

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITCH INTERACTIVE, INC.,
Petitioner,

v.

CP STUDIOS LLC,
Patent Owner.

Patent No. 10,632,388

Inter Partes Review No. IPR2026-00397

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

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I. INTRODUCTION

The Petition should be referred for merits consideration for four independent reasons. *First*, the '388 patent was allowed only because the Examiner relied upon non-existent limitations. Claim 1 recites only “an ***interaction*** via the social online service.” (EX1001, claim 1.) Yet the Examiner inexplicably stated in the Notice of Allowance that it instead requires a “***comment*** to the social network . . . includ[ing] one or more ***keywords***”—which is nowhere in the claim—and allowed the claim on that basis. (EX1003, 28-29.) Having misread the claim, the Examiner conducted unduly narrow searches focused on “comment” and “keyword” throughout prosecution. (*Id.*, 81, 115, 145.) Even Applicant warned the Examiner that the Notice of Allowance “uses language that is not present in the allowed claims” and “may be interpreted as incorrectly characterizing the claims.” (*Id.*, 20.) The Examiner nevertheless took no corrective action. The Examiner further erred by failing to cite non-patent literature, which was a significant source of relevant disclosures concerning online gaming interfaces in 2012 as shown by the Petition. These are material Office errors that warrant review.

Second, Patent Owner seeks to enforce these claims against a quintessential American success story. Twitch began in 2006 as a round-the-clock livestream of one founder’s life. (EX1026.) By 2014, Twitch accounted for the fourth-largest share of peak U.S. internet traffic, and Amazon agreed to acquire it for

approximately \$970 million. (EX1030.) Today, Twitch is one of the world's most watched live-streaming platforms and a major contributor to the U.S. content creator economy. (EX1023, 7; EX1031; EX1032.) Patent Owner, by contrast, identifies no product, license, or research program associated with the '388 patent. Yet, Patent Owner now seeks to encumber an industry it never entered, using claims directed to known concepts disclosed in contemporaneous patents, publications, and games before the asserted priority date.

Third, the parties' history supports Twitch's settled expectation of non-enforcement. CP Studios approached Twitch/Amazon in 2018 concerning this portfolio, Amazon declined the offer, and CP Studios then remained silent for more than seven years without accusing Twitch of infringement or demanding a license. Patent Owner also identifies no commercialization, marking, successful licensing, or prior enforcement of the '388 patent that would support its contrary settled-expectations argument.

Fourth, the *Fintiv* factors strongly weigh against discretionary denial. Trial in the parallel district court proceeding is scheduled for January 2029, more than a year *after* the projected Final Written Decision deadline in December 2027. The district court proceeding remains in its early stages, no merits rulings have issued, Twitch has provided a full *Sotera* stipulation, and Patent Owner's speculation

about future system-art theories is unsupported by any invalidity contentions. As discussed below, each of these considerations supports merits review.

II. THIS IPR IS AN APPROPRIATE USE OF OFFICE RESOURCES

A. This IPR Will Allow the Office to Correct Material Errors

Institution would permit the Office to correct material errors in prosecution. First, the Examiner allowed claim 1 based on narrowing limitations not found in the claim. Claim 1 recites only “receiving, by the server, an *interaction* via the social online service.” (EX1001, claim 1.) Yet the Notice of Allowance unduly restricted “interaction” to a “*comment* to the social network . . . includ[ing] one or more *keywords*” as shown below. (EX1003, 28.)

The following is an examiner’s statement of reasons for allowance. There is no teaching or suggestion in the art of a video game environment that is in association with a social network comprising a plurality of users operating a plurality of computing devices, wherein the gaming environment allows a user to post at least one comment to the social network that is related to an event occurring in the gaming environment, wherein the computing devices processes and determines if the at least one comment includes one or more keywords, wherein the affects the gameplay of a user in the video game environment.

