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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALMENDRA PTE. LTD.

Petitioner,

v.

FIENILE AGRONECÓCIOS LTDA.

Patent Owner.

Case No. PGR2025-00055

U.S. Patent No. 12,089,543 B2

**PETITIONER ALMENDRA PTE. LTD.'S OPPOSITION TO PATENT
OWNER FIENILE AGRONECÓCIOS LTDA.'S DISCRETIONARY
DENIAL BRIEF**

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EXHIBIT LIST

Exhibit	Description
1001	U.S. Patent No. 12,089,543
1002	File History of U.S. Patent No. 12,089,543
1003	Declaration of Dr. John Long
1004	Curriculum Vitae of Dr. John Long
1005	U.S. Patent Pub. No. 2019/0098843 (“Rosen”)
1006	U.S. Patent Pub. No. 2016/0198640 (“Singh”)
1007	U.S. Patent Pub. No. 2021/0185945 (“Richardville”)
1008	U.S. Patent No. 4,336,908 (“Vikre”)
1009	U.S. Patent No. 3,797,517 (“Kircher”)
1010	U.S. Patent No. 3,930,335 (“Widmayer”)
1011	U.S. Patent No. 4,209,131 (“Barash”)
1012	U.S. Patent No. 2,604,359 (“Zybach”)
1013	Reissue Application No. 19/322,633 – File History

GLOSSARY OF TERMS

Term	Description
The '543 Patent	U.S. Patent No. 12,089,543
Board	Patent Trial and Appeal Board
Challenged Claims	Claims 1-7 of the '543 Patent.
Patent Owner	Fienile Agronecócios LTDA
Petition	Petition for Post-Grant Review (Paper 1)
Petitioner	Almendra Pte. Ltd.
PGR	Post-Grant Review
Reissue Application	Reissue Application No. 19/322,633
Request	Patent Owner's Request for Discretionary Denial (Paper 7)
Richardville	U.S. Patent Pub. No. 2021/0185945
Rosen	U.S. Patent Pub. No. 2019/0098843
Singh	U.S. Patent Pub. No. 2016/0198640
USPTO	United States Patent and Trademark Office

I. INTRODUCTION

U.S. Patent No. 12,089,543 issued in 2024 as the national stage application of PCT/BR2022/050461 without significant examination. Pet., 14-15. As granted, the '543 Patent is replete with errors. Among other things, the '543 Patent improperly (1) utilizes coined terms (“dimerizer”) without defining them (Pet., 26-27); (2) claims the process of “determining” and “implementing” irrigation routines which are not enabled by the specification (Pet., 31-37); and (3) claims the application of generic machine learning in violation of 35 U.S.C. § 101. Pet., 37-41. Perhaps even more importantly, each of the Challenged Claims are rendered obvious by one or more prior art references. Pet., 41-91.

Patents with significant deficiencies—such as the '543 Patent—are precisely the sort of patents that PGR proceedings were designed to address. *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 360, 138 S. Ct. 1348, 1353 (2018) (“Sometimes, though, bad patents slip through. Maybe the invention wasn’t novel, or maybe it was obvious all along, and the patent owner shouldn’t enjoy the special privileges it has received.”); *see also Thryv, Inc. v. Click-To-Call Techs., LP*, 590 U.S. 45, 54, 140 S. Ct. 1367, 1374 (2020) (“Congress, concerned about overpatenting and its diminishment of competition, sought to weed out bad patent claims efficiently.”); *Celgene Corp. v. Peter*, 931 F.3d 1342, 1361 (Fed. Cir. 2019) (“Congress passed the AIA with post grant review procedures that were intentionally more robust and would provide a

more efficient system for challenging patents that should not have issued.”) (internal quotations omitted). “To remedy these sorts of problems, Congress has long permitted parties to challenge the validity of patent claims in federal court” and “has supplemented litigation with various administrative remedies.” *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 360, 138 S. Ct. 1348, 1353 (2018).

Now, rather than address Petitioner’s challenge, Patent Owner attempts to subvert the Board (and Congress) by asserting an entirely novel theory for discretionary denial. Nearly three months after Petitioner filed the instant Petition (and the same day its Request for Discretionary Denial was due), Patent Owner filed Reissue Application No. 19/322,633. Paper 6 at 2; EX1013. Patent Owner’s sole argument for discretionary denial is its unsupported proposition that the later-filed Reissue Application “will address the very grounds raised in the Petition, making PGR institution duplicative and unnecessary.” Request at 1. If a Patent Owner could foreclose the possibility of Post Grant Review simply by filing a reissue application, it would obviate the very purpose of the PGR framework. This outcome cannot be correct. For the reasons set forth below, the Request should be denied, and this matter should be referred to the Board for a decision on the merits.

