

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TANKLOGIX, LLC,
Petitioner

v.

SITEPRO, INC.,
Patent Owner

Case No. PGR 2025-00060

U.S. Patent No. 12,321,184

PETITIONER'S DISCRETIONARY DENIAL OPPOSITION BRIEF

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PETITIONER’S EXHIBIT LIST

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
EX1001	U.S. Patent No. 12,321,184
EX1002	U.S. Patent No. 12,321,184 File History
EX1003	U.S. Patent No. 12,321,184 Labeled Independent Claims
EX1004	U.S. Patent No. 9,649,909 (12/708,557 Application)
EX1005	Declaration of Dr. Gary Wooley
EX1006	Curriculum Vitae of Dr. Gary Wooley
EX1007	U.S. Patent No. 7,424,399 to Kahn
EX1008	U.S. Patent No. 8,667,091 to Almadi
EX1009	U.S. Patent No. 9,709,995 to Gutierrez
EX1010	SCADA: Supervisory Control and Data Acquisition, 4th Edition (2010)
EX1011	TDE Petroleum v. AKM Enterprise – SDTX
EX1012	TDE Petroleum v. AKM Enterprise – CAFC
EX1013	PGR2023-00023 ProFrac v. Halliburton – Final Decision
EX1014	Petitioner’s Sotera Stipulation
EX1015	Time to Trial Statistics – WDTX

Patent Owner's request for discretionary denial of institution under 35 U.S.C. §§ 314(a) and/or 325(d) should be denied for at least the reasons below.

I. The Final Written Decision Will Likely Precede the District Court Trial

Patent Owner's request for discretionary denial of institution under §§ 314(a) and/or 325(d) should be rejected. Based on the district court schedule, which is quite likely to slip, the district court trial will not occur before March 1, 2027. *See* EX2003. A Notice of Filing Date Accorded was mailed July 18, 2025. Based on that date, a final written decision will issue no later than January 18, 2027 – at least *one month and two weeks before the scheduled first day of trial*. However, that scheduled district court trial date is not realistic. The average time to trial now in the Western District of Texas is now 33.1 months. *See* EX1015. Applying that average time to trial to this case would result in a trial date of September, 2027 – roughly *eight months after* a Final Written Decision would issue. Furthermore, in the district court case, the investment of the parties and Court has been low, as there has been no *Markman* hearing, and discovery has not yet commenced. *See* EX2003.

II. Settled Expectations

This PGR is against the same Patent No. 12,321,184 (hereinafter “the ’184 Patent”) asserted in the district court case. The ’184 patent was issued on June 3,

2025, a mere four months ago. Thus, instituting this PGR is consistent with the Office's goal of establishing predictable patent rights. *Micron Tech. Inc. v. Yangtze memory Techs. Co.*, IPR2025-00190, Paper 21 at 3 (June 25, 2025) ("the challenged patents were issued recently, from 2021 through 2024. Early challenges favor robust, predictable patent rights and weigh against discretionary denial."). Due to the age of the '184 patent, Patent Owner cannot claim to have settled expectations regarding their '184, which was only issued roughly four months ago.

Further, one benchmark regarding settled expectations has analogized the relevant timeline to the six-year patent enforcement statute of limitations. *Dabico Airport Sols. Inc. v. Axa PowerAps*, IPR2025-00408, Paper 21 at 2–3 (Director June 18, 2025) (citing 35 U.S.C. § 286 ("Except as otherwise provided by law, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action.")). The '184 patent at issue was granted a mere four months ago, which is significantly less than the six-year statute of limitations referenced in the Director's *Dabico* guidance.

In *Dabico*, the Director stated "the challenged patent has been in force almost eight years." *Dabico* at 2. In *Proxense*, the Director stated "the challenged patents have been in force over nine years." *Intel Corp. v. Proxense*

LLC, IPR2025-00327, Paper 12, at 2–3 (Director June 26, 2025). As explained above, the '184 patent at issue has been in force for less than 6 months.

Further, Patent owner does not allege attempting to commercialize the '184 patent. Thus, a settled expectations argument regarding the commercialization of the '184 patent is not apparent.

Therefore, for the reasons discussed above, the settled expectations weigh heavily in favor of Petitioner and against discretionary denial of institution.

