

Filed on behalf of IngenioSpec, LLC
By: Douglas R. Wilson
Michelle E. Armond
Joseph Li
Monica Arnold
ARMOND WILSON LLP
100 Bayview Circle, Suite 300
Newport Beach, CA 92660
Telephone: (949) 932-0778
Email: ipr@armondwilson.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

INGENIOSPEC, LLC,
Patent Owner.

Case No. IPR2026-00419
U.S. Patent No. 12,313,913

PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL

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TABLE OF EXHIBITS

Exhibit No.	Description
2001-2010	RESERVED
2011	Defendant's Proposed Claim Constructions, <i>IngenioSpec, LLC v. Apple Inc.</i> , Case No. 1:25-cv-00867 (W.D. Tex. Dec. 22, 2025)
2012	RESERVED
2013	RESERVED
2014	RESERVED
2015	Declaration of Peter Tong
2016	RESERVED
2017	RESERVED
2018	Defendant's Reply Claim Construction Brief, <i>IngenioSpec, LLC v. Apple Inc.</i> , Case No. 1:25-cv-00867, Dkt. No. 52 (W.D. Tex. Feb. 18, 2026)
2019	RESERVED
2020	Claim Construction Order, <i>IngenioSpec, LLC v. Apple Inc.</i> , Case No. 1:25-cv-00867, Dkt. No. 69 (W.D. Tex. Apr. 6, 2026)
2021-2027	RESERVED
2028	Notice of Voluntary Dismissal, <i>IngenioSpec, LLC v. Apple Inc.</i> , Case No. 1:25-cv-01101, Dkt. No. 6 (W.D. Tex. Aug. 8, 2025)

I. INTRODUCTION

This is the ninth serial IPR petition filed by Apple against IngenioSpec’s patents. From November 2025 to the filing of this IPR challenge eight months later in July 2026, Apple has now filed nine IPR petitions challenging seven of IngenioSpec’s patents.¹ Institution has already been discretionarily denied for the ’104 and ’789 Patents. *See* IPR2026-00142, Paper 10 at 1; IPR2026-00144, Paper 9 at 1. This latest challenge against the ’913 Patent should be discretionarily denied because the ’913 Patent was dismissed from district court litigation over a year ago and is no longer being asserted against Apple, *see* Pet. at 121, making it an inefficient use of Board resources to institute this IPR. Discretionary denial is also warranted because of IngenioSpec’s settled expectations, Apple’s inconsistent claim construction positions, and the weakness of the Petition’s unpatentability challenge.

Because Apple fails to justify instituting this ninth serial IPR petition against IngenioSpec’s patents, institution should be denied.

¹ *See* Paper 2 (“Pet”); IPR2026-00142, Paper 2; IPR2026-00143, Paper 2; IPR2026-00144, Paper 2; IPR2026-00253, Paper 1; IPR2026-00331, Paper 2; IPR2026-00332, Paper 2; IPR2026-00339, Paper 2; IPR2026-00340, Paper 2.

II. IT IS AN INEFFICIENT USE OF BOARD RESOURCES TO REVIEW THE '913 PATENT THAT IS NO LONGER BEING ASSERTED IN DISTRICT COURT

Apple's Petition acknowledges that "[t]he '913 Patent was asserted in the following litigation matter: *IngenioSpec, LLC v. Apple, Inc.*, Case No. 1:25-cv-1101 (W.D. Tex.)" and that "[t]he matter was dismissed on August 20, 2025, without prejudice." Pet. at 121; *see also* EX2028 at 1. The Director recently explained that "dismissal of all or substantially all claims in a co-pending litigation" constitutes "exceptional circumstances" warranting revisiting a decision to institute trial. *Light & Wonder v. Evolution Malta*, IPR2025-01072, Paper 30 at 3-4 (Dir. June 22, 2026) (precedential). That is because "it is an inefficient use of Board resources to review claims of a patent that are no longer being asserted in district court." *Sportradar v. SportsCastr*, IPR2025-00313, Paper 19 at 2 (Dir. July 16, 2025) (denying institution); *see also* *Coretronic v. Maxell*, IPR2025-00941, Paper 10 at 3 (Dir. Sept. 26, 2025) (denying institution: "Patent Owner is no longer asserting the challenged patent in the parallel district court proceeding. It is an inefficient use of Board resources to review claims of a patent that will not be further addressed in the district court trial involving the parties." (citation omitted)).

