UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ADVANCED MICRO DEVICES, INC.,
Petitioner,

v.

FERMAT INTERNATIONAL, INC.,
Patent Owner.

IPR2026-00360
U.S. Patent No. 12,271,636

PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION OF PETITION FOR *INTER PARTES* REVIEW OF UNITED STATES PATENT NO. 12,271,636

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PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	Declaration of Robert Bismuth dated July 16, 2026.
2002	Delaware Division of Corporations, Statement of Good Standing for Fermat International, Inc., dated July 7, 2026.
2003	Email chain between Manish Muthal, Ivo Bolsens and Carrie Chong of Xilinx and Robert Bismuth and Arnaud Blandin of Fermat, dated January 11-January 14, 2019.
2004	Fermat presentation to Xilinx.
2005	January 25, 2019 email from Robert Bismuth to various recipients at Fermat summarizing January 25, 2019 meeting with Xilinx.
2006	February 14, 2022 press release titled "ADM Completes Acquisition of Xilinx," *available at* https://www.amd.com/en/newsroom/press-releases/2022-2-14-amd-completes-acquisition-of-xilinx.html; *last accessed* July 6, 2026.

Patent Owner Fermat International, Inc., ("Fermat" or "Patent Owner") respectfully requests the Director deny institution of the Petition for *Inter Partes* Review ("Petition") filed by Advanced Micro Devices, Inc. ("AMD" or "Petitioner") challenging claims 1-12 of U.S. Patent No. 12,271,636 ("the '636 patent").

I. INTRODUCTION

The Director should exercise his discretion and deny institution of this IPR for several reasons. First, the public interest favors discretionary denial. Patent Owner is a small U.S. and French-based company who was forced out of business because of infringement by large corporations like Petitioner. Further, the Petition identifies no error in the original patent grant and serves only to shield Petitioner from infringement liability against Patent Owner. The public interest favors protecting small businesses like Petitioner from duplicative validity challenges in the form of IPRs.

Second, this IPR duplicates work that will be done in district court and is not a true alternative to district court for resolving patent validity. While Petitioner belatedly filed a stipulation, that stipulation falls far short of a *Sotera* stipulation because it is filled with qualifications and carveouts that mean the stipulation is unlikely to have any meaningful effect in the litigation. Thus, Petitioner is using this IPR as a means to gain leverage in the litigation rather than as a true

alternative to district court.

Third, the Petition says nothing about the claim construction positions Petitioner will pursue in district court. Claim construction has not yet started in the district court. If this IPR is instituted, Petitioner will be free to later assert inconsistent claim construction and indefiniteness positions in district court. Petitioner's claim construction positions confirm that Petitioner is using this IPR as a means to gain leverage in the litigation rather than as a true alternative to district court.

Fourth, settled expectations support denying the Petition. Patent Owner disclosed its patented technology to the semiconductor company Xilinx in 2019; Petitioner acquired Xilinx in 2022. This IPR was only filed after Patent Owner filed a lawsuit in district court in 2026. Petitioner's acquisition of Xilinx and subsequent inaction gave Patent Owner settled expectations that Petitioner would not challenge the enforceability of the '636 Patent.

Fifth, the Petition's overreliance on expert testimony supports discretionary denial. Petitioner's expert declaration is 178 pages long and is cited over 200 times in the Petition, many times to explain why a POSITA would allegedly supply a claim limitation that is not expressly disclosed in the asserted references.

Sixth, as will be discussed further in the forthcoming POPR, the merits of the Petition are weak. Neither set of grounds teaches or suggests every limitation

of the challenged claims, and in some places, Petitioner impermissibly relies on background knowledge of a POSITA to supply the missing limitations.

Accordingly, the Director should exercise his discretion to deny institution.

II. PARALLEL AND OTHER PROCEEDINGS

On January 13, 2026, Patent Owner asserted the ’636 Patent, along with several related patents, in *Fermat International, Inc. v. Advanced Micro Devices, Inc.*, Civil Action No. 7-26-cv-00011 (W. D. Tex.). That case is currently proceeding in Texas.

