

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIAANT TECHNOLOGY LLC,
MEDIAOCEAN LLC, and
APPROVIN CORP.,
Petitioners

v.

INTENT IQ, LLC,
Patent Owner

Case IPR2026-00330
Patent 11,949,962

**PETITIONERS' OPPOSITION TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL OF INSTITUTION**

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LIST OF EXHIBITS

EX1001	U.S. Patent No. 11,949,962 to Shkedi (“the ’962 Patent”)
EX1002	Excerpts from the Prosecution History of the ’962 Patent (“the Prosecution History”)
EX1003	Declaration and Curriculum Vitae of Dr. Michael Mitzenmacher
EX1004	U.S. Pub. No. 2009/0172728 to Roy Shkedi <i>et al.</i> (“Shkedi-728”)
EX1005	U.S. Pub. No. 2008/0259906 to Roy Shkedi (“Shkedi-906”)
EX1006	U.S. Pub. No. 2010/0094758 to Simon Chamberlain <i>et al.</i> (“Chamberlain”)
EX1007	U.S. Pat. No. 8,566,164 to Roy Shkedi <i>et al.</i>
EX1008	Excerpt of File History of U.S. Pat. Appl. No. 11/968,117
EX1009	U.S. Pub. No. 2010/0211648 to Dirk Bhagat <i>et al.</i>
EX1010	Internet Archive Capture of https://en.wikipedia.org/wiki/Web_beacon from Aug. 24, 2010, available at https://web.archive.org/web/20100824203358/https://en.wikipedia.org/wiki/Web_beacon
EX1011	U.S. District Court – Federal Case Management Statistics, 12-Month Periods Ending December 31, 2025, available at https://www.uscourts.gov/sites/default/files/document/fcms_na_distprofile1231.2025.pdf
EX1012	Complaint, <i>AlmondNet, Inc. v. Mediaocean LLC</i> , D. Del., Case No. 1-25-cv-00406

I. INTRODUCTION

Intent IQ's Request for Discretionary Denial of Institution should be denied, and the Director should proceed to consider the merits of Petitioners' Petition for *inter partes* review (IPR) of U.S. Patent No. 11,949,962 ("the '962 Patent"). The decision to refer is a multi-factor analysis based on "the totality of the evidence and arguments presented." *Magnolia Med. Techs., Inc. v. Kurin, Inc.*, IPR2026-00097, Paper 17 at 2 (Director May 14, 2026) (precedential). The Director exercises this discretion in service of the public interest, to ensure that AIA review functions as the "quick and cost-effective alternative to district court patent litigation" Congress intended and to correct patents that "may have been improvidently granted," rather than to relitigate validity after an adverse judgment or to expand a dispute into a second forum. *Id.* at 2, 6-7, 9-10. This Petition embodies that purpose. It was filed early, before any trial date and while the district court cases remain at the pleadings stage; it seeks to correct a material Examiner error the Office itself did not catch; and it presents no risk of a duplicative second bite, because no forum has adjudicated the validity of the '962 Patent. The request to discretionarily deny Petitioners' IPR Petition should be rejected because: (1) the '962 Patent is a young patent that was allowed as a result of material Examiner error; and (2) the litigations are at such early stages that overlap will be avoided by the estoppel arising under 35 U.S.C. § 315(e) as a result of the final written decision in this proceeding.

Notably, timing considerations mitigate concerns over inconsistent outcomes or duplication of efforts, allowing an instituted IPR to function as an alternative to co-pending litigations. As Intent IQ acknowledges, trials have not yet been scheduled in the co-pending litigations. Paper 8 (“Req.”) at 15. Further, the median time to trial statistics demonstrate that trials are likely to occur over a year *after* the Board issues a final written decision in this proceeding. EX1011, 14. Taken together, these facts avoid duplication of efforts between the co-pending litigation and an IPR.