Those far narrower elements appeared in a parent patent, but do not appear in the independent claims here. (EX1018; EX1001, claims 1, 11, 20.)

The Director has found material error on this precise pattern, even for older patents with strong settled-expectations arguments. *Skullcandy, Inc. v. Earin AB*, No. IPR2025-00690, Paper 9, 2-3 (P.T.A.B. July 31, 2025) (Acting Dir. C.M.

Stewart) (referring Petition for merits consideration over a 9-year-old patent because the reasons for allowance relied on features not recited in the claims).

Contrary to Patent Owner's assertions, this is ***not*** a claim-construction issue.

Rather, the Examiner read substantive limitations into the claims and then allowed the claims based on the perceived absence of those unclaimed limitations from the prior art.

The Examiner's search history confirms the effect of his misreading: he searched for "comment" and "keyword," not "interaction." (EX1003, 81, 115, 145.) Nor did he search for examples of interaction such as clicks, likes, or shares. (*Id.*) Those unduly narrow queries returned few results, as shown below. (*Id.*, 81.)

EAST Search History

EAST Search History (Prior Art)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
S1	1182	(video adj game) and (social network post)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	SAME	OFF	2018/06/22 20:36
S2	18095	((H04L51/32 OR A63F13/87 OR A63F13/86).CPC.)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	SAME	OFF	2018/06/22 20:37
S3	148	S2 and (video adj game) and (social network post)	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	SAME	OFF	2018/06/22 20:39
S4	28	S3 and keyword	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	SAME	OFF	2018/06/22 20:39
S5	15	S4 and comment	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	SAME	OFF	2018/06/22 20:39
S6	0	((2013/0006709) or (2012/0072855)).CCLS.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2018/06/22 20:41
S7	7	((("20130006709") or ("20120072855")).PN.	US-PGPUB; USPAT; USOCR; FPRS; EPO; JPO; DERWENT; IBM_TDB	OR	OFF	2018/06/22 20:41

(EX1003, 81.) Thus, Petitioner does not merely seek institution because the Petition found better art; the prosecution history demonstrates that the Examiner's claim misreading led to wrong searches throughout prosecution.

The Examiner compounded that error when Applicant expressly notified him of the misreading. After the Notice of Allowance, Applicant submitted remarks noting that “the Examiner’s Statement of Reasons for Allowance . . . uses language that is not present in the allowed claims” and may be “interpreted as incorrectly characterizing the claims.” (EX1003, 20.) Despite this express warning, the Examiner neither corrected the Notice nor reopened prosecution. (*Id.*, 1-19.)

Patent Owner’s argument that allowance was driven by the last round of amendment is contrary to the Notice of Allowance and misses the point. (Br., 14.) Those modest amendments, such as clarifying that the claimed “interaction” occurs “via the social online service,” do not cure the Examiner’s error, as the Examiner was already proceeding from the mistaken premise that the claim required comments containing keywords. (*Id.*) Under that mistaken understanding, the amendments would further limit those supposed keyword-containing comments by requiring them to occur via the social online service. Indeed, the Examiner searched for “comment” *before* the amendments, and his updated search *after the amendments continued to focus on “comments.”* (EX1003, 36-37, 81, 115, 145.)

The Examiner further erred by failing to cite non-patent literature—a significant omission given the technology at issue. By 2012, contemporaneous game design and user-interface features were documented in gaming publications, manuals, and other non-patent materials, while patent literature often focused on

backend functionality. Yet despite the GUI-heavy nature of the claims, the Examiner cited no contemporaneous gaming publications. The Examiner thus overlooked an entire category of relevant prior art.

Patent Owner's own exhibits underscore the deficiency in relying exclusively on patent art. Patent Owner points to a handful of Facebook and Zynga patents cited during prosecution, but does not show that those references provide comparable disclosure to, for example, the primary reference FarmVille for Dummies (EX1004). (Br., 15-16.) And that is exactly the problem of focusing exclusively on patent art, especially for these GUI-heavy claims. The fact that the Examiner considered some patent art assigned to Facebook or Zynga does not establish he considered public disclosures of their products.

