

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AT&T SERVICES, INC. and STREAMWIDE INC.

Petitioners

v.

BK TECHNOLOGIES, INC.

Patent Owner

Case No. IPR2026-00348
U.S. Patent No. 11,997,568

**PATENT OWNER'S AUTHORIZED REPLY IN SUPPORT OF
DISCRETIONARY DENIAL BRIEF**

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Statutes

37 CFR §§ 11.18(b)(1)	2
37 CFR §§ 11.18(c)	2

EXHIBIT LIST

Exhibit No.	Description
2001	Reseller Agreement between StreamWide Inc. and BK Technologies, Inc. dated July 22, 2022
2002	Declaration of James Teel
2003	AT&T, <i>Introducing FirstNet Fusion: New Mission-Critical Platform will Revolutionize First Responder Communications</i> (Oct. 16, 2025), https://about.att.com/story/2025/firstnet-fusion.html
2004	StreamWide, <i>AT&T selects STREAMWIDE to power the FirstNet next-generation mission-critical application for public safety in the U.S.</i> (Sept. 30, 2025), https://www.streamwide.com/wp-content/uploads/2025/09/30092025-_-streamwide_firstnet_-att_-pr_-en-vfinal.pdf
2005	Complaint, Dkt. 1, <i>BK Technologies Inc. v. AT&T Mobility, LLC et al.</i> , No. 2:26-cv-00090 (E.D. Tex. Feb. 3, 2026)
2006	Motion to Intervene, Dkt. 16, <i>BK Technologies Inc. v. AT&T Mobility, LLC et al.</i> , No. 2:26-cv-00090 (E.D. Tex. May. 6, 2026)
2007	Coke Morgan Stewart, Memorandum re Interim Processes for PTAB Workload Management (Mar. 26, 2025), https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf
2008	Interim Director Discretionary Process, https://www.uspto.gov/patents/ptab/interim-director-discretionary-process
2009	DocketNavigator Statistics – Motion Success, accessed on June 29, 2026
2010	Declaration of Lisa Moyles
2011	Letter to AT&T from Lisa Moyles on behalf of BK Technologies dated November 13, 2025
2012	Declaration of Dr. Jacob Sharony

Patent Owner BK Technologies, Inc. (“BK”) respectfully submits this authorized reply, limited to the three issues identified by the Board. EX3101. Petitioners AT&T Services, Inc. (“AT&T”) and StreamWide, Inc. (“SW”) (collectively, “Petitioners”) attempted to cure the compelling reasons why the Petition should be denied for discretionary reasons, but their belated efforts are nothing short of egregious gamesmanship. Petitioners filed their *Sotera* stipulation, SW’s non-patent counterclaim “promise,” and the motion for a stay long after BK’s Discretionary Denial Brief (Paper 8, “DD Brief”) exposed their absence, prejudicing BK’s ability to address the issues in its opening brief. Moreover, Petitioners made material misrepresentations to the district court about the timing and content of those very filings. The Board should not reward such belated, bad faith tactics.

I. PETITIONERS’ POST-BRIEF *SOTERA* STIPULATION SHOULD BE GIVEN LITTLE OR NO WEIGHT

Petitioners frame BK’s argument as merely “complain[ing] about the lack of a *Sotera* stipulation—which Petitioners have since provided.” Paper 10 at 2. But the stipulation’s lateness is not a technicality; it exemplifies the litigation gamesmanship the Board’s DD framework seeks to prevent. The Interim Director Discretionary Process directs petitioners intending to submit a *Sotera* stipulation to do so “as soon as practicable, so that the patent owner may address [its impact] in its [DD] brief.” EX2008 at § I.D. Petitioners’ cited cases (Paper 10 at 5) are inapposite because they predate this DD framework, which began in March 2025. *Id.*

Petitioners filed their Petition on May 5, 2026 without any *Sotera* stipulation. Even after BK's July 7, 2026 DD Brief identified the stipulation's absence as grounds for denial, Petitioners had a full month to submit one before their opposition was due. Yet they chose to wait until August 7, 2026, the due date for their opposition and more than three months after filing the Petition, to offer the stipulation. Petitioners cannot credibly argue that BK was not prejudiced by this timing when BK's own briefing forced their hand and Petitioners then delayed the purported cure until the last possible day.

More critically, AT&T made a material misrepresentation to the district court regarding timing. AT&T's Motion to Stay the district court case, filed on August 5, 2026, represented to the court that Petitioners made a *Sotera* stipulation "as submitted to the PTAB." EX1014 at 7. But Petitioners did not file their *Sotera* stipulation until August 7, 2026—two days after AT&T represented to the court that it had already been "submitted." Paper 9. This representation was false when made.¹ AT&T told the district court it had done something it had not yet done to bolster a motion that AT&T hoped would, in turn, influence this Board's institution decision.

The Board should give no weight to Petitioners' stipulation. Petitioners had every opportunity to include a *Sotera* stipulation in their Petition but chose not to.

