D. Tex. Aug. 14, 2025)
2002	Agreed Docket Control Order, *Carma Tech., Corp. v. Uber Tech., Inc.*, Civ. No. 2:25-cv-29 (E.D. Tex. June 2, 2025)
2003	U.S. District Courts - Federal Court Management Statistics–Comparison Within Circuit (December 31, 2025) (available at https://www.uscourts.gov/sites/default/files/document/fcms_na_distcomparison1231.2025.pdf)
2004	Memorandum Order, *Headwater Research LLC v. Samsung Electronics Co., Ltd.*, Civ. No. 2:23-CV-00103 (Dec. 11, 2024)
2005	Defendant Uber Technologies, Inc.'s Invalidity Contentions, *Carma Tech., Corp. v. Uber Tech., Inc.*, Civ. No. 2:25-cv-29 (E.D. Tex. July 30, 2025)
2006	Defendants' Objections to the Court's Claim Construction Order, Dkt. 336, *Carma Tech., Corp. v. Uber Tech., Inc.*, Civ. No. 2:25-cv-29 (E.D. Tex. Sept. 10, 2026)
2007	Carma's [REDACTED] Objections to the Magistrate's Report & Recommendation, Dkt. 340, *Carma Tech., Corp. v. Uber Tech., Inc.*, Civ. No. 2:25-cv-29 (E.D. Tex. Sept. 10, 2026)

Pursuant to the Board's email authorization of September 14, 2026, Patent Owner Carma Technology, Ltd. opposes Petitioner's Request for Director Review ("Request") and respectfully requests that it be denied. No patent or party has been dismissed from the district court case, all issues between the parties—including validity—are nearly finalized in district court, and the alleged new development in district court still requires *de novo* review by the District Judge and is likely to lead to transfer over dismissal. These reasons all compel denial of Petitioner's Request.

I. Petitioner overstates the import of the Report and Recommendation, and omits other critical facts.

No party or patent has yet been dismissed (or transferred) from the district court litigation. On August 27, 2026, Magistrate Judge Payne issued a written Report and Recommendation ("R&R") to the district court as to how Petitioner's Motion to Dismiss Or Transfer Due to Improper Venue, filed on May 23, 2025, should be decided. Ex. 1049. This R&R was issued barely over two months before trial was set to begin, and after fact discovery, expert reports and discovery, claim construction, summary judgment briefing, and Daubert motion briefing were all complete. To put it simply, except for the actual trial (now set for January 11, 2027) and the associated pretrial filings (which are already underway), all issues in the litigation, including validity, are fully briefed and ready to be resolved at trial.

To be clear, the R&R does not reach the merits of the infringement or validity case. Instead, the R&R recommends that the district court find that venue is improper in the Eastern District of Texas as to the two parties against whom the '668 and other continuation patents were asserted, and further recommends that the district court dismiss the case instead of transferring the trial-ready case to a different district so that it can proceed to trial in a different venue. Ex. 1049.

On September 10, 2026, Patent Owner timely objected to both recommendations in accordance with Federal Rule of Civil Procedure Rule 72(b)(3). Ex. 2007. The trial date has now been reset to January 11, 2027 in an Amended Scheduling Order issued by the District Court. Ex. 1051. No party or patent has yet been dismissed from the case by the District Judge. *Id*.

II. Petitioner's Request should be denied because the '668 patent is still at issue in the co-pending litigation.

Petitioner's Request is founded upon the faulty premise that the '668 patent is no longer at issue in the co-pending litigation. This is false. Petitioner presents the R&R's recommendation as final and binding on the parties. ***It is not***.

The outcome of Uber's Motion to Dismiss remains subject to the District Judge's *de novo* review and determination. Pursuant to FRCP 72(b)(3), "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify

the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Thus, the R&R has not changed the status of the litigation, and indeed may never be adopted, in part or in full. Petitioner's unconditional claim that the '668 is "no longer at issue in that litigation" turns a blind eye to the current state of the litigation and is misleading.

