

PUBLIC VERSION

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SKECHERS U.S.A., INC.,
Petitioner,

v.

FAST IP, LLC,
Patent Owner.

Case IPR2026-00343
Patent U.S. 11,871,811

**MOTION TO FILE CORRECTED OPPOSITION TO
PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL**

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U.S. Patent and Trademark Office
P.O. Box 1450
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Petitioner Skechers U.S.A., Inc. (“Petitioner”) respectfully submits this motion to correct minor typographical and/or clerical errors in its opposition brief to Patent Owner’s Request for Discretionary Denial (Paper 15) (“Opposition”). In the original Opposition (p. 19, first line), the word “not” was inadvertently omitted between the words “was” and “involved” in the following sentence: “3G Capital was involved in preparing the Petition.” Petitioner’s corrected Opposition corrects this minor error so that it reads, “3G Capital was not involved in preparing the Petition.” This is consistent with the correct language used in Petitioner’s discretionary denial opposition brief in related IPR2026-00342 (Paper 14, p. 19).

The Director authorized Petitioner to file this motion via email on August 3, 2026. Petitioner has conferred with Patent Owner Fast IP, LLC (“Patent Owner”), who has stated that they do not object to Petitioner seeking the Director’s guidance for correction of this typographical error. A copy of the proposed Corrected Opposition (clean and redline) is attached hereto as Attachments A and B.

The following four factors all weigh in favor of granting this motion:

- 1) The nature of the error, and whether the party requesting relief provides adequate explanation for how the error occurred, including how the error was discovered;
- 2) The length of time elapsed between learning of the error and bringing the error to the Board’s attention;

- 3) Prejudice to the other party, if any, by allowing the proposed corrections; and
- 4) Whether the proposed corrections have any impact on the proceeding.

See Ivantis, Inc. v. Glaukos Corp., IPR2018-01180, Paper 14 at 9 (Dec. 6, 2018).

A. Factor 1: Petitioner Discovered The Typographical Errors During Routine Review Of The Brief

The nature of the error here is entirely clerical/typographical, with the word “not” inadvertently omitted in one of two concurrently-filed discretionary denial opposition briefs (the second being Paper 19 in IPR2026-00342, which includes the correct language). Petitioner became aware of this error upon routine review of the opposition brief shortly after the brief was filed. Accordingly, Factor 1 weighs in favor of granting the motion.

B. Factor 2: Petitioner Promptly Moved to Correct the Error

Petitioner’s counsel discovered the error on Friday, July 31, 2026. Petitioner contacted Patent Owner’s counsel about the issue on Friday, July 31, 2026 to determine whether Patent Owner would oppose Petitioner’s request for the Director’s guidance. Patent Owner confirmed it would not oppose, and Petitioner subsequently contacted the Director for leave to file the motion on July 31, 2026. In all cases, Petitioner acted with reasonable diligence to quickly correct the errors upon discovery. Accordingly, Factor 2 weighs in favor of granting the motion.

C. Factor 3: Correcting the Clerical Errors Will Not Prejudice Patent Owner

Petitioner immediately contacted Patent Owner regarding the correction to its opposition brief, and Patent Owner has ample time to account for this change of one word in its subsequent discretionary denial briefing. Moreover, the correction sought here is consistent with the correct language used in Petitioner's discretionary denial opposition brief in related IPR2026-00342 (Paper 14, p. 19). Petitioner also notes that Patent Owner has indicated that it did not object to Petitioner's request for guidance. Thus, Factor 3 weighs in favor of granting the motion.

D. Factor 4: Correcting the Clerical Errors Will Positively Impact The Proceeding

Replacing the missing word "not" to read, "3G Capital was not involved in preparing the Petition," would only have a positive impact on the proceeding. In particular, this correction would reflect the correct factual circumstances and ensure consistency with the opposition discretionary denial brief in related proceeding IPR2026-00342. The changes will also simplify the Board's review of the issues and the parties' briefing since it will ensure consistency with later-filed documents in this proceeding. Accordingly, Factor 4 also weighs in favor of granting the motion.

For the foregoing reasons, Petitioner respectfully requests that the Director grant Petitioner's motion and enter the Corrected Opposition attached hereto as Attachment A.

Dated: August 6, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on August 6, 2026, a copy of the foregoing document "**MOTION TO FILE CORRECTED OPPOSITION TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL**" was served by electronic mail upon the following parties:

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ATTACHMENT A

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SKECHERS U.S.A., INC.,
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v.

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Case No. IPR2026-00343
U.S. Patent No. 11,871,811

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REQUEST FOR DISCRETIONARY DENIAL**

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TABLE OF CONTENTS

	Page(s)
I. INTRODUCTION	1
II. BACKGROUND	2
III. REFERRAL IS WARRANTED.....	4
A. Referral Will Rectify The '811 Patent's Erroneous Issuance	4
B. The Complexity Of The Dispute Favors Referral.....	6
IV. FAST'S ARGUMENTS ARE MERITLESS	7
A. Petitioner's Positions are Consistent	7
B. <i>Fintiv</i> Favors Referral	10
1. Factor 1: Neutral Because No Stay Has Been Requested	10
2. Factor 2: Neutral Due To Significant Uncertainty	11
3. Factor 3: Favors Referral Due To Lack Of Investment.....	12
4. Factor 4: Favors Referral Due To Petitioner's Stipulation	13
5. Factor 5: Neutral Because The Parties Are The Same	14
6. Factor 6: Favors Referral As The Merits Are Strong	15
C. Petitioner Named All Real Parties In Interest ("RPIs").....	15
D. Settled Expectations Favor Referral.....	19
V. CONCLUSION.....	20

TABLE OF AUTHORITIES*

	Page(s)
Cases	
<i>CyWee Grp. Ltd. v. Samsung Elecs. Co.</i> , 2019 WL 11023976 (E.D. Tex. Feb. 14, 2019).....	11
<i>Dynapass IP Hldgs. LLC v. JPMorgan Chase & Co.</i> , 2024 WL 233223 (E.D. Tex. Jan. 22, 2024)	12
<i>Ingenico Inc. v. IOENGINE, LLC</i> , 136 F.4th 1354 (Fed. Cir. 2025)	13
<i>Intel Corp. v. Qualcomm Inc.</i> , 21 F.4th 801 (Fed. Cir. 2021)	8, 9
<i>SSL Servs., LLC v. Cisco Sys., Inc.</i> , 2016 WL 3523871 (E.D. Tex. Jun. 28, 2016)	11
<i>Stingray Music USA, Inc. v. Music Choice</i> , 2017 WL 9885167 (E.D. Tex. Dec. 12, 2017)	11
<i>U.S. v. Bestfoods</i> , 524 U.S. 51 (1998).....	17
Board Authorities	
<i>Amgen Inc. v. Bristol-Myers Squibb Co.</i> , IPR2025-00601, Pap. 8 (Acting Dir. Jul. 24, 2025) (informative)	3
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Pap. 11 (PTAB Mar. 20, 2020) (precedential).....	11
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Pap. 15 (PTAB May, 2020) (informative)	10, 11

* All bold, italicized emphasis in quotation marks is added by Petitioner.

<i>BOE Tech. Grp. Co. v. Optronix Scis. LLC</i> , IPR2024-01130, Pap. 16 (PTAB Jan. 27, 2025)	11
<i>Home Depot U.S.A., Inc. v. H2 Intellect LLC</i> , IPR2025-00480, Pap. 11 (Acting Dir. Sept. 4, 2025)	12, 20
<i>Infineon Techs. Am. Corp. v. MOSAID Techs. Inc.</i> , IPR2025-01487, Pap. 27 (Dir. Mar. 17, 2026)	4, 5
<i>iRhythm Techs., Inc. v. Welch Allyn, Inc.</i> , IPR2025-00363, Pap. 27 (Dir. Mar. 17, 2026)	4
<i>Magnolia Med. Techs., Inc. v. Kurin, Inc.</i> , IPR2026-00097, Pap. 17 (Dir. May 14, 2026) (precedential)	4
<i>Microsoft Corp. v. ParTec AG</i> , IPR2025-00318, Pap. 9 (Acting Dir. Jun. 12, 2025)	6
<i>Padagis US LLC v. Neurelis, Inc.</i> , IPR2025-00464, Pap. 12 (Acting Dir. Jul. 16, 2025) (informative)	6, 12
<i>Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.</i> , IPR2025-00632, Pap. 20 (PTAB Nov. 3, 2025)	8
<i>Samsung Elecs. Co., Ltd. v. Netlist, Inc.</i> , IPR2026-00018, Pap. 20 (PTAB Apr. 28, 2026)	14
<i>Samsung Elecs. Co., Ltd. v. Wilus Inst. of Stands. & Tech. Inc.</i> , IPR2025-00933, Pap. 11 (Director Oct. 10, 2025)	13
<i>Sand Revolution II, LLC v. Continental Intermodal Grp. – Trucking LLC</i> , IPR2019-01393, Pap. 24 (PTAB Jun. 16, 2020) (informative)	10
<i>Shenzhen Tuozhu Tech. Co. v. Stratasyss, Inc.</i> , IPR2025-00438, Pap. 10 (Acting Dir. Jul. 17, 2025)	7, 13, 15
<i>Syngenta Crop Prot. AG v. FMC Corp.</i> , PGR2020-00028, Pap. 8 (PTAB Sept. 15, 2020)	17, 18, 19
<i>Tesla, Inc. v. Bulletproof Prop. Mgmt., LLC</i> , IPR2026-00204, Pap. 14 (Dir. Jun. 15, 2026) (informative)	4, 14

