

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC. AND SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

GAEA, LLC,
Patent Owner.

Case IPR2026-00425
Patent 10,776,023

**BRIEF IN SUPPORT OF PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL**

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EXHIBIT LIST

Exhibit No.	Exhibit Description
2001	July 29, 2026 Gaea's Preliminary Infringement Contentions Against Meta
2002	September 11, 2026 Meta's Invalidity Contentions
2003	July 6, 2026 Gaea's Preliminary Infringement Contentions Against Samsung
2004	August 31, 2026 Samsung's Invalidity Contentions
2005	August 31, 2026 Samsung's Subject Matter Ineligibility Contentions
2006	Ex. A to 7-29-2026 Gaea's Preliminary Infringement Contentions Against Meta
2007	Ex. A to 7-6-2026 Gaea's Preliminary Infringement Contentions Against Samsung
2008	Sept. 25, 2026 Email from Meta to Gaea
2009	Mar. 26, 2025 Stewart Memorandum InterimProcesses-PTABWorkloadMgmt
2010	Maintenance Fee Statement
2011	April 1, 2025 Director's CSIS Statement
2012	October 25, 2019 List of References Cited by Examiner, citing U.S. Pat. Pub. No. 2004/0174627
2013	November 10, 2020 Information Disclosure Statement

I. INTRODUCTION

Patent Owner Gaea, LLC, (“Gaea” or “Patent Owner”) respectfully requests that the Board exercise its discretion and deny institution of this Petition for *inter partes* review of U.S. Patent No. 10,776,023 (EX1001) under 35 U.S.C. § 341(a). Co-pending with the Petition are two district court actions for patent infringement of the ’023 patent, one in the Northern District of Texas and the other in the Eastern District of Texas (the “NDTX Case” and “EDTX Case” respectively). Pet. at 3. It would be inefficient and risk inconsistent rulings to allow the Petition to proceed.

First, Petitioner Meta Platforms, Inc. and Petitioner Samsung Electronics Co., Ltd. (“Meta” and “Samsung” or collectively “Petitioners”) fail to satisfy the requirements of *Advance Bionics* because Petitioners do not establish material error by the Patent and Trademark Office (“PTO” or “the Office”). For at least this reason, the Petition should be denied.

Additionally, based on the application of the *Fintiv* factors as detailed below, due to Petitioners’ substantial delay in filing the Petition, and the significant risk of substantial overlapping issues between the instant Petition and the parallel district court actions, denial is warranted.

Lastly, the Board should also exercise its discretion and deny institution under the factors that Acting Director Stewart outlined in her March 26, 2025, memorandum. These additional factors further support discretionary denial here: (1)

the merits of the Petition are weak; (2) the Petitioners improperly rely on and largely parrot an expert declaration; and (3) the claims have been in force for more than six years and have never been subject to challenge until now.

II. THE PETITION FAILS TO SATISFY *ADVANCED BIONICS* FOR EITHER PRIMARY REFERENCE PREVIOUSLY PRESENTED TO THE EXAMINER

All four grounds rely principally on prior art previously presented to the Office. Grounds 1–2 rely on Olster, which the Examiner repeatedly applied during prosecution. Grounds 3–4 rely on Hashimoto, which the Examiner specifically searched and cited immediately before allowance. Pet., 5. Yet Petitioners fail to establish material Office error as to either reference.

Under *Advanced Bionics*, once the same or substantially the same art or arguments were previously presented to the Office, Petitioner must demonstrate that the Office materially erred. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8–9 (PTAB Feb. 13, 2020) (precedential). If reasonable minds can disagree regarding the Office’s treatment of the art or arguments, material error has not been shown. *Id.* at 9. *Ecto World* confirms that Part Two requires Petitioner to explain—with reference to *Becton Dickinson* factors (c), (e), and (f)—how the Examiner materially erred: the extent to which the art was evaluated, the error allegedly made, and whether additional evidence or facts warrant

reconsideration. *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 4–6 (Director May 19, 2025) (precedential as to § A).