II. ARGUMENT

Petitioner’s argument for discretionary denial is based on several deficient principles. According to Petitioner, (1) “[t]he PTAB has repeatedly recognized that

overlapping USPTO proceedings on the same patent and issues are disfavored” (Request at 1); (2) “the Patent Owner has already chosen the reissue path to resolve the very issues raised in the Petition” (Request at 2); and (3) “the reissue will likely be resolved prior to the anticipated Final Written Decision date” (Request at 3). As explained in additional detail, below, each argument fails.

A. Contrary to Patent Owner’s representation, the PTAB does not inherently disfavor overlapping proceedings.

Patent Owner misleadingly represents that “[t]he PTAB has repeatedly recognized that overlapping USPTO proceedings on the same patent and issues are disfavored.” Request at 1. But, Patent Owner’s conclusion that overlapping proceedings are “disfavored” strains credulity. Both statute and regulation provide guidance regarding parallel proceedings on the same patent. Moreover, the two opinions cited by Patent Owner are inapposite.

1. Controlling authority provides guidance regarding treatment of parallel proceedings addressing the same patent.

While a PGR proceeding is pending, the Director has ultimate control over the treatment of any other “proceeding or matter involving the [same] patent,” such as Patent Owner’s Reissue Application:

[D]uring the pendency of any post-grant review under this chapter, if [a reissue application] involving the patent is before the Office, the Director may determine the manner in which the post-grant review or [reissue application] may proceed, *including providing for the stay*,

transfer, consolidation, or termination of any such [reissue application].

35 U.S.C. § 325(d) (emphasis added). Specifically, the statute suggests that the Director may determine the manner in which the Petition may proceed, including by staying, transferring, consolidating, or terminating the Reissue Application. *Id.* This authority is further codified in Federal Regulations, which provide that “[w]here another matter involving the patent is before the Office, the Board may during the pendency of the post-grant review enter any appropriate order regarding the additional matter including providing for the stay, transfer, consolidation, or termination of any such matter.”37 C.F.R. § 42.222.

“Under that authority, *the Board ordinarily will stay a parallel Office proceeding* where good cause exists. Good cause for staying a case may exist if, for example, an on-going AIA proceeding, which is subject to statutory deadlines, is addressing the same or overlapping claims of a patent at issue in a parallel Office proceeding.” Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding, 84 Fed. Reg. 16,654, 16,656 (Apr. 22, 2019) (“Notice Regarding Amendment Options”) (emphasis added); *see also* MPEP 1442.02 (“To avoid duplicating effort ... if there is a pending trial before the Patent Trial and Appeal Board (PTAB), the PTAB may suspend action in the reissue application.”). Thus, Patent Owner’s apparent

assumption that the Reissue Application will take priority is far from a foregone conclusion.

Here, Patent Owner suggests without support that discretionary denial of the June 16, 2025 Petition is appropriate, rather than a stay of Patent Owner's September 8, 2025 Reissue Application. Patent Owner's suggestion has no basis in controlling law. For example, statute provides that:

In determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments *previously were presented* to the Office.

35 U.S.C. § 325(d) (emphasis added).

Here, Patent Owner has failed to show—and in fact has not even attempted to show—that “the same or substantially the same prior art or arguments” were at issue in the Reissue Application. Even accepting Patent Owner's assumption that the Examiner in the Reissue Application will consider the same arguments presented in the Petition, those arguments cannot be said to have been “previously ... presented” in light of the infancy of the subsequently-filed Reissue Application. *See* Notice Regarding Amendment Options at 16,657 (“The Board also may deny institution under 35 U.S.C. 325(d) of a requested AIA trial proceeding if a parallel Office proceeding, for example, is in a more advanced stage and involves overlapping

issues with the proposed AIA trial proceeding.”). There is no colorable argument that the Reissue Application (which was filed less than a month ago) “is in a more advance stage” than the Petition. No substantive prosecution has occurred, and it is unlikely that the proceeding will be complete prior to the January 7, 2027 statutory deadline for a Final Written Decision. EX1013; *see also* § II.B, *infra*.