Thus, the '668 patent has not been eliminated from the litigation, nor has any defendant been dismissed from the case. Indeed, unless and until the district court enters an order on Petitioner's motion to dismiss in its favor, if ever, the *status quo* should be maintained in these proceedings. The Director is respectfully asked to deny Petitioner's Request.

III. The district court's *de novo* review could lead to trial in Texas in January of 2027, or trial in Delaware based on the nearly complete record already developed in Texas.

Petitioner's effort to create the impression that the district court's review of an R&R will be perfunctory is also misleading. *See Gonzalz v. Infostream Group, Inc.*, Case No. 2:14-cv-0906-JRG-RLP (E.D. Tex. April 26, 2016), at Dkts. 169 (Objections to R&R), 185 (Memo Order), 186 (Vacating R&R); *Allergan Sales, LLC v. Teva Pharm. USA, Inc.*, Case No. 2:15-cv-01471-JRG-RSP (E.D. Tex. Oct. 24, 2017), at Dkt. 263 (Modifying R&R). *De novo* review is the antithesis of perfunctory review. *Garcia v. Boldin*, 691 F.2d 1172, 1178 (5th Cir. 1982) ("Under 28 U.S.C. § 636(b)(1), a district court must make a de novo determination

of those parts of the magistrate's report, findings, or recommendations to which timely objection is made."); *AlexSam, Inc. v. Aetna, Inc*., 119 F.4th 27, 40 (Fed. Cir. 2024) (*de novo* review is an independent review that is not deferential to the decision below).

Here, the district court can fully vacate the R&R and decide venue is proper in the Eastern District of Texas, in which case Patent Owner's '668 patent assertion claims will proceed to trial in January of 2027, just over two months after the original trial date that resulted in discretionary denial.[1] In this circumstance, the Director's discretionary denial should stand.

Alternatively, the district court could transfer this trial-ready case to Delaware, where venue is proper, particularly given the advanced state of the case. Applying the governing law in the Fifth Circuit to these facts, Patent Owner has argued that the district court should reject the recommendation to dismiss two defendants, and instead transfer the case to a proper forum. *See Giroir v. MBank Dallas, N.A.*, 676 F. Supp. 915, 923 (E.D. Ark. 1987) ("There seems to be no real point in dismissing the case, since the parties have already invested a considerable

[1] This *de minimis* change in trial date does not compel institution where a similarly-close trial date warranted discretionary denial of this IPR, as ordered by the Director on July 14, 2026.

amount of time and money in it, since discovery has already begun, and since the plaintiffs are likely to refile it almost immediately. The court will therefore order the transfer…".). Thus, even if the district court agrees with the R&R on the venue merits, the court should transfer this trial-ready litigation to Delaware.[2] Notably, even Petitioner's motion originally requested transfer to Delaware as an alternate remedy to dismissal.

If this case is transferred to Delaware, then the Director's discretionary denial should stand. Even if trial is delayed, every aspect of this case, including validity, has already been fully prepared for trial in district court. All that remains is a final determination on the merits. Under these circumstances, the substantial investment already made in the District Court litigation, and the likelihood that the investment will simply transfer to a proper venue and continue where it left off, warrants the Director's denial of Petitioner's Request.

[2] Petitioner argues in the Request that "trial in any such action would not occur until well after any PTAB final written decision," but this is pure speculation, particularly where the District Judge has not even ruled on Patent Owner's Objections to the R&R. Request, 8-9.

IV. Petitioner's inconsistent claim construction positions warrant discretionary denial.

Additionally, Petitioner's claim construction positions continue to weigh in favor of discretionary denial. As addressed in Patent Owner's request for discretionary denial, Petitioner takes inconsistent positions in District Court compared to its Petition. In District Court, Petitioner contends the '668 patent does not "allow a person of ordinary skill in the art to understand what is claimed" or "fail to inform, with reasonable certainty, those skilled in the art about the scope of the claimed invention." Ex. 2005, 156-57, 160, 163 (pdf pages). Petitioner included no such reservations in its Petition. Further, in its District Court invalidity contentions, Petitioner reserves a right to contend that terms in the '668 patent should be construed under 35 U.S.C. §112, ¶6 in District Court (Ex. 2005, 165-66 (pdf pages)) but later did not address that element as invoking. §112, ¶6 in District Court claim construction briefing. Given that Petitioner did not provide any such reservation in the Petition, these differences show that the District Court case will address more issues than can be resolved in this IPR.