Further, this is not a mixed petition in which only some grounds rely on previously presented primary art. Every asserted ground relies on one of the two foundational references, Olster or Hashimoto: Grounds 1–2 on Olster and Grounds 3–4 on Hashimoto. Pet., 5. Indeed, there is no ground resting on a principal reference outside the § 325(d) analysis addressed below.

A. Petitioners Do Not Acknowledge the Examiner’s Consideration of Hashimoto, Much Less Show Material Error

Petitioners devote substantial attention to alleged Examiner error concerning Olster for Grounds 1 and 2. But they do not even acknowledge that Hashimoto—the principal reference for Grounds 3 and 4—was specifically searched and cited by the Examiner during prosecution, much less attempt to show material error in the Office’s treatment of that reference.

The prosecution record Petitioners omit is particularly significant. Hashimoto was not newly discovered art. After Applicant’s April 24, 2020 amendment added the requirements that the storage-device policy be received “from a host” and indicate a “recording method” (EX1002, 223–24), the Examiner conducted additional prior-art searches directed to those newly amended concepts. On May 1, the Examiner searched “policy or policies” with “host or server or cpu or client,”

and separately searched writing with “policy” or “method.” *Id.*, 299–300. Two days later, the Examiner specifically searched Hashimoto by its publication number, US 2016/0313943, and then searched the resulting references for “polic[y],” “rule,” “criteria,” or “parameter.” *Id.*, 301. The Examiner thereafter identified Hashimoto on the PTO-892 Notice of References Cited accompanying the allowance papers. *Id.*, 245–46. The Notice of Allowability was expressly responsive to Applicant’s April 24 submission and stated that claims 1–36 were allowable over the prior art of record. *Id.*, 243–44.

Hashimoto therefore satisfies *Advanced Bionics* Part One. Indeed, *Ecto World* holds that Part One is satisfied where asserted art merely appeared on an IDS, even if the Examiner never applied it in a rejection. IPR2024-01280, Paper 13 at 4–5. The record here is even stronger: the Examiner himself specifically searched Hashimoto following the dispositive amendment and cited it in the allowance papers.

Yet Petitioners provide no Part Two analysis directed to Hashimoto. For Olster, Petitioners repeatedly assert that the Examiner “materially erred” and identify particular disclosures purportedly overlooked. Pet., 14–15, 31–32. For Hashimoto, Ground 3 instead proceeds directly to the merits, asserting that “Hashimoto discloses each limitation of claims 1, 9, and 14 as features in a single embodiment.” Pet., 54. Ground 4 likewise relies principally on Hashimoto, adding Kilian for additional limitations, without identifying any material error in the

Office’s treatment of Hashimoto. Pet., 72–81. That does not satisfy Part Two. *Ecto World* holds that “generalized statements as to the strength” of a petition do not sufficiently identify material error and rejects shifting to the Board the burden of scouring a petition to assemble a Part Two argument. IPR2024-01280, Paper 13 at 5–6. Petitioners are required to explain how the Examiner materially erred notwithstanding Hashimoto’s prior presentation to the Office. They do not. Their assertion that Hashimoto discloses the challenged limitations (Pet., 54–71) addresses the merits of their challenge—not why the Office materially erred in its prior treatment of Hashimoto. Petitioners’ failure to identify any Hashimoto-specific error weighs strongly in favor of denying Grounds 3–4 under § 325(d), particularly given the Examiner’s targeted consideration of Hashimoto immediately before allowance.

B. Petitioners’ Claim that the Examiner “Overlooked” Olster Is Contradicted by the Prosecution Record

Although Petitioners recognize their *Advanced Bionics* Part Two burden for Olster, their alleged error is contradicted by the prosecution history. They contend that the Examiner “completely overlooked” two supposedly critical Olster teachings: that policies may be distributed “from a client 102,” and that Olster’s replication functionality constitutes the claimed “recording method.” Pet., 14–15, 31–32. Neither premise withstands the record.