III. *Sotera* Stipulation

The Petition presents strong invalidity grounds, and each claim that TankLogix believes may reasonably be asserted against it in the district court litigation has been challenged. Further, TankLogix has submitted a stipulation that goes beyond a typical *Sotera* stipulation, which eliminates any potential overlapping invalidity issues between the litigation and the PGR upon institution. *See* EX1014. As Petitioner has stipulated:

Consistent with *Sotera Wireless, Inc.*, Petitioner hereby stipulates “that if the PTAB institutes inter partes review, Petitioner ‘will not pursue in [*SitePro, Inc. v. TankLogix, LLC*, No. 7:25-cv-00266 (W.D. Tex.) (the “Litigation”)] the specific grounds [asserted in PGR2025-00060], or . . . any other ground . . . that was raised or could have been reasonably raised

in a PGR (i.e., any ground that could be raised under §§ 102 or 103 on the basis of prior art patent or printed publications).” *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 13-14 (PTAB Dec. 1, 2020) (precedential). For the avoidance of doubt, if the PTAB institutes inter partes review, Petitioner will not, in the Litigation, rely on any product or system art that is “based on the same evidence presented” in this PGR. *Cf. SAP America, Inc. v Cyandia, Inc.*, IPR2024-01496, Paper 13 at 9 (PTAB Apr. 7, 2025).

EX1014.

These are additional strong reasons why the Director should not discretionarily deny institution.

IV. *Advanced Bionics* Analysis

Using the streamlined process set forth in *Advanced Bionics* to apply the *Becton Dickinson* factors provides a favorable argument for institution. *See, Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential). This two-prong analysis follows.

A. *Advanced Bionics* Prong One and 35 U.S.C. §325(d) Favor Institution.

Advanced Bionics prong one and *Becton Dickinson* factors (a), (b), and

(d) favor institution. This first prong of *Advanced Bionics* evaluates whether the same or substantially the same prior art or arguments were previously presented to the Office. *Id.*

Petitioner agrees with Patent Owner's statement that the references of Kahn, Gutierrez, Almadi, and SCADA (hereinafter "the References") were cited by the examiner during the prosecution of the '184 patent. However, as discussed in the subsequent section, based on the prosecution history of the '184 patent, the Examiner did not substantively examine the References during the prosecution process. Therefore, this first prong of the *Advanced Bionics* framework is likely neutral. An analysis of the substance of the arguments previously presented at the Office follows.

B. *Advanced Bionics* Prong Two and 35 U.S.C. §325(d) Favor Institution.

Advanced Bionics prong two and *Becton Dickinson* factors (c), (e), and (f) favor institution. This second prong of the *Advanced Bionics* evaluates whether the Office erred in a manner material to the patentability of the challenged claims. *Id.* With regards to *Becton Dickinson* factors (c), (e), and (f), "a petitioner may also point to the fact that even though the asserted prior art is listed on an IDS, the Examiner did not issue any prior art rejections during examination, so the Examiner materially erred by overlooking certain teachings

in the prior art on the IDS.” *Ecto World, LLC v. Rai Strategic Holding Inc.*, IPR2024-01280, Paper 13 at 5 (PTAB May 19, 2025) (precedential).

The only Office Action in the application's history was issued on November 21, 2024, raising two objections: (1) a minor typographical issue and (2) a non-statutory obviousness-type double patenting rejection over U.S. Patent Nos. 12,019,461; 11,726,504; and 11,294,403. The Examiner asserted that the then pending claims were not patentably distinct from those in U.S. Patent No. 11,294,403. EX1002, pp. 8–11. Importantly, the Examiner did not issue any rejection based on prior art under 35 U.S.C. §§ 102 or 103, nor did the record reflect any inquiry into compliance with §§ 101 or 112. *Id.* The lack of any substantive rejection based upon § 102 or § 103 despite the references being cited by the Examiner illustrates a surface-level analysis of patentability. The teachings of the References were clearly not considered for a prior art rejection during the prosecution process.

1. Examiner Committed Material Error by Not Issuing a § 103 Rejection

The Petition lays the Grounds for why a POSITA would combine the References. The References are analogous art to the '184 patent as they are from the same field of endeavor, fluid handling systems. The POSITA would be

motivated to combine Kahn, Gutierrez, and Almadi as the aforementioned references describe similar systems for remote monitoring and control of fluid handling facilities. Further, a POSITA would recognize that SCADA provides specific details of fluid processing systems and remote control of fluid handling devices of Gutierrez and Kahn to process instrumentation, various communication methods, and computer applications. EX1005 ¶ 57.

