

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIDEOAMP INC.,
Petitioner

v.

THE NIELSEN COMPANY (US), LLC.,
Patent Owner

Case IPR2026-00310
Patent 12,063,402

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

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LIST OF EXHIBITS

VA-1001	U.S. Patent No. 12,063,402 to F. Gavin McMillan (“the ’402 Patent”)
VA-1002	Prosecution History of the ’402 patent (“the Prosecution History”)
VA-1003	Declaration and Curriculum Vitae of Dr. Tim Williams
VA-1004	Complaint, <i>The Nielsen Company (US), LLC v. VideoAmp, Inc.</i> , 1-25-cv-00408 (DDE), filed April 2, 2025
VA-1005	U.S. Patent Publication No. 2016/0029155 A1 to Kerr et al. (“Kerr”)
VA-1006	U.S. Patent Publication No. 2010/0331016 A1 to Dutton et al. (“Dutton”)
VA-1007	Universal Mobile Telecommunications System (UMTS) 3G TS 23.101 version 3.0.1, Released 1999
VA-1008	U.S. Patent Publication No. 2009/0164577 A1 to Parkes et al. (“Parkes”)
VA-1009	U.S. Patent Publication No. 2013/0036117 A1 to Fisher et al. (“Fisher”)
VA-1010	U.S. Patent Publication No. 2012/0284333 A1 to Neff (“Neff”)
VA-1011	U.S. Patent Publication No. 2011/0040612 A1 to Simmons et al. (“Simmons”)
VA-1012	Cambridge Advanced Learner’s Dictionary, Fourth Edition
VA-1013	Merriam-Webster’s Collegiate Dictionary, Eleventh Edition

- VA-1014 Complaint, *The Nielsen Company (US), LLC v. VideoAmp, Inc.*, 1-24-cv-00123-1 (DDE), filed January 31, 2024
- VA-1015 Memorandum, Interim Processes for PTAB Workload Management (USPTO March 26, 2025) (“Stewart Memorandum”)
- VA-1016 3GPP2 S.R0048-A Version 4.0, 3G Mobile Equipment Identifier (MEID) Stage 1 (“3GPP2 S.R0048-A”), June 23, 2005
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- VA-1018 U.S. Patent Publication No. 2013/0273941 A1 to Grokop (“Grokop”)
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- VA-1042 Memorandum Opinion, The Nielsen Company (US), LLC v. VideoAmp, Inc., No. 24-123-RGA, Dkt. 21 (D. Del. Mar. 31, 2025)
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I. INTRODUCTION

Nielsen's request for discretionarily denying VideoAmp's IPR petition should be rejected because VideoAmp's IPR petition presents the Board with a timely, efficient, and necessary opportunity to review the validity of the '402 patent in line with multiple Office priorities. As explained below, Nielsen's broad patent litigation campaign and anti-competitive conduct burden emerging competitors and stifle genuine innovation in the advertising industry. VideoAmp is precisely the type of innovative American company that the IPR process was designed to protect from costly, serial, patent litigation by a large entity. Institution of an IPR is also merited because the '402 patent issued as a result of material Examiner error in assessing prior art. IPR of the '402 patent is thus necessary to resolve whether the '402 patent distinguishes the prior art – an issue that was not properly addressed in its original prosecution and one that is not under appeal in the co-pending appeal.

Moreover, most, if not all, the *Fintiv* factors lean towards institution. For example, investment in concurrent litigation is low, no invalidity contentions have been exchanged, and the final written decision will issue before any potential remanded District Court case.

Finally, Nielsen's merits arguments are procedurally improper for a discretionary denial brief and are substantively without merit.

II. CONTRARY TO NIELSEN’S ALLEGATIONS, VIDEOAMP FILED A *SOTERA* STIPULATION THAT MINIMIZES ANY OVERLAP WITH THE DISTRICT COURT PROCEEDING

Nielsen claims that discretionary denial is warranted because VideoAmp failed to file a stipulation, thereby leading to duplicative efforts between the IPR proceeding and the district court proceeding. Request, 14-15. Incorrect.

