UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GILGAMESH PHARMACEUTICALS, INC.,
Petitioner

v.

ENVERIC BIOSCIENCES CANADA, INC.,
Patent Owner

PGR2025-00076
Patent 12,138,276

PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION

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I. INTRODUCTION

Patent Owner Enveric Biosciences Canada, Inc. ("Enveric" or "Patent Owner") respectfully requests that the Director exercise his discretion to deny institution of Gilgamesh's Petition. Although Patent Owner understands that early challenges to patents through post-grant review are favored, ***this particular Petition for PGR*** does not deserve institution. Simply put, this Petition suffers from several fatal flaws, and it would waste the Board's time, effort, and resources to consider it for institution at all.

No expert support despite complex technology. The Petition is fatally flawed by its complete ***lack of any expert testimony***. Although expert testimony may not be required in cases involving straightforward technology, the claims at issue here—directed to halogenated psilocybin derivatives defined by chemical structure—are not the type readily understandable without specialized knowledge. The Petition relies ***solely on attorney argument*** for issues that depend on the perspective of a person of ordinary skill in the art ("POSITA"). As just one example, Petitioner alleges that a POSITA would have been "motivated to replace one of the fluoro substituents on N,N-dimethyl-5,6-difluorotryptamines with chlorine, thereby producing N,N-dimethyl-5-chloro-6-fluorotryptamine," but fails to provide any supporting evidence for this allegation. Pet., 58. Critically, the Petition does not even ***define*** a POSITA, a foundational element for evaluating its

grounds of unpatentability. This evidentiary gap cannot be cured at trial, as the Board's procedures prohibit introducing evidence that could have been presented with the Petition. CONSOLIDATED TRIAL PRACTICE GUIDE (Nov. 2019) ("CTPG"), 3. Petitioner's inexplicable failure to provide any expert support for its grounds of unpatentability renders this particular Petition wholly inadequate.

Failure to set forth the grounds of unpatentability with particularity. The Petition is also fatally flawed because it does not set forth the grounds of unpatentability with particularity as required by 35 U.S.C. §322(a)(3) and 37 C.F.R. §42.204. The Petition's "Statement of Precise Relief Requested" presents ***four*** grounds of unpatentability (Grounds I-IV) as follows:

Ground #	**Basis**
Ground I	Claims 1-20, 24, 26, and 28 are anticipated under 35 U.S.C. §§102.
Ground II	Subject matter in claim 27 is either anticipated under 35 U.S.C. §102 or rendered obvious under 35 U.S.C. §103.
Ground III	Claims 25 and 29 are rendered obvious under 35 U.S.C. §103.
Ground IV	Claim 1 is not enabled and is indefinite.

Pet., 10. But the "Argument" section appears to set forth many more grounds of unpatentability that Petitioner failed to identify with particularity in the Table. As one example, Gilgamesh's anticipation argument relies on no less than 12 prior-art references, suggesting that Ground I encompasses ***at least 12 grounds*** of

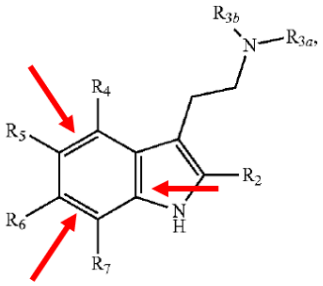
unpatentability rather than just the one listed in the table. *Id.*, 14-53. As to obviousness, Petitioner fails to clearly identify the specific combination of references it relies on, provide any specific motivation for those combination(s), or cite to testimony from a POSITA. As another example, the Table identifies Ground IV as unpatentable based on a lack of enablement and indefiniteness. *Id.*, 10. But in the Argument, the Petition merely states that claim 1 is indefinite "for the reasons enumerated in section IV." *Id.*, 65.