¹ While this misrepresentation was made before the district court and not the PTAB, the Office does not tolerate dishonesty. 37 CFR §§ 11.18(b)(1), (c). The Board should not reward Petitioners' dishonesty in the parallel proceeding.

Their belated offer, accompanied by a false representation to the district court, reflects an effort to manipulate parallel proceedings, not good faith.

II. SW’S LATE ABOUT-FACE ON NON-PATENT COUNTERCLAIMS CONFIRMS GAMESMANSHIP

Petitioners now promise that SW “will refrain from bringing the breach of contract and tortious interference counterclaims” if the IPRs are instituted. Paper 10 at 4. But this promise must be evaluated against what SW actually did, and why.

On May 6, 2026, SW moved to intervene in the district court. Its motion asserts three grounds: (1) BK accused SW’s technology; (2) AT&T made an indemnity demand; and (3) BK allegedly seeks to “claim inventorship to SW’s technology.” EX2006 at 5. SW’s proposed Answer and Counterclaims assert breach of contract and tortious interference with existing contract, specifically alleging that BK filed the district court lawsuit to interfere with the SW/AT&T contractual relationship for AT&T’s FirstNet Fusion platform. *Id.* at 41-43.

SW cannot have it both ways. It asserted these non-patent counterclaims to justify its intervention and complicate the district court proceedings. Now, only after BK’s DD Brief, SW treats those counterclaims as disposable. This is the definition of procedural gamesmanship: asserting claims when they serve a tactical purpose and abandoning them when they become inconvenient. *See Jenam Tech, LLC v. Google LLC*, 630 F. Supp. 3d 1208, 1215 (N.D. Cal. 2022).

AT&T’s Motion to Stay compounds this problem with a second material

misrepresentation: SW’s “representation” about not raising non-patent claims “was also made to the PTAB in the Petitions for IPR.” EX1014 at 7 n.4. This too is false. The statement appears in neither Petition. Nor could it: the Petitions were filed on May 5, 2026. SW did not move to intervene until May 6, 2026, the day after the Petitions were filed, and its proposed breach of contract and tortious interference claims were not part of the district court record until that date. *See* EX2006. Petitioners cannot rely on an alleged promise that is chronologically impossible. The claims to be “not asserted” did not yet exist at the time the Petitions were filed.

Moreover, SW’s willingness to abandon these claims only underscores their tactical nature and confirms that this is a private commercial dispute. The alleged breach of contract and tortious interference arise from the SW/AT&T Agreement, a private supply agreement. *See* EX2006 at 38-43. The indemnity relationship between SW and AT&T, the Reseller Agreement between SW and BK, and the willingness to use and discard non-patent counterclaims as litigation leverage all confirm that the true dispute here is private, not public.

III. AT&T’S CONDITIONAL MOTION TO STAY DOES NOT CURE PREJUDICE OR SUPPORT INSTITUTION

AT&T filed its Motion to Stay in the district court on August 5, 2026, nearly a month after BK’s DD Brief and two days before Petitioners’ Opposition. The motion is conditional: AT&T asks the court to stay the case only “in the event the [PTAB] institutes” review, or alternatively to defer ruling until institution. EX1014

at 6. This does not demonstrate that a stay is likely. At most, it shows that AT&T has asked for a stay—a unilateral act any defendant can undertake at any time.

Under *Fintiv* Factor 1, the question is “whether a stay exists or is likely to be granted if a proceeding is instituted.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (PTAB Mar. 20, 2020). A conditional, pre-institution motion that the district court has not yet ruled upon does not satisfy this standard. The motion remains pending, BK has not yet filed its opposition, no stay has been granted, and it is unlikely one will be. DD Brief at 13; EX2009.

Critically, the stay motion’s simplification argument depends entirely on the same late and misleading representations addressed above. AT&T argues institution would simplify the case because (a) the *Sotera* stipulation (which was not filed when AT&T told the court it was), and (b) SW’s agreement to drop non-patent counterclaims (which AT&T falsely represented had been made in the Petitions). A motion to stay built on material misrepresentations should carry no weight. The Board should not credit AT&T’s stay motion as evidence favoring institution when that motion is both conditional and predicated on the very post-hoc filings and false representations that warrant discretionary denial.

IV. CONCLUSION

For the foregoing reasons, and those set forth in BK’s DD Brief, BK respectfully requests that the Board exercise its discretion to deny institution.

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Dated: August 14, 2026

Respectfully submitted,

/ Lisa. J. Moyles /
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Lead Counsel for Patent Owner

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CERTIFICATE OF COMPLIANCE

Pursuant to the Boards authroization, I certify that this paper complies with the 5-page limit requirement.

Dated: August 14, 2026

/ Lisa J. Moyles /
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Lead Counsel for Patent Owner

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R § 42.6(e), I hereby certify that a true and correct copy of the foregoing was served on Counsel for Petitioner via filing through the P-TACTS System, as well as by delivering a copy via electronic mail to the following:

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