<i>Tesla, Inc. v. Intell. Ventures II LLC</i> , IPR2025-00217, Pap. 9 (Acting Dir. Jun. 13, 2025) (informative).....	6, 7, 15
<i>Tesla, Inc. v. Intell. Ventures II LLC</i> , IPR2025-00340, Pap. 18 (Dir. Nov. 5, 2025) (informative)	8, 10

Other Authorities

MPEP § 904	6
MPEP § 904.03	5

I. INTRODUCTION

The Petition warrants merits consideration. First, it presents highly relevant, invalidating art that was never considered by the Office, likely due to the deficient, highly abbreviated examination of the '811 patent. Second, institution will simplify a complex district court litigation, which includes seven patents, dozens of asserted claims, and potentially thousands of accused products. Third, the arguments by Patent Owner FAST IP, LLC ("FAST") seeking discretionary denial are meritless.

On claim construction, FAST simply lists claim elements for which Petitioner preserved an indefiniteness defense, then asserts, without explanation, that these are "inconsistent claim construction positions." DD.Br., 6. FAST does not even try to articulate how any such allegation is inconsistent with the Petition. FAST just asserts that, whenever a Petitioner alleges indefiniteness, "[s]uch conduct should not stand" and "the Director should deny the Petition." *Id.*, 10. That is unsupported.

Further, the *Fintiv* factors here favor referral. The district court case is in its early stages, with a transfer motion pending, Skechers yet to file an answer, and discovery only recently having begun in earnest. Skechers also filed a robust *Sotera*-plus stipulation that eliminates the vast majority of possible overlap with the lawsuit.

Petitioner has previously named the real party-in-interest to this proceeding—Skechers U.S.A., Inc. But in an abundance of caution, before filing this Opposition,

Petitioner filed an Amended Mandatory Notice listing additional entities as RPIs. Pap. 13. Petitioner submits that moots the RPI issue. Further, an overwhelming body of law rebuts FAST’s assertion that a third-party investment advisor is an RPI.

Finally, FAST has no settled expectations, as the ’811 patent issued less than three years before the Petition was filed. In fact, FAST’s failure to commercialize the patent, and public statements that it did not intend to bring suit, demonstrate that *Petitioner* had settled expectations against assertion. FAST’s reliance on a license is a mere smokescreen, as FAST neglects to inform the Board that (a) FAST alleges its licensees have never practiced the ’811 patent and thus were not required to mark, (b) [REDACTED], and (c) [REDACTED].

II. BACKGROUND

Skechers U.S.A., Inc. (“Petitioner” or “Skechers”) has been a leader in the footwear industry since its founding in California over thirty years ago. FAST is a patent holding company that does not make or sell any products. FAST, its licensee (HandsFree Labs Licensing, LLC), and a related shoe seller (Kizik Design, LLC) asserted six patents against Skechers in the Eastern District of Texas on July 24, 2025(the “Texas case”). EX1030. The plaintiffs did so without contacting Skechers first, in spite of prior public statements that they were not “actively looking to sue

anyone” and did not want to “win by litigation.” EX2008, 4. A few months later, the plaintiffs dropped one patent and added two others, U.S. Patent Nos. 12,471,660 and 12,458,101, for a total of seven (7) patents asserted in the lawsuit. EX1031.

The ’811 patent covers designs that predate it by decades, if not centuries. Instead of addressing this, FAST misdirects by touting its supposed innovations in “hands-free footwear” and “industry coverage” of its “innovative technology.” DD.Br., 2-4. Notably absent from FAST’s brief is *any reference to the technology of the ’811 patent*. FAST touts technologies *not at issue here*.¹ FAST’s claims of innovation, untied to *the ’811 patent*, do not favor denial; rather, FAST’s avoidance of the issues shows that review is warranted. *See Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, Pap. 8, 2-3 (Acting Dir. Jul. 24, 2025) (informative).

This Petition concerns a patent that FAST *never commercialized* and *left on the shelf* until it sued Skechers. FAST does not deny that “plaintiffs [including FAST] contend that they themselves have never practiced the [’811] patent.” Pet., 1. FAST and its licensees have *never marked a product* with the ’811 patent, and a single, [REDACTED] license [REDACTED] does not suggest, much less provide compelling evidence, that it has been commercialized by anyone.

¹ See, e.g., EX2004, 1-2 (“spring-back’ heel technology” in which the “heel compresses” and “pops up to fit snugly around the back of the foot”); EX2005, 4 (“Internal Flex Arc hands-free system”); EX2006, 3 (“Cage technology” for “compression and responsive rebound”).

III. REFERRAL IS WARRANTED

A. Referral Will Rectify The '811 Patent's Erroneous Issuance

Referral serves the public interest by allowing the Office “to reconsider its own decision and correct a possible error.” *Magnolia Med. Techs., Inc. v. Kurin, Inc.*, IPR2026-00097, Pap. 17, 6 (Dir. May 14, 2026) (precedential). The '811 patent's prosecution lasted under four months, and the challenged claims never received an art rejection (EX1001, fields (22), (45), EX1002, 16-18), likely due to a deficient search (*see infra*). This highly abbreviated examination warrants review.

The Petition shows anticipation of most claims by Kim and obviousness of the remainder over Kim in view of Hoying and Koo. FAST concedes none of these were before the Office during prosecution. *See Tesla, Inc. v. Bulletproof Prop. Mgmt., LLC*, IPR2026-00204, Pap. 14, 3 (Dir. Jun. 15, 2026) (informative). The Petition also does not rely heavily on expert testimony; there are no “gaps” to fill, Petitioner's expert just explains the relevant background knowledge of a POSITA. *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Pap. 10, 2-3 (Acting Dir. Jun. 6, 2025) (“weighs against discretionary denial” if expert just “explain[s] the background knowledge of a person of ordinary skill”). Petitioner also filed a Search Disclosure Declaration, a “favorable discretionary consideration.” *Infineon Techs. Am. Corp. v. MOSAID Techs. Inc.*, IPR2025-01487, Pap. 27, 3 (Dir. Mar. 17, 2026).

FAST's attempt to justify the highly abbreviated examination of the '811 Patent, leaning heavily on the Examiner's search, only underscores the problems below. DD.Br., 5. Detailed review shows that the Examiner conducted a deficient search that failed to identify the most pertinent references in the field. Despite the "over 250 extensive queries," *id.*, it appears that only **three** were performed **during the '811 patent's examination**. EX2012, L46-47, L277. Moreover, the vast majority of queries were duplicative and either overly narrow, targeting specific patent numbers, or overly broad, targeting swaths of CPC classes with thousands of references. The Examiner used just **one** keyword search, "(stabilizer AND elastic AND arch AND deflect\$4).clm," which narrowly targeted only claim language and required terms **not in the claims**. See EX2012, query L40 (duplicated at, *e.g.*, L76, L106, L138, L154, L168, L202). MPEP § 904.03 (search must be "commensurate with the limitations" of the claims). Nor did the Examiner target subclasses plainly related to the claims, such as A43C 11/002 (Fastenings using stretchable material attached to cuts in the uppers), A43B 23/26, (Tongues for shoes), or A43C 1/02 (elastic laces), each of which contain the highly material Koo reference.

The Examiner's search for foreign references (like Kim) further illustrates these deficiencies. The Examiner only queried the Foreign Image and Text database in a single, extremely broad CPC search that encompassed 6 separate classes and hit

over 14,000 references. EX2012, query L1 (duplicated at, *e.g.*, L26, L48, L62, L92, L124, L140, L174, L204). These classes were not searched with keywords, and had the Examiner done so, the highly material Kim reference may have been discovered.

The Examiner did not “obtain[] a thorough understanding of the invention” and was not “fully aware of the what the claims do *not* call for, as well as what they do require.” MPEP § 904. Referral for merits review is warranted. *See Microsoft Corp. v. ParTec AG*, IPR2025-00318, Pap. 9, 2-4 (Acting Dir. Jun. 12, 2025) (proper to review error, even if trial date precedes FWD); *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464, Pap. 12, 2-3 (Acting Dir. Jul. 16, 2025) (informative) (similar).

B. The Complexity Of The Dispute Favors Referral

Referral is also warranted because the Texas case involves seven patents with diverse subject matter, covering ornamental designs, fifty-six utility claims, and potentially thousands of accused products. *Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00217, Pap. 9, 2-3 (Acting Dir. Jun. 13, 2025) (informative) (“complex and diverse litigation proceeding tip[ped] the balance against discretionary denial” despite “trial date preced[ing] the projected [FWD] due date”).