2. Patent Owner’s cited authority is unavailing.

Patent Owner relies on two opinions for its novel theory, both of which involve the requested discretionary denial of an *inter partes* review proceeding on the basis of a co-pending *ex parte* reexamination. Contrary to Patent Owner’s representations, there is nothing *per se* improper about parallel proceedings. *ResMed Corp., v. Cleveland Medical Devices, Inc.*, IPR2025-00159, Paper 10 at 10 (P.T.A.B. June 12, 2025) (“The Office’s April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding* provides information as to how the Office may handle parallel reexamination and AIA proceedings involving the same patent. The existence of this Notice indicates that there is nothing *per se* improper about parallel *ex parte* reexaminations and *inter partes* reviews.”) (citing Notice Regarding Amendment Options at 16,656-58).

Moreover, the specific opinions cited by Patent Owner are readily distinguishable. *First*, in *Cisco Systems, Ind. V. QPrivacy USA LLC*, Petitioner filed

for *inter partes* review of two patents. IPR2025-00836, Paper 11 (P.T.A.B. Aug. 29, 2025); IPR2025-00837, Paper 11 (P.T.A.B. Aug. 29, 2025).¹ There, the Director performed “a holistic assessment of all of the evidence and arguments presented” and exercised discretion to deny because (1) “it [was] unlikely that a final written decision in th[e] proceeding [would] issue before district court trial occurs” and (2) an *ex parte* reexamination request for one of the challenged patents was before the Office. *Id.* at 2-3. Here, there is no pending district court trial to consider, and nothing in the Director’s opinion suggests that the presence of a co-pending reissue application (without more) is sufficient to justify discretionary denial.

Second, in *American Airlines, Inc. & Southwest Airlines Co. v. Intellectual Ventures I LLC*, Petitioner filed for *inter partes* review of two patents. IPR2025-00785, Paper 11 (P.T.A.B. Aug. 29, 2025); IPR2025-00786, Paper 12 (P.T.A.B. Aug. 29, 2025).² There, the Director determined that although “an *ex parte* reexamination request for one of the challenged patents [was] before the Office,” discretionary

¹ Although Patent Owner cites both IPR2025-00836 and IPR2025-00837, the Director issued a single opinion in both related proceedings.

² Although Patent Owner cites both IPR2025-00785 and IPR2025-00786, the Director issued a single opinion in both related proceedings.

denial was *not appropriate* and referred the case to the Board to make a determination on the merits. *Id.* at 3.

Of particular relevance, the Director noted that “[i]t is not an efficient use of Office resources to review a patent in two separate, concurrent Office proceedings.” *Id.* at 2. While Patent Owner quoted this language, they neglected to explain that after referring the petition to the Board, the Director further ordered that “[i]f the Board determines that the Petition warrants institution of *inter partes* review, and a reexamination is ordered, *the Board shall stay the reexamination proceeding* to avoid duplication of efforts within the Office.” *Id.* at 4 (emphasis added). The same procedure—ordering a stay of the Reissue Application if the PGR is instituted on the merits—is appropriate here.

Finally, the relevance of opinions referencing co-pending *ex parte* reexamination proceedings is of questionable relevance. *Ex parte* reexamination proceedings are, by their very nature, requested by third parties. Here, Patent Owner *intentionally chose* to file the Reissue Application which it now asserts will result in “significant duplication of effort, additional expense for the parties, and a risk of inconsistent decisions.” Request at 2. Each of the alleged harms which Patent Owner asserts justify discretionary denial are concerns of Patent Owner’s own making. In fact, discretionary denial at this stage would only serve to prejudice Petitioner, who has no right to involvement in the reissue proceeding.

B. Patent Owner has failed to establish that the Reissue Application “will likely be resolved prior to the anticipated Final Written Decision date.”

The Petition was filed on June 16, 2025, and a Notice of Filing Date Accorded was issued July 7, 2025, setting the deadline for Patent Owner’s Preliminary Response for October 7, 2025. Paper 1, Paper 3. An institution decision is due no later than January 7, 2026, and a final written decision is due no later than January 7, 2027. *Id.*

The *only* evidence cited by Patent Owner regarding the timing of its Reissue Application is the assertion that “the average number of months from application filing date to disposal is 26.2 months” which Patent Owner characterizes as “falling slightly after the anticipated date of the Final Written Decision.” Request at 3, (citing EX2001 at 3). The Reissue Application was filed September 8, 2025 (EX1013 at 2-5), which suggests disposal will occur mid-November, 2027—more than ten months *after* a Final Written Decision. Patent Owner’s characterization of ten months as “*slightly* after the anticipated date of the Final Written Decision” strains credulity.

