

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JOHNSON CONTROLS INC.,
Petitioner,

v.

FRACTUS, S.A.,
Patent Owner.

Case No. IPR2026-00338
Patent No. 8,738,103

**BRIEF IN SUPPORT OF PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

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EXHIBIT LIST

Exhibit No.	Title
Ex. 2001	DECLARATION IN SUPPORT OF PATENT OWNER’S MOTION FOR PRO HAC VICE ADMISSION OF LARRY L. SHATZER
Ex. 2002	Docket report in <i>Fractus, S.A. v. Vivint, Inc.</i> , Case No. 2:22-cv-00413-JRG (printed June 3, 2026),
Ex. 2003	Docket report in <i>Fractus, S.A. v. ADT LLC</i> , Case No. 2:22-cv-00412-JRG (printed June 3, 2026)
Ex. 2004	Request for Ex Parte Preexamination of U.S. Patent No. 8,738,103, Reexamination Control No. 90/019,500
Ex. 2005	U.S. Patent No. 8,810,458
Ex. 2006	Complaint in <i>Fractus, S.A. v. ADT LLC</i> , Case No. 2:22-cv-00412-JRG
Ex. 2007	“Wireless Panels”, https://www.johnsoncontrols.com/security/intrusion-detection/residential-security/wireless-panels (last accessed June 21, 2026)
Ex. 2008	“Johnson Controls IQ Panels now supported by PowerManage, simplifying installation and data management,” https://www.johnsoncontrols.com/media-center/news/press-releases/2025/04/21/powermanage (last accessed June 21, 2026)
Ex. 2009	Notice of Final Election of Claims for Trial in <i>Fractus, S.A. v. ADT LLC</i> , Case No. 2:22-cv-00412-JRG

Ex. 2010	“Fractus and Vivint sign patent licensing deal for antenna technology in IoT, smart homes,” https://www.fractus.com/company/news/fractus-and-vivint-sign-patent-licensing-deal-for-antenna-technology-in-iot-smart-homes/ (last accessed June 21, 2026)
Ex. 2011	Joint Motion to Dismiss with Prejudice in <i>Fractus, S.A. v. ADT LLC</i>, Case No. 2:22-cv-00412-JRG
Ex. 2012	“Fractus expands IoT patent licensing program signing ADT agreement and ending litigation,” https://www.prnewswire.com/news-releases/fractus-expands-iot-patent-licensing-program-signing-adt-agreement-and-ending-litigation-302264328.html (last accessed June 21, 2026)
Ex. 2013	“Fractus expands U.S. connected safety licensing via RPX agreement,” https://www.fractus.com/company/news/fractus-expands-u-s-connected-safety-licensing-via-rpx-agreement/ (last accessed June 21, 2026)
Ex. 2014	“Fractus welcomes new licensee, expanding presence in the U.S. smart home market,” https://www.fractus.com/company/news/fractus-welcomes-new-licensee-expanding-presence-in-the-u-s-smart-home-market/ (last accessed June 21, 2026)
Ex. 2015	“Qolsys Rebrands as IQ Security Products,” https://diysecurityblog.com/index.php/2026/03/23/qolsys-

	rebrands-as-iq-security-products/ (last accessed June 22, 2026)
Ex. 2016	“Five smart features that make choosing security simple,” https://www.johnsoncontrols.com/building-insights/2025/thought-leadership/five-smart-features-that-make-choosing-security-simple (last accessed June 22, 2026)
Ex. 2017	“Introducing Our Latest Innovations – Advancing the Security Industry,” https://security.jci.com/iq-pm (last accessed June 22, 2026)