On May 12, 2026, Petitioner filed this IPR, along with IPR2026-00358 and IPR2026-00359 challenging related U.S. Patent Nos. 11,886,750 and 11,550,512, respectively. All three IPRs are in the pre-institution phase.

III. THE DIRECTOR SHOULD EXERCISE HIS DISCRETION TO DENY INSTITUTION

A. The Public Interest Favors Denying Institution

“Director discretion should consider public interest.” *Magnolia*, IPR2026-00097, Paper 17 at 6. “Unlike court proceedings, AIA reviews are not solely about resolving ‘a private dispute.’” *Id.* (*quoting Saint Regis Mohawk Tribe v. Mylan Pharms. Inc*., 896 F.3d 1322, 1330 (Fed. Cir. 2018) (Dyk, J., concurring)). “The Office institutes review to reconsider its own decision and correct a possible error in the original patent grant—not to shield a particular petitioner from infringement

liability." *Id.* Public interest entails, for example "American manufacturing and/or small business considerations." *Id.*, 7.

The public interest here favors noninstitution. The Petition identifies no error in the original patent grant. *Magnolia*, IPR2026-00097, Paper 17 at 6. Nor is Petitioner a small business—AMD is a large multinational corporation that has filed dozens of IPRs over the years. *Id.*, at 7-8.

Fermat, on the other hand, is a small company that operated in the U.S. and France manufacturing near memory high speed compute modules for servers that included flash-based storage and significant DRAM memory. Ex. 2001 [Bismuth Decl.], ¶ 2. At its largest, Fermat had approximately 10 employees. *Id.* Patent Owner Fermat International, Inc., is a domestic Delaware-based corporation incorporated on January 30, 2019. *Id.*, ¶ 3; Ex. 2002 [Delaware Corporation search]. When originally founded, French company SAS Fermat was the parent of Fermat International, Inc. Ex. 2001 [Bismuth Decl.], ¶ 4. However, in 2023, Fermat inverted control of the company so that Fermat International, Inc. became the parent company, and SAS Fermat became its subsidiary. *Id.* This was done for two reasons. First, raising capital for deep technology ventures like Fermat is easier in the U.S., and second, the majority of potential customers for Fermat's products were in the U.S. *Id.* Moreover, Fermat's founders and inventors are U.S.

citizens; Fermat President and CEO Robert Bismuth and CFO Garth MacBeth live in the Seattle area. *Id.*, ¶ 5.

Fermat sold its storage computation solutions primarily to U.S.-based customers. Ex. 2001 [Bismuth Decl.], ¶ 6. The U.S.-based company Micron was Fermat's largest customer. . *Id.* A photograph of Fermat's commercialized module is shown below:

Id.

As part of the shift to the United States and away from SAS Fermat, Fermat intended to move its manufacturing from Switzerland to the U.S. and had met with manufacturers in Washington state and toured their facilities. . Ex. 2001 [Bismuth Decl.], ¶ 7. However, by the end of 2023, Fermat was faced with increased competition from major vendors like Petitioner who were adopting architecture covered by Fermat's issued U.S. patents. *Id.* Even though Fermat's products still

held a performance advantage, the ability of major companies like Petitioner to sell to and support the customers Fermat was targeting was beyond Fermat's capability. *Id.* In other words, scaling Fermat was proving difficult due to market competition from large companies like Petitioner that had adopted Fermat's patented technology. *Id.* As a result, Patent Owner liquidated SAS Fermat in 2024 and filed a lawsuit for patent infringement against Petitioner in January 2026. *Id.*

Rather than using the IPR process to protect small American businesses, this IPR was filed by a large corporation whose infringement helped to shut down a small American business. This is against the public interest. *Magnolia* at 4-5. Institution should be denied because this is a private dispute better suited for adjudication in the district court.