1. The Examiner Was Expressly Presented with—and Specifically Searched Olster for—the Client-Distribution Disclosure that Petitioners Claim Was Overlooked

Petitioners assert that “there is no evidence in the record confirming that the Examiner considered” Olster's disclosure that policies may be “distributed from a client 102,” emphasizing that the Examiner did not cite that particular language. Pet., 14, 31. But Applicant quoted the exact disclosure to the Examiner immediately before allowance:

The policies may be stored on and distributed from a client 102 to the data storage system 100 and to all zones in the data storage system and to all nodes in the data storage system.

EX1002, 231 (quoting EX1005, ¶30).

Applicant did so while addressing the newly amended requirement that the controller receive the storage-device policy “from a host.” EX1002, 223–24, 231. Petitioners therefore cannot establish that this disclosure was overlooked merely because the Examiner did not repeat the same sentence in an Office Action. The purportedly overlooked language was expressly placed before him in connection with the limitation at issue.

The contemporaneous EAST search history does more than reinforce that conclusion; it directly contradicts Petitioners' characterization of that history. Petitioners acknowledge that the Examiner searched for “host” and equivalent terms—specifically, “host or server or cpu or client”—but argue that he “did not

reference or acknowledge that Olster expressly disclosed” the very host-related teaching on which Petitioners now rely. Pet., 14. What Petitioners omit, however, is that the search they cite *was a search of Olster itself*. Search S215 retrieved ***US20150052167—Olster’s publication number***. EX1002, 299. The Examiner then searched S215 for “policy or policies” *together with* “host or server or cpu,” producing two hits. *Id.*, 300 (S227). Eighteen minutes later, the Examiner ran another Olster-specific search, this time expressly adding “client”—the very term Petitioners identify in asserting that the Examiner failed to acknowledge Olster’s client-distribution disclosure. Pet., 14. Indeed, the search string he used was: “S215 and ((policy or policies) same (host or server or cpu or ***client***))” *Id.* (S228) (emphasis added). That search again produced two hits. *Id.* Four minutes later, the Examiner broadened the Olster-specific search to include “criteria,” while retaining “client,” again producing two hits. *Id.* (S229).

The premise of Petitioners’ asserted Examiner error is therefore demonstrably incorrect. Petitioners point to the Examiner’s search for “host or server or cpu or client” as evidence that he failed to acknowledge Olster’s host/client disclosure (Pet., 14), but that same search history shows that ***Olster was the reference being searched for those very terms***. And that occurred after Applicant had expressly quoted Olster’s disclosure that policies may be “distributed from a client 102” while addressing the newly added “from a host” limitation. EX1002, 223–24, 231.

Therefore, Petitioners' argument that "there is no evidence in the record confirming that the Examiner considered" this Olster disclosure is not merely unsupported—it is directly contradicted by the same EAST search history on which Petitioners rely.

2. The Office Also Confronted the Precise Dispute Petitioners Now Raise Over Olster's Replication-and-Placement Policy

Petitioners' second alleged oversight fares no better. Pet., 14-15, 29-32. Petitioners contend that the Examiner overlooked Olster's disclosure covering its replication component which allegedly provides redundancy, including through RAID, which Petitioners now characterize as a "recording method" for writing content to storage media. *Id.* But the Examiner had already relied on Olster's paragraphs 30–31, including paragraph 31's teaching that the "replication and placement component of a policy defines the replication and placement of data objects in the data storage system." EX1002, 204–05. Applicant likewise addressed that functionality, explaining that Olster's replication-and-placement policy determines "how many times content is replicated and where the content is placed in a storage system." *Id.*, 162–64.

Most importantly, Applicant addressed the issue again after adding the "recording method" limitation. Immediately after quoting paragraph 30's client-distribution language, Applicant explained that Olster has "two components, a replication and placement component and a searchability component," described what the replication-and-placement component does, and expressly argued that

neither component “would result in a recording method for writing content to a storage media.” *Id.* at 231–32.