TABLE OF AUTHORITIES

Cases

<i>Advanced Bionics, LLC v. MED-EL Elektromedizinische Gertite GmbH</i> , IPR201901469, Paper 6 (Feb. 13, 2020) (precedential)	4
<i>Alliance Laundry Sys., LLC v. PayRange LLC</i> , IPR2025-00950, Paper 11 (September 19, 2025) (designated informativ: January 9, 2026)	4, 13
<i>Amgen Inc. v. Bristol-Myers Squibb Co.</i> , IPR2025-00601, Paper 9 (July 24, 2025) (informative)	7
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential)	4
<i>Applications in Internet Time, LLC v. RPX Corp.</i> , 897 F.3d 1336 (Fed. Cir. 2018)	14
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<i>Dabico Airport Sols. Inc. v. AXA Power ApS</i> , IPR2025-00408, Paper 21 (PTAB June 18, 2025) (informative)	6
<i>Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha</i> , IPR2016-01357, Paper 19 (Sept. 6, 2017) (precedential as to § II.B.4.i)	4
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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Patent Owner respectfully requests the Director to exercise discretionary denial of institution. Several considerations favor discretionary denial of institution in this IPR.

First, U.S. Patent No. 8,738,103 (“the ‘103 Patent”), issued over 12 years ago and Petitioner has likely been aware of the ‘103 Patent since at least 2021, when Patent Owner brought infringement of Petitioner’s products to the attention of Petitioner’s customers. Petitioner’s awareness of the ‘103 Patent and failure to seek early review demonstrate the parties’ settled expectations and, accordingly, supports discretionary denial.

Second, the ‘103 Patent has been the subject of two *prior* post grant procedures, an *ex parte* reexamination and an *inter partes* review. Petitioner was likely aware of both these proceedings but declined to challenge the ‘103 Patent until it filed this Petition. The ‘103 patent surviving two prior post grant challenges, as well as and Petitioner’s failure to challenge timely the ‘103 patent subsequent thereto, demonstrate the parties’ settled expectations of the claims’ validity and support discretionary denial.

Third, Patent Owner has undertaken substantial domestic licensing of the ‘103 Patent, which favors discretionary denial.

Fourth, the Petition fails to identify all real parties-in-interest, favoring

discretionary denial.

Finally, the invalidity challenges in the Petition are weak, favoring discretionary denial.

II. FACTUAL BACKGROUND

The ‘103 Patent, entitled “Multiple-Body-Configuration Multimedia and Smartphone Multifunction Wireless Devices,” was filed on December 21, 2006, as U.S. Patent Application No. 11/614,429. The patent claims priority to U.S. Provisional Application Nos. 60/831,544, filed July 18, 2006, and 60/856,410, filed November 3, 2006, as well as foreign priority applications. The United States Patent and Trademark Office ultimately issued the ‘103 Patent on May 27, 2014, more than 12 years ago. EX1001 at cover page.

On October 21, 2022, Fractus, S.A. filed a patent infringement action against ADT LLC in the United States District Court for the Eastern District of Texas, Marshall Division, styled *Fractus, S.A. v. ADT LLC*, Case No. 2:22-cv-00412-JRG (the “ADT litigation”). EX2003 at docket index (“D.I.”) 1.

On the same day, October 21, 2022, Fractus filed a separate patent infringement action against Vivint, Inc. in the Eastern District of Texas, styled *Fractus, S.A. v. Vivint, Inc.*, Case No. 2:22-cv-00413-JRG (the “Vivint litigation”). EX2002 at D.I. 1. The Vivint action was later consolidated with the ADT litigation pursuant to a Consolidation Order entered on December 8, 2022. EX2003 at D.I. 16.

Vivint filed an *inter partes* review on October 24, 2023, challenging claims 12 and 15 of the ‘103 Patent. *Vivint Inc. v. Fractus S.A.*, Inter Partes Review IPR2024-00087, Paper 2 at 3 (October 24, 2023)(the “Vivint IPR”). The Vivint litigation was terminated on February 20, 2024, and the Vivint IPR was terminated on the same date. EX2003 at D.I. 113; Vivint IPR, Paper 14.