Review is further warranted to address material Examiner errors during original examination of the '962 Patent. *See Magnolia Med. Tech., Inc. v. Kurin*, IPR2026-00097, Paper 17 at 8 (Director May 14, 2026) (precedential). The application for the '962 Patent received limited scrutiny during prosecution. In the single Office Action before allowance, the Examiner made no prior art rejections, and in identifying the “closest prior art references” failed to consider the Shkedi-728 reference that clearly identifies nearly all of the limitations of the claims, despite the '962 Patent specifically calling out Shkedi-728 as having very similar teachings. *See* EX1001, 1:46-2:17, 9:28-36, 10:25-43.

Additionally, Intent IQ has not established settled expectations, strong or otherwise. The '962 Patent has been in force for a short time, having issued just two years before the Petition's filing. *Tesla*, Paper 14 at 4. Intent IQ's attempts to

conjure settled expectations based on the existence of older family members with narrower claims also fails. The '962 Patent issued years later and with claims clearly taught in the prior art.

For each of the reasons described herein, the Petition should be referred.

II. MULTIPLE COMPELLING REASONS SUPPORT MERITS REVIEW AND INSTITUTION OF THE IPR PETITION

A. The '962 Patent Is the Product of Material Examination Errors

The substantive examination of the particular claims of the '962 Patent was limited. The Examiner issued a single Office Action that contained only a double patenting rejection and no prior art rejections. The '962 Patent's quick allowance was the result of material examination errors that merit further review and correction by the Office through IPR. *Padagis US LLC v. Neurelis Inc.*, IPR2025-00464, Paper 12 at 3 (PTAB Jul. 16, 2025) (informative Jan. 9, 2026) (referral warranted where "Petitioner appears to show a material error by the Office").

In determining that the '962 Patent independent claims were "indicated as allowable subject matter with respect to the prior art," the Examiner identified several purportedly "closest prior art references" and explained their disclosures. *See* EX1002, 114-115. Yet, despite having been cited in an information disclosure statement (IDS), the Examiner failed to list and distinguish Shkedi-728, which is the inventor's own prior work. *See* EX1002, 114-115, 218 (IDS listing U.S. Patent No. 8,566,164, which is the patent that issued from the application that published as

Shkedi-728). The Examiner initialed the IDS on December 6, 2023, and returned it with the Office Action. EX1002, 197. Even more conspicuously, Shkedi-728 is listed in the specification itself as “related to” the systems and methods disclosed in the ’962 Patent. *See* EX1001, 1:54-55.

The Examiner’s failure to consider Shkedi-728 as one of the “closest prior art references” is material error. And this was not a harmless oversight but a material error that directly impacted allowance of the ’962 Patent. As set forth in the Petition, Shkedi-728 discloses nearly every limitation of the claims of the ’962 Patent. *See* Pet., 14-59. In fact, the ’962 Patent notes that “[s]everal proposed schemes (e.g., as disclosed in one or more of the applications listed above[, which include Shkedi-728]) would enable targeting of television ads based on observed online behavior while maintaining that segregation of PII, or without using PII at all.” EX1001, 9:28-32. And the ’962 Patent goes on to explain that “[v]arious suitable ways for establishing or recognizing [] an explicit association [between a primary online device (OD1) with a set-top box (STB)] are disclosed in the patents and pending applications cited above[, including Shkedi-728].” EX1001, 10:25-31. In other words, the ’962 Patent acknowledges much of the overlap between its claims and disclosures in other of the inventors’ patents and publications, like Shkedi-728. *See* EX1001, 1:46-2:17, 9:28-36, 10:25-43.

From this significant overlap in disclosure, including the use of nearly

identical terminology (*see* EX1001, 2:11-17), it would have been straightforward for the Examiner to identify any additional prior art disclosures, like those of the Chamberlain reference upon which the Petition relies in combination with Shkedi-728. *See* Pet., 11-14 (describing in detail the combination and the motivation to combine). Yet, the Examiner either did not recognize or appreciate the strong foundation that Shkedi-728 provided for such an obvious combination. This is perhaps unsurprising, as much of the Examiner’s searching was done in relation to earlier patents and before the filing of the application that led to the ’962 Patent. *See* EX1002, 124-184 (showing the date of most of the Examiner’s searches having happened before the May 25, 2023 filing date of the application for the ’962 Patent); §III.B, *infra* (explaining differences in scope between the claims of the ’962 Patent and earlier patents that Intent IQ claims are “most relevant”).