That is substantially the dispute Petitioners now ask the Office to revisit. Petitioners contend that Olster’s replication functionality is a recording method. Pet., 30–32. Applicant expressly argued to the Examiner that it is not. EX1002, 231–32. Whatever the ultimate merits of that disagreement, it is not evidence that the underlying Olster teaching was overlooked.

Petitioners thus must do more than offer a competing interpretation of Olster. Because the Examiner actually applied Olster during prosecution, Petitioners must demonstrate material error—e.g., by showing that Olster teaches the disputed limitation and that “no reasonable examiner could have found otherwise.” *Ecto World*, Paper 13 at 5–6. They cannot make that showing where Applicant expressly presented the very disclosure now invoked and explained why Olster’s replication-and-placement component was not the claimed recording method. EX1002, 231–32.

Petitioners attempt to transform this previously considered issue into Examiner error by emphasizing Olster’s paragraph 35, which discusses redundancy and RAID. Pet., 14–15, 29–30. But the absence of a separate citation to paragraph 35 does not establish that the Examiner overlooked the underlying functionality. Paragraph 31 identifies the relevant “replication and placement component.” EX1005, ¶31. Paragraph 34 then discusses replication and resiliency, including

synchronous and asynchronous replication; paragraph 35 further explains that partial replication may provide redundancy and identifies RAID as another resiliency configuration. *Id.*, ¶¶34–35.

Section 325(d) does not require an examiner to list every paragraph that elaborates upon a teaching the Office actually evaluated. Paragraph 35 does not identify a different storage-policy component or state that Olster’s replication-and-placement component is a “recording method.” It instead supplies additional detail concerning redundancy and resiliency functionality Petitioners now rely upon, while the Examiner and Applicant expressly addressed Olster’s replication and placement functionality. EX1002, 162–64, 204–05, 231–32; EX1005, ¶¶31, 34–35.

The Petition confirms the point because the proposition Petitioners say the Examiner overlooked is not actually stated in Olster. Petitioners instead improperly rely on their expert to fill the gap. Dr. Litz opines that Olster’s replication component “is a recording method,” characterizes replication and RAID as writing methods involving striping and mirroring, and explains how RAID may be used to recover a defective SSD block or page. Pet., 30–31 (citing EX1003, ¶¶90–92). The asserted chain is therefore not an overlooked Olster disclosure; it is Petitioners’ new interpretation of Olster’s previously considered replication functionality.

Nor does Petitioners’ reliance on claim 4 bridge that gap: claim 4’s requirement that a recording method include instructions related to media-defect

treatment does not establish that anything characterized as media-defect treatment is itself the claimed recording method. And Olster's paragraph 35 itself does not discuss defective SSD blocks or pages; that more specific theory comes from Petitioners' expert. Pet., 30–31; EX1003, ¶92.

Thus, Petitioners have not identified a materially different Olster teaching that escaped examination. Instead, they ask the Office to accept a new interpretation of functionality disclosed in Olster that the Examiner and Applicant actually addressed. That does not demonstrate material Office error.

C. *Eunsung* Does Not Support Reconsideration of this Prosecution Record

Petitioners' reliance on *Eunsung Global Corp. v. HydraFacial LLC*, IPR2025-00445, Paper 14 at 3 (July 10, 2025), is misplaced. Pet., 2. There, the Director found material error because the Examiner had overlooked teachings that appeared to disclose the very features underlying allowance. Here, the record demonstrates the opposite. As explained above, the supposedly overlooked Olster client disclosure was expressly presented to the Examiner, and he specifically searched Olster for the host/client terminology that Petitioners contend he overlooked. EX1002, 231, 299–300. Likewise, Olster's replication and placement functionality was repeatedly addressed during prosecution and expressly distinguished from the claimed recording method. *Id.*, 162–64, 204–05, 231–32.

Eunsung therefore does not cure Petitioners' failure under *Advanced Bionics*.