None of Patent Owner's remaining arguments has merit. Examiner error is prosecution-specific, meaning that Twitch does not have to make the same examiner-error argument in the '132 IPR petition, which concerns different claims before a different Examiner. (Br., 13 n.4; EX1035.) Nor is a Search Disclosure Declaration required. (*Id.*, 16.) The November 17, 2025 Director Memorandum alert makes clear that an SDD is voluntary and “[t]here will be no negative impact on a petitioner who chooses not to participate in this optional practice.” (Emphasis in original.) It is also certainly not a prerequisite to showing Office error. The record here shows the error: the Examiner's stated reasons for

allowance and search terms were materially narrower than the claim language.

The absence of a voluntary SDD does not erase that prosecution history.

B. There Are Compelling Economic and Public Interest Reasons to Examine the Challenged Claims

Twitch’s and Patent Owner’s respective contributions to the U.S. economy are not remotely comparable. Twitch, “the company that basically invented livestreaming in the US,” is an American startup that helped commercialize what has now become a significant medium of communication. (EX1022, 2.) In 2006, Justin Kan, Emmett Shear, and Michael Seibel drove across the country from New York to San Francisco and launched “a 24/7 live reality television show.” (EX1026, 1.) When gaming represented just 3% of its streaming traffic, the founders chose to focus on that small segment and create what became Twitch. (EX1027.) Growth was explosive. By February 2014, Twitch accounted for 1.8% of peak U.S. internet traffic—fourth in the country, behind only Netflix, Google, and Apple. (EX1028; EX1029.) By July 2014, more than 55 million unique visitors watched more than 15 billion minutes of content in one month, produced by more than one million broadcasters. (EX1030.)

Twitch also creates opportunities for Americans to have their own success stories. (EX1031.) Apart from Twitch’s own employees, more than [REDACTED] U.S. creators earned revenue on Twitch in 2025 alone, turning their passion, talent, and

entrepreneurial spirit into income. (EX1032.) That same year, Twitch paid more than [REDACTED] directly to U.S. creators, enabling Americans to turn their interests, talents, and entrepreneurial efforts into income and businesses. (*Id.*) Many content creators build businesses around their channels, hiring producers, editors, managers, designers, and other workers. And Twitch enables creators to earn additional revenue through third-party sponsorships and other brand partnerships. Twitch thus does not merely pay creators, it provides the platform on which American creators can build businesses, employ others, and generate additional economic activity.

Patent Owner offers nothing comparable in terms of economic contribution. Its entire economic-interest theory rests on assignment history and the empty label “American startup.” (Br., 19-20.) Patent Owner points to no product practicing the ’388 claims, no research and development expenditure tied to the claimed invention, no revenue from it, no jobs created by it, and no successful license. A transfer of patent title does not prove technological contribution or economic reliance. Moreover, Patent Owner has never operated in livestreaming, yet it seeks to encumber an entire ecosystem of streamers, viewers, and developers with claims directed to social-game concepts that games such as FarmVille had popularized before May 2012. (*See* EX1004.) The public interest favors reviewing such claims, not insulating them from review.

C. Settled Expectations of the Parties Weigh Against Denial

The parties' direct dealings undermine Patent Owner's settled-expectations argument. In November 2018, CP Studios approached Twitch/Amazon offering a portfolio for sale that included the '132 and '373 patents and the application that later issued as the '388 patent. (EX1033.) Amazon expressly declined in December 2018. (EX1034.) For the next seven years, neither CP Studios nor its successor accused Twitch of infringement, demanded a license, or otherwise asserted the portfolio. That prolonged silence following a rejected offer reasonably supported an expectation of non-enforcement.