The ADT litigation continued after Vivint’s termination. On April 30, 2024, *ex parte* reexamination control no. 90/019,500 (the “‘500 reexamination”) was filed against the ‘103 Patent. EX2004. The reexamination request sought reexamination of the same claims being asserted in the ADT litigation against ADT, claims 12 and 15, based primarily on the same prior art references relied upon in the Vivint IPR – Johnson, Boireau (EX1015) and Zeilinger. Vivint IPR, Paper 1; EX2004. The ADT litigation remained pending until October 4, 2024, when the case was terminated. EX2003 at D.I. 253.

III. LEGAL STANDARD

As indicated in the March 26, 2025 Memorandum by the Director that addresses “Interim Processes for PTAB Workload Management” (“Director Memo”):

[C]onsistent with the discretionary considerations enumerated in existing Board precedent (including *Fintiv*, *General Plastic*, and *Advanced Bionics**) and the Consolidated Trial Practice Guide (Nov.

2019), the parties are permitted to address all relevant considerations, which may include:

- Whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims;
- Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability;
- The strength of the unpatentability challenge;
- The extent of the petition's reliance on expert testimony;
- Settled expectations of the parties, such as the length of time the claims have been in force;
- Compelling economic, public health, or national security interests; and
- Any other considerations bearing on the Director's discretion.

Director Memo at 2-3 (*citing, Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential); *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (Sept. 6, 2017) (precedential as to § II.B.4.i); *Advanced Bionics, LLC v. MED-EL Elektromedizinische Gertite GmbH*, IPR201901469, Paper 6 (Feb. 13, 2020) (precedential)).

Other considerations that favor discretionarily denying a petition include evidence of licensing the subject patent. *Alliance Laundry Sys., LLC v. PayRange LLC*, IPR2025-00950, Paper 11 (September 19, 2025) (designated informative: January 9, 2026) (Discretionarily denying institution where the patent owner

presented evidence of licensing the challenged patent, creating some settled expectations that favored Patent Owner).

Still other considerations include whether the Petition has accurately identified all real parties-in-interest (“RPIs”). *Corning Optical Communications RF, LLC v. PPC Broadband Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (precedential except for § II.E.1) (Oct. 28, 2025). Specifically, redesignating *Corning Optical* as precedential returns the Office to its original interpretation of 35 U.S.C. § 312 that a petition must correctly identify all RPIs before the Director can institute a proceeding. *Corning Optical*, IPR2014-00440, Paper 68 at 23-24 (collecting cases); *id.* at 4 (disclosure of all RPIs is “required by 35 U.S.C. § 312(a)(2)”). Further, by not designating section II.E.1 of *Corning Optical* precedential, the Director has clarified that the petitioner bears the burden of showing its listing of RPIs is correct. Memorandum, Precedential designation of *Corning Optical* (“Corning Memo”).¹

¹ <https://www.uspto.gov/sites/default/files/documents/>

Precedential_designation_of_Corning_Optical_Communications_RF_LLC_v._PPC_Broadband_Inc_Memo_-_Dated_10_28_25.pdf (last accessed June 17, 2026).

IV. ARGUMENT

A. The ‘103 Patent’s Issue Date Favors Discretionary Denial

The ‘103 Patent issued more than 12 years ago on May 27, 2014. EX1001 at cover page. The Director has consistently found that patents that have been in force for substantially *less* time than the ‘103 Patent have strong settled expectations as a result of their time in force. Consider, for example, *inter partes* review IPR2025-00929 directed to Patent Owner’s U.S. Patent No. 8,810,458 (EX2005, “the ‘458 patent”). The ‘458 patent has been in force for less time than the ‘103 Patent, issuing on August 19, 2014. EX2005 at cover sheet. In IPR2025-00929 the Director found that the ‘458 patent had been “in force for more than eleven years, creating strong settled expectations for Patent Owner.” IPR2025-00929. Paper 11 at 2. Given its longer time in force, the ‘103 Patent has even stronger settled expectations.