For Olster, Petitioners have not shown that the Office overlooked the asserted teachings; for Hashimoto, they have not identified any material Office error at all. Neither warrants reconsideration under § 325(d).

III. INSTITUTION SHOULD BE DENIED UNDER *FINTIV*

The Director should also exercise his discretion to deny institution under *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) ("*Fintiv I*") and its progeny. As addressed below, the *Fintiv* factors weigh in favor of denying the Petition.

A. *Fintiv* Factor 1: Petitioners Have Not Indicated that They Intend to File for any Pre-Institution or Post-Institution Stays.

Petitioners have not requested pre-institution stays in either the NDTX Case or EDTX Case, nor have they given any indication that they plan to do so. Petitioners have also not given any indication that they intend to request a post-institution stay. Because there is no evidence indicating that pre- or post-institution stays will be sought or granted in the parallel NDTX and EDTX Cases, the first *Fintiv* factor weighs in favor of denying institution.

B. *Fintiv* Factor 2: Trial in the Parallel District Court Actions Is Estimated to Occur Contemporaneously with the Board's Deadline for a Final Written Decision.

"If the court's trial date is earlier than the projected statutory deadline, the Board generally has weighed this fact in favor of exercising authority to deny

institution.” *Fintiv I* at 9. Here, the second *Fintiv* factor does not favor institution, or in the very least, is neutral.

Based on the Notice of Filing Date Accorded issued on August 5, 2026, the deadline for a final written decision in this IPR is approximately February 4, 2028, which may be extended to August 4, 2028, for good cause or in the case of joinder. 37 C.F.R. § 42.100(c). In the NDTX Case, trial has been scheduled for February 21, 2028. *See Gaea, LLC v. Meta Platforms, Inc.*, 4:26-cv-00348 (N.D. Tex.) (“*Gaea v. Meta*”) at Dkt. No. 34. In the EDTX Case, trial has been scheduled for April 3, 2028. *See Gaea, LLC v. Samsung Electronics Co., Ltd.*, 2:26-cv-00264 (E.D. Tex.) (“*Gaea v. Samsung*”) at Dkt. No. 24.

Trial in the NDTX Case will be essentially contemporaneous with the deadline for final written decision for the instant prospective IPR. As the EDTX Case overlaps substantially with the NDTX case, it is very likely that the outcome of the NDTX Case will heavily inform the EDTX Case. Therefore, since many of the issues across the NDTX and EDTX Cases will be resolved contemporaneously with the deadline for final written decision (or well before, should the deadline for final written decision be extended), this *Fintiv* factor weighs against institution.

C. *Fintiv* Factor 3: The Parties Expect to Invest Heavily in Several Parallel Proceedings, and Petitioner Unduly Delayed in Filing the Petition.

Here, Petitioners and Patent Owner are engaged in the parallel NDTX and EDTX Cases, which are anticipated to require significant resources to resolve, including claim construction, substantial document productions, the examination of source code, and the service of written discovery and responses thereto. In both cases, there are pending motions to transfer venue. *See Gaea v. Meta*, at Dkt. No. 62; *Gaea v. Samsung*, at Dkt. No. 43. Additionally, there is a pending motion to dismiss in *Gaea v. Samsung*. *See* Dkt. No. 41. In *Gaea v. Meta*, venue discovery is set to close on October 12, 2026, with Gaea's response to Meta's motion due on November 2, 2026. *See* Dkt. No. 60. In *Gaea v. Samsung*, the Parties' deadline to submit a venue discovery order and briefing schedule is October 13, 2026. *See* Dkt. No. 50. It is clear that the parties have already expended significant effort related to these motions, and that this work will only continue to increase.