This is one of five filed IPRs challenging FAST patents asserted in the litigation: 11,633,006 (IPR2026-00342); 11,871,811 (IPR2026-00343); 12,274,325 (IPR2026-00373); 12,121,096 (IPR2026-00443); and D1,037,641 (IPR2026-

00444). Skechers will also file petitions on the other recently issued asserted patents, 12,471,660 and 12,458,101, once they are eligible. The patents cover diverse subjects, including a pivoting heel structure (12,458,101), different configurations of elastic elements (e.g., 11,871,811 and 12,121,096), and ornamental designs (D1,037,641). The Board is “better suited” for review. *Tesla*, IPR2025-00217, Pap. 9, 3; *Shenzhen Tuozhu Tech. Co. v. Stratasy, Inc.*, IPR2025-00438, Pap. 10, 2-3 (Acting Dir. Jul. 17, 2025) (complex litigation weighed against discretionary denial, despite FWD date after trial). Further, beyond the number of patents and their subject matter, the prior art disputes also involve complex issues of prior art qualification under § 102(a)(2), Pet., 9-10, for which the Board’s expertise is valuable. The PTAB is also the only practical forum for many challenged claims, as the petitions challenge many more claims than can reasonably be asserted at trial.

IV. FAST’S ARGUMENTS ARE MERITLESS

A. Petitioner’s Positions are Consistent

As Petitioner explained, “none of the issues presented in this Petition require any claim term to be construed.” Pet., 8. FAST *does not dispute* this. DD.Br., 6-7. Instead, FAST just lists claim elements for which Petitioner preserved an indefiniteness defense, then merely asserts, without explanation, that these are “inconsistent claim construction positions.” *Id.* Notably, FAST makes no attempt

to articulate how any indefiniteness allegation is inconsistent with any argument in the Petition. Nor does FAST allege Petitioner “seek[s] narrower constructions in litigation to avoid infringement liability.” *Id.* (quoting *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Pap. 20, 4 (PTAB Nov. 3, 2025)). Instead, FAST’s entire argument amounts to a sweeping assertion that, whenever a Petitioner alleges indefiniteness, “[s]uch conduct should not stand” and “the Director should deny the Petition.” DD.Br., 10. That is factually and legally unsupported.

There is no inconsistency between indefiniteness and prior art invalidity if, “notwithstanding the alleged indefiniteness of the claim term, an ordinarily skilled artisan would understand that *the asserted art* satisfies the claim limitation (such as if the limitation prescribed a range and only the outer bounds of the range were unclear).” *Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00340, Pap. 18, 3-4 (Dir. Nov. 5, 2025) (informative). Skechers’ indefiniteness defenses are driven by **FAST’s** overbroad infringement theories, but the art asserted in the Petition raises no such issues. *See Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 813 (Fed. Cir. 2021) (indefiniteness “precludes a patentability determination only when the indefiniteness renders it logically impossible for the Board to reach such a decision.”).

For example, the “elastic element” limitations (terms 3-14 in FAST’s brief) are indefinite because a POSITA would not be able to determine, with reasonable

certainty, the “outer bounds” of that term. In the litigation, FAST insists that a broad, indeterminate swath of materials, even *leather* and *canvas*, qualify as “elastic element[s].” *See, e.g.*, EX1033, 6 (accusing numerous Skechers shoe lines, such as “Summits” and “On-the-GO Flex Radiant”); EX1034 (Summits shoe with “vegan leather upper”); EX1035 (On-the-Go Flex Radiant shoe with “canvas and perform Tex faux leather upper”). FAST’s broad allegation that even leather and canvas can fall within the scope of “elastic element” places the outer bounds, and thus definiteness, of that claim term at issue in the litigation. In contrast, no such issue is raised by the Petition because the references asserted (Kim, Koo, and Hoying) include materials like elastic gores that are clearly within the scope of “elastic element” as described in the ’811 Patent’s preferred embodiment, regardless of the outer bounds of that claim term. *See, e.g.*, Pet., 11-12 (“stretchable woven fabric”), 13-14 (“plurality of elastic straps”), 53-54 (“stretchable portion” made of “elastic to ensure ease of step in”); EX1001, 1. Thus, even if the outer bounds of “elastic element” are indefinite, there is no inconsistency that would “preclude[] a patentability determination [because] the indefiniteness renders it logically impossible for the Board to reach such a decision.” *Intel*, 21 F.4th at 813.

The same is true for the remaining terms. Beyond FAST’s baseless assertion that all indefiniteness allegations are “inconsistent” with an IPR petition construction

position, FAST has highlighted no actual inconsistency between the Petition’s analysis of the prior art and the assertion that the outer bounds of these limitations are unclear. The Petition properly alleges that a POSITA “would understand that *the asserted art* satisfies the claim limitation.” *Tesla*, IPR2025-00340, Pap. 18, 3-4. The Director should reject FAST’s new, bright-line rule that any indefiniteness allegations in litigation warrant discretionary denial of IPR petitions.

B. *Fintiv* Favors Referral

1. Factor 1: Neutral Because No Stay Has Been Requested

This factor is neutral. Neither party has moved for a stay. FAST’s speculation about how the court may rule on a hypothetical request is improper. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Pap. 15, 12 (PTAB May, 2020) (informative) (“We decline to infer, based on actions taken in different cases with different facts, how the district court would rule should a stay be requested by the parties in the parallel case here.”); *Sand Revolution II, LLC v. Continental Intermodal Grp. – Trucking LLC*, IPR2019-01393, Pap. 24, 7 (PTAB Jun. 16, 2020) (informative) (same).

The procedural state of the litigation shows that FAST’s speculation is improper. Petitioner moved to transfer to the Central District of California, EX1036, a forum that frequently grants IPR stays, EX1037. Significant work remains even if there is no transfer, including claim construction, fact and expert discovery, and

dispositive motions, increasing the likelihood of a stay. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Pap. 11, 10 (PTAB Mar. 20, 2020) (precedential). Moreover, EDTX often stays post-institution, even in cases far more advanced here. *See, e.g., Stingray Music USA, Inc. v. Music Choice*, 2017 WL 9885167, at *2 (E.D. Tex. Dec. 12, 2017) (staying after expert exchange because “a stay might still obviate the need to prepare for trial [on] some or all ... claims, thus reducing the burden ... on the parties and the Court”); *SSL Servs., LLC v. Cisco Sys., Inc.*, 2016 WL 3523871, at *3 (E.D. Tex. Jun. 28, 2016) (staying despite “advanced stage”); *CyWee Grp. Ltd. v. Samsung Elecs. Co.*, 2019 WL 11023976, at *7 (E.D. Tex. Feb. 14, 2019) (similar; “discovery was nearly complete and the trial date was four months away”).

2. Factor 2: Neutral Due To Significant Uncertainty

As set forth below, there is “strong evidence” that the current trial date of June 21, 2027 will not hold for multiple independent reasons. *See Fintiv*, IPR2020-00019, Pap. 15, 13. Given substantial uncertainty about the trial date, this factor is neutral.

First, as noted above, Petitioner has moved to transfer to CDCA. If granted, the California court will set its own case schedule, which is presently unknown.

Second, at least five other cases have the same trial date before Judge Gilstrap. EX1038-42. *See BOE Tech. Grp. Co. v. Optronix Scis. LLC*, IPR2024-01130, Pap. 16 at 10 (PTAB Jan. 27, 2025) (*Fintiv* factor 2 “neutral or weigh[s] slightly in favor

of not exercising discretion” where 10 trials were set on the same day).

Third, FAST intends to amend its infringement contentions to add *thousands* of newly accused products, EX1043, and the substantial required discovery is likely to cause a significant continuance of the trial date. Even amendments requiring “limited” discovery have led to multi-month continuances in EDTX. *See e.g., Dynapass IP Hldgs. LLC v. JPMorgan Chase & Co.*, 2024 WL 233223, at *2 (E.D. Tex. Jan. 22, 2024) (granting “three-month continuance” where “[d]efendants will only need limited, targeted further discovery to address the proposed amendments”).

Fourth, Petitioner has yet to even file an Answer to the Complaint in the Texas case, as Skechers’ pending Motion to Dismiss has yet to receive a ruling. If and when that occurs, the new material added will likely necessitate schedule changes.

These facts ensure trial will occur far later than FAST suggests, likely after any FWD. And even if not, when “balanced” against the other factors, discretionary denial is still unwarranted. *See Home Depot U.S.A., Inc. v. H2 Intellect LLC*, IPR2025-00480, Pap. 11, 2-3 (Acting Dir. Sept. 4, 2025) (referring despite projected FWD being 7 months after trial); *Padagis*, IPR2025-00464, Pap. 12, 2-3 (similar).