Even now, in its Request for Director Review, Petitioner disparages the claim construction order, noting that Petitioner "disagree[s] with the constructions adopted by the district court and maintain[s] that the narrower constructions they

proposed [in district court] are correct." Request, 3 n.2.[3] Petitioner continues its claim construction discussion to the Director by commenting that the district court "declined to adopt a disclaimer made during prosecution of the '427 patent." Request, 4; *see also* Request, 6 (arguing that the district court declined to adopt a disclaimer argued by Petitioner). Put simply, Petitioner advanced narrowed constructions to the District Court, and adopted different, broader constructions to the Board. This is exactly the type of behavior that warrants discretionary denial, and Petitioner cannot allege that the district court's refusal to adopt those narrower constructions somehow cleanses Petitioner's inconsistency.

V. Other factors continue to warrant discretionary denial.

Patent Owner's Request for Discretionary Denial presented additional factors that continue to weigh in favor of discretionary denial, and the uncertain status of the co-pending litigation fails to tip the scales in Petitioner's favor. *See* Paper 7, 8-11, 15-16. Specifically, Patent Owner explained that Petitioner came forward with this Petition nearly 5 years after the '668 patent issued; Petitioner was placed on notice of the related '427 patent and Patent Owner's patent portfolio in

[3] Petitioner also filed objections to the District Court's claim construction order on September 10, 2026, thus confirming that Petitioner continues to press different constructions in the two forums. Ex. 2006.

2016; and Petitioner did not file this IPR until more than a year after Patent Owner's initiation of a parallel district court litigation. Under these factors, discretionary denial remains the appropriate step. There is no reason for the Board to allocate resources to this dispute now.

Moreover, Petitioner's *Fintiv* rehash in the Request is predicated on a fact that has not and may not occur, namely the District Court Judge's adoption of the R&R without modification. Petitioner also speculates about the impact of the District Judge adopting the R&R, but fails to acknowledge that the case is fully ready for trial if the District Judge rejects the R&R or transfers the case to a proper forum, as he should. *See* Request, 9-11.

But any speculation about potential future outcomes should not weigh into the Director's decision here. The only change that has actually occurred in the District Court is the slight delay of trial date by two months, from November 2026 to January 2027. This *de minimis* change does not turn the first five *Fintiv* factors in Petitioner's favor.

As to the sixth *Fintiv* factor, Petitioner argues that "the Petitions present compelling Olmi-based grounds that demonstrate the material error in overlooking Olmi during prosecution." Request, 11. But Petitioner fails to alert the Director that Petitioner did not move for summary judgment of invalidity of any claim of any patent in the co-pending litigation. Petitioner's assertion to the Director that

the Olmi-based grounds are "compelling" does not square with Petitioner's message to the Court that no prior art was compelling enough to warrant summary judgment. The Director should not dedicate Board resources to a dispute that Petitioner did not even think was worth the District Court's time and resources.

The *Fintiv* discussion in the Request is speculation and unfounded, and should be disregarded as such.

VI. Arguments in Sections III.C and III.D of the Request are improper.

Finally, Petitioner sought permission to file its Request for Director Review based on new information, but then improperly included arguments directed to information that has not changed relative to the prior discretionary denial opposition submitted by Petitioner on June 16, 2026. Specifically, Petitioner's renewed arguments regarding material error and settled expectations are founded upon information already reviewed and rejected by the Director. Nothing presented in these sections is new or warrants reconsideration of the Director's prior decision to deny the Petition.

VII. Conclusion

For the reasons presented above, Patent Owner respectfully asks that the Director allow the discretionary denial to remain in place, undisturbed, and reject Petitioner's request otherwise. No *inter partes* review should be instituted.

Dated: September 21, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on this date, a true and correct copy of the foregoing document was served via email, by consent, to Petitioner by serving the correspondence email addresses of record as follows:

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