In addition to expending resources on the above motions practice, the parties in both cases have dedicated substantial time and energy to the creation of preliminary infringement, invalidity, and subject matter ineligibility contentions. *See* EX2001 (7-29-2026 Gaea's Preliminary Infringement Contentions Against Meta); EX2002 (9-11-2026 Meta's Invalidity Contentions); EX2003 (7-6-2026 Gaea's Preliminary Infringement Contentions Against Samsung); EX2004 (8-31-2026

Samsung's Invalidity Contentions); EX2005 (8-31-2026 Samsung's Subject Matter Ineligibility Contentions). With a filing date accorded of August 5, 2026, the institution decision for the Petition will be made on or before February 5, 2027. By this date, in the NDTX Case, the parties will have completed all claim construction discovery and briefing and will be preparing for a *Markman* hearing. *See Gaea v. Meta*, at Dkt. No. 24. While the parties have not yet conducted any discovery owing to these currently pending motions, Patent Owner expects the case to proceed in earnest once these are resolved and expects that discovery efforts will be in full swing by the time of the institution decision.

Moreover, the Director should consider Petitioners' delay in filing the Petition. The instant Petition was filed on August 5, 2026, nearly five months after the filing of the complaint in the parallel NDTX Case and just over four months after the filing of the complaint in the parallel EDTX Case. Petitioners offer no explanation for their delay.

Thus, because of the past and future duplicative resource expenditures by the parties in the parallel proceedings and petitioner's delay, this factor favors denial.

D. *Fintiv* Factor 4: The Petition and the Parallel District Court Cases Will Likely Raise Substantially Overlapping Issues.

Here, at least some of the challenged claims are asserted in the parallel NDTX and EDTX Cases. Specifically, Patent owner has asserted claims 1, 9, and 14 of the '023 Patent against Petitioners. *See* EX2006 (Ex. A to 7-29-2026 Gaea's Preliminary

Infringement Contentions Against Meta); EX2007 (Ex. A to 7-6-2026 Gaea's Preliminary Infringement Contentions Against Samsung). In response, both parties raised prior art references Olster, Davis, and Hashimoto in their invalidity contentions. *See* EX2002; EX2004. Samsung also raised prior art reference Kilian. EX2004. Meanwhile, the Petition challenges claims 1, 2, 7, 9, 14-20, 32, 34, and 36 of the '023 patent. Pet., 11-12; *see also* EX2004 at 2. The prior art references raised by Petitioners in the petition are Olster, Davis, Hashimoto, and Kilian. Pet., 15-23.

Furthermore, despite the overlap in claims, Petitioners have taken materially inconsistent claim construction positions before the Board and in the District Court cases. Specifically Petitioners state in the Petition that it “establishes the prior art meets each of the claim limitations under its plain and ordinary meaning.” Pet., 23. However, on Sept. 25, 2026, Petitioner Meta sent an email to Patent Owner identifying that, in the NDTX Case, it would be seeking to have the term “recording method for writing content to the storage media” from claims 1, 9, and 14 of the '023 Patent construed by the Court. *See* EX2008 (Sept. 25, 2026 Email from Meta to Gaea). Petitioners' failure to reconcile the different claim construction approaches taken before the Board and in the District Court cases weighs in favor of denying institution. *See Infineon Techs. Am. Corp. v. Mosaid Techs. Inc.*, IPR2025-01456, Pap. No. 27 (PTAB Mar. 17, 2026) (denying institution after concluding that the petitioner failed to reconcile materially different claim construction positions taken

before the PTAB and a parallel district court.); *see also Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Pap. No. 20 (PTAB Nov. 3, 2025) (holding that a petitioner may not take materially inconsistent claim construction positions before the PTAB and a parallel district court without a sufficient explanation.).

Every single claim of the '023 patent that Patent Owner alleges is infringed by both Petitioners in the NDTX and EDTX Cases is challenged in the Petition. And every piece of prior art that Petitioners use to support the Petition has been raised by invalidity contentions in the district court cases. Because of the guaranteed overlap of claims, the substantively overlapping prior art at issue, and Petitioners' materially inconsistent claim construction positions before the Board and in the District Court cases, the fourth *Fintiv* factor weighs in favor of denying institution.

E. *Fintiv* Factor 5: Petitioners Are the Parallel Proceeding Defendants.

The Petition concedes that Petitioners are the defendants in the parallel NDTX and EDTX Cases, and thus merits discretionary denial. Pet., 3; *Fintiv I* at 15.