3. Factor 3: Favors Referral Due To Lack Of Investment

Factor 3 weighs against denial, because at institution, investment by the court and parties on activities pertinent to *Fintiv* will still be minimal. FAST points to

irrelevant deadlines to suggest substantial investment will be made in the litigation by the time of institution, DD Br. at 11-12, but not one of them relates to a deadline for the district court to issue an order “related to the patent at issue in the petition.” *Fintiv*, Pap. 11, 10 (“If, at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising discretion to deny institution”). The first date related to the ’811 patent is the Markman hearing, which will not take place until December 17, 2026. EX2002. At that time, the close of fact discovery and expert disclosures will still be *months away*, scheduled for February 1, 2027 and March 8, 2027, respectively. *Id.*

4. Factor 4: Favors Referral Due To Petitioner’s Stipulation

Petitioner has filed a *Sotera*-plus stipulation that covers (1) combinations of prior art in the asserted grounds with system art, and (2) system art corresponding to the asserted references. EX1029. This robust stipulation renders IPR a true alternative by disclaiming “grounds that could not be raised during an IPR.” *Ingenico Inc. v. IOENGINE, LLC*, 136 F.4th 1354, 1367 (Fed. Cir. 2025); *Samsung Elecs. Co., Ltd. v. Wilus Inst. of Stands. & Tech. Inc.*, IPR2025-00933, Pap. 11, 3 (Dir. Oct. 10, 2025) (“Petitioner has filed a broad stipulation that reduces the concern of inconsistent outcomes or significant duplication of efforts.”); *Shenzhen Tuozhu*, IPR2025-00438, Pap. 10, 3.

FAST’s contrary assertions are meritless. The argument that the stipulation was filed too late for FAST to consider is disproven by the fact that FAST ***addressed the stipulation in its brief***. DD.Br., 12-14. FAST cites no authority that a *Sotera* stipulation filed ***before*** discretionary denial briefing should be ignored. In its only case, the petitioner’s stipulation was filed “two weeks ***after***” its own brief. *Samsung Elecs. Co., Ltd. v. Netlist, Inc.*, IPR2026-00018, Pap. 20, 3 (PTAB Apr. 28, 2026). Here, Skechers followed the Director’s guidance, filing its stipulation well before FAST’s brief, allowing it to “address the impact of the stipulation.” *Id.*, 3.

FAST’s claim that the stipulation is insufficient because it is “conditional” on the IPR not being “vacated, reversed, or otherwise withdrawn” is misplaced. DD.Br., 14. The Director has approved stipulations with ***identical language***. *Tesla*, IPR2026-00204, Pap. 14, 2-3 (referring and noting “Petitioner’s broad stipulation”); *id.*, EX1102 (stipulation applied only if “institution is not later vacated, reversed, or otherwise withdrawn”). FAST’s only case, *Advanced Micro Devices, Inc. v. XtreamEdge, Inc.*, is inapposite—that petitioner ***violated*** its stipulation, which did not include the above language—by serving invalidity contentions duplicative of its IPR grounds following institution. IPR2025-00223, Pap. 29, 3 (Dir. May 12, 2026).

5. Factor 5: Neutral Given The Litigation’s Complexity

While the parties in the litigation are the same, as discussed in Part III.B,

FAST has asserted 7 patents and 56 claims, far more than can be asserted at trial. The PTAB is the only practical forum for many challenged claims. *See, e.g., Tesla*, IPR2025-00217, Pap. 9, 3; *Shenzhen*, IPR2025-00438, Pap. 10, 2-3 (both finding complex litigation weighed against discretionary denial despite parties being the same). Petitioner's *Sotera*-plus stipulation also eliminates overlap between this IPR and the lawsuit. This factor is thus neutral, or does not outweigh other factors.

6. Factor 6: Favors Referral As The Merits Are Strong

FAST was unable to identify a single deficiency in the Petition's analysis of the prior art. DD.Br. at 15. It does not even *mention* the technology at issue, aside from a cursory citation to the patent's abstract. The merits are strong, presenting straightforward anticipation and obviousness grounds. FAST's claim that the Petition "fails to identify" the Grounds is plainly incorrect, given the Petition's clear listing on page 10. Pet., 10. Ground 2 combines Kim and Hoying, and Petitioner's mapping relies only on those references. Pet., 52-61. The additional references discussed (Lyden, Toronjo, Marvin, and Smith) simply show that the elements of the claims challenged in Ground 2 (elastic elements with 2-way and 4-way stretch) were well-known, conventional features in the art. *See id.*, 48-51.

C. Petitioner Named All Real Parties In Interest ("RPIs")

FAST contends that "Skechers was acquired by Brazilian owner 3G Capital

... seven months before it filed its IPR Petition” and that “3G Capital is an unnamed RPI.” DD.Br., 17. That argument is meritless, both factually and legally.

First, contrary to FAST’s assertion, Petitioner was *not* acquired by “3G Capital,”² nor by a “Brazilian owner.”³ Instead, in the September 2025 acquisition to which FAST refers, Skechers U.S.A., Inc.’s common stock was acquired by Beach Acquisition Co Parent LLC via a series of subsidiary entities (Beach Acquisition Bidco LLC, Beach Acquisition Midco LLC, and Beach Acquisition Holdco LLC (“the Beach Entities”)). *See* EX1044, 2. 3G Capital Partners L.P., by contrast, is an investment advisor that manages “pooled investment vehicles,” EX1045, 5, but does not own operating companies and is not a corporate parent of Petitioner. For clarity, Petitioner does not believe or concede any of the Beach Entities are RPIs either, because they are distinct corporate entities and do not meet the standard for RPIs discussed below. Nevertheless, in an abundance of caution, prior to submitting this Opposition, Petitioner filed an Amended Mandatory Notice listing the Beach entities as additional RPIs. Pap. 12. Petitioner submits that this renders the RPI issue moot.

Second, FAST’s assertion that 3G Capital—an investment advisor, not a

² No entity exists that is simply named “3G Capital.” 3G Capital Partners L.P. is an investment advisor, and it has a subsidiary named 3G Capital, Inc. EX1045.

³ 3G Capital Partners L.P. is a Cayman Islands investment firm headquartered in New York, and 3G Capital, Inc., is a Delaware corporation. EX1045. FAST’s insinuation otherwise appears to conflate 3G Capital’s nationality with that of some of its founders (i.e., individual people), which is not well taken.

corporate parent of Petitioner—is an RPI is factually and legally unsupported. “Congress intended the term ‘real party in interest’ to have its ‘common-law meaning,’” and common principles law require a “blurring of corporate separation such that the [alleged RPI] could have controlled the filing and participation of the Petition.” *Syngenta Crop Prot. AG v. FMC Corp.*, PGR2020-00028, Pap. 8, 14-16 (PTAB Sept. 15, 2020); *U.S. v. Bestfoods*, 524 U.S. 51, 61-62 (1998) (corporate separateness is “deeply ‘ingrained in our economic and legal systems’” and respected absent misuse, such as an entity being “used as a mere agency or instrumentality”) (citations omitted). Notably, FAST did not sue 3G Capital or any other entity in the litigation, and did not amend to add them after the acquisition.

Petitioner is unaware of any case in which an investment manager that is not a corporate parent was nonetheless found to be an RPI, and does not believe any such case exists. In FAST’s lead case, *Sun Pharm. Indus., Inc. v. Biofrontera Inc.*, the RPI was a parent that “100% owned” the petitioner, “consolidate[d] its financial statements” with the petitioner, and “issued press releases in the name of” the petitioner. PGR2026-00021, Pap. 12, 2-3 (Dir. May 26, 2026). On those facts, the Director found the petitioner had “not provided sufficient evidence” that its “corporate parent and 100% owner” did “not have the ability to control the proceeding.” *Id.* In contrast, FAST has demonstrated no such facts as to investment

advisor 3G Capital, nor could it. *See* EX1053, ¶9. It has provided no evidence suggesting 3G Capital issues financial statements consolidated with or on behalf of Skechers (or any Beach Entity), and it could not, for 3G Capital has never once done so. *Id.* ¶10. Skechers also continues to issue press releases in its own name, and 3G Capital has never issued a press release in the name of Skechers. *Id.* ¶11; EX1048.

Moreover, FAST does not even allege, much less provide evidence to show, “that the corporate form has been ignored” by Skechers. *Syngenta*, PGR2020-00028, Pap. 8, 15. To the contrary, Skechers has operated as a distinct corporation since its founding over thirty years ago, and it has continued to do so since its stock was acquired. EX1046 ¶10. Skechers’ management remains *unchanged* after the acquisition. EX2021, 2 (“[T]he Company will continue to be led by Chairman and [CEO] Robert Greenberg, President Michael Greenberg, and the rest of the current management team.”); EX2014, 2 (same); EX1046 ¶4. Skechers, and Skechers alone, pays the legal bills incurred in connection with the Petition, including the institution fee. EX1046 ¶8. Skechers’ counsel in this IPR and in the underlying litigation, Irell & Manella LLP, has represented Skechers for over sixteen years, long before the acquisition, *see, e.g.*, EX1047, and takes direction from the same people at Skechers from before the acquisition—namely, Skechers’ in-house counsel, Messrs. Paccione and Scotti, who take direction from Skechers’ Executive Management. EX1046

¶¶6-7. 3G Capital was not involved in preparing the Petition. *Id.*

D. Settled Expectations Favor Referral

FAST's license to Nike, [REDACTED]

[REDACTED], does not create settled expectations for the '811 patent, for multiple reasons.