The Petition further demonstrates how the references in combination with the skills and knowledge of a POSITA teach every limitation of every claim of the '184 patent. This is exemplified when the Petition describes the References teaching claim 1 of the '184 Patent. Petition at 38-53.

Accordingly, the Examiner materially erred during prosecution by not rejecting at least independent claim 1 based on § 103 non-obviousness. The Petition describes how the References in combination teach every element of every claim of the '184 patent. This is illustrated using the table below for independent claim 1 of the '184 patent.

	Kahn	Gutierrez	Almadi	SCADA
Preamble	X	X	X	X
[1a]	X	X	X	X
[1a1]	X	X		

[1a2]	x		x	
[1b]	x	x	x	x
[1c]		x	x	
[1d]		x		x
[1e]			x	
[1f]		x	x	x

Even if one of the References is not prior art, as asserted by Patent Owner, the table above indicates that the other references disclose each element, i.e., there is complete redundancy in at least the invalidity assertions involving claim 1.

In addition, the obviousness of the '184 patent with respect to the References is not limited to claim 1. The Petition lays the Grounds for a § 103 rejection for every claim listed in the '184 patent. *Id.* As discussed earlier, the Examiner did not make a § 103 rejection even when faced with the References which teach the patent at issue. This illustrates a material error by the Office in allowance of the '184 patent.

Therefore, a material error exists as Kahn, Gutierrez, Almadi, SCADA, in combination with the skills of a POSITA, teach the '184 patent. Moreso, a

material error likely exists due to the Examiner not making a prior art rejection despite the References teaching the '184 patent. Due to this, this second prong of the *Advanced Bionics* strongly favors institution.

2. Examiner Committed Material Error by Not Issuing a § 101 Rejection

In addition, the Examiner materially erred during prosecution by not issuing a § 101 rejection despite the '184 patent concerning an unpatentable, abstract idea.

Independent claim 1 of the '184 patent is representative of independent claims 30 and 31. *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1348 (Fed. Cir. 2014) (“The Board may consider a representative claim when other claims are ‘substantially similar and linked to the same abstract idea.’”). Claim 30 is a system claim which mirrors the limitations of claim 1, and claim 31 is an apparatus claim that includes the limitations of claim 30 along with elements found in other claims. The Petition provides great detail as to the representation of claim 30 and claim 31 through claim 1. Petition at 21. Therefore, independent claim 1 is representative of independent claims 30 and 31.

An invention is patent-eligible if it claims a “new and useful process,

machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions in laws of nature, natural phenomena and abstract ideas. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014). According to the guidance set forth in the MPEP, the Office must look to see whether a claim is directed to a judicial exception and apply a two prong approach for this determination. MPEP 2016.04 Eligibility Step 2A.

The first prong of step 2A asks whether claim 1 is directed toward an abstract idea. The Petition lays the grounds for why claim 1 of the ’184 patent is directed toward an abstract idea. Petition at 22-27. The background section of the ’184 patent explains that controlling fluid handling devices is a mental process, which indicates an abstract idea. *See, e.g., Cyber-Source Corp. v. Retail Decision, Inc.*, 654 F.3d 1366, 1372-73 (Fed. Cir. 2011) (holding that a claim whose “steps can be performed in the human mind, or by a human using a pen and peper” is directed to an “unpatentable mental process[]”). Therefore, claim 1 of the ’184 patent is directed toward an abstract idea and thus, unpatentable subject matter.

Despite the clear abstract idea, Examiner provided no analysis as to the patentability of the abstract idea. As mentioned previously, the only rejections issued in the prosecution history of the ’184 patent were a minor typographical

issue and a non-statutory double patenting rejection. Therefore, there is clear material error committed by the Examiner by not addressing the abstract ideas listed in the claims.

The second prong of step 2A asks, given the claim is directed toward an abstract idea, whether the abstract idea is integrated into a practical application of the exception. The Petition lays the grounds for claim 1 of the '184 patent as not being integrated into a practical application. Petition at 22-27. Simply requiring the use of one or more computing systems for the mental process, as instructed by the '184 patent, does not change the focus of the claim away from being directed towards an abstract idea. Moreover, the claims of the '184 patent do not recite any non-generic hardware or software mechanism for use in the abstract idea. Therefore, the claim is directed toward an abstract idea and is not integrated into a practical application of the exception and should have been rejected under the basis of § 101.