VideoAmp served Nielsen with a conditional *Sotera* stipulation at the time of the petition’s filing. The stipulation is on record in this proceeding as VA-1023. Thus, there will be no duplicative efforts between this IPR and any future remanded District Court litigation. *Id.* Moreover, the IPR petition focuses on prior art grounds whereas the grounds currently at issue in the district court proceeding are §101 grounds, which cannot be asserted in an IPR proceeding. And even if the Federal Circuit remands the case back to the District Court, Petitioner’s stipulation ensures that there will be no duplicative efforts.

III. PTAB POLICIES DO NOT FAVOR DISCRETIONARY DENIAL OF VIDEOAMP’S IPR PETITION

A. Nielsen is Engaging in an Aggressive Patent Litigation Campaign to Compensate for its Business-related Shortcomings

In the Memo dated March 11, 2026 (“Memo”), Director Squires emphasized the multi-factor nature of discretionary denials and “raise[d] a legitimate question about whether the current institution framework appropriately weighs the interests of entities that invest in domestic production.” VA-1030, 2. In expanding the factors considered for discretionary denial, the Director noted that “[s]ome

stakeholders have asserted that the availability of IPRs and PGRs is important to protect American manufacturers and small businesses.” VA-1030, 2. The Memo further states that “[w]hen determining whether to institute IPR and PGR proceedings, the Director will consider: ... (2) 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; and (3) whether the petitioner is a small business that has been sued for infringement of the patent at issue.” VA-1030, 2. Analysis under these criteria favors referral.

1. Nielsen Provided No Evidence that It Makes its Products in the U.S.

Nielsen did not provide any evidence of any purported manufacturing contribution of their product(s) associated with the ’402 patent along with their discretionary denial brief. *See generally*, Request. Indeed, it appears that Nielsen’s “biggest engineering base” is in India—not in the United States. VA-1044. Thus, factor 2 noted above favors referral.

2. Nielsen is Using Its Patents to Intimidate Smaller Competitors, Such as VideoAmp

Petitioner, like other small-sized industry members, has had to suffer multiple meritless infringement accusations by Nielsen. *Infra*, §§III.A-B. VideoAmp’s IPR petition should be referred and entities, like Nielsen, should not be allowed to leverage the discretionary denial factors to protect an erroneously

granted patent. VA-1030; VA-1040.

Nielsen's motivation for filing these cases is its inability to compete in the market. While VideoAmp was investing in software engineering in the United States, Nielsen's outsourced product was floundering. In 2021, Nielsen lost its Media Ratings Counsel (MRC) accreditation for National TV ratings for significantly undercounting viewership. VA-1024; VA-1025. Even after Nielsen's accreditation was regained, Nielsen's customers and regulators continued to voice concerns with the accuracy of Nielsen's product. VA-1025. In September 2025, the MRC expressed concerns with the accuracy of Nielsen's estimations in its "Big Data + Panel" measurements (referred to as "currency") and directed the company to implement fixes – changes that are not projected to be complete until later this year. VA-1026; VA-1027.

Nielsen's struggles since 2021 provided multiple companies an opportunity to increase their market share. VA-1025; VA-1027. To impede such competition, over the past five years, Nielsen has brought *eleven different* patent infringement suits against not just VideoAmp, but also HyphaMetrics, TVision, TVSquared, and ACRCcloud. VA-1028. Nielsen's aggressive litigation campaign seeks to stop emerging industry innovators to compensate for Nielsen's aforementioned business and technology shortcomings.