Further, the Director has adopted a “six-year guideline” for this factor, noting that once a patent surpasses the six-year statute of limitations for past damages found in 35 U.S.C. § 286, expectations regarding its validity become significantly more established. *See Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 2-3 (PTAB June 18, 2025) (informative) (stating this approach “aligns with other approaches to settled expectations and incentives, for example, for filing infringement lawsuits”). It is, therefore, unsurprising that the Director has often found that patents in force for significantly less time than the ‘103 Patent have settled

expectations that favor discretionary denial. *See Cambridge Indus. USA, Inc. v. Applied Optoelectronics, Inc.*, IPR2025-00433, Paper 11 at 3 (PTAB June 26, 2025) (denying institution where “strong settled expectations” existed for seven- and nine-year-old patents); *Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, Paper 9 (July 24, 2025) (informative) (denying institution where “the challenged patents have been in force for seven and six years, respectively, creating strong settled expectations for Patent Owner”).

The ‘103 Patent has been in force for more than double the guideline value of six years from issuance. Therefore, the settled expectations of the Parties strongly favor discretionary denial of the Petition.

B. Petitioner’s Knowledge of the ‘103 Patent and Delayed Challenge Favor Discretionary Denial

Petitioner has likely been aware of the ‘103 Patent since *at least* 2021. This knowledge of the patent in combination with the substantial delay in challenging it weighs strongly in favor of discretionarily denying the Petition.

As indicated in the complaint in the ADT litigation, Patent Owner asserted the ‘103 Patent against ADT, and ADT was provided notice of its potential infringement of Patent Owner’s patents in June of 2021. EX2006 at ¶ 17. Further, the ADT Complaint explicitly identifies the following Qolsys products as “Exemplary Infringing Products”:

Table 1: Exemplary Infringing Products

Qolsys	IQ Panel 2
Qolsys	IQ Panel 2+
Qolsys	IQ Panel 4
Qolsys	IQ Hub

Qolsys² is a subsidiary of Petitioner Johnson Controls, and the above-identified products are listed with links to the Qolsys website on Petitioner's corporate site:



[iQPanel2 >](#)

Features a built-in 5 MP camera and multiple wireless radios with an elegant, modern user interface.

- Software-enabled Bluetooth touchless disarming
- Z-Wave Plus—to use up to 128 smart home devices

[See product details](#)

[IQ >](#)



EX2007.

² Earlier this year Qolsys rebranded as IQ Security Products, but remains a subsidiary of Johnson Controls. EX2015. For simplicity, Patent Owner refers to Qolsys throughout this paper.

In fact, Petitioner refers to the Qolsys products as its own products:

Johnson Controls IQ Panels now supported by PowerManage, simplifying installation and data management

- The IQ Panel 4 family features three all-in-one smart home and security systems with Bluetooth disarming for hands-free home access.

EX2008 (annotated); *see also* EX2016; EX2017.

Given that the complaint in the ADT litigation explicitly identified Petitioner's products as "Exemplary Infringing Products," it is highly likely that Petitioner was made aware of the '103 Patent shortly after service of the complaint on October 24, 2022, and likely sooner due to the communications between Patent Owner and Petitioner's customer ADT dating back to June of 2021. Nevertheless, Petitioner waited years before filing the present Petition, and more than a year after the conclusion of the lawsuit in which its products were accused of infringement. *See* EX2003 at D.I. 253. Petitioner's substantial delay in filing the Petition in this case strongly favors discretionarily denying the Petition.

C. The '103 Patent has Already Been the Subject of Two Previous Post-Grant Proceedings, Favoring Discretionary Denial

As indicated above, the '103 Patent has been subject to two previous post grant review proceedings: the '087 IPR, filed October 24, 2023 and terminated on February 20, 2024, and the '500 reexamination, filed April 30, 2024. While the '087

IPR settled without a final written decision, and the ‘500 reexamination did not reject any of the claims challenged in the present proceedings, the existence of these proceedings, and the ‘500 reexamination in particular, strongly favor discretionary denial of the Petition.