B. The Petition Should Be Denied Because This IPR Duplicates District Court Efforts Instead of Being A True Alternative To District Court Litigation

"The purpose of AIA reviews was, and is, to provide a quick and cost-effective alternative to district court patent litigation for resolving disputes over patent validity." *Magnolia Medical Technologies, Inc. v. Kurin, Inc.*, IPR2026-00097, Paper 17 at 2 (Director May 14, 2026) (precedential). (*citing* H.R. Rep. No. 112-98 at 48 (2011)). "Even when the prior art and arguments a petitioner presents in district court are substantially different from what it presents before the Board, the AIA review often simply serves as a means by which the petitioner presents

additional invalidity arguments under sections 102 and 103." *Id.* at 3. "When this occurs, the parties spend more time and resources litigating patent validity than they would have in the absence of AIA reviews." *Id*.

The Petition serves as a means for the Petitioner to present additional invalidity arguments further to those that will be presented in district court, duplicating the efforts of the parties, Board, and district court. The litigation is in its early stages and invalidity contentions have not yet been served. If this IPR does not render the challenged claims unpatentable, Petitioner will simply raise additional new invalidity arguments in the district court. Avoiding IPR estoppel in district court is relatively simple, especially before invalidity contentions are filed. Under *Ironburg Inventions Ltd. v. Valve Corp.*, 64 F.4th 1274 (Fed. Cir. 2023), in order for estoppel to apply, Patent Owner—not Petitioner—has "the burden of proving, by a preponderance of the evidence, that a skilled searcher exercising reasonable diligence would have identified an invalidity ground." *Id.*, 1299. Thus, Patent Owner must prove estoppel applies. Further, prior art searches going beyond "reasonable diligence" entirely avoid IPR estoppel. *Id.* Simply by performing a prior art search with more than "reasonable diligence" in the litigation, Petitioner will be able to largely avoid IPR estoppel in the district court.

Although Petitioner filed—without prior authorization from the Board or Director—a stipulation (Exhibit 1049) stating that it will not pursue certain

invalidity grounds in the litigation, its stipulation has so many carveouts it does little if anything to narrow the invalidity issues in the district court, serving even less purpose than the more common *Sotera* stipulation. First, unlike a *Sotera* stipulation that attaches permanently at institution, Petitioner's stipulation is conditional because only applies if the IPR reaches "an appealable final decision." Ex. 1049, 2. If this IPR terminates for any reason other than "an appealable final decision," Petitioner's stipulation is meaningless and Petitioner is free to assert any and all prior art (including the references asserted in this IPR) in the litigation.

So, for example, if the IPR is instituted and the Director later terminates the IPR via Director review or otherwise, Petitioner's stipulation would be meaningless. Or, if this IPR is instituted and Patent Owner disclaims the challenged claims, no district court estoppel would apply. Similarly, if this IPR is instituted and Petitioner later withdraws the IPR or the IPR settles, no district court estoppel would apply.

Further, Petitioner is aware that final written decisions usually to kill most, if not all, of the challenged claims. Final written decisions result in all challenged

claims being found unpatentable roughly seventy percent of the time.[1] Petitioner's stipulation is therefore an example of a petitioner "pursuing alternative theories under a 'wait and see' approach presumably to gain a litigation advantage." *Magnolia*, Paper 17 at 4.

The categories of prior art Petitioner's stipulation covers are also carefully selected to appear as though they are concessions without actually providing meaningful estoppel. First, Petitioner agrees not to pursue "Grounds 1A-2B of IPR2026-00360." Ex. 1049, 1. But these specific grounds would necessarily be estopped if the Board issues "an appealable final decision" (i.e., a final written decision) because they would have already been "raised" pursuant to 35 U.S.C. § 315(e)(1) and (2).

Petitioner's second category is "[a]ny other ground that could have been reasonably raised in IPR2026-00360 under §§ 102 or 103 on the basis of prior art patents or printed publications." Ex. 1049, 1. This language simply parrots the language of 35 U.S.C. § 315(e) that always applies when a final written decision issues. The advantage of a *Sotera* stipulation was that the estoppel would apply at

[1] *See, e.g.,* https://ipwatchdog.com/2025/01/12/ptab-70-claims-invalidation-rate-continues-source-concern/

institution rather than at the final written decision, but under Petitioner's "wait and see" stipulation, the estoppel is conditional until a final written decision issues, thus negating its value.