First, FAST alleges it *and its licensees* have never practiced the '811 patent. Skechers moved to dismiss FAST's pre-suit damages claim for failure to mark, and FAST responded that neither it nor its licensees have practiced the patent. EX1032, 25 (“[T]here is *no allegation in the Amended Complaint that the patentee or a licensee made or sold a patented article*, so there is no need to allege that anything was marked.”); EX1049, 9 (“The Complaint *does not include a single allegation that the patentee or a licensee made or sold a product covered by an asserted patent.*”). Nike does not mark any product with the '811 patent. EX1050.

Second, FAST fails to inform the Board that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. FAST cites no authority for such a sweeping assertion.

Third, FAST never asserted the '811 patent before it sued Skechers, which it did without notice (or even a suggestion) that it thought Skechers was infringing. FAST's only prior assertion of *any* patents concerned technologies *not at issue here*, EX1052, and FAST then stated it was not "actively looking to sue anyone else." EX2008, 4. If anything, FAST's lack of commercialization and public statements supports *Petitioner's* settled expectations. *Home Depot*, IPR2025-00480, Pap. 11, 2-3 (that the "patent has not been commercialized, asserted, marked, licensed, or otherwise applied" weighed "in favor of Petitioner's expectations").

V. CONCLUSION

Petitioner respectfully requests referral for consideration on the merits.

Dated: August 6, 2026

Respectfully submitted,

/s/ Kamran Vakili

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. section 42.6, that on August 6, 2026,
a complete copy of the foregoing document **PETITIONER'S CORRECTED
OPPOSITION TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL** was served upon the following, by ELECTRONIC
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ATTACHMENT B

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SKECHERS U.S.A., INC.,
“Petitioner”

v.

FAST IP, LLC,
“Patent Owner”

Case No. IPR2026-00343
U.S. Patent No. 11,871,811

**PETITIONER’S CORRETED OPPOSITION TO PATENT OWNER’S
REQUEST FOR DISCRETIONARY DENIAL**

Mail Stop: PATENT BOARD
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TABLE OF CONTENTS

	Page(s)
I. INTRODUCTION	1
II. BACKGROUND	2
III. REFERRAL IS WARRANTED.....	4
A. Referral Will Rectify The '811 Patent's Erroneous Issuance	4
B. The Complexity Of The Dispute Favors Referral.....	6
IV. FAST'S ARGUMENTS ARE MERITLESS	7
A. Petitioner's Positions are Consistent	7
B. <i>Fintiv</i> Favors Referral	10
1. Factor 1: Neutral Because No Stay Has Been Requested	10
2. Factor 2: Neutral Due To Significant Uncertainty	11
3. Factor 3: Favors Referral Due To Lack Of Investment.....	12
4. Factor 4: Favors Referral Due To Petitioner's Stipulation	13
5. Factor 5: Neutral Because The Parties Are The Same	14
6. Factor 6: Favors Referral As The Merits Are Strong	15
C. Petitioner Named All Real Parties In Interest ("RPIs").....	15
D. Settled Expectations Favor Referral.....	19
V. CONCLUSION.....	20

TABLE OF AUTHORITIES*

	Page(s)
Cases	
<i>CyWee Grp. Ltd. v. Samsung Elecs. Co.</i> , 2019 WL 11023976 (E.D. Tex. Feb. 14, 2019).....	11
<i>Dynapass IP Hldgs. LLC v. JPMorgan Chase & Co.</i> , 2024 WL 233223 (E.D. Tex. Jan. 22, 2024)	12
<i>Ingenico Inc. v. IOENGINE, LLC</i> , 136 F.4th 1354 (Fed. Cir. 2025)	13
<i>Intel Corp. v. Qualcomm Inc.</i> , 21 F.4th 801 (Fed. Cir. 2021)	8, 9
<i>SSL Servs., LLC v. Cisco Sys., Inc.</i> , 2016 WL 3523871 (E.D. Tex. Jun. 28, 2016)	11
<i>Stingray Music USA, Inc. v. Music Choice</i> , 2017 WL 9885167 (E.D. Tex. Dec. 12, 2017)	11
<i>U.S. v. Bestfoods</i> , 524 U.S. 51 (1998).....	17
Board Authorities	
<i>Amgen Inc. v. Bristol-Myers Squibb Co.</i> , IPR2025-00601, Pap. 8 (Acting Dir. Jul. 24, 2025) (informative)	3
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Pap. 11 (PTAB Mar. 20, 2020) (precedential).....	11
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Pap. 15 (PTAB May, 2020) (informative)	10, 11

* All bold, italicized emphasis in quotation marks is added by Petitioner.

<i>BOE Tech. Grp. Co. v. Optronix Scis. LLC</i> , IPR2024-01130, Pap. 16 (PTAB Jan. 27, 2025)	11
<i>Home Depot U.S.A., Inc. v. H2 Intellect LLC</i> , IPR2025-00480, Pap. 11 (Acting Dir. Sept. 4, 2025)	12, 20
<i>Infineon Techs. Am. Corp. v. MOSAID Techs. Inc.</i> , IPR2025-01487, Pap. 27 (Dir. Mar. 17, 2026)	4, 5
<i>iRhythm Techs., Inc. v. Welch Allyn, Inc.</i> , IPR2025-00363, Pap. 27 (Dir. Mar. 17, 2026)	4
<i>Magnolia Med. Techs., Inc. v. Kurin, Inc.</i> , IPR2026-00097, Pap. 17 (Dir. May 14, 2026) (precedential)	4
<i>Microsoft Corp. v. ParTec AG</i> , IPR2025-00318, Pap. 9 (Acting Dir. Jun. 12, 2025)	6
<i>Padagis US LLC v. Neurelis, Inc.</i> , IPR2025-00464, Pap. 12 (Acting Dir. Jul. 16, 2025) (informative)	6, 12
<i>Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.</i> , IPR2025-00632, Pap. 20 (PTAB Nov. 3, 2025)	8
<i>Samsung Elecs. Co., Ltd. v. Netlist, Inc.</i> , IPR2026-00018, Pap. 20 (PTAB Apr. 28, 2026)	14
<i>Samsung Elecs. Co., Ltd. v. Wilus Inst. of Stands. & Tech. Inc.</i> , IPR2025-00933, Pap. 11 (Director Oct. 10, 2025)	13
<i>Sand Revolution II, LLC v. Continental Intermodal Grp. – Trucking LLC</i> , IPR2019-01393, Pap. 24 (PTAB Jun. 16, 2020) (informative)	10
<i>Shenzhen Tuozhu Tech. Co. v. Stratasy, Inc.</i> , IPR2025-00438, Pap. 10 (Acting Dir. Jul. 17, 2025)	7, 13, 15
<i>Syngenta Crop Prot. AG v. FMC Corp.</i> , PGR2020-00028, Pap. 8 (PTAB Sept. 15, 2020)	17, 18, 19
<i>Tesla, Inc. v. Bulletproof Prop. Mgmt., LLC</i> , IPR2026-00204, Pap. 14 (Dir. Jun. 15, 2026) (informative)	4, 14

<i>Tesla, Inc. v. Intell. Ventures II LLC</i> , IPR2025-00217, Pap. 9 (Acting Dir. Jun. 13, 2025) (informative).....	6, 7, 15
<i>Tesla, Inc. v. Intell. Ventures II LLC</i> , IPR2025-00340, Pap. 18 (Dir. Nov. 5, 2025) (informative)	8, 10

Other Authorities

MPEP § 904	6
MPEP § 904.03	5

I. INTRODUCTION

The Petition warrants merits consideration. First, it presents highly relevant, invalidating art that was never considered by the Office, likely due to the deficient, highly abbreviated examination of the '811 patent. Second, institution will simplify a complex district court litigation, which includes seven patents, dozens of asserted claims, and potentially thousands of accused products. Third, the arguments by Patent Owner FAST IP, LLC ("FAST") seeking discretionary denial are meritless.

On claim construction, FAST simply lists claim elements for which Petitioner preserved an indefiniteness defense, then asserts, without explanation, that these are "inconsistent claim construction positions." DD.Br., 6. FAST does not even try to articulate how any such allegation is inconsistent with the Petition. FAST just asserts that, whenever a Petitioner alleges indefiniteness, "[s]uch conduct should not stand" and "the Director should deny the Petition." *Id.*, 10. That is unsupported.

Further, the *Fintiv* factors here favor referral. The district court case is in its early stages, with a transfer motion pending, Skechers yet to file an answer, and discovery only recently having begun in earnest. Skechers also filed a robust *Sotera*-plus stipulation that eliminates the vast majority of possible overlap with the lawsuit.