The overlap between a representative example challenged claim and Shkedi-728 is summarized below and set out in full in the Petition:

Representative Claim 1 Limitation (’962 Patent)	Corresponding Disclosure in Shkedi- 728 (EX1004)
A method comprising: [1.a] with a programmed hardware computer system automatically storing first electronic indicia of an association between a first online device (OD1) and a set-top box (STB) by matching (i) first personally identifiable information (PII) about a user of the OD1, which first PII is received by the computer system from a third party,	“[T]he online access identifier [<i>e.g.</i> , IP _{modem}] and, the set-top box identifier [<i>e.g.</i> , ID _{STB}] can be associated by each being referenced or included in the user profile.” EX1004, [0039]. “Various schemes currently are implemented, under development, or being considered wherein [personally identifiable Information] PII is used,

with (ii) second personally identifiable information about a user of the STB; and	e.g., to target television advertisements based on a viewer's online behavior.” EX1004, [0035]. ““For example, the association between the online behavior from IP_{modem} and subsequent delivery of the targeted ad to ID_{STB} can be established by: use of PII or non-PII as needed, desired, or permitted....” EX1004, [0053].
[1.b.i] with the computer system automatically measuring effectiveness of an advertisement displayed via the STB by tracking user behavior performed on a second online device (OD2) following delivery of the advertisement, based on an association between the OD2 and the STB,	“The tracking of online activity that is enabled by the association of an STB identifier with an online access identifier (using an online access IP address as described above...) can allow an advertiser to <u>evaluate the effectiveness of the television advertising</u> or to refine targeting criteria for the online or television advertising.” EX1004, [0060]. “Other observed viewer behavior can also be derived from analysis of user habits in selecting TV programs, which selections can be used in deciding what TV ad to deliver or avoid delivering to the user, and this type of interaction too can be used for the purposes described herein, namely custom delivery of online advertisements or decisions to record online behavior <u>to measure the effectiveness of the TV ads.</u>” EX1004, [0061]. Shkedi-906's incorporated disclosure describes that “[t]he delivery end-point [of a television ad] may be one television set or multiple sets of a given user; likewise, online access may

	involve one or more computers or other online interface devices of a given user.” EX1005, [0039]; <i>see also</i> EX1004, [0002]; EX1007, 1:12-15 (incorporating Shkedi-906). Shkedi-906 further states that “the CAS database can be searched to find all the computers, mobile devices, and other STBs that used the same IP address at the same date and time, and those will be assumed to be devices that are part of the same household and using the same LAN.” EX1005, [0063].
[1.b.ii] which association has been determined using both (i) the first electronic indicia of the association between the OD1 and the STB stored pursuant to part (a), and (ii) stored second electronic indicia of an association between the OD2 and the OD1, which have been associated based on use by the OD1 of a common proxy IP address and based on use by the OD2 of the common proxy IP address, wherein the common proxy IP address is an IP address through which network traffic of the OD1 and the OD2 was routed,	“In this implementation the term ‘common IP address’ denotes the IP address of a modem 32 or other online access device to which remote network traffic is routed for <u>all of the multiple devices</u> sharing a common connection to the remote network (Internet 10) through that modem.” EX1004, [0071]. Incorporated Shkedi-906 further states that “the CAS database can be searched to find all the computers, mobile devices, and other STBs that used the same IP address at the same date and time, and those will be assumed to be devices that are part of the same household and using the same LAN.” EX1005, [0063]. “Then, an association or link is created among the devices, by linking the device identifiers or tags with the STB’s identifier in the CAS database or by placing linking codes or information identifying the linked devices within the identifiers (cookies)

	of each of the devices along with the date and time the association was created.” EX1005, [0063].
[1.b.iii] wherein the association between the OD1 and the OD2 has been determined by a computer system located outside a local area network (LAN) defined by the common proxy IP address.	Shkedi-728’s Central Ad Server 40, which maintains the profiles, is outside the LAN defined by the common proxy IP address: FIG. 1 <u>EX1004, FIG. 1 (Annotated)</u>

For at least these reasons, the Examiner committed material error in examining the application that led to the '962 Patent, and the Board's resources are well spent addressing this error. *See, e.g., Padagis*, IPR2025-00464, Paper 12 at 3.