Indeed, the Board has recently discretionarily denied institution where a challenged patent was dismissed without prejudice from a district court litigation. *See, e.g., Cellco P'ship v. Pegasus Wireless Innovation*, IPR2025-00290, Paper 18

at 4 (Dir. June 26, 2025) (“[I]t is an inefficient use of Board resources to review patents that have been dismissed on a joint motion by Petitioner and Patent Owner.”); IPR2025-00290, EX1025 at 2-3 (order dismissing infringement allegations as to patents without prejudice); *Google v. Mullen Indus.*, IPR2025-00227, Paper 13 at 4 (Dir. June 25, 2025) (“[I]t is an inefficient use of Board resources to review the ’540 patent that has been dismissed from the litigation.”); IPR2025-00227, Paper 12 at 6 (Google: “[T]he district court dismissed Mullen’s infringement claims—without prejudice to the ’540 patent being later asserted....”).

Because it would be an inefficient use of Board resources to review the ’913 Patent that IngenioSpec is no longer asserting against Apple, discretionary denial is warranted.

III. PATENT OWNER’S SETTLED EXPECTATIONS FAVOR DISCRETIONARY DENIAL

In considering discretion, the Director may address the “[s]ettled expectations of the parties, such as the length of time the claims have been in force.” Memorandum, “Interim Processes for PTAB Workload Management,” at 2 (Mar. 26, 2025) (“Interim Processes Memo”); *see also Magnolia Med. Techs. v. Kurin*, IPR2026-00097, Paper 17 at 8 (Dir. May 14, 2026) (precedential) (“Settled expectations of either party may be a factor in determining whether to institute an AIA review.”).

The '913 Patent and other challenged patents have been licensed to third parties, supporting IngenioSpec's settled expectations. EX2015 ¶¶ 2-8; *Alliance Laundry Sys. v. PayRange*, IPR2025-00950, Paper 11 at 3 (Dir. Sept. 19, 2025) (informative) ("settled expectations favoring Patent Owner" where "Patent Owner presents evidence that it has licensed the challenged patent"); *Hisense v. VideoLabs*, IPR2025-00880, Paper 11 at 2 (Dir. Oct. 10, 2025) (settled expectations where "the challenged patents have been licensed").

IngenioSpec also wrote to Apple on April 9, 2025 notifying Apple that the '913 Patent application had been allowed and again on June 9, 2025 notifying Apple of the issuance of the '913 Patent—both times before the now-dismissed district court litigation was filed, EX2015 ¶ 9—which further "favor[s] discretionary denial," *Hisense*, IPR2025-00880, Paper 11 at 2 ("Patent Owner sent Petitioner a notice letter regarding Patent Owner's patent portfolio.").

IngenioSpec's settled expectations favor discretionarily denying institution.

IV. THE WEAKNESS OF THE UNPATENTABILITY CHALLENGE SUPPORTS DENYING INSTITUTION

The "strength of the unpatentability challenge" may also be considered in deciding whether to exercise discretion to deny institution. Interim Processes Memo at 2. Here, Apple's facially-deficient Petition supports denying institution.

First, the Petition fails to address at least one limitation in almost every challenged claim in each of the Petition’s six grounds and thus on its face fails to satisfy 37 C.F.R. § 42.104(b)(4), requiring that “[t]he petition must specify where each element of the claim is found in the prior art patents or printed publications relied upon” *See* Pet. at 7 (asserting that it has satisfied the rule). As identified in the bullet-point list below, the Petition does not address the requirement of “at least partially contained within the head-worn structure” or comparable claim limitations for the following labeled limitations, which include limitations in independent Claims 1, 71, 94, 109, and 117 as well as numerous dependent claims.