Petitioner has previously named the real party-in-interest to this proceeding—Skechers U.S.A., Inc. But in an abundance of caution, before filing this Opposition,

Petitioner filed an Amended Mandatory Notice listing additional entities as RPIs. Pap. 13. Petitioner submits that moots the RPI issue. Further, an overwhelming body of law rebuts FAST’s assertion that a third-party investment advisor is an RPI.

Finally, FAST has no settled expectations, as the ’811 patent issued less than three years before the Petition was filed. In fact, FAST’s failure to commercialize the patent, and public statements that it did not intend to bring suit, demonstrate that *Petitioner* had settled expectations against assertion. FAST’s reliance on a license is a mere smokescreen, as FAST neglects to inform the Board that (a) FAST alleges its licensees have never practiced the ’811 patent and thus were not required to mark, (b) [REDACTED], and (c) [REDACTED].

II. BACKGROUND

Skechers U.S.A., Inc. (“Petitioner” or “Skechers”) has been a leader in the footwear industry since its founding in California over thirty years ago. FAST is a patent holding company that does not make or sell any products. FAST, its licensee (HandsFree Labs Licensing, LLC), and a related shoe seller (Kizik Design, LLC) asserted six patents against Skechers in the Eastern District of Texas on July 24, 2025(the “Texas case”). EX1030. The plaintiffs did so without contacting Skechers first, in spite of prior public statements that they were not “actively looking to sue

anyone” and did not want to “win by litigation.” EX2008, 4. A few months later, the plaintiffs dropped one patent and added two others, U.S. Patent Nos. 12,471,660 and 12,458,101, for a total of seven (7) patents asserted in the lawsuit. EX1031.

The ’811 patent covers designs that predate it by decades, if not centuries. Instead of addressing this, FAST misdirects by touting its supposed innovations in “hands-free footwear” and “industry coverage” of its “innovative technology.” DD.Br., 2-4. Notably absent from FAST’s brief is *any reference to the technology of the ’811 patent*. FAST touts technologies *not at issue here*.¹ FAST’s claims of innovation, untied to *the ’811 patent*, do not favor denial; rather, FAST’s avoidance of the issues shows that review is warranted. *See Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, Pap. 8, 2-3 (Acting Dir. Jul. 24, 2025) (informative).

This Petition concerns a patent that FAST *never commercialized* and *left on the shelf* until it sued Skechers. FAST does not deny that “plaintiffs [including FAST] contend that they themselves have never practiced the [’811] patent.” Pet., 1. FAST and its licensees have *never marked a product* with the ’811 patent, and a single, [REDACTED] license [REDACTED] does not suggest, much less provide compelling evidence, that it has been commercialized by anyone.

¹ See, e.g., EX2004, 1-2 (“spring-back’ heel technology” in which the “heel compresses” and “pops up to fit snugly around the back of the foot”); EX2005, 4 (“Internal Flex Arc hands-free system”); EX2006, 3 (“Cage technology” for “compression and responsive rebound”).

III. REFERRAL IS WARRANTED

A. Referral Will Rectify The '811 Patent's Erroneous Issuance

Referral serves the public interest by allowing the Office “to reconsider its own decision and correct a possible error.” *Magnolia Med. Techs., Inc. v. Kurin, Inc.*, IPR2026-00097, Pap. 17, 6 (Dir. May 14, 2026) (precedential). The '811 patent's prosecution lasted under four months, and the challenged claims never received an art rejection (EX1001, fields (22), (45), EX1002, 16-18), likely due to a deficient search (*see infra*). This highly abbreviated examination warrants review.

The Petition shows anticipation of most claims by Kim and obviousness of the remainder over Kim in view of Hoying and Koo. FAST concedes none of these were before the Office during prosecution. *See Tesla, Inc. v. Bulletproof Prop. Mgmt., LLC*, IPR2026-00204, Pap. 14, 3 (Dir. Jun. 15, 2026) (informative). The Petition also does not rely heavily on expert testimony; there are no “gaps” to fill, Petitioner's expert just explains the relevant background knowledge of a POSITA. *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Pap. 10, 2-3 (Acting Dir. Jun. 6, 2025) (“weighs against discretionary denial” if expert just “explain[s] the background knowledge of a person of ordinary skill”). Petitioner also filed a Search Disclosure Declaration, a “favorable discretionary consideration.” *Infineon Techs. Am. Corp. v. MOSAID Techs. Inc.*, IPR2025-01487, Pap. 27, 3 (Dir. Mar. 17, 2026).

FAST's attempt to justify the highly abbreviated examination of the '811 Patent, leaning heavily on the Examiner's search, only underscores the problems below. DD.Br., 5. Detailed review shows that the Examiner conducted a deficient search that failed to identify the most pertinent references in the field. Despite the "over 250 extensive queries," *id.*, it appears that only **three** were performed **during the '811 patent's examination**. EX2012, L46-47, L277. Moreover, the vast majority of queries were duplicative and either overly narrow, targeting specific patent numbers, or overly broad, targeting swaths of CPC classes with thousands of references. The Examiner used just **one** keyword search, "(stabilizer AND elastic AND arch AND deflect\$4).clm," which narrowly targeted only claim language and required terms **not in the claims**. See EX2012, query L40 (duplicated at, *e.g.*, L76, L106, L138, L154, L168, L202). MPEP § 904.03 (search must be "commensurate with the limitations" of the claims). Nor did the Examiner target subclasses plainly related to the claims, such as A43C 11/002 (Fastenings using stretchable material attached to cuts in the uppers), A43B 23/26, (Tongues for shoes), or A43C 1/02 (elastic laces), each of which contain the highly material Koo reference.

The Examiner's search for foreign references (like Kim) further illustrates these deficiencies. The Examiner only queried the Foreign Image and Text database in a single, extremely broad CPC search that encompassed 6 separate classes and hit

over 14,000 references. EX2012, query L1 (duplicated at, *e.g.*, L26, L48, L62, L92, L124, L140, L174, L204). These classes were not searched with keywords, and had the Examiner done so, the highly material Kim reference may have been discovered.

The Examiner did not “obtain[] a thorough understanding of the invention” and was not “fully aware of the what the claims do *not* call for, as well as what they do require.” MPEP § 904. Referral for merits review is warranted. *See Microsoft Corp. v. ParTec AG*, IPR2025-00318, Pap. 9, 2-4 (Acting Dir. Jun. 12, 2025) (proper to review error, even if trial date precedes FWD); *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464, Pap. 12, 2-3 (Acting Dir. Jul. 16, 2025) (informative) (similar).

B. The Complexity Of The Dispute Favors Referral

Referral is also warranted because the Texas case involves seven patents with diverse subject matter, covering ornamental designs, fifty-six utility claims, and potentially thousands of accused products. *Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00217, Pap. 9, 2-3 (Acting Dir. Jun. 13, 2025) (informative) (“complex and diverse litigation proceeding tip[ped] the balance against discretionary denial” despite “trial date preced[ing] the projected [FWD] due date”).

This is one of five filed IPRs challenging FAST patents asserted in the litigation: 11,633,006 (IPR2026-00342); 11,871,811 (IPR2026-00343); 12,274,325 (IPR2026-00373); 12,121,096 (IPR2026-00443); and D1,037,641 (IPR2026-

00444). Skechers will also file petitions on the other recently issued asserted patents, 12,471,660 and 12,458,101, once they are eligible. The patents cover diverse subjects, including a pivoting heel structure (12,458,101), different configurations of elastic elements (e.g., 11,871,811 and 12,121,096), and ornamental designs (D1,037,641). The Board is “better suited” for review. *Tesla*, IPR2025-00217, Pap. 9, 3; *Shenzhen Tuozhu Tech. Co. v. Stratasy, Inc.*, IPR2025-00438, Pap. 10, 2-3 (Acting Dir. Jul. 17, 2025) (complex litigation weighed against discretionary denial, despite FWD date after trial). Further, beyond the number of patents and their subject matter, the prior art disputes also involve complex issues of prior art qualification under § 102(a)(2), Pet., 9-10, for which the Board’s expertise is valuable. The PTAB is also the only practical forum for many challenged claims, as the petitions challenge many more claims than can reasonably be asserted at trial.

IV. FAST’S ARGUMENTS ARE MERITLESS

A. Petitioner’s Positions are Consistent

As Petitioner explained, “none of the issues presented in this Petition require any claim term to be construed.” Pet., 8. FAST *does not dispute* this. DD.Br., 6-7. Instead, FAST just lists claim elements for which Petitioner preserved an indefiniteness defense, then merely asserts, without explanation, that these are “inconsistent claim construction positions.” *Id.* Notably, FAST makes no attempt

to articulate how any indefiniteness allegation is inconsistent with any argument in the Petition. Nor does FAST allege Petitioner “seek[s] narrower constructions in litigation to avoid infringement liability.” *Id.* (quoting *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Pap. 20, 4 (PTAB Nov. 3, 2025)). Instead, FAST’s entire argument amounts to a sweeping assertion that, whenever a Petitioner alleges indefiniteness, “[s]uch conduct should not stand” and “the Director should deny the Petition.” DD.Br., 10. That is factually and legally unsupported.