F. *Fintiv* Factor 6: The Merits of Petitioners' Examiner-Error Arguments Do Not Withstand Scrutiny

As explained in Section II above, Petitioners' assertions of material examiner error are either contradicted by the prosecution record or not made at all such that

Petitioner is simply seeking a second bite at the apple for the very same art already extensively and explicitly weighed by the Examiner. *See supra* § II.

IV. ADDITIONAL FACTORS SET FORTH IN THE DIRECTOR'S MEMORANDUM SUPPORT DISCRETIONARY DENIAL

A. The Strength of the Unpatentability Challenge

As previously explained for *Fintiv* Factor 6, Petitioner's unpatentability challenge is extremely weak, resorting to rehashing art already explicitly considered by the Examiner. *See supra* § III.F. The Petition therefore fails to show a reasonable likelihood of prevailing.

B. The Extent of the Petition's Reliance on Expert Testimony

As noted above, *supra* § II.B.2, Petitioners improperly rely on their expert to fill gaps in the prior art, using statements from their expert to support the allegation that the Examiner overlooked a certain proposition in Olster when in fact the proposition in question is not actually stated in Olster at all. Therefore, the expert testimony relied upon by the Petition should be given little weight and should be considered as a relevant factor in favor of discretionary denial.

C. Settled Expectations of the Parties.

The Director's Memorandum also lists "[s]ettled expectations of the parties, such as the length of time the claims have been in force" as another factor based upon which the Director may determine to deny institution. EX2009. In this case, the '023 patent claims were issued over six years ago on September 15, 2020

(EX1001 at 1), and Patent Owner has paid maintenance fees (EX2010), strongly counseling against review.

In addition, acting Directors have noted the ability of companies such as Petitioners to “scour issued patents for commercial opportunities and to review issued patents to determine if and how they impact these companies’ freedom to operate” (though the Director has also regretted that “these early tools are rarely used because there are other portions of the AIA that encourage competitors to wait until they are actually sued for infringement to participate in this joint exercise to improve the IP system”). *See* EX2011 at 8. During prosecution of the ’023 patent, a Samsung reference was cited by the Examiner as potentially relevant prior art. *See* EX2012 (10/25/2019 List of References Cited by Examiner, citing U.S. Pat. Pub. No. 2004/0174627). This same reference was then cited by Patent Owner in its 11-10-2020 Information Disclosure Statement, and then listed on the face of the issued ’023 patent, thus putting Petitioner Samsung on notice of the ’023 patent and of Patent Owner’s patenting activity in a relevant technology area to Samsung. *See* EX2013 (11-10-2020 Information Disclosure Statement). But, not until the filing of this Petition has Petitioner Samsung ever sought to challenge the ’023 patent at the PTAB.

Because of the well settled expectations of the parties, including the length of time the claims have been in effect and Petitioner Samsung’s prior decision not to

challenge the '023 patent, despite notice and opportunity to do so, this factor weighs in favor of denying institution.

V. CONCLUSION

The Board should exercise its discretion and deny institution of the Petition.

Respectfully Submitted,

Dated: October 13, 2026

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(Case No. IPR2026-00425)

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**CERTIFICATION UNDER INTERIM DIRECTOR DISCRETIONARY
PROCESS (II)(C)(iii)**

Under the provisions of 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the page count for all portions of the foregoing Patent Owner's Brief in Support of Request for Discretionary Denial totals 20 pages per Microsoft Word, which complies with the requirement of 20 pages allowed under the Interim Director Discretionary Process. *See* Interim Director Discretionary Process (II)(C)(iii) (<https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>).

Dated: October 13, 2026

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CERTIFICATE OF SERVICE

As authorized by Patent Owner's Mandatory Notice, I hereby certify that on October 13, 2026, a copy of this document has been served in its entirety by electronic mail on Petitioner's lead and backup counsel.

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