In fact, Nielsen files successive patent suits to extend litigation and drive up

costs for smaller competitors as part of a larger anti-competitive campaign. VA-1004; VA-1014; VA-1033, 42-47. For instance, Nielsen filed a complaint against VideoAmp alleging infringement of US Patent Nos. 11,856,250 and 11,871,058, which were invalidated by the District Court on a Motion to Dismiss. VA-1014; VA-1042. The ink on the court's order was not even dry before Nielsen filed a subsequent lawsuit alleging infringement of the '402 patent, which VideoAmp is now again defending itself through this IPR. VA-1004; VA-1042.

Nielsen could have included the '402 patent in the original case, but chose to file a separate complaint over a year later. VA-1004. The '402 patent issued on August 13, 2024 –after the first litigation between Nielsen and VideoAmp began on January 31, 2024. VA-1001, Cover; VA-1014. Thus, Nielsen continues to advance patent litigation against other entities for as long as possible—*even though it has yet to prevail in a single case.*

B. Nielsen Engages in Anti-competitive Practices to Maintain a Monopoly and Suppress Innovation

Since the 1950's, Nielsen has operated as a monopoly in the market for TV audience measurement services. The industry consensus as to Nielsen's monopolistic power is overwhelming. As an example, several publications have expressly characterized Nielsen as holding “a monopoly on TV viewership and ratings numbers for decades,” and that “[w]hen it comes to national television audience measurement used for the buying and selling of commercial time, Nielsen

has long been an industry-mandated monopoly.” VA-1034; VA-1035. Other sources have recognized that “Nielsen Has Built a TV Ratings Monopoly Nearly as Old as TV,” and that “Nielsen is a perfect example of a monopoly.” VA-1036; VA-1037.

Nielsen’s anti-competitive practices include serial patent lawsuits aimed at competitors deemed to be a threat. *Supra*, §III.A. As mentioned above, Nielsen previously sued VideoAmp (and lost). *Id.* In another instance, Nielsen sued TVision *five times* in the span of four years. VA-1033, 12-14, 42-55; VA-1029. On November 11, 2025, TVision filed a counterclaim against Nielsen for anti-competitive practices – marking the third time Nielsen has been sued under the anti-monopoly Sherman Act in as many decades. VA-1033, 16-17, 26-27.

C. VideoAmp is Precisely the type of Entity that Congress Intended the IPR Process to Protect

Congress has long signaled its displeasure of patent litigation abuses. For example, in the 2011 Patent Reform Act, which became the America Invents Act (AIA), Congress noted the need for “productive alternatives to costly and complex [patent] litigation.” VA-1040, 1. Thus, the deterrence of frivolous patent litigation was a fundamental purpose of the post grant procedures introduced by the America Invents Act (AIA). *Id.*

Based in New York and Los Angeles, VideoAmp is an American company founded in 2014 that aims to “create a more sophisticated data-driven advertising

ecosystem that redefines how media is valued, bought, and sold.” VA-1031.

VideoAmp’s products challenge the current status quo and provide the needed solutions for years of industry stagnation. VA-1041.

As noted above and consistent with Congressional intent, AIA proceedings are designed to protect and provide practical legal solutions to companies, like VideoAmp, that are repeatedly sued for patent infringement over substandard patents by a larger competitor. VA-1030; VA-1040. Denying VideoAmp’s IPR Petition would merely encourage actors like Nielsen, whose repeated suits against competitors – including VideoAmp – places a tremendous cost on the industry. VA-1028; VA-1033, 14, 45-52.

Moreover, Nielsen’s patents have been invalidated over and over again. VA-1033, 14, 45-52. In Nielsen’s first suit against VideoAmp, both patents were found to be invalid. VA-1043. The appealed ’402 patent claims have similarly been found invalid by the district court. EX-2001; EX-2002. In fact, none of Nielsen’s *twelve* separate patent actions against its competitors have yielded a favorable verdict for Nielsen. VA-1033, 14, 45-52.