Petitioner's third category is "[a]ny ground based on a combination of system prior art (i.e., prior art that is neither a patent nor printed publication) and the references that form the basis of Grounds 1A-2B of IPR2026-00360 (i.e., the Dalal, Ng, Raghava, Heil, and Jun references)." Ex. 1049, 1. Petitioner's fourth category is "[a]ny ground under §§ 102 or 103 on the basis of system art mirroring the references that form the basis of Grounds 1A–2B of IPR2026-00360 (i.e., the Dalal, Ng, Raghava, Heil, and Jun references)." *Id.* These categories simply agree not to recycle the asserted references under the guise of system art and add little to the estoppel, especially since Petitioner will simply search for system art that does not overlap with the asserted references.

Petitioner's qualified stipulation is exactly the sort of litigation tactic designed to gain a litigation advantage through the IPR process rather than use the IPR process as an alternative to litigation. This IPR, if instituted, will "simply serve[ ] as a means by which the petitioner presents additional invalidity arguments under sections 102 and 103." *Magnolia*, Paper 17 at 3. Thus, institution will waste PTAB resources and cause the parties, Board, and district court to perform more work than they would have without an IPR. Because this IPR will not be an

alternative to litigation, the Director should exercise his discretion to decline institution.

C. The Petition Should Be Denied Because Petitioner Will Likely Assert Inconsistent Indefiniteness and Claim Construction Positions In The District Court Litigation

The Director has explained that "[a]llowing petitioners to [advance different constructions in the PTAB and district court] does not further the Office's goal of 'providing greater predictability and certainty in the patent system.'" *Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.*, IPR2025-00632, Paper 20 at 4 (Director, Nov. 3, 2025) (precedential) (quoting 83 Fed. Reg. at 51,342-43). "[A]lthough a petitioner is not necessarily precluded from arguing different claim construction positions before a district court and the Board, the petitioner should explain sufficiently why the different positions are warranted." *Id.*, 5. But allowing "parties [to] take inconsistent positions, without sufficient reasoning, on overlapping issues between district court and the PTAB, suggest[s] that parties are misleading one tribunal or the other or pursuing alternative theories under a 'wait and see' approach presumably to gain a litigation advantage and/or settlement leverage." *Magnolia Medical Technologies, Inc. v. Kurin, Inc.*, IPR2026-00097, Paper 17 at 4 (Director May 14, 2026) (precedential).

If this IPR is instituted, Petitioner will be free to advance inconsistent constructions in the district court litigation without any explanation for why these

different positions are warranted. The Petition argues that "[t]he Challenged Claims are obvious under any reasonable interpretation advanced pursuant to the *Phillips* standard" and proposes the term "programmable logic component" should be construed as a "logic component programmable by reconfiguring its internal hardware connections, such as an FPGA." Pet. 5. But in the district court, there has been no claim construction and Petitioner has not yet served invalidity contentions. The Petition is silent as to what claim construction or § 112 positions Petitioner plans to take in the litigation, and to what extent those positions are inconsistent with the positions advanced in the Petition. Pet., 5.

Instituting this IPR would allow Petitioner to advance inconsistent indefiniteness and claim construction positions in the district court without even attempting to explain why different positions are warranted. This is contrary to the Office's goal of providing greater predictability and certainty in the patent system (*Revvo*, IPR2025-00632, Paper 20 at 4) and suggests Petitioner is misusing the AIA review process to gain a litigation advantage. *Magnolia*, IPR2026-00097, Paper 17 at 4. Institution should be denied to avoid this result.

D. Settled Expectations Supports Denying Institution

Settled expectations favors denial. Petitioner AMD had prior knowledge of Fermat's patented technology through its acquisition of Xilinx Inc. The asserted patents date back to Provisional application No. 62/882,044, filed on Aug. 2, 2019,

provisional application No. 62/853,764, filed on May 29, 2019, and provisional application No. 62/801,839, filed on Feb. 6, 2019. Ex. 1001 [‘636 Patent], (60).