Examiner does not address the aforementioned § 101 issues during the prosecution history of the '184 patent. Despite the apparent patentable subject matter issues, Examiner allowed the '184 patent. This constitutes material error in the application of the rules set forth by the Office.

3. Examiner Committed Material Error by Not Issuing a § 112 Rejection

In addition, the Examiner materially erred during prosecution by not issuing a § 112 rejection despite claims 2, 11, 14, and 31 of the '184 patent lacking written description support. The Petition lays the grounds for the material error. Petition at 86. The listed claims introduce subject matter that is either entirely absent from the specification or presented only in generic or incomplete terms that would not convey possession of the full scope of the claimed invention to a person of ordinary skill in the art. For example, claim 2 requires user-level permission granularity that is not described in the application beyond general account-level access. This is only one example, and many more are listed in the Petition. *Id.* Since the written description requirement demands that the specification clearly convey to a POSITA that the inventor was in possession of the full scope of the claimed subject matter as of the filing date- not merely that such functionality might be later derivable or obvious, the Examiner materially erred by not issuing a § 112 rejection during the prosecution of the '184 patent for a lack of written description.

Thus, Examiner committed material error in three distinct ways; not issuing a § 103 rejection, § 101 rejection, and § 112 rejection. Therefore, the second prong of *Advanced Bionics* strongly favors institution of this PGR.

V. Fintiv Analysis

The six *Fintiv* factors guide against discretionary denial. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (precedential).

A. Factor 1: TankLogix Will File a Motion A Stay

Factor 1 favors institution. TankLogix plans to file a motion to stay the district court case. TankLogix agrees with SitePro's statement that Judge Counts has not previously ruled on any contested motions to stay pending PTAB post-grant proceedings. However, stay is likely granted if PGR is instituted, as courts in the Western District of Texas grant motions to stay pending IPRs slightly more than denying.

Therefore, this factor likely favors Petitioner, but conservatively, it can be considered neutral.

B. Factor 2: Parallel Proceeding Trial Date

Factor 2 likely favors institution. Based on that PTAB post-grant proceeding timeline, a final written decision will issue not later than January 18, 2027 – at least *one month and two weeks before the scheduled first day of trial*. However, that scheduled trial date is not realistic. The average time to trial now in the Western District of Texas is now 33.1 months. *See* EX1015. Applying that average time to trial to this case would result in a trial date of September, 2027 – roughly *eight months after* a Final Written Decision would

issue.

Therefore, this factor heavily favors institution.

C. Factor 3: Investment in Parallel Proceeding

Factor 3 favors institution. The co-pending litigation is in its early stages, and the investment in it has been minimal. The parties have not exchanged preliminary positions on claim construction and discovery has not opened. *See PEAG LLC v. Varta Microbattery GmbH*, IPR2020-01214, Paper 8, 17 (Jan. 6, 2021).

Therefore, this factor heavily favors institution.

D. Factor 4: Overlapping Issues with Parallel Proceeding

Factor 4 favors institution consistent with *Sotera Wireless, Inc.*, Petitioner hereby stipulates “that if the PTAB institutes *inter partes* review, Petitioner ‘will not pursue in [*SitePro, Inc. v. TankLogix, LLC*, No. 7:25-cv-00266 (W.D. Tex.) (the “Litigation”)] the specific grounds [asserted in PRG2025-00060], or . . . any other ground . . . that was raised or could have been reasonably raised in an PGR (i.e., any ground that could be raised under §§ 102 or 103 on the basis of prior art patent or printed publications).” *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 13-14 (PTAB Dec. 1, 2020) (precedential). For the avoidance of doubt, if the PTAB institutes PGR, Petitioner will not, in the Litigation, rely on any product or system art that is

“based on the same evidence presented” in this PGR. *Cf. SAP America, Inc. v Cyandia, Inc.*, IPR2024-01496, Paper 13 at 9 (PTAB Apr. 7, 2025) As such, the Grounds presented in the instant PGR will be materially different from the grounds that will be presented in the district court.

Further, as mentioned previously, TankLogix has submitted a stipulation that goes beyond a typical *Sotera* stipulation, and which eliminates any potential overlapping invalidity issues between the litigation and the PGR upon institution. *See* EX1014.