D. Equitable Considerations Outweigh *Hulu*’s Efficiency Concerns

As Nielsen noted in its Request, the District Court’s invalidity finding of the ’402 patent has been appealed. Request, 2-3. Thus, the determination of the validity of the ’402 patent is not final yet. *Id.* Moreover, the District Court only

examined the '402 patent in the context of patent eligibility – not the obviousness theories that the Petition presents. Request, 1-3; EX-2002. Even if the pending appeal results in a remand to the District Court, the obviousness-based invalidity challenge presented in this IPR would resolve well before any arguments in a remanded District Court proceeding. *Id.* Moreover, by the time an appeal will have concluded, VideoAmp will be barred under 35 U.S.C. § 315(b) from bringing a new challenge in an IPR petition. Thus, it is in the interest of justice to allow this IPR petition to be referred.

Nielsen cites *Hulu* to encourage the Office to deny this IPR petition. Request, 2-4 (citing *Hulu, LLC v. Piranha Media Distribution LLC*, IPR2024-01252, Paper 27 at 2 (Director April 17, 2025) (informative)). But the equitable considerations here are notably different from *Hulu* and outweigh the efficiency concerns that were central to *Hulu*.

The cost of litigating any remanded case would be substantially higher than the cost of an IPR trial. VA-1043, 76-78. The American Intellectual Property Law Association (AIPLA) reported in 2023 that the average cost of patent litigation for disputes of over \$1 Million for the preceding year ranged from \$1 Million to \$3.625 Million, through appeal. VA-1043, 76. The AIPLA also reported that the average cost of an IPR, though appeal, in the Electrical/Computer space during the same time period was \$500,000. *Id.*, 78. These cost savings significantly benefit smaller

competitors that are naturally at a disadvantage when defending against patent infringement suits from a dominant incumbent.

Each of the *Hulu*-based cases cited by Nielsen involve a large, established, Petitioner against a smaller Patent Owner. *Id.* In contrast, VideoAmp, a substantially smaller entity relative to Nielsen, chose to pursue an invalidity challenge at the PTAB as a cost-effective defensive strategy – something the Office has recognized benefits smaller businesses. VA-1030, 2. Foreclosing a PTAB challenge in view of *Hulu* would rob VideoAmp of these cost savings in the event of a remand – to the benefit of the much larger Nielsen. Nielsen champions *Hulu* because it supports their larger abusive litigation strategy – dragging their smaller-sized competitors into expensive litigation as much as possible. VA-1004; VA-1014; VA VA-1033, 42-47.

In this circumstance, where the financial resources of the parties are switched compared to *Hulu* and its descendants, the most equitable forum to hear invalidity arguments in the event of a remand is the PTAB. If Nielsen is genuinely concerned with conserving Office resources and avoiding duplication as they say, VideoAmp will withdraw its IPR petition if Nielsen withdraws its appeal.

IV. VIDEOAMP WAS DILIGENT IN FILING ITS IPR

35 U.S.C. § 315(b) allows the filing of an IPR within one year of service of a complaint for infringement. VideoAmp diligently filed this IPR on March 17,

2026, within the Congressionally allowed statutory window that extended until April 2, 2026. VA-1004. *SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC*, 580 U.S. 328 (2017) (citing *Petrella v. MGM*, 572 U.S. 663, 680) (“...courts are not at liberty to jettison Congress’ judgment on the timeliness of suit.”).

Using the full statutory window was hardly prejudicial to Nielsen with the litigation at a standstill. EX-2001; EX-2002. No invalidity contentions had been exchanged and no expert or discovery work had commenced. *Id.* Thus, there was no risk of *Fintiv*-based duplicative efforts. Nielsen fails to identify any case law or precedent to support their argument that the one year bar of § 315(b) is arbitrarily shortened in circumstances where there are no significant *Fintiv* concerns. Request, 12-14; *infra*, §VII. Even further, the absence of a trial schedule and VideoAmp’s *Sotera* 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 Management, LLC*, IPR2026-00204, Paper 14 (Director June 15, 2026) (informative).