There is no inconsistency between indefiniteness and prior art invalidity if, “notwithstanding the alleged indefiniteness of the claim term, an ordinarily skilled artisan would understand that *the asserted art* satisfies the claim limitation (such as if the limitation prescribed a range and only the outer bounds of the range were unclear).” *Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00340, Pap. 18, 3-4 (Dir. Nov. 5, 2025) (informative). Skechers’ indefiniteness defenses are driven by **FAST’s** overbroad infringement theories, but the art asserted in the Petition raises no such issues. *See Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 813 (Fed. Cir. 2021) (indefiniteness “precludes a patentability determination only when the indefiniteness renders it logically impossible for the Board to reach such a decision.”).

For example, the “elastic element” limitations (terms 3-14 in FAST’s brief) are indefinite because a POSITA would not be able to determine, with reasonable

certainty, the “outer bounds” of that term. In the litigation, FAST insists that a broad, indeterminate swath of materials, even *leather* and *canvas*, qualify as “elastic element[s].” *See, e.g.*, EX1033, 6 (accusing numerous Skechers shoe lines, such as “Summits” and “On-the-GO Flex Radiant”); EX1034 (Summits shoe with “vegan leather upper”); EX1035 (On-the-Go Flex Radiant shoe with “canvas and perform Tex faux leather upper”). FAST’s broad allegation that even leather and canvas can fall within the scope of “elastic element” places the outer bounds, and thus definiteness, of that claim term at issue in the litigation. In contrast, no such issue is raised by the Petition because the references asserted (Kim, Koo, and Hoying) include materials like elastic gores that are clearly within the scope of “elastic element” as described in the ’811 Patent’s preferred embodiment, regardless of the outer bounds of that claim term. *See, e.g.*, Pet., 11-12 (“stretchable woven fabric”), 13-14 (“plurality of elastic straps”), 53-54 (“stretchable portion” made of “elastic to ensure ease of step in”); EX1001, 1. Thus, even if the outer bounds of “elastic element” are indefinite, there is no inconsistency that would “preclude[] a patentability determination [because] the indefiniteness renders it logically impossible for the Board to reach such a decision.” *Intel*, 21 F.4th at 813.

The same is true for the remaining terms. Beyond FAST’s baseless assertion that all indefiniteness allegations are “inconsistent” with an IPR petition construction

position, FAST has highlighted no actual inconsistency between the Petition’s analysis of the prior art and the assertion that the outer bounds of these limitations are unclear. The Petition properly alleges that a POSITA “would understand that *the asserted art* satisfies the claim limitation.” *Tesla*, IPR2025-00340, Pap. 18, 3-4. The Director should reject FAST’s new, bright-line rule that any indefiniteness allegations in litigation warrant discretionary denial of IPR petitions.

B. *Fintiv* Favors Referral

1. Factor 1: Neutral Because No Stay Has Been Requested

This factor is neutral. Neither party has moved for a stay. FAST’s speculation about how the court may rule on a hypothetical request is improper. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Pap. 15, 12 (PTAB May, 2020) (informative) (“We decline to infer, based on actions taken in different cases with different facts, how the district court would rule should a stay be requested by the parties in the parallel case here.”); *Sand Revolution II, LLC v. Continental Intermodal Grp. – Trucking LLC*, IPR2019-01393, Pap. 24, 7 (PTAB Jun. 16, 2020) (informative) (same).

The procedural state of the litigation shows that FAST’s speculation is improper. Petitioner moved to transfer to the Central District of California, EX1036, a forum that frequently grants IPR stays, EX1037. Significant work remains even if there is no transfer, including claim construction, fact and expert discovery, and

dispositive motions, increasing the likelihood of a stay. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Pap. 11, 10 (PTAB Mar. 20, 2020) (precedential). Moreover, EDTX often stays post-institution, even in cases far more advanced here. *See, e.g., Stingray Music USA, Inc. v. Music Choice*, 2017 WL 9885167, at *2 (E.D. Tex. Dec. 12, 2017) (staying after expert exchange because “a stay might still obviate the need to prepare for trial [on] some or all ... claims, thus reducing the burden ... on the parties and the Court”); *SSL Servs., LLC v. Cisco Sys., Inc.*, 2016 WL 3523871, at *3 (E.D. Tex. Jun. 28, 2016) (staying despite “advanced stage”); *CyWee Grp. Ltd. v. Samsung Elecs. Co.*, 2019 WL 11023976, at *7 (E.D. Tex. Feb. 14, 2019) (similar; “discovery was nearly complete and the trial date was four months away”).

2. Factor 2: Neutral Due To Significant Uncertainty

As set forth below, there is “strong evidence” that the current trial date of June 21, 2027 will not hold for multiple independent reasons. *See Fintiv*, IPR2020-00019, Pap. 15, 13. Given substantial uncertainty about the trial date, this factor is neutral.

First, as noted above, Petitioner has moved to transfer to CDCA. If granted, the California court will set its own case schedule, which is presently unknown.

Second, at least five other cases have the same trial date before Judge Gilstrap. EX1038-42. *See BOE Tech. Grp. Co. v. Optronix Scis. LLC*, IPR2024-01130, Pap. 16 at 10 (PTAB Jan. 27, 2025) (*Fintiv* factor 2 “neutral or weigh[s] slightly in favor

of not exercising discretion” where 10 trials were set on the same day).

Third, FAST intends to amend its infringement contentions to add ***thousands*** of newly accused products, EX1043, and the substantial required discovery is likely to cause a significant continuance of the trial date. Even amendments requiring “limited” discovery have led to multi-month continuances in EDTX. *See e.g., Dynapass IP Hldgs. LLC v. JPMorgan Chase & Co.*, 2024 WL 233223, at *2 (E.D. Tex. Jan. 22, 2024) (granting “three-month continuance” where “[d]efendants will only need limited, targeted further discovery to address the proposed amendments”).

Fourth, Petitioner has yet to even file an Answer to the Complaint in the Texas case, as Skechers’ pending Motion to Dismiss has yet to receive a ruling. If and when that occurs, the new material added will likely necessitate schedule changes.

These facts ensure trial will occur far later than FAST suggests, likely after any FWD. And even if not, when “balanced” against the other factors, discretionary denial is still unwarranted. *See Home Depot U.S.A., Inc. v. H2 Intellect LLC*, IPR2025-00480, Pap. 11, 2-3 (Acting Dir. Sept. 4, 2025) (referring despite projected FWD being 7 months after trial); *Padagis*, IPR2025-00464, Pap. 12, 2-3 (similar).

3. Factor 3: Favors Referral Due To Lack Of Investment

Factor 3 weighs against denial, because at institution, investment by the court and parties on activities pertinent to *Fintiv* will still be minimal. FAST points to

irrelevant deadlines to suggest substantial investment will be made in the litigation by the time of institution, DD Br. at 11-12, but not one of them relates to a deadline for the district court to issue an order “related to the patent at issue in the petition.” *Fintiv*, Pap. 11, 10 (“If, at the time of the institution decision, the district court has not issued orders related to the patent at issue in the petition, this fact weighs against exercising discretion to deny institution”). The first date related to the ’811 patent is the Markman hearing, which will not take place until December 17, 2026. EX2002. At that time, the close of fact discovery and expert disclosures will still be *months away*, scheduled for February 1, 2027 and March 8, 2027, respectively. *Id.*

4. Factor 4: Favors Referral Due To Petitioner’s Stipulation

Petitioner has filed a *Sotera*-plus stipulation that covers (1) combinations of prior art in the asserted grounds with system art, and (2) system art corresponding to the asserted references. EX1029. This robust stipulation renders IPR a true alternative by disclaiming “grounds that could not be raised during an IPR.” *Ingenico Inc. v. IOENGINE, LLC*, 136 F.4th 1354, 1367 (Fed. Cir. 2025); *Samsung Elecs. Co., Ltd. v. Wilus Inst. of Stands. & Tech. Inc.*, IPR2025-00933, Pap. 11, 3 (Dir. Oct. 10, 2025) (“Petitioner has filed a broad stipulation that reduces the concern of inconsistent outcomes or significant duplication of efforts.”); *Shenzhen Tuozhu*, IPR2025-00438, Pap. 10, 3.

FAST’s contrary assertions are meritless. The argument that the stipulation was filed too late for FAST to consider is disproven by the fact that FAST ***addressed the stipulation in its brief***. DD.Br., 12-14. FAST cites no authority that a *Sotera* stipulation filed ***before*** discretionary denial briefing should be ignored. In its only case, the petitioner’s stipulation was filed “two weeks ***after***” its own brief. *Samsung Elecs. Co., Ltd. v. Netlist, Inc.*, IPR2026-00018, Pap. 20, 3 (PTAB Apr. 28, 2026). Here, Skechers followed the Director’s guidance, filing its stipulation well before FAST’s brief, allowing it to “address the impact of the stipulation.” *Id.*, 3.