Shortly before filing its first provisional on the claimed technology, Fermat disclosed its technology to FPGA manufacturer Xilinx, Inc. . Ex. 2001 [Bismuth Decl.], ¶ 8. On January 11, 2019, Arnaud Blandin, then the VP of Business Development for Fermat, met with Manish Muthal of Xilinx to discuss the prospect of collaborating. Ex. 2003 [Xilinx Email]. Mr. Blandin’s presentation deck is attached as Exhibit 2004 [Fermat presentation]. Mr. Blandin then arranged a meeting between Mr. Muthal and Fermat CEO and inventor Robert Bismuth for January 25, 2019 at Xilinx’ San Jose offices. *Id.* At the meeting, Mr. Bismuth discussed Fermat’s technology and showed Mr. Muthal a functioning Fermat module. Ex. 2005 [Email summarizing 1/25/2019 meeting]. Mr. Muthal was impressed and was interested in Xilinx potentially investing in Fermat. *Id.* Mr. Muthal offered to set up a follow up meeting under NDA with technical staff and corporate development/venture investing staff. *Id.* However, no further meeting was ever scheduled. Ex. 2001 [Bismuth Decl.], ¶ 8.

In 2022, Xilinx was acquired by Petitioner AMD and merged into AMD. Ex. 2006 [AMD Completes Acquisition of Xilinx]. Through its acquisition of Xilinx, AMD had prior knowledge of Fermat’s patented technology since January 2019.

Xilinx (and, by extension, AMD) were aware of Fermat's patented technology at least as of January 2019, yet failed to challenge any of the asserted patents prior to filing this IPR. AMD's delay in challenging Fermat's patents gives Fermat settled expectations that AMD would not challenge the enforceability of the '636 Patent.

E. The Petition's Overreliance on Expert Testimony Supports Discretionary Denial

One of the relevant considerations for discretionary denial is "[t]he extent of the petition's reliance on expert testimony." Interim Processes for PTAB Workload Management Memorandum, 2. "[A]s a matter of efficiency, extensive reliance on expert testimony … may suggest that the questions are better resolved in an Article III court." Interim Processes FAQs at 22.[2] The PTAB explains as follows:

> While the Board may consider expert testimony, as a matter of efficiency, extensive reliance on expert testimony [ ] may suggest that the questions are better resolved in an Article III court. The statute and our reviewing court require that petitions be based on prior art patents and printed publications. As the judges have technical and legal expertise, it is not necessary for an expert to explain every aspect of the prior art. It is most helpful if an expert is providing focused testimony, for example to provide helpful context or to explain terms

[2] *Available at* https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management.

> of art. The failure to provide focused expert testimony may weigh against institution.

Id.

The Petition's extensive reliance on expert testimony suggests the issues presented in the Petition are better resolved in the district court litigation. The declaration of Dr. Alpert in this IPR is 178 pages long. Exhibit 1003 [Alpert Decl.]. The Petition relies on the Alpert declaration extensively, citing the Alpert declaration approximately 204 times.

In many places, the Petition relies on the Alpert Declaration to explain why a POSITA would have understood the prior art meets certain limitations. For example, for limitation [1.d.i], the Petition relies on Dr. Alpert to explain why a POSITA would supply the claimed "facilitate inter-node data communications" limitation that is not expressly disclosed in the Dalal-Ng combination. Pet., 29 ("Because Dalal explains that the first connection layer 804-0 includes "direct inter-module connections" to hwa modules "of a same server," a POSITA would have understood that the ***data*** and ***instructions*** stored in Dalal's ***node memory*** facilitate ***inter-node data communications*** by causing execution process 842-1 to forward a result to another hwa module (***compute node***) in the same server. *Id*.") (emphasis in original).

As another example, the Petition relies on the Alpert Declaration to explain why a POSITA would supply the "resource-specific memory locations to support the data processing operation" limitation. Pet., 31 ("A POSITA would have understood that SDRAM comprises an array of cells having independent, addressable memory banks that can be pre-allocated to serve as ***resource-specific memory***. AMD1003, ¶75, *citing corroborating*, AMD1042, p.3 ('SDRAM devices contain a…storage array'), AMD1045, 3:64–4:9 (allocating data among first and second banks of SDRAM)."). (*emphasis in original*). Thus, the Petition is relying on Dr. Alpert's declaration to expand the arguments in the Petition.

Dr. Alpert's 178 -page expert declaration does not "provid[e] focused testimony" such as "to provide helpful context or to explain terms of art." Interim Processes FAQs at 22. Instead, it serves to expand the arguments in the Petition by incorporating new arguments and evidence throughout the Petition. Petitioner's "failure to provide focused expert testimony" thus weighs against institution. *Id.*

F. The Weakness of the Petition's Merits Further Supports Discretionary Denial

The Memorandum instructs patent owners to address all relevant considerations for discretionary denial is "[t]he strength of the unpatentability challenge." Interim Processes for PTAB Workload Management Memorandum, 2.

As will be explained in further detail in the preliminary response, the merits of the Petition are particularly weak.

First, each of the Petition's four grounds is an obviousness ground relying on two or three way combinations. Pet., 1. None of the grounds allege anticipation. The fact that the Petition cannot allege unpatentability for any claim without relying on multiple references underscores that the claims are significantly different than any asserted reference.

Second, the combinations themselves are weak, failing to teach or suggest several limitations. The Petition alleges sole independent claim 1 is obvious over (1) the combination of Dalal and Ng and (2) the combination of Heil and Jun. Pet., 1. This is incorrect.

For example, Dalal and Ng do not teach or suggest limitation [1g]: "wherein the storage interface component utilizes a plurality of communications channels to transfer data between the programmable logic component and the data store." For Dalal, Petitioner maps paths through fabric 716 to the claimed data mover [1e] (Pet., 32–33), storage interface [1f] (Pet., 33–34), and channels [1g] (Pet., 37), but does not identify a relationship sufficient to show that the alleged storage interface utilizes the alleged channels as limitation [1g] requires. For Ng, the Petition treats the first and second memory interfaces collectively as the storage interface (Pet., 35) and individually as the plurality of communications channels (Pet., 38). The

Petition asserts that the interfaces "would have utilized" multiple channels maps the same interfaces to both roles without identifying what relationship satisfies the requirement that the storage interface utilize the channels.

As another example, the Heil-Jun combination does not reconcile its compute-node mapping with Claim 1's express inter-node and intra-node relationships. Petitioner maps the compute node to Heil's server unit—a host paired with an acceleration component—but alleges communications link (limitation [1a]) is transport component 2530 in the acceleration component (Pet., 68–70) and the node memory (limitation [1d.i]) is the local host's main memory and stored configuration/setup information, Pet., 78–81. The Petition alleges the claimed data mover (limitation [1e]) is the host-to-accelerator PCIe/DMA path—which it characterizes as "within the server unit component (intra-node data communications)" (Pet., 83–84)—and alleges the storage interface and channels (limitation s [1f]/[1g]) are Jun's flash board incorporated into the acceleration component. Pet., 84–86. The Petition does not explain how the local-host memory satisfies the node-memory requirement for inter-node data communications while the host-to-accelerator and accelerator-to-flash-board paths are each treated as intra-node relationships within the same compute node.

Thus, the weakness of the unpatentability challenge further supports discretionary denial.

IV. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests the Director to exercise discretion and deny the Petition.

Dated: July 20, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d) and the Interim Director Discretionary Process § II.C.iii, the undersigned certifies that this Brief in Support of Discretionary Denial complies with the type-volume limitations of those sections because it contains no more than 20 pages.

Dated: July 20, 2026

Respectfully Submitted,

By: / *Stephen McBride* /
Stephen McBride
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION OF PETITION FOR *INTER PARTES* REVIEW OF UNITED STATES PATENT NO. 12,271,636 was served electronically via email on July 20, 2026, on the following counsel of record for Petitioners:

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