B. Institution Will Narrow the Parallel Litigations and Promote Efficient Use of Resources

As Intent IQ acknowledges, there are no trial dates set with respect to the '962 Patent and the litigations are still in their earliest stages (including being in the midst of dismissal briefing). Req., 15. Indeed, the Federal Court's median time to trial

statistics show that trials are not likely to occur until over a year *after* a final written decision is due to be issued in this IPR. In that regard, the IPR will act as a true alternative to litigation, as 35 U.S.C. § 315(e) estoppel will prevent consideration of the grounds that were raised or reasonably could have been raised in the Petition. For at least these reasons and as explained in more detail below, the *Fintiv* factors do not counsel for discretionary denial.

1. The Final Written Decision Will Issue at Least a Year Before the Beginning of Any Trials

As Intent IQ admits, “the district court litigations are in their early stages and do not have a set trial date.” *See* Req., 15. The Federal Court’s median time-to-trial statistics indicate that trial will likely occur at least 43 months after the complaints were filed. EX1011, 14. The earliest complaint alleging infringement of the ’962 Patent was filed against Mediaocean LLC on April 1, 2025. EX1012. Thus, a trial is unlikely to happen before November 2028. A final written decision in this IPR will be due in October 2027—over a year before any trials.

The relevant timing is summarized below:

Milestone	Date
Earliest infringement complaint filed (EX1012)	Apr. 1, 2025
Projected final written decision in this IPR	Oct. 2027
Earliest likely district-court trial	After Nov. 2028

**2. The Early Stage of Litigation Coupled with § 315(e)
Estoppel Avoid Wasteful, Duplicative Efforts**

The co-pending litigations are largely dormant, and they will remain so through institution and much of the IPR proceeding, if instituted. For example, the parties in the co-pending district court litigation are still briefing a motion to dismiss; no answer has been filed, no scheduling order has been entered, no claim construction has occurred, and no substantive discovery has been taken. The court has therefore made minimal investment, and the great weight of any litigation effort remains ahead. Indeed, Intent IQ does not dispute that “the district court litigations are in their early stages.” Req., 15. These facts weigh strongly against discretionary denial, especially as IPRs can inform ongoing litigation. *See, e.g., CrowdStrike Inc. v. Webroot, Inc.*, IPR2023-00126, Paper 9 at 10 (PTAB May 5, 2023) (early-stage investment weighs against denial).

Intent IQ alleges that “[t]here is likely to be substantial overlap between this IPR and the district court proceeding.” Req., 15-17. However, these arguments entirely ignore the preclusive effect of estoppel under 35 U.S.C. § 315(e). Section 315(e) provides that, where institution occurs and the proceeding results in a final written decision under § 318(a), the petitioner, real party in interest, or privy of the petitioner are all estopped with respect to “any ground that the petitioner raised or reasonably could have raised during that inter partes review” against that claim. 35 U.S.C. § 315(e). Statutory estoppel substantially mitigates the overlap concern in

the same manner the Board recognized for a *Sotera* stipulation, which the Board has agreed “mitigates any concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions.” *Sotera Wireless, Inc. v. Masimo Corporation*, IPR2020-01019, Paper 12 at 18-19 (PTAB Dec. 1, 2020). Intent IQ does not allege that § 315(e) estoppel will not apply at trial, nor could it. *See* Req., 15-17.

3. Holistic Consideration of the *Fintiv* Factors Favors Referral

As discussed below, a holistic weighing of the *Fintiv* factors favors referral. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential).

Factor 1 (Stay)—Because no motion to stay has been filed, the outcome of such a motion cannot be inferred, nor the existence of stay known. *Sand Revolution II, LLC v. Continental Intermodal Group – Trucking LLC*, IPR2019-01393, Paper 24 at 7 (June 16, 2020) (informative). Factor 1 is therefore ***neutral***.