The Director has treated comparable silence as inconsistent with Patent Owners' claims of settled expectations. *See Apple Inc. v. Ferid Allani*, No. IPR2025-00856, Paper 11 (P.T.A.B. Sept. 5, 2025) (Acting Dir. C.M. Stewart) (informative Jan. 9, 2026) (finding discretionary denial inappropriate where the patent owner waited eleven years after discussions about the challenged patent to assert it); *Medtronic, Inc. v. Moskowitz Family LLC*, No. IPR2026-00163, Paper 8, 2 (P.T.A.B. Mar. 2026) (referring petition for merits consideration where a decade of silence followed petitioner's rejection of a licensing demand).

Patent Owner asks the Director to treat the citation of its '132 patent during prosecution of a Twitch patent as notice that Twitch was required to challenge the present '388 patent. (Br., 18–19.) But the '132 patent was filed years before the

'388 patent, concerns a different examiner, and has a different specification.

Patent Owner's position would effectively require a patent applicant to monitor every cited reference, trace its entire future prosecution lineage, and promptly challenge any later-issued patent arising from that lineage. No authority imposes this extraordinary obligation, and Patent Owner cites none.

The citation to the '132 patent does not establish that Twitch had meaningful notice that the later-issued '388 patent would be asserted against its livestreaming platform. And even if it had, any inference of potential enforcement arising from that February 2018 citation was undermined by the parties' subsequent dealings: CP Studios approached Twitch/Amazon concerning the portfolio later that year, Amazon declined its overtures in December 2018, and CP Studios then remained silent for more than seven years.

The commercial record likewise cuts against Patent Owner's settled expectations. Patent Owner identifies no evidence that the '388 patent was practiced in a commercial product, marked on products, successfully licensed, or previously enforced. *See, e.g., Intel Corp. v. Proxense LLC*, No. IPR2025-00327, Paper 12, 2–3 (P.T.A.B. June 26, 2025) (Acting Dir. C.M. Stewart) (recognizing that a patent's age may carry less weight where it “may not have been commercialized, asserted, marked, licensed, or otherwise applied in a petitioner's particular technology space, if at all”); *Meta Platforms, Inc. v. Sitnet, LLC*, No.

IPR2026-00111, Paper 8, 8 (P.T.A.B. Feb. 25, 2026) (summary decision referring petition for merits consideration where there was no evidence of licensing or other commercialization).

Patent Owner's proposed six-month filing deadline is likewise unsupported. (Br., 19.) Section 315(b) provides a one-year statutory bar, not the six-month rule Patent Owner proposes. *Apple Inc. v. Fintiv, Inc.* also recognizes that it is often reasonable to wait until the asserted claims are known. No. IPR2020-00019, Paper 11, 11-12 (P.T.A.B. Mar. 20, 2020). But Twitch filed *before* Patent Owner even identified its asserted claims and challenged every claim of the '388 patent. *DataDome S.A. v. Arkose Labs Holdings, Inc.*, cited by Patent Owner, is distinguishable because pre-suit written notice and suit followed within the same year. No. IPR2025-00693, Paper 13 (P.T.A.B. Aug. 14, 2025) (Acting Dir. C.M. Stewart). Here, CP Studios waited more than seven years after direct portfolio discussions before suing.

Finally, the challenged claims concern game/social-interaction functionality, while Twitch operates principally as a livestreaming platform. Patent Owner's infringement theory apparently depends substantially on games, mods, extensions, and other functionality supplied by third-party developers and streamers. Twitch does not practice these claims, and they are not in its line of business. Against that backdrop—and following CP Studios' seven years of silence after Amazon

rejected its portfolio overture—Twitch had no obvious reason to anticipate that these game-focused patents would later be asserted against its streaming platform. *See Home Depot U.S.A., Inc. v. H2 Intellect LLC*, No. IPR2025-00480, Paper 11, 2–3 (P.T.A.B. Sept. 4, 2025) (Acting Dir. C.M. Stewart).