FAST’s claim that the stipulation is insufficient because it is “conditional” on the IPR not being “vacated, reversed, or otherwise withdrawn” is misplaced. DD.Br., 14. The Director has approved stipulations with ***identical language***. *Tesla*, IPR2026-00204, Pap. 14, 2-3 (referring and noting “Petitioner’s broad stipulation”); *id.*, EX1102 (stipulation applied only if “institution is not later vacated, reversed, or otherwise withdrawn”). FAST’s only case, *Advanced Micro Devices, Inc. v. XtreamEdge, Inc.*, is inapposite—that petitioner ***violated*** its stipulation, which did not include the above language—by serving invalidity contentions duplicative of its IPR grounds following institution. IPR2025-00223, Pap. 29, 3 (Dir. May 12, 2026).

5. Factor 5: Neutral Given The Litigation’s Complexity

While the parties in the litigation are the same, as discussed in Part III.B,

FAST has asserted 7 patents and 56 claims, far more than can be asserted at trial. The PTAB is the only practical forum for many challenged claims. *See, e.g., Tesla*, IPR2025-00217, Pap. 9, 3; *Shenzhen*, IPR2025-00438, Pap. 10, 2-3 (both finding complex litigation weighed against discretionary denial despite parties being the same). Petitioner's *Sotera*-plus stipulation also eliminates overlap between this IPR and the lawsuit. This factor is thus neutral, or does not outweigh other factors.

6. Factor 6: Favors Referral As The Merits Are Strong

FAST was unable to identify a single deficiency in the Petition's analysis of the prior art. DD.Br. at 15. It does not even *mention* the technology at issue, aside from a cursory citation to the patent's abstract. The merits are strong, presenting straightforward anticipation and obviousness grounds. FAST's claim that the Petition "fails to identify" the Grounds is plainly incorrect, given the Petition's clear listing on page 10. Pet., 10. Ground 2 combines Kim and Hoying, and Petitioner's mapping relies only on those references. Pet., 52-61. The additional references discussed (Lyden, Toronjo, Marvin, and Smith) simply show that the elements of the claims challenged in Ground 2 (elastic elements with 2-way and 4-way stretch) were well-known, conventional features in the art. *See id.*, 48-51.

C. Petitioner Named All Real Parties In Interest ("RPIs")

FAST contends that "Skechers was acquired by Brazilian owner 3G Capital

... seven months before it filed its IPR Petition” and that “3G Capital is an unnamed RPI.” DD.Br., 17. That argument is meritless, both factually and legally.

First, contrary to FAST’s assertion, Petitioner was *not* acquired by “3G Capital,”² nor by a “Brazilian owner.”³ Instead, in the September 2025 acquisition to which FAST refers, Skechers U.S.A., Inc.’s common stock was acquired by Beach Acquisition Co Parent LLC via a series of subsidiary entities (Beach Acquisition Bidco LLC, Beach Acquisition Midco LLC, and Beach Acquisition Holdco LLC (“the Beach Entities”)). *See* EX1044, 2. 3G Capital Partners L.P., by contrast, is an investment advisor that manages “pooled investment vehicles,” EX1045, 5, but does not own operating companies and is not a corporate parent of Petitioner. For clarity, Petitioner does not believe or concede any of the Beach Entities are RPIs either, because they are distinct corporate entities and do not meet the standard for RPIs discussed below. Nevertheless, in an abundance of caution, prior to submitting this Opposition, Petitioner filed an Amended Mandatory Notice listing the Beach entities as additional RPIs. Pap. 12. Petitioner submits that this renders the RPI issue moot.

Second, FAST’s assertion that 3G Capital—an investment advisor, not a

² No entity exists that is simply named “3G Capital.” 3G Capital Partners L.P. is an investment advisor, and it has a subsidiary named 3G Capital, Inc. EX1045.

³ 3G Capital Partners L.P. is a Cayman Islands investment firm headquartered in New York, and 3G Capital, Inc., is a Delaware corporation. EX1045. FAST’s insinuation otherwise appears to conflate 3G Capital’s nationality with that of some of its founders (i.e., individual people), which is not well taken.

corporate parent of Petitioner—is an RPI is factually and legally unsupported. “Congress intended the term ‘real party in interest’ to have its ‘common-law meaning,’” and common principles law require a “blurring of corporate separation such that the [alleged RPI] could have controlled the filing and participation of the Petition.” *Syngenta Crop Prot. AG v. FMC Corp.*, PGR2020-00028, Pap. 8, 14-16 (PTAB Sept. 15, 2020); *U.S. v. Bestfoods*, 524 U.S. 51, 61-62 (1998) (corporate separateness is “deeply ‘ingrained in our economic and legal systems’” and respected absent misuse, such as an entity being “used as a mere agency or instrumentality”) (citations omitted). Notably, FAST did not sue 3G Capital or any other entity in the litigation, and did not amend to add them after the acquisition.

Petitioner is unaware of any case in which an investment manager that is not a corporate parent was nonetheless found to be an RPI, and does not believe any such case exists. In FAST’s lead case, *Sun Pharm. Indus., Inc. v. Biofrontera Inc.*, the RPI was a parent that “100% owned” the petitioner, “consolidate[d] its financial statements” with the petitioner, and “issued press releases in the name of” the petitioner. PGR2026-00021, Pap. 12, 2-3 (Dir. May 26, 2026). On those facts, the Director found the petitioner had “not provided sufficient evidence” that its “corporate parent and 100% owner” did “not have the ability to control the proceeding.” *Id.* In contrast, FAST has demonstrated no such facts as to investment

advisor 3G Capital, nor could it. *See* EX1053, ¶9. It has provided no evidence suggesting 3G Capital issues financial statements consolidated with or on behalf of Skechers (or any Beach Entity), and it could not, for 3G Capital has never once done so. *Id.* ¶10. Skechers also continues to issue press releases in its own name, and 3G Capital has never issued a press release in the name of Skechers. *Id.* ¶11; EX1048.

Moreover, FAST does not even allege, much less provide evidence to show, “that the corporate form has been ignored” by Skechers. *Syngenta*, PGR2020-00028, Pap. 8, 15. To the contrary, Skechers has operated as a distinct corporation since its founding over thirty years ago, and it has continued to do so since its stock was acquired. EX1046 ¶10. Skechers’ management remains *unchanged* after the acquisition. EX2021, 2 (“[T]he Company will continue to be led by Chairman and [CEO] Robert Greenberg, President Michael Greenberg, and the rest of the current management team.”); EX2014, 2 (same); EX1046 ¶4. Skechers, and Skechers alone, pays the legal bills incurred in connection with the Petition, including the institution fee. EX1046 ¶8. Skechers’ counsel in this IPR and in the underlying litigation, Irell & Manella LLP, has represented Skechers for over sixteen years, long before the acquisition, *see, e.g.*, EX1047, and takes direction from the same people at Skechers from before the acquisition—namely, Skechers’ in-house counsel, Messrs. Paccione and Scotti, who take direction from Skechers’ Executive Management. EX1046

¶¶6-7. 3G Capital was not involved in preparing the Petition. *Id.*

D. Settled Expectations Favor Referral

FAST's license to Nike, [REDACTED]

[REDACTED], does not create settled expectations for the '811 patent, for multiple reasons.

First, FAST alleges it *and its licensees* have never practiced the '811 patent. Skechers moved to dismiss FAST's pre-suit damages claim for failure to mark, and FAST responded that neither it nor its licensees have practiced the patent. EX1032, 25 (“[T]here is *no allegation in the Amended Complaint that the patentee or a licensee made or sold a patented article*, so there is no need to allege that anything was marked.”); EX1049, 9 (“The Complaint *does not include a single allegation that the patentee or a licensee made or sold a product covered by an asserted patent.*”). Nike does not mark any product with the '811 patent. EX1050.

Second, FAST fails to inform the Board that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. FAST cites no authority for such a sweeping assertion.

Third, FAST never asserted the '811 patent before it sued Skechers, which it did without notice (or even a suggestion) that it thought Skechers was infringing. FAST's only prior assertion of *any* patents concerned technologies *not at issue here*, EX1052, and FAST then stated it was not "actively looking to sue anyone else." EX2008, 4. If anything, FAST's lack of commercialization and public statements supports *Petitioner's* settled expectations. *Home Depot*, IPR2025-00480, Pap. 11, 2-3 (that the "patent has not been commercialized, asserted, marked, licensed, or otherwise applied" weighed "in favor of Petitioner's expectations").

V. CONCLUSION

Petitioner respectfully requests referral for consideration on the merits.

Dated: August 6, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. section 42.6, that on August 6, 2026,
a complete copy of the foregoing document **PETITIONER'S CORRECTED
OPPOSITION TO PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL** was served upon the following, by ELECTRONIC
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