Factor 2 (Trial Date)—As described above, there is no trial date set and the cases remain admittedly “in their early stages.” In similar circumstances, a lack of trial date has been found to “reduc[e] the risk of inconsistent outcomes or significant duplication of efforts,” favoring referral. *See, e.g., Samsung Electronics Co., Ltd. v. CM HK Limited*, IPR2025-01023, Paper 12 at 2 (Director Oct. 17, 2025); *Harbor Freight Tools USA Inc. v. Champion Power Equipment, Inc.*, IPR2025-00805, Paper 20 at 2 (Director Sept 19, 2025). Thus, Factor 2 ***favors referral***.

Factor 3 (Investment)—Intent IQ admits that “the district court litigations are in their early stages” and does not argue this will change in the relevant time period. Req., 15. Factor 3 therefore *favours referral*.

Factor 4 (Overlap)—As discussed above, because the trials will occur well after a final written decision is due, estoppel under 35 U.S.C. § 315(e) will apply. In similar circumstances, the Director has found that the risk of significant duplication of efforts at trial is reduced. *See, e.g., Samsung*, IPR2025-01023, Paper 12 at 2; *Harbor Freight*, IPR2025-00805, Paper 20 at 2. Thus, Factor 4 *favours referral*.

Factor 5 (Parties)—While the parties in the parallel litigations are the same, this factor alone does not favor denial, particularly where, as here, the Petition demonstrates strong merits of unpatentability. *Cisco Systems, Inc. v. Ramot At Tel Aviv University Ltd.*, IPR2020-00122, Pap. 15, 10 (Crumbley, dissenting); *Fintiv*, IPR2020-00019, Paper 11 at 13-14. Factor 5 is, at best, *neutral*.

Factor 6 (Merits and Other Considerations)—The merits of the Petition are compelling. As set forth in the Petition, the ’962 Patent claims are plainly unpatentable over the prior art. As explained in the Petition, the prior art clearly and unequivocally teaches each and every feature of the claims, largely based on the inventor’s own prior disclosures. *See* Paper 2 (Petition) at 14-59; §II.A *supra* (providing example mapping).

Intent IQ’s *Graham* arguments (Req. at 7-9) are meritless. In *KSR*, the

Supreme Court rejected the overly-formalistic analysis that Intent IQ seeks to impose. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418-19 (2007). Rather, the Federal Circuit has explained that, to satisfy the requirements of *Graham*, “[a] party seeking to invalidate a patent as obvious must demonstrate . . . that a skilled artisan would have had reason to combine the teaching of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success from doing so.” *In re Cyclobenzaprine Hydrochloride*, 676 F. 3d 1063, 1068-69 (Fed. Cir. 2012) (quotations omitted). That is precisely what the Petition explains, particularly in §III.A.3, in which it explains the proposed combination of Shkedi-728 and Chamberlain, and provides a POSITA’s motivation and expectation of success in making the combination. Pet., 11-14. Notably, the obviousness case rests primarily on the inventor’s *own* prior disclosures, Shkedi-728, which the ’962 Patent itself acknowledges as closely related art. And when the Petition turns to Chamberlain’s teachings, it explicitly addresses “how and why a skilled artisan would have combined the references.” *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 784, 797 (Fed. Cir. 2021).

Nor is the Petition impermissibly reliant on expert testimony. As the Director has explained, a petition is not over-reliant where the expert explains the background knowledge of a person of ordinary skill in the art and supports each opinion with citations to record evidence. *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-

00363, Paper 10 (PTAB June 6, 2025). Dr. Mitzenmacher’s declaration does exactly that, tying each opinion to the disclosures of the asserted references. EX1003. Factor 6 therefore *favours referral*.

As discussed above, each *Fintiv* factor is either neutral or favors referral, and thus, all *Fintiv* factors weigh against denial on discretion.