In order to account for this discrepancy, Patent Owner suggests that the “special” status accorded the Reissue Application will accelerate this timeline by an unknown amount. Request at 3. However, as explained above, the proper procedure is to *stay* the Reissue Application pending PGR, *not* to fast-track it to completion before the PGR. *See* § II.A.1, *supra*. Indeed, Patent Owner’s arguments for

discretionary denial equally support a stay of the Reissue Application. “In deciding whether to grant a stay of a parallel proceeding involving the same patent within the Office, the Office (typically the Board) may consider a number of factors.” Notice Regarding Amendment Options at 16,657. For example, the Board may consider “[w]hether the same grounds of unpatentability or the same prior art are at issue in both proceedings” and “[w]hether the concurrent parallel Office proceeding will duplicate efforts within the Office”—both of which Patent Owner suggests are true. *Compare id. with* Request at 2 (“Patent Owner has already chosen the reissue path to resolve the very issues raised in the Petition”).³ Patent Owner’s suggestion that the Reissue Application “is likely to resolve issues relating to the patentability of the ’543 Patent *prior to* the Final Written Decision” remains unsupported.

³ Petitioner also disputes that the Reissue Application will “resolve the very issues raised in the Petition.” Post-Grant Review is an adversarial proceeding, which allows Petitioner the opportunity to respond to arguments and amendments proposed by Patent Owner, including by identifying new art and arguments to address any amended claims. If discretionary denial is granted and the reissue proceeding is allowed to proceed, Petitioner’s only recourse will be to file yet another petition for PGR regarding the reissue patent, putting the parties back in the same position they are currently in, and wasting additional both Board and party resources.

C. Consideration of the Reissue Application invites gamesmanship and undermines Post-Grant Review.

USPTO settled-expectations principals emphasize that petitioners should file both IPR and PGR challenges promptly after patent issuance to promote early and efficient resolution of validity disputes. *See Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (discussing factors for discretionary denial, including whether a petitioner delayed in filing and the impact of such delay on the efficiency of the review process). Under 37 C.F.R. § 42.202(a), a petition for post-grant review must be filed within nine months of the grant of the patent or issuance of a reissue patent.

Allowing Patent Owner's tactic here would encourage gamesmanship: patent owners could block timely PGR review simply by filing a reissue, effectively insulating older patents from scrutiny under the USPTO's settled-expectations framework. That outcome would strip petitioners of their statutory rights, undermine confidence in patent quality, and frustrate Congress's intent in creating post-grant review. The Board should reject this attempt to convert reissue into a discretionary shield against post-grant review and instead maintain consistent policy by ensuring timely-filed petitions are decided on their merits.

III. CONCLUSION

In sum, Patent Owner argues that it “is an inefficient use of Board resources to review a challenged patent that is also being examined in a concurrent proceeding.” Request at 4. It is unclear, then, why Patent Owner filed the Reissue Application which forms the basis of its Request for Discretionary Denial, with the full knowledge that the ’543 Patent was already being examined in the instant proceeding. In order to preserve party and Board resources, minimize prejudice to Petitioner, and encourage the efficient resolution of the instant dispute, Petitioner asserts that the correct procedure is to (1) deny Patent Owner’s request for discretionary denial, (2) refer the Petition to the Board for a decision on the merits, and (3) stay the Reissue Application if institution is granted.

Dated: October 7, 2025

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CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. § 42.6(e), the undersigned certifies that a complete and entire copy of the foregoing Petitioner Almendra Pte. Ltd.'s Opposition to Patent Owner Fienile Agronecócios Ltda's Discretionary Denial Brief was served electronically via e-mail on October 7, 2025 on counsel of record for Petitioners, as follows:

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CERTIFICATE OF COMPLIANCE

Petitioner Alemendra Pte. Ltd.'s Opposition to Patent Owner Fienile Agroneócios Ltda's Discretionary Denial Brief complies with the type-volume limitation in 37 CFR § 42.24 and the Interim Director Discretionary Process in that it contains fewer than 20 pages, as measured by the word processing software used to prepare the document.

Dated: October 7, 2025

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