Nielsen also argues that VideoAmp “should have sought PGR” because “the parties’ prior litigation made, or should have made, Petitioner aware that Patent Owner was involved in the same technology space as Petitioner.” Request, 12-13.

Said another way, Nielsen believes that the mere existence of litigation between Nielsen and VideoAmp should have driven VideoAmp to pre-emptively PGR the '402 patent, even before it was asserted on April 2, 2025. *Id.* Nielsen effectively demands that VideoAmp track all pending Nielsen applications, and preemptively file PGRs challenging new Nielsen patents as they issue, regardless of whether they may be later asserted against VideoAmp. Request, 12-13. Nielsen's argument also presumes that VideoAmp have a belief that it infringed the '402 patent claims, which VideoAmp does not have.

Asking VideoAmp to preemptively PGR every newly issued Nielsen patent, simply because of the presence of litigation, calls for VideoAmp to spend countless financial resources to file possibly hundreds of PGR challenges that unnecessarily bog down precious Office resources – irrespective of whether the issued patents would ever be asserted against VideoAmp. Nielsen has hundreds of patents issued to it every year, and previously has advertised its status as a top US patent recipient. VA-1032. Given this substantial number of patents, it is most efficient for VideoAmp to respond to patents as they are asserted – for both VideoAmp and the Office. *Id.*

Finally, if anything, the delay is with Nielsen. As discussed above in §II.B.1, the '402 patent issued on August 13, 2024 – well after litigation between Nielsen and VideoAmp had first commenced on January 31, 2024. VA-1001,

Cover; VA-1014. Nielsen could have sought to amend their previous complaint to add the '402 patent, but instead, they chose to file a separate complaint over a year later. VA-1004.

V. ORIGINAL PROSECUTION OF THE '402 PATENT SUFFERED FROM MATERIAL EXAMINER ERROR

As noted in the Petition, despite well over a hundred different prior art references being presented to the Examiner, not a single prior art rejection was advanced against the '402 patent during prosecution. Petition, 6-7; *see generally*, VA-1002.

The Examiner's error in failing to issue any rejection is highlighted by the District Court's decision (currently under appeal) that the '402 patent claims are invalid under § 101. *See generally*, VA-1002; EX-2001; EX-2002. The Examiner's failure to confirm compliance with all the statutory requirements is a clear example of material Examiner error that allowed the Challenged claims to issue.

In addition, the Examiner also failed to employ the correct search strategy leading to a scenario in which the Examiner did not find any prior art to form the basis of an anticipation or obviousness rejection. In particular, advertising solutions like those described in the '402 patent existed long before the Benefit Date, which Nielsen even appears to acknowledge. Request, 12 ("...prior art advertising methods already existed..."); VA-1003, ¶¶42-43, 48. However, the

Examiner's search queries focused instead on cellular "roaming" and "emergency alert" publications. VA-1002, 748-861. It is, thus, hardly surprising that the Examiner was unable to identify applicable prior art. To address this error, IPR of the '402 patent should be referred for institution consideration.

VI. NIELSEN'S ARGUMENTS REGARDING THE PETITION'S MERITS ARE IMPROPER AND INCORRECT

A. Lengthy Merits Arguments are Improper in a Discretionary Denial Brief

USPTO rules for the Interim Director Discretionary Process ("Process") specify that merit-related arguments presented in a discretionary denial brief "should briefly explain why the merits are relevant" and that Patent Owners "should not treat a discretionary denial brief as an additional opportunity for merits briefing." VA-1038, §II.C.i (emphasis added).