III. INTENT IQ FAILS TO ESTABLISH SETTLED EXPECTATIONS

A. The ’962 Patent Is Young, Having Issued Just Two Years Before the Petition Was Filed

Intent IQ fails to show that it has settled expectations in the ’962 Patent. It does not. The ’962 Patent issued in April 2024, just two years before the Petition was filed. Intent IQ presumptively lacks strong settled expectations on a young patent like the ’962 Patent. *Samsung Electronics Co., Ltd., v. Wilus Institute of Standards*, IPR2025-00935, Paper 12 at 2-3 (Sept. 26, 2025) (finding that patent issued in 2021 “has not been in force for a significant period of time” and thus “Patent Owner has not developed strong settled expectations that favor discretionary denial”).

B. Intent IQ’s Contention That the ’962 Patent Claims Are Narrower Than the Parent Claims Is Wrong

Intent IQ explains that “the ’962 Patent is part of a family that claims priority to August 3, 2011,” and that “[t]he oldest enforceable patent in the family, U.S. Patent No. 8,683,502, was issued on March 25, 2014.” Req., 2. Intent IQ goes on to argue that the ’962 Patent—which is a continuation of U.S. Patent No. 9,078,035

(the “’035 Patent”) issued on July 7, 2015—has “claims [that] are narrower in relevant respect than the claims of the ’035 Patent.” Req., 2-3. As a result, Intent IQ concludes that the settled expectations it purportedly has in the ’035 Patent should also apply to the ’962 Patent. This is both incorrect and irrelevant.

First, contrary to Intent IQ’s arguments, the claims of the ’035 Patent are broader—not “narrower”—than the claims of the ’962 Patent. A “claim that deletes a limitation or element from the patent claims is broader in that limitation’s aspect.” *In re Clement*, 131 F.3d 1464, 1468 (Fed. Cir. 1997). Independent claim 1 of the ’035 Patent requires “automatically with the computer system causing an action to be taken with respect to online activity through the secondary online device.” EX2003, 27:20-22. Dependent claim 3 of the ’035 Patent provides an example that “the action in part (b) includes causing a selected online advertisement to be directed to the secondary online device.” EX2003, 27:40-42. On the other hand, independent claim 1 of the ’962 Patent is broader because it deletes the requirement of “causing an action to be taken . . . through the secondary online device.” EX1001, 28:2-30.

Instead, claim 1 of the ’962 Patent recites “automatically measuring effectiveness of an advertisement displayed via the STB by tracking user behavior performed on a second online device (OD2).” EX1001, 28:11-13. Intent IQ argues that this is a “*stricter* requirement.” Req., 4 (emphasis in original). However, Intent IQ fails to explain how “tracking user behavior performed on a second online

device” relates to “causing an action to be taken . . . through the secondary online device.” Indeed, “tracking user behavior performed on a second online device (OD2)” need not require a computer system to cause an action to be taken through the second online device, because tracking of a device’s activities can be achieved independent of the tracked device (*e.g.*, by capturing traffic as it flows through another device like a router or an ISP server). That is, a computer system can track user behavior with respect to a device without the computer system causing any actions to be taken on the device.

Second, Intent IQ cites no authority supporting its assertion that settled expectations can flow from older family members to younger patents, regardless of claim scope. To the contrary, discretionary denials predicated on the existence of other family members have largely stemmed from those other patents also being asserted in district court, such that “intrinsically similar issues” would need to be decided in both forums. *See, e.g., Apple Inc. v. HBCU Messaging US LP*, IPR2025-01493, Paper 15 at 1 n.2 (Director Feb. 18, 2026); *Amazon.Com, Inc. v. Audio Pod IP, LLC*, IPR2025-00757, Paper 15 at 3 (Director Aug. 14, 2025). Here, Intent IQ has never asserted either of the ’502 or ’035 Patents to which it attempts to derive settled expectations, suggesting the difference in claim language is sufficient to support asserting the ’962 Patent and not those two (*e.g.*, due to distinct infringement theories and/or recognition that the ’502 or ’035 Patents face even stronger invalidity

concerns). In any case, because the '502 or '035 Patents have not been asserted, similarity between the '962 Patent and those patents does not impact the efficiency of the Board's review of the '962 Patent.¹

For at least these reasons, Intent IQ should not derive settled expectations from the unasserted and distinct '502 or '035 Patents.