- Ground 1 (Claims 1-3, 23-37, 40-41, 45, 65-70): Claims 1[K], 24[A], 40[A], 40[B], 45[A]. *See* Pet. at 25-26, 29, 38-40.
- Ground 2 (Claims 4-14, 20-22, 46-50, 54-64, 94-96): Claim 94[K]. *See* Pet. at 74.
- Ground 4 (Claims 38-39, 42-44, 71-73, 79, 92-93, 117-119, 122, 124-125): Claims 38[A], 44[A], 71[J], 71[K], 92[A], 117[J], 117[K], 119[A], 119[B], 124[A]. *See* Pet. at 91, 94-96, 98, 101-103.
- Ground 5 (Claims 18-19, 51-53, 74-78, 80-81, 83-86, 90-91, 97-112, 114-116, 120, 123): Claims 51[A], 51[B], 75[A], 75[B], 77[A], 81[A], 81[B], 84[A], 86[A], 90[A], 102[A], 102[B], 103[A], 105[A], 106[A], 106[B],

109[J], 110[A], 112[A], 112[B], 116[A], 116[B]. *See* Pet. at 105, 107-110, 112-118.

- Ground 6 (Claims 82, 87-89, 113, 121): Claims 82[A], 113[A], 121[A].
See Pet. at 119-121.

For example, in Ground 1, the Petition **never addresses** the Claim 1[K] requirement of at least one conductive element “at least partially included within the head-worn structure.” *See* Pet. at 25-26. The Petition asserts that “[a]udio device 10D can ‘include’ power contacts 164 (a conductive element)” and mentions the “interconnection between the power contacts 164 and the corresponding contacts of the cradle.” *Id.* at 25. Earlier in the Petition, Apple alleged as to the head-worn structure recited in Claim 1[B] that “Jannard’s audio device 10D includes the claimed **head-worn structure** because it is eyewear with a support structure, such as **frame 42D**, worn on the user’s head.” *Id.* at 14 (emphases added). In other words, Apple asserts that the frame 42D, as part of the audio device 10D, corresponds to the head-worn structure of Claim 1. But nowhere does the Petition assert that the power contacts 164 (the Petition’s alleged “at least one conductive element”) are at least partially included within the frame 42D (the Petition’s alleged head-worn structure). Apple’s expert offers nothing more and is equally deficient. *See* EX1003 ¶¶ 65-66. Thus, the Petition fails to address, much less show, “at least one conductive element at least partially included within the head-worn structure,” as

recited by Claim 1[K]. This material deficiency is present for independent Claims 1, 71, 94, 109, and 117.

Ground 3 (Claims 15-17) is not identified in the bullet-point list above, but the challenges to the dependent claims in Ground 3 fail at least because those claims depend from independent Claim 1 challenged in Ground 1.

The Board’s “determination regarding institution” must be “based on what the Petition actually presented and not what it could have reasonably contained had it been reformulated.” *Securus Techs. v. Global Tel*Link Corp.*, IPR2016-00267, Paper 10 at 5 (P.T.A.B. Sept. 12, 2016). Thus, the Petition’s failure to address the above limitations at all means Apple cannot sustain its burden on those claims. *See, e.g., Unified Patents v. SMTM Techs.*, IPR2019-00434, Paper 6 at 19 (P.T.A.B. July 30, 2019) (no reasonable likelihood of success where “Petitioner entirely fails to address [claim] limitation”); *see also Jiawei Tech. (HK) v. Richmond*, IPR2014-00937, Paper 24 at 5 (P.T.A.B. Feb. 6, 2015) (denying request for rehearing regarding denial of institution: “Petitioner’s complaints about our analysis do not undo Petitioner’s failure to address the claim language in the Petition.”). Further, it would be an inefficient use of Board resources to institute as to all claims even if the Petition established a reasonable likelihood of prevailing as to any or a subset of the challenged claims. *See, e.g., Deeper v. Vexilar*, IPR2018-01310, Paper 7 at 43 (P.T.A.B. Jan. 24, 2019) (informative) (“[I]nstituting a trial with respect to all

twenty-three claims and on all four grounds based on evidence and arguments directed to only two claims and one ground would not be an efficient use of the Board’s time and resources.”); *Chevron Oronite v. Infineum USA*, IPR2018-00923, Paper 9 at 11 (P.T.A.B. Nov. 7, 2018) (informative) (“[I]nstituting a trial with respect to all twenty claims based on evidence and arguments directed to [two claims] is not an efficient use of the Board’s time and resources.”).