III. THE FINTIV FACTORS FAVOR INSTITUTION

The district court trial is scheduled for more than a year *after* the projected FWD, the litigation remains in its early stages, and Twitch has provided a full Sotera stipulation. The *Fintiv* factors therefore weigh strongly against discretionary denial.

A. Factor 1: Likelihood of Post-Institution Stay Is Neutral

No rule requires a defendant to seek a stay before institution. Factor 1 instead asks whether a stay has been or may be granted. Delaware courts commonly evaluate stay requests after institution. *See, e.g., PayRange Inc. v. CSC ServiceWorks, Inc.*, No. 1:23-cv-00278-MN (D. Del. Feb. 26, 2024), Dkt. No. 61 (holding that “the motion to stay is denied as premature” and defendant may renew its motion after issuance of institution decision); Order, *Waters Corp. v. Agilent Techs., Inc.*, No. 1:18-cv-01450 (D. Del. Aug. 6, 2019), Dkt. 95 at 1 (denying “request to stay the litigation pending IPR without prejudice to renew after the PTAB decision on institution”). Patent Owner cannot convert the absence of a premature motion into evidence that a post-institution stay is unlikely. (Br., 5.)

A stay is especially likely here. This IPR challenges every claim of the '388 patent. *See Consumeron, LLC v. MapleBear Inc.*, No. 1:21-1147-GBW-MPT, 2023 WL 3434002, at *2 (D. Del. May 12, 2023) (granting stay where IPR proceedings encompassed all asserted claims of all patents-in-suit). The case is in its infancy (*see infra* Section III.C), and Judge Noreika has often granted stays before Markman. *See, e.g., Microsurgical Tech., Inc. v. New World Med., Inc.*, No. 1:20-cv-00754 (D. Del. Aug. 16, 2021), and *Rein Tech, Inc. v. Mueller Sys., LLC*, No. 1:18-cv-01683.

Patent Owner's argument concerning U.S. Patent No. 9,889,373 is moot. (Br., 5-6.) Twitch has now filed a petition challenging the patent. (IPR2026-00514.) Regardless, Delaware courts grant stays even where fewer than all asserted patents are challenged. *See, e.g., NEC Corp. v. Peloton Interactive, Inc.*, No. 1:22-cv-987-CJB, 2024 WL 1533952, at *1 (D. Del. Apr. 9, 2024) (granting stay where two of the three asserted patents were subject to pending IPRs given the "real overlap" between the patents); Oral Order, *Speyside Med., LLC v. Medtronic CoreValve, LLC*, No. 1:20-cv-00361-JLH-CJB (D. Del. Sept. 30, 2021), Dkt. 155 (granting a stay where three of the five patents were challenged given "common specification and similar claim language" between the patents).

Rex Computing does not establish that a stay would be denied here. There, Judge Noreika emphasized that the parties were already "so far into this case" and

that there had “arguably [been] a little bit of delay in bringing the IPR [11 months since filing of complaint]” before denying the stay. (EX2003, 96:8-22.) This case is materially different. The case remained at an early stage, Twitch has served no invalidity contentions, and Patent Owner’s prediction of what Twitch will “almost certainly” do is conjecture on its face. (Br., 6.)

B. Factor 2: Weighs Against Denial – District Court Trial Will Occur More Than One Year *After* the FWD

Factor 2 is not close. Patent Owner concedes that trial is set for January 2029, *more than a year after* the projected Final Written Decision due date. (Br., 7.) That gap weighs strongly against denial.

Patent Owner’s fallback argument that the Board’s deadline could be extended by up to six months depends on a future good-cause finding. (Br., 7.) It is not the projected statutory deadline under *Fintiv*. (Paper 11, 9.) Patent Owner’s position would effectively rewrite Factor 2 to require the projected FWD deadline to precede trial by at least six months before the factor can weigh against denial. *Fintiv* imposes no such requirement. *Regardless*, even the hypothetical extended June 29, 2028 deadline would precede trial by more than six months.