First, while reexamination was not sought as to the claims challenged in this proceeding, it was nevertheless within the reexamination examiner’s authority to reject any and all claims of the ‘103 Patent during the ‘500 reexamination proceeding. A reexamination proceeding ordered under 35 U.S.C. 304 “**provides a complete reexamination of the patent claims** on the basis of prior art patents and printed publications.” MPEP § 2258 (emphasis added). Further:

The decision to reexamine any claim for which reexamination has not been requested lies within the sole discretion of the Office, to be exercised based on the individual facts and situation of each individual case. **If the Office chooses to reexamine any claim for which reexamination has not been requested, it is permitted to do so.**

MPEP § 2243 (emphasis added).

Accordingly, the Office had the authority to reexamine any claim of the ‘103 Patent during the ‘500 reexamination but declined to do so. Further, the Office declined to reexamine the claims challenged in the Petition even though it was

presented with the same Boireau reference (EX1015) relied upon as the primary reference in the Petition. Petition at 6; EX2004 at 31. Accordingly, there is a strong settled expectation that the claims that survived the ‘500 reexamination were valid. These settled expectation favor discretionarily denying the Petition.

Additionally, Petitioner was likely aware of the ‘500 reexamination and its results but still waited years to challenge the ‘103 Patent via the present Petition. The ‘500 reexamination did not identify its requester, as generally permitted under 37 C.F.R. § 1.510. It is clear, however, that the ‘500 reexamination was likely filed by Petitioner’s customer ADT. First, the ‘500 reexamination challenged only the narrowed set of claims that Fractus planned to assert against ADT at trial. EX2009. It is particularly telling that the ‘500 reexamination challenged only claims 12 and 15 of the ‘103 Patent. Fractus initially asserted a number of claims from the ‘103 Patent against ADT. Only much later in the proceeding did Fractus limit the claims it would assert against ADT to the only two claims challenged in the ‘500 reexamination. Second, the ‘500 reexamination request relies on ADT’s expert from the litigation (*see* EX2004 at 3; EX2003 at docket entry 135), the same expert relied upon in the Petition. Further, the ‘500 reexamination was filed only two months after the ‘087 IPR was terminated by ADT’s codefendant, Vivint, due to settlement with Patent Owner. At the time the ‘500 reexamination was requested, ADT was the only party with an infringement suit pending against it based on the ‘103 Patent. Finally,

by the time the '087 IPR settled, ADT was time barred from filing its own IPR against the '103 Patent under 35 U.S.C. § 315(b), leaving reexamination as the only avenue available to challenge the validity of the '103 Patent at the Patent Office. Accordingly, it is readily apparent that the '500 reexamination was filed on behalf of Petitioner's customer ADT.

As discussed above, ADT was facing infringement liability due, at least in part, to Petitioner's products, products indicated in the ADT complaint as being "Exemplary Infringing Products." EX2006 at 8, Table 1. Accordingly, it is likely that Petitioner was aware of the '500 reexamination and its results. Nevertheless, Petitioner waited years to file the Petition. The failure of Petitioner to challenge the surviving claims of the '103 Patent near to the completion of the '500 reexamination shows strong settled expectations that the surviving claims were valid. These settled expectations strongly favor discretionarily denying the Petition.

Petitioner will likely argue that the '500 reexamination should not weigh in favor of discretionary denial because it has been the Office's general practice to examine only the claims for which reexamination has been requested. *See* MPEP § 2240. This is, however, a bad policy that should not be encouraged. As illustrated by the present case, the third post grant challenge of the '103 Patent, following this practice encourages piecemeal, serial patent challenges which waste Office resources and encourage harassment of patent owners. The Office and Director

should instead encourage efficient, comprehensive patent challenges directed to all claims the challenging party deems invalid.

D. The Substantial Domestic Licensing of the ‘103 Patent Favors Discretionary Denial of the Petition

Evidence of licensing the subject patent weighs in favor of settled expectations and discretionarily denying the Petition. *Alliance Laundry*, IPR2025-00950, Paper 11. Patent Owner has a long history of licensing the ‘103 Patent, which favors discretionarily denying the Petition.