Second, the Petition is supported by an expert declaration from Apple’s expert, Dr. Smith, that largely “repeats, *verbatim*, the conclusory assertion[s] for which it is offered to support.” *Xerox v. Bytemark*, IPR2022-00624, Paper 9 at 15 (P.T.A.B. Aug. 24, 2022) (precedential) (denying institution); *compare* Pet. at 7-121, *with* EX1003 ¶¶ 32-519. Dr. Smith’s parroting almost verbatim Apple’s Petition, as shown in the illustrative snapshot below, confirms the Petition’s weakness. *See, e.g., Xerox*, IPR2022-00624, Paper 9 at 15-17; *TikTok v. NTECH Props.*, IPR2024-01339, Paper 9 at 16 (P.T.A.B. Feb. 25, 2025) (“Petitioner fails to establish a reasonable likelihood of” prevailing where its expert “testimony repeats, almost verbatim, the language in the Petition without any further explanation or supporting reasoning or evidence.”).

Pet. at 17 Ground 1, Claim 1[D]	Smith Decl. ¶ 50 Ground 1, Claim 1[D]
Audio device 10D can include motion sensors. (EX1004, 35:4-9; EX1003, ¶50.) For example, a wearable electronic interface 601 of audio device 10D includes a sensor that measures and indicates a time-varying parameter, such as speed or acceleration. (EX1004, 24:61-25:3; EX1003, ¶50.) The sensor may be “built into ... a pair of eyewear” and thus contained within the head-worn structure and providing motion data (<i>e.g.</i>, velocity) of the audio device. (EX1004, 25:26-28; EX1003, ¶50.)	50. Jannard discloses that audio device 10D can include motion sensors. (EX1004, 35:4-9.) For example, a wearable electronic interface 601 of head-worn audio device 10D includes a sensor that measures and indicates a time-varying parameter, such as speed or acceleration. (EX1004, 24:61-25:3.) The sensor may be “built into ... a pair of eyewear,” <i>i.e.</i>, audio device 10D, thus contained within the head-worn structure and providing motion data (<i>e.g.</i>, velocity) of the audio device. (EX1004, 25:26-28.)

V. PETITIONER’S INCONSISTENT CLAIM CONSTRUCTION POSITIONS WARRANT DISCRETIONARY DENIAL

Board “rules discourage petitioners from seeking broader constructions at the Board to support a patentability challenge while seeking narrower constructions in litigation to avoid infringement liability.” *Revvo Techs. v. Cerebrum Sensor Techs.*, IPR2025-00632, Paper 20 at 4 (Dir. Nov. 3, 2025) (precedential). That is what Apple has done here: Apple asserts that “[t]he Board *should not construe* any of the claim terms” in the IPR, Pet. at 5 (emphasis added), while simultaneously proposing in “district court litigation involving the parent ’901 patent,” *id.* at 3, that:

- limitations reciting a “head-worn” apparatus or device be construed as “electronic eyewear or headwear,” EX2011 at 1, and
- limitations reciting a “speaker... proximate to” an ear, a first ear, or a second ear be construed as a “speaker... near” an ear, a first ear, or a second ear, *id.* at 1-2.

Those same or similar terms appear in the '913 Patent. As to the meaning of “proximate,” Apple further argued in the '901 Patent district court litigation that it excludes “inside” the ear. EX2018 at 9 (“None of these terms mean ‘inside.’”); *see also* IPR2026-00331, Paper 10 at 19 (Apple asserting that the court “confirmed on the record that ‘proximate’ means ‘near’ but excludes standalone in-ear devices” (citing EX2020; EX1041 at 56:22-59:11)).

Apple’s inconsistent claim construction positions are exactly the type of gamesmanship the Office has discouraged, including in an informative decision discretionarily denying institution where the petitioner argued in the IPR “that the term ‘composition’ should be given its plain and ordinary meaning, whereas in the parallel proceeding Petitioner asserted that the term ‘composition’ was narrower than its plain and ordinary meaning.” *Sun Pharms. Indus. v. Nivagen Pharms.*, IPR2025-00893, Paper 18 at 2-3 (Dir. Sept. 19, 2025) (informative). Apple’s inconsistent claim constructions between the two forums warrant denial of its Petition. *See, e.g., id.* at 3 (discretionary denial where the petitioner “advanced a narrow construction in district court and advances a broader construction in its Petition”); *Revvo Techs. v. Cerebrum Sensor Techs.*, IPR2025-00632, Paper 36 at 4 (Dir. Jan. 26, 2026) (“The appropriate course of action... is to deny institution” where petitioner “raise[s] different claim constructions in the two forums.”).