Patent Owner also shifts the inquiry from trial to discovery and claim construction. (Br., 7-8.) The projected FWD deadline falls before the March 2028 Markman hearing and the June 2028 close of expert discovery. Thus, the Board

can resolve patentability before the district court reaches its most resource-intensive merits stages.

C. Factor 3: Weighs Against Denial – Investment in the District Court Is Not Significant

The parties have invested almost nothing in the merits. (Br., 8-9.) Fact discovery has not yet begun, and the parties have yet to take any depositions. Claim construction briefing will not begin until December 15, 2027, shortly before the projected FWD deadline. (EX1025, 15-17.) The district court has issued no substantive rulings and will not have done so by the January 6, 2027 institution deadline. Transfer briefing and other non-merits motions do not overlap with the Petition’s prior-art challenges. “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.” *Fintiv*, , Paper 11, 9–10; *see also Bio-Rad Lab’ys, Inc. v. Cal. Inst. of Tech.*, No. IPR2024-01451, Paper 11, 10 (P.T.A.B. Mar. 27, 2025) (weighing against exercising discretion because “expert reports, expert discovery, expert depositions, and pretrial motions and disclosures” had yet to occur).

Patent Owner’s list of anticipated document production, source-code review, written discovery, and contentions describes the future, not investment. (Br., 8.) As Patent Owner acknowledges, Factor 3 examines the “work already completed”

at institution, not work Patent Owner predicts the parties will perform months later.
(*Id.*)

Nor did Twitch unduly delay. “[I]t is often reasonable for a petitioner to wait to file its petition until it learns which claims are being asserted.” *Fintiv*, Paper 11, 11–12. Patent Owner’s complete asserted-claim set was not due until January 2027. Twitch nevertheless filed in June 2026 and challenged all claims 1–23, rather than waiting for the infringement contentions.

D. Factor 4: *Sotera* Stipulation Weighs Against Denial

Consistent with Patent Office precedent, Twitch provided a full *Sotera* stipulation. If the Board institutes review, Twitch will not advance in the parallel district court proceeding “any ground that the petitioner raised or reasonably could have raised during that inter partes review.” (Paper 7, 1.) A *Sotera* stipulation “weighs strongly in favor of not exercising discretion to deny institution” because it “mitigates any concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions.” *Sotera Wireless, Inc. v. Masimo Corp.*, No. IPR2020-01019, Paper 12, 18–19 (P.T.A.B. Dec. 1, 2020).

No rule requires the “*Sotera Plus*” stipulation that Patent Owner demands, and Patent Owner cites none. (Br., 9-12.) Twitch has served no invalidity contentions and identified no system-art theory. Factor 4 evaluates actual or likely

overlap based on the record—not hypothetical grounds Patent Owner imagines months before invalidity contentions are due.

A conventional *Sotera* stipulation remains meaningful even when system art may exist. *See Nikon Corp. v. Optimum Imaging Techs., LLC*, No. IPR2024-01373, Paper 17, 20–24 (P.T.A.B. Apr. 23, 2025) (*Sotera* stipulation substantially reduced overlap notwithstanding system art); *HP Inc. v. Universal Connectivity Techs., Inc.*, No. IPR2024-01428, Paper 12, 7–8 (P.T.A.B. Apr. 8, 2025) (finding *Sotera* stipulation mitigated duplication and inconsistent-decision concerns even where petitioner reserved certain system-art theories). *Sotera* itself did not require abandonment of every possible system-art defense, especially given that Twitch challenges all claims 1–23, while Patent Owner’s complaint identifies only claim 1.