First, Patent Owner and Vivint Inc. entered into a licensing agreement which resulted in dismissal of Vivint from the litigation and settlement of the ‘087 IPR directed to the ‘103 Patent. ‘087 IPR, Paper 13; EX2010. Similarly, Patent Owner entered into a license with ADT, resulting in dismissal of the ADT lawsuit, in which the ‘103 Patent was asserted. EX2011 at 1; EX2012. Earlier this year, Fractus entered into a licensing agreement with RPX for, among other things, monitored alarm panels, relating to devices associated with the ‘103 Patent claims. EX2013. These are just a few of Patent Owner’s non-confidential licenses directed to the ‘103 Patent. Patent Owner has entered into many additional licenses, including additional licenses in the home security sector. *See, e.g.*, EX2014.

Patent Owner’s licensing of the ‘103 patent is analogous to that of *Alliance Laundry*. *See Alliance Laundry*, IPR2025-00950, Paper 6. Unlike *Alliance Laundry*,

however, the ‘103 Patent has been in force for substantially longer than four years. *Alliance Laundry*, IPR2025-00950, Paper 11. Accordingly, the present case presents a stronger case for discretionary denial than that of *Alliance Laundry*.

E. The Petition Fails to Name Real Parties-In-Interest, Favoring Discretionary Denial

As indicated above, the Director recently redesignated *Corning Optical* as precedential. As explained in the Corning Memo, this case requires petitioners to identify the RPIs to their petitions before institution. Petitioner has failed to identify all RPIs in the Petition, favoring discretionary denial of the Petition.

“[T]he focus of the real-party-in-interest inquiry is on the patentability of the claims challenged in the IPR petition, bearing in mind who will benefit from having those claims canceled or invalidated.” *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1348 (Fed. Cir. 2018). Here, the companies which manufacture infringing products are the beneficiaries of the present IPR. Those beneficiaries include Petitioner’s subsidiary Qolsys.

As discussed above, Qolsys products were identified in the ADT complaint as “Exemplary Infringing Products.” While ADT may have entered into a license with Patent Owner (*see* sections II and IV.D, *supra*), Qolsys has not. Accordingly, Qolsys “will benefit from having those claims canceled or invalidated.” *Applications in Internet Time*, 897 F.3d. at 1348. Given its close subsidiary relationship to Petitioner

in combination with benefitting from the IPR, Qolsys is an RPI to the Petition. This is not to say that Petitioner may not also benefit from the present proceeding. “Indeed, Congress understood that there could be *multiple* real parties in interest, as evidenced by § 312(a)'s requirement that an IPR petition must ‘identif[y] *all* real parties in interest.’” *Id.* at 1347, *citing* 35 U.S.C. § 312(a)(2) (emphasis added).

At the very least, the identification of the RPIs in this proceeding is in dispute, which favors discretionarily denying the Petition. *See Tianma Microelectronics Co., Ltd. v. LG Display Co., Ltd.*, IPR2025-01579, Paper 12 (March 18, 2026) (precedential).

F. The Invalidity Challenges in the Petition are Weak, Favoring Discretionary Denial

In accordance with the Interim Director Discretionary Process, Patent Owner incorporates herein the merit arguments and evidence from its forthcoming Patent Owner Preliminary Response (“POPR”) by reference. *See* Interim Director Discretionary Process § II.C.i (“Notwithstanding the prohibition on incorporation by reference in 37 C.F.R. § 42.6(a)(3), when filing a brief for discretionary denial, a patent owner may direct attention to an anticipated POPR and evidence for a discussion of the merits.”).

V. CONCLUSION

Appropriate analysis under the framework described in the Director Memo

and based on the evidence of record favors exercising discretion to deny institution of the Petition.

Dated: June 22, 2026

Respectfully submitted,

/Mark J. DeBoy/

Mark J. DeBoy (Reg. 66,983)

Attorney for Patent Owner, Fractus S.A.

CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing **BRIEF IN SUPPORT OF PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL** and accompanying **EXHIBITS** were served via email (as previously consented to by counsel) on June 22, 2026 to lead and backup counsel of record for Petitioners as follows:

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Dated: June 22, 2026

/Mark J. DeBoy/
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