IV. THERE ARE NO OTHER REAL PARTIES-IN-INTEREST TO THE PETITION

Intent IQ argues that “there are serious questions as to whether Petitioners (and particularly Petitioner Mediaocean LLC) identified all real parties-in-interest.” Req., 11-13. Beyond being based on pure speculation, this accusation finds absolutely no support in the law. Indeed, the requisite facts for any additional real parties-in-interest are entirely absent here. No parties other than Petitioners previously or currently have funded, controlled, or had the opportunity to control this proceeding.

A real party-in-interest is bound by the estoppel of 35 U.S.C. § 315(e) stemming from a final written decision. “Because nonparty preclusion risks binding those who have not had a full and fair opportunity to litigate, the Supreme Court has

¹ Intent IQ's reference to “significant licensing activity” is similarly inapposite, because none of the litigation that resulted in those licenses involved any of the '962, '502, or '035 Patents.

cautioned that there is a general rule against nonparty preclusion, subject to certain exceptions.” *WesternGeco LLC v. ION Geophysical Corp.*, 889 F.3d 1308, 1316-19 (Fed. Cir. 2018). Two questions are “at the heart” of demonstrating that a non-party should be deemed a “real party-in-interest” (RPI): “whether [the] non-party ‘desires review of the patent’ **and** whether a petition has been filed at [the] nonparty’s ‘behest.’” *Applications In Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1351 (Fed. Cir. 2018) (“*AIT*”) (emphasis added). Both must be answered in the affirmative to present an exception to the general rule against non-party preclusion. *Id.*

In order to assess whether a petition was filed at the behest of a non-party, the Federal Circuit looks to evidence of a “sufficiently close relationship” between the petitioner and a non-party to justify the burden of potential estoppel. *Id.* at 1350. In determining how close a relationship must be to deem a non-party an RPI, the Federal Circuit turns to “Wright & Miller and other authorities [that] provide examples of legal relationships in which a nonparty is or is not a ‘real party in interest.’” *Id.* at 1349. Examples of such relationships include “(1) executors; (2) administrators; (3) guardians; (4) bailees; (5) trustees of express trusts; (6) parties ‘with whom or in whose name a contract has been made for another’s benefit’; and (7) parties authorized by statute.” *Id.* at 1347-48. Further examples include certain “trade associations,” attorneys-in-fact or agents solely for the purpose of bringing

suit, or parties that actually consent or otherwise acquiesce to being bound by a prior judgement. *Id.* at 1351, 1357. All of these examples are relationships where one party is operating at the “behest” of another.

No such relationship exists in this case, nor has Intent IQ even alleged one. Rather, Intent IQ argues “the publicly available information shows that two private equity investors, CVC Capital Partners and TA Associates, have a significant equity stake in (and operating control over) Mediaocean,” but cites no authority that an ownership interest in and of itself gives rise to an RPI relationship. To the contrary, when analyzing the real party-in-interest to a prior litigation, the Federal Circuit has explained that “control of a *party* to the litigation through stock ownership or corporate officership is not enough to create privity²], absent a showing that the corporate form has been ignored (which is not the case here).” *Gillig v. Nike, Inc.*, 602 F.3d 1354, 1362 (Fed. Cir. 2010). This stands to reason as Intent IQ’s position would result in the untenable requirement that petitioners name all major shareholders as RPI.

² Privity is a “more expensive notion” compared to real party-in-interest. *AIT*, 897 F.3d at 1363.

Accordingly, the Petition's listing of the real parties-in-interest is complete, and the shareholder information cited by Intent IQ provides no evidence to the contrary.

V. CONCLUSION

Petitioners respectfully request that Intent IQ's Request for Discretionary Denial of Institution be denied, and that the Director proceed to consider the Petition on the merits.

Respectfully submitted,

Dated: July 8, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on July 8, 2026, a complete and entire copy of this Petitioner's Opposition to Patent Owner's Request for Discretionary Denial and Accompanying Exhibits were provided by email to the Patent Owner by serving the correspondence email addresses of record as follows:

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