Further, the district court in the '901 Patent litigation issued a claim construction order adopting Apple's proposed construction for the "head-worn" apparatus or device limitations as "electronic eyewear or headwear," EX2020 at 2-3, contradicting Apple's "no claim construction is necessary" approach here, Pet. at 5. Denial of institution is appropriate for this additional reason.

VI. APPLE IDENTIFIED NO MATERIAL ERROR WARRANTING IPR

Apple establishes no material error that supports instituting this IPR. Apple claims that the '913 Patent "issued after a flawed examination." Pet. at 2. Specifically, it asserts that "the applicant secured allowance by arguing that capacitive switches could not sense 'force'" but that "the specification identifies capacitive switches activated by electrical force—contradicting the applicant's argument." *Id.* According to Apple then, "[t]he Examiner allowed the application (including claims directed to 'force sensing') only by overlooking these specification disclosures, and analogous disclosures in the prior art (Kallman)." *Id.*

Apple's assertions of error are unsupported and meritless. First, Apple's speculation concerning the use of the term "electrical force" in the specification with respect to capacitance represents Apple's failure to recognize that "electrical force" is well known to be an interaction between two electric charges. The strength of such an electric force is governed by Coulomb's law. Such "electrical force" reference in the specification, *see* EX1001 at 38:66-39:3, 40:1-5, does not present

any inconsistency or contradiction with any argument about sensing a force induced on a force sensing device by a user input. *See, e.g.*, Pet. at 130 (Claim 23[F]: “a force sensing device configured to receive a user input based on a force induced on the force sensing device, the force sensing device being an electrical component configured to sense force...”). Further, Apple’s citations to the file history at pages 32-36 at 448-449 relate to the Examiner’s search terms and thus do not support Apple’s assertions. *See* Pet. at 2 (citing EX1002 at 32-36, 448-449). Second, regarding the independent claims, the Examiner’s statement of reasons for allowance explained:

[N]one of [the cited art] teaches that wherein the piezoelectric device being contained within the head-worn structure; wherein a radiation detector contained within the head-worn structure and configured to capture radiation data, and wherein the head-worn personal electronic apparatus is configured to determine whether the head-worn personal electronic apparatus is being worn by the user based on the radiation data captured by the radiation detector; and wherein a force sensing device configured to receive a user input based on a force induced on the force sensing device, the force sensing device being contained within the head-worn structure.

EX1002 at 1280, 1282. In other words, the Examiner allowed the claims because the cited art failed to disclose multiple limitations (including “force sensing”) in combination. Apple never addresses how the Examiner erred in this respect. *See* Pet. at 2; *Vestas-Am. Wind Tech. v. Gen. Elec.*, IPR2018-01029, Paper 9 at 14 (P.T.A.B. Oct. 19, 2018) (denying institution: “Petitioner has not pointed to error by

the Examiner or even addressed the findings made by the Examiner during the reexamination proceeding.”).

The absence of material error weighs against institution.

VII. CONCLUSION

The Director should discretionarily deny institution of this challenge to the '913 Patent that has already been dismissed from the district court proceeding.

ARMOND WILSON LLP

Dated: September 21, 2026

By: /Douglas R. Wilson/
Douglas R. Wilson (Reg. No. 54,542)
Michelle E. Armond (Reg. No. 53,954)
Joseph Li (Reg. No. 74,998)
Monica Arnold (Reg. 77,262)
Attorneys for IngenioSpec, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a true copy of the foregoing **PATENT OWNER’S REQUEST FOR DISCRETIONARY DENIAL** and **EXHIBITS 2011, 2015, 2018, 2020, AND 2028** are being served electronically on September 21, 2026 to the following lead and backup counsel for Petitioner to the following email addresses:

Alex S. Yap
AYap@mofo.com

Mehran Arjomand
MArjomand@mofo.com

Bryan Blumenkopf
BBlumen@mofo.com

Apple-IngenioSpec-IPR@mofo.com

ARMOND WILSON LLP

Dated: September 21, 2026

By: /Douglas R. Wilson/
Douglas R. Wilson (Reg. No. 54,542)
Michelle E. Armond (Reg. No. 53,954)
Joseph Li (Reg. No. 74,998)
Monica Arnold (Reg. 77,262)
Attorneys for IngenioSpec, LLC