Therefore, this factor favors institution.

E. Factor 5: Identity Of Parties.

Factor 5 is neutral. Petitioner is the defendant in the co-pending litigation. However, this is true of most post grant proceeding petitioners, therefore, this factor is neutral. However, this factor should be afforded little to no weight. The previous four factors when analyzed together weigh heavily in favor of institution.

Therefore, this factor is neutral.

F. Factor 6: Other Circumstances, Including the Merits.

Factor 6 guides against discretionary denial. Here, the evidence of unpatentability is compelling, as evidenced by the Grounds in the Petition.

1. The Prosecution was Non-Substantive.

The prosecution has not established any prior art rejections against the

claims that are now being challenged. The sole challenges to the original claims was based on typographical error and obviousness-type double patenting. (EX2001, at 74-77). In said Office Action, the Examiner raised the typographical issue because it was originally filed containing the phrase “executing s process recipe” instead of “executing *a* process recipe.” *Id* at 74. In the same Office Action, the Examiner made a non-statutory obviousness-type double patenting rejection. *Id*. In response to said Office Action, the Patent Owner canceled and replaced all of the original claims with a new set, coupled with a terminal disclaimer. EX2001, at 87-100). This new set of claims again did not include any indication subsequent prior-art examination or written eligibility analysis by the Examiner before allowance.

2. The IDS and Front-Page Citations Do Not Show Substantive Consideration of the Asserted Art.

The Patent Owner's Notice of References Cited and the '184 patent's front page are traditionally used to prove that the Patent Office saw the asserted art, however, here, these only prove citation, and not application of the prior art; merely listing does not constitute the necessary threshold for “evaluation.” Further, although the Patent Owner's discretionary denial brief lists the prior art references, it does not identify a passage where the Examiner mapped said references to the issued limitations or rejected the claims on that basis.

3. The Combination of the References Teach the '184 Patent.

Patent owner asserts that the combination of Kahn, Gutierrez, Almadi, and SCADA fails to show the requisite disclosure, teaching, or suggestion for several claimed features of independent Claims 1, 30, and 31 yet provides no explanation or reasoning for why these features or the claim would not have been obvious. However, the references in combination with the skills of a POSITA would likely teach the '184 patent as disclosed in the Petition. The obviousness of the '184 with regards to the references will be explained further if the PGR is instituted.

G. *Fintiv* Factors Summary

	Conclusion	Explanation
Factor 1	Neutral or slightly favors institution	Stay is likely if PGR is instituted, because courts in WDTX grant motions to stay pending PGR slightly more than denying
Factor 2	Favors institution	Trial date will likely change given the district court's current and increasing congestion and average time to trial
Factor 3	Favors institution	No significant investment in substantive issues has occurred; claim construction has not commenced; discovery has not

		commenced
Factor 4	Favors institution	Petitioner’s stipulation removes all potential overlapping invalidity issues—including any product or system art that is “based on the same evidence presented” in this PGR
Factor 5	Neutral	Same parties in the PGR and litigation, but should be afforded little to no weight
Factor 6	Favors institution	Compelling merits and other factors favor institution

VI. Conclusion

Taken together, the settled expectations, *Sotera* stipulation, *Advanced Bionics* analysis, the *Fintiv* favors and other issues discussed herein weigh strongly against discretionarily denying institution.

Petitioner respectfully requests that the Director refrain from exercising his discretion to deny this petition, and instead pass it to a merits panel for consideration.

Dated: October 8, 2025

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CERTIFICATE OF WORD COUNT UNDER 37 CFR § 42.24(d)

Under 37 C.F.R. § 42.24(d), the undersigned certifies that the word count for this *Brief Against Discretionary Denial* totals 3,635 words and 19 pages, excluding the parts exempted by 37 C.F.R. § 42.24(a). The word count was made using the built-in word count function in the Microsoft® Word software used to prepare this document.

Dated: October 8, 2025

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CERTIFICATE OF SERVICE

I hereby certify that the PETITIONER'S DISCRETIONARY DENIAL OPPOSITION BRIEF was served, by consent of the parties, by emailing a copy thereof to counsel of record for the Patent Owner on October 8, 2025 by filing the documents through P-TACTS and by sending via electronic mail to the following:

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