Completely disregarding this guidance, Nielsen submits almost *eight pages* of merits arguments with their discretionary denial request – roughly half of their entire brief. Request, 4-12. This is far from a brief explanation of the relevance of the merits. *Id.* In addition to presenting arguments against three separate invalidity arguments made in the Petition, Nielsen appears to have used their discretionary denial briefing to advance a novel claim construction theory for

“demographic information,” recited in limitations 1.3-1.4. *Id.*¹

Raising detailed merits arguments including a claim construction theory for the first time in discretionary denial briefing abuses the Process and is an “additional opportunity for merits briefing” the rules caution against. VA-1038, §II.C.i; Request, 4-12. These arguments are improper and premature, and should not be considered. VA-1038, §II.C.i. Only in the spirit of being fully responsive to Nielsen’s Request, VideoAmp briefly addresses Nielsen’s merits arguments below.

B. Nielsen’s Narrowing of “Demographic Information” to Include Only a “Home Location” of a User is at Odds with the ’402 Patent’s Disclosure

Nielsen argues that “demographic information” should be limited to a “home location.” Request, 4-12. The Petition explained that demographic information encompasses “a location of a user.” Petition, 27; VA-1003, ¶¶57, 60. Nielsen’s interpretation is improperly narrow for the reasons discussed below.

¹ The Rules only explicit endorsement of claim construction issues being presented in discretionary briefing is with respect to inconsistent claim construction positions advanced by a Petitioner. VA-1038, §I.F (citing *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 (PTAB Dec. 13, 2024) (informative)). No such case exists here.

The parties do not dispute that the '402 patent's FIG. 6 table includes “demographic information,” regardless of how this feature is interpreted or construed. Indeed, the '402 patent explicitly describes that “the example data table 600 includes demographic information associated with the registered panelists.” VA-1001, 17:64-66, *see also* 18:24-27, 18:59-65.² Although Nielsen alleges that the demographic information in FIG. 6 must be a “home location,” Nielsen's construction contradicts the disclosure in FIG. 6. Request, 6-10. For instance, entry 622 in FIG. 6 is a “gym,” which is not a home location. *Id.*; VA-1001, FIG. 6. Thus, if Nielsen's requirement of a “home” location were to be imported into the claims, it would exclude, without explanation, the clearest examples of demographic information described by the '402 patent. VA-1001, 17:45-18:35, FIG. 6.

The '402 patent only describes a home location as an example of demographic information. VA-1001, 4:13-34 (“In some examples, demographic information may be collected for a home”), Petition, 27 (emphasis added). The Challenged claims recite non-residential buildings as reference locations, which

² Dr. Williams noted that it would be improper to extend “demographic information” to include “immutable characteristics” of a user based on the claims of the '402 patent. VA-1003, ¶60.

are related to the claimed demographic information. VA-1001, Claims 5-6. VA-1001, Claim 1.³ Additionally, Nielsen’s argument that demographic information must include “defined qualities of the audience member that do not change” is at odds with the claims themselves. Request, 6-7 (emphasis omitted). The claims require demographic information to be “based on” a server performing the features of limitations [1.4]-[1.5]. VA-1001, Claim 1. If the claimed demographic information could truly never change, as Nielsen alleges, it could not be “based on” any operation of a server. *Id.* The claims would not have been understood to require a sever that controls, affects, or modifies the home location of a panelist based on the performance of limitations [1.4]-[1.5]. *Id.*⁴

³ For at least this reason, the Petition does not conflate “demographic information” and “reference location,” as Nielsen alleges. Request, 8-9. “Demographic information” and a “reference location” are not the same, but the claims do impose a relationship where demographic information is “based on” the user’s spatial relationship to a “reference location” (e.g., whether the user is inside the corresponding “reference area”). VA-1001, Claim 1.

⁴ Adopting Nielsen’s interpretation would require improperly reading limitation [1.3] as “wherein [accessing] the demographic information is based on a server...” VA-1001, Claim 1.

C. Nielsen Distorts the Petition's Additional Dutton Obviousness Argument

Nielsen argues that the Petition “makes no showing that Kerr-Dutton’s ‘house’ corresponds to the user’s house rather than any other house.” Request, 10-11. This distorts the argument in the Petition, which used Dutton’s disclosure of houses as places of interest (“POIs”) to argue that a POSITA would have found it obvious that Kerr’s geofences would have included a home location. *Id.*; Petition, 29 (citing VA-1006, ¶[0039]). As explained in the Petition, Kerr already monitors the user’s location, and with the additional disclosure of POIs that are houses in Dutton, a POSITA would have found it obvious that a user’s location would have at least occasionally included a house (i.e., the user’s home location). *Id.*

D. Kerr would not be Rendered Inoperable if its Techniques were Extended to Home Locations

Nielsen argues that a POSITA wouldn’t have found it obvious that Kerr’s geofences would have included home locations because doing so would “result in ‘the destruction of [Kerr’s] entire purpose.’” Request, 11 (citing *Medtronic*, 69 F.4th 1341, 1350). Specifically, Nielsen argues that “[t]he purpose of Kerr’s invention is to serve user ads based on the specific location where the user is.” Request, 12. In so doing, Nielsen appears to assume that a POSITA implementing Kerr would see no advantage in targeting advertisements based on determining a user was located at home. *Id.*

That Kerr describes some exemplary embodiments where a user is located in a retail location says nothing about any alleged self-imposed limitation against advertising in residential areas. *Id.* (citing Petition, 7). Nielsen cites Kerr’s teaching that context is valuable in advertising to declare, without any supporting evidence, that the context of a user being at home is useless to Kerr’s advertising techniques. *Id.*, (citing VA-1005, ¶¶[0017]-[0020]). But Kerr’s teachings do not support such a conclusion. *Id.* They simply affirm the value of location-based context. *Id.* The Request does not explain how an advertising system using location-based context would be rendered inoperable if the location happened to be a home (it would not be). Request, 11-12. Such a conclusory assumption is undermined by the prior art, and moreover, Nielsen’s own statements affirming the prevalence of similar prior art ad-serving techniques that considered a home location. Petition, 29 (citing VA-1019, ¶¶[0034]-[0038]); VA-1003, ¶59; Request, 12 (“...prior art ad-serving methods already existed to serve those users.”).

VII. *FINTIV* SUPPORTS INSTITUTION

Nielsen does not directly address the *Fintiv* factors in their Request, but declares, without explanation, that “traditional *Fintiv* analysis would...warrant discretionary denial.” Request, 1-2. However, when properly analyzed, the *Fintiv* factors support institution.

As noted above in §II.D, the district court proceeding involving the ’402

patent has been dismissed, pending appeal. EX-2001; EX-2002. Due, in part, to a summary judgement finding the claims to be directed to patent ineligible subject matter early in the proceedings, there has been limited activity and investment in the litigation. *Id.* Accordingly, *Fintiv* factors 3 and 6 strongly favor institution. *Id.*; *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, 6 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”). Because no prior art invalidity contentions have been advanced in the litigation, *Fintiv* factor 4 also favors institution. *Id.* Moreover, because the median time to trial is well over 1,000 days for the District Court of Delaware, even if the case were to be remanded expeditiously by the Federal Circuit, *Fintiv* factor 2 would still strongly favor institution as an IPR would resolve prior to any new trial. VA-1038, 14. Lastly, while none of the parties have requested a stay, Petitioner reserves the right to file a stay should the Federal Circuit remand the case back to the District Court and this IPR institute. Thus, *Fintiv* factor 1 is neutral, at worst.

VIII. CONCLUSION

For the forgoing reasons, VideoAmp submits that discretionary denial would be inappropriate.

Respectfully submitted,

Date: June 22, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4) and 42.205(b), the undersigned certifies that on June 22, 2026, a complete and entire copy of this Petitioner's Response To Patent Owner's Request For Discretionary Denial and accompanying exhibits were provided by email to Patent Owner by serving the correspondence addresses of record as follows:

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