

From: [Director Discretionary Decision](#)
To: [Richard M. Bemben](#); [Director Discretionary Decision](#); [René Vazquez](#)
Cc: [David Haars](#); [Rob Sokohl](#); [Justin Wang](#); [PTAB Account](#)
Subject: RE: IPR2026-00317 (Patent No. 12,230,394) — Patent Owner's Request for Authorization to File a Reply to Petitioner's Opposition to Discretionary Denial Brief
Date: Monday, August 31, 2026 12:18:34 PM

Petitioner's request is granted.

From: Richard M. Bemben <RBEMBEN@sternekessler.com>
Sent: Monday, August 31, 2026 11:46 AM
To: Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>; René Vazquez <rvazquez@dnlzito.com>
Cc: David Haars <DHaars@sternekessler.com>; Rob Sokohl <RSOKOHL@sternekessler.com>; Justin Wang <JWang@sternekessler.com>; PTAB Account <PTAB@sternekessler.com>
Subject: RE: IPR2026-00317 (Patent No. 12,230,394) — Patent Owner's Request for Authorization to File a Reply to Petitioner's Opposition to Discretionary Denial Brief

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Honorable Director,

Because Monday, September 7, 2026, is Labor Day, Petitioner respectfully requests that its brief be due on Wednesday, September 9, 2026, so that each party has at least three business days to prepare its brief.

Respectfully,
Richard Bemben
Counsel for Petitioner

From: Director_Discretionary_Decision <[Director_Discretionary_Decision@uspto.gov](#)>
Sent: Monday, August 31, 2026 11:03 AM
To: Richard M. Bemben <[RBEMBEN@sternekessler.com](#)>; René Vazquez <[rvazquez@dnlzito.com](#)>; Director_Discretionary_Decision <[Director_Discretionary_Decision@uspto.gov](#)>
Cc: David Haars <[DHaars@sternekessler.com](#)>; Rob Sokohl <[RSOKOHL@sternekessler.com](#)>; Justin Wang <[JWang@sternekessler.com](#)>; PTAB Account <[PTAB@sternekessler.com](#)>
Subject: RE: IPR2026-00317 (Patent No. 12,230,394) — Patent Owner's Request for Authorization to File a Reply to Petitioner's Opposition to Discretionary Denial Brief

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Patent Owner is authorized to file a 5-page reply in IPR2026-00317, due no later than Thursday, September 3, 2026, limited to addressing the matters raised below. Petitioner is authorized to file a 5-page sur-reply, due no later than Tuesday, September 8, 2026.

From: Richard M. Bemben <RBEMBEN@sternekessler.com>

Sent: Monday, August 31, 2026 10:06 AM

To: René Vazquez <rvazquez@dnlzito.com>; Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>

Cc: David Haars <DHaars@sternekessler.com>; Rob Sokohl <RSOKOHL@sternekessler.com>; Justin Wang <JWang@sternekessler.com>; PTAB Account <PTAB@sternekessler.com>

Subject: RE: IPR2026-00317 (Patent No. 12,230,394) — Patent Owner's Request for Authorization to File a Reply to Petitioner's Opposition to Discretionary Denial Brief

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Honorable Director,

The parties did not confer regarding Patent Owner's request, and Petitioner disagrees that good cause exists for additional briefing. Patent Owner argues that good cause exists because it allegedly did not have an opportunity to address material error in the prosecution history. But whether the Office erred during prosecution, including with respect to the examiner's search, was a well-established discretionary denial consideration long before Patent Owner filed their request for discretionary denial on July 21, 2026. Patent Owner could have addressed the adequacy of the examiner's search in their request. Petitioner also disagrees with the substantive arguments that Patent Owner raised in their email.

To the extent briefing is granted, Petitioner requests it be limited to two pages of additional briefing for each party (i.e., a Reply by Patent Owner and a Sur-reply by Petitioner), which is commensurate with the issue Patent Owner raised.

Respectfully,
Richard Bemben
Counsel for Petitioner

From: René Vazquez <rvazquez@dnlzito.com>

Sent: Friday, August 28, 2026 5:13 PM

To: Director_Discretionary_Decision@uspto.gov

Cc: Richard M. Bemben <RBEMBEN@sternekessler.com>; David Haars <DHaars@sternekessler.com>; Rob Sokohl <RSOKOHL@sternekessler.com>; Justin Wang <JWang@sternekessler.com>; PTAB Account <PTAB@sternekessler.com>

Subject: IPR2026-00317 (Patent No. 12,230,394) — Patent Owner's Request for Authorization to File a Reply to Petitioner's Opposition to Discretionary Denial Brief

EXTERNAL EMAIL: Use caution before clicking links or attachments.

Dear Director:

Pursuant to Section IV of the Interim Director Discretionary Process, Patent Owner iScan2D Technologies, LLC respectfully requests authorization to file a reply of no more than five pages to Petitioner's Opposition to Patent Owner's Discretionary Denial Brief (Paper [8]), filed August 26, 2026. Counsel for Petitioner is copied on this request.

Patent Owner seeks leave on a single, narrow issue: to correct Petitioner's characterization of the Examiner's prior-art search at pages 3–4 of the Opposition. Patent Owner does not seek to re-argue the Advanced Bionics framework, the cumulative nature of the asserted art, or any other matter, all of which are fully joined on the existing briefing.

Good cause exists for three reasons.

First, the Opposition advances an affirmative factual theory of causation that appears nowhere in the Petition or any prior paper. Petitioner asserts that the Examiner's claimed error "was caused by a flawed search strategy," and that the Examiner "focus[ed] her search on more references like Brown instead of references disclosing wireless-enabled wearable devices," which "caused the Examiner to miss references such as Weiss and LeBoeuf." Opp. 4. Patent Owner could not have addressed this theory in its Discretionary Denial Brief because it did not then exist, and under the Office's guidance a petition "should not address discretionary issues."

Second, the theory rests on record materials that neither party had previously placed at issue. Specifically, the Examiner's PE2E search history at EX1002, 167–176, and Petitioner's characterization of particular artificial-intelligence search entries within it (identified by Petitioner as L202, L209, L211, L212, L213, and L215). Patent Owner has had no opportunity to address that evidence.

Third, the characterization is contradicted by the very pages Petitioner cites. Within the range at EX1002, 167–176, the search history reflects, among other entries:

- A query expressly combining barcode display, wearable activity tracking, and pairing, which is the combination Petitioner contends was never searched: "(display\$4 WITH (code bar\$1code 'qr')) WITH (watch wear\$4 ((activity fitness exercise) ADJ track\$4)) WITH pair\$3." EX1002, 170 (entry L207).
- Claim-directed queries combining display, activity/fitness, and pairing, progressively narrowed to add wearables: "(display\$4 AND (activity fitness exercise) AND pair\$4).clm.," then "... AND (watch wearable)).clm." EX1002, 176 (entries L224–L226).
- The artificial-intelligence entries Petitioner highlights are a subset of a search session reflected in the same range that runs from approximately 4:12 p.m. through at least 7:33 p.m. on September 3, 2024. EX1002, 167, 176.

A brief reply would permit the record on this point to be corrected before the Director's decision. Given the compressed schedule, Patent Owner is prepared to file within three business days of authorization and does not believe this request will delay that decision. Patent Owner has no objection to Petitioner being afforded a sur-reply of equal length.

Respectfully submitted,

René A. Vazquez

Reg. No. 38,647

Lead Counsel for Patent Owner iScan2D Technologies, LLC