No pinpoint citations to the prior art. To make matters worse, the Petition fails to provide any pinpoint citations to the prior-art references and thus fails to particularly identify the specific portions of the evidence supporting its challenges as required by 37 C.F.R. §42.204(b)(5). As just one example, Petitioner asserts that U.S. Provisional Application 62/978,075 (EX1009) anticipates claim 1 but provides ***no pinpoint citations*** to the specific portions of the application that allegedly teach the subject matter of claim 1. *See* Pet., 28-37. This is no small oversight, as EX1009 discloses the structures of over ***three hundred different compounds***. The Board's rules provide that it "may exclude or give no weight to the evidence where a party has failed…to identify specific portions of the evidence that support the challenge," 37 C.F.R. §42.204(b)(5), and the Board should do so here. Indeed, the "lack of clarity in Petitioner's presentation deprives Patent Owner of a fair opportunity to respond fully to the Petition and does not lend itself

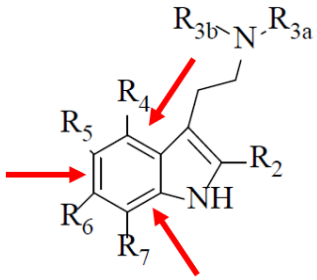
to informed evaluation by the panel." *Smith & Nephew, Inc. v. ConforMIS, Inc.*, IPR2017-00545, Paper 8 at 14 (PTAB July 13, 2017).

Relying on chemical structures without demonstrating that they match the source material. Where Petitioner's evidence can be decoded, Petitioner's representations in the Petition often do not match the source material. As just one example, Petitioner appears to re-draw the structure in claim 1 of the '276 Patent, but changes the location of the double bonds in the Petition and does not explain why:

Claim 1 From '276 Patent



Claim 1 From Gilgamesh's Petition



Compare EX1001, cl. 1, *with* Pet., 17; *see also* Pet., 17-53, 56. It is not clear from the Petition whether Petitioner intended these structures to be the same, or whether there is some meaning behind the changed drawings.

In other places, Petitioner's evidence cannot be decoded. Petitioner relies on complex chemical nomenclature and then purports to derive chemical structures from that nomenclature, without sufficiently explaining how it did so. For

example, Petitioner appears to translate a disclosure from EP 2,686,119 (EX1006) on the left into the structure on the right, without any explanation at all[1]:

Prior Art (EX1006, [0112])

3-(2-Aminoethyl)-7-fluoro-*1H*-indole oxalate (**26**)

[0112] The title compound has been synthesized according to the procedure for the synthesis of **27** starting from azide derivative which was obtained according to the procedure for the synthesis of **21** to afford yellowish crystals (0.9 g, 70% yield). ^{1}H NMR (DMSO-d_6) δ 11.48 (br s, 1H), 7.37 (d, 1H, *J* = 7.8Hz), 7.30 (s, 1H), 6.95 (dt, 1H, *J*= 7.5 Hz, 4.8Hz), 6.90 (dd, 1H, *J*= 11.1 Hz, 0.3Hz), 3.05 (m, 4H); ^{13}C NMR (DMSO-d_6) δ 164.5 (COO), 148.6 (d, *J* = 242 Hz), 130.8 (d, *J* = 5 Hz), 124.5 (s), 123.9 (d, *J* = 13 Hz), 118.7 (d, *J* = 6 Hz), 114.2 (d, *J* = 3 Hz), 110.7 (d, *J* = 2 Hz), 105.8 (d, *J* = 17 Hz), 39.2 (s), 23.0 (s); IR (film) 3395, 3050, 2915, 1710, 1605, 1575, 1511, 1441, 1217, 721, 123 cm^{-1}; HRMS (ESI) calculated for $C_{10}H_{11}N_2F$ (M^+): 178.0904, found: 178,0906, error: 1.12 ppm.

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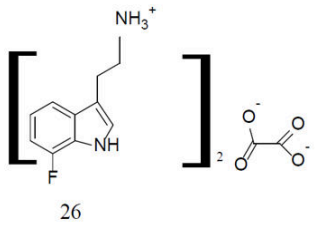

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EP 2682119

Even without an expert, Petitioner had the opportunity to explain ***in its Petition*** how paragraph 112 of EX1006 corresponds to the structure presented on page 23 of the Petition but chose not to. The Board should not be expected