Patent Owner’s authority does not show otherwise. *Code200* involved IPR art already identified in the district-court invalidity contentions, near-complete claim overlap, and no stipulation. *U.S. Venture* likewise involved overlapping references and complete overlap in the asserted patent claims. *DataDome* involved no stipulation at all. And *Motorola Solutions* turned on a district-court case that was already far advanced: the parties had served extensive infringement and invalidity contentions, exchanged opening and rebuttal expert reports, filed claim-construction briefs, conducted depositions, and held a claim-construction hearing

before a trial date eleven months before the projected FWD. Here, none of those events has occurred, and trial is more than a year after the projected FWD. This factor weighs strongly against denial.

E. Factor 5: Identity of the Parties Weighs Against Denial Because the FWD Is Likely to Precede the Trial

The parties are the same in the parallel district court litigation and this IPR. Where, as here, the FWD “is likely to issue before the district court trial,” this factor weighs against discretion. *BMW of N. Am., LLC v. Mich. Motor Techs. LLC*, No. IPR2023-01234, Paper 11, 14–15 (P.T.A.B. Jan. 26, 2024).

F. Factor 6: Other Considerations Weigh Strongly Against Discretionary Denial

The strength of the Petition independently weighs against discretionary denial. This IPR will allow the Office to correct material errors during prosecution (*see supra* Section II.A), compelling economic and public interest considerations favor examination of the challenged claims (*see supra* Section II.B), and the Petition is strong on the merits.

1. The grounds are straightforward and compelling

Patent Owner does not identify a single gap in the prior art mapping. (*See Br.*, 16-17.) Instead, Patent Owner manufactures a claim construction dispute where none exists. Twitch does not ask the Board to adopt a special construction of “interaction.” Under its ordinary meaning, “interaction via the social online

service” is not limited to a “comment” containing “keywords,” yet the Examiner repeatedly analyzed the claims through those unrecited narrowing concepts. *See supra* Section II.A. Twitch’s statement that no express construction is necessary is entirely consistent with applying the term according to its ordinary meaning.

Importantly, the Petition’s unpatentability showing does not hinge on a broad construction of “interaction.” Multiple grounds in the Petition disclose even the keyword-comment concepts not recited in claim 1. The Examiner’s error is therefore relevant to why the challenged claims escaped proper examination; it is not a premise necessary to Twitch’s prior-art grounds. Patent Owner’s suggestion that Twitch might advocate a narrower construction in district court is pure speculation. This is an Examiner error issue, not a claim construction issue.

2. Patent Owner fails to show improper reliance on expert testimony

Patent Owner identifies no substantive deficiency in Dr. Houh’s declaration. Instead, it alleges that the declaration is “substantially duplicative.” But from a **234**-page declaration, Patent Owner identifies only ***one*** sentence that purportedly demonstrates duplication. (Br., 17–18.) Even that sentence provides more reasoning than its alleged counterpart in the Petition. (*Compare* EX1002, ¶78 with Pet., 11.) The declaration is approximately twice the length of the Petition and provides more extensive technical analysis and explanation of the motivations to

combine. (*See, e.g.*, EX1002, ¶¶ 78-83, 102-103, 204-210, 220-224, 232-239, 394-401.) Patent Owner's reliance on *Xerox Corp.* is therefore misplaced.

Patent Owner also complains that the declaration was cited frequently in the Petition. But Patent Owner identifies no authority making citation frequency a defect. Many of those citations simply direct the Board to the declaration's corresponding discussion of a claim element for readability; they do not substitute expert opinion for missing prior-art disclosure or constitute circular reasoning. (*See, e.g.*, Pet., 24 (citing EX1002, ¶¶ 104-116), 43 (citing EX1002, ¶¶ 166-168), 59 (citing EX1002, ¶¶ 240-244).)

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that Patent Owner's request be denied and the Petition be referred for merits consideration.

Dated: October 6, 2026

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I hereby certify that the attached PETITIONER'S OPPOSITION TO
PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF
INSTITUTION and supporting materials were served on the below date via email
(by agreement) to the following counsel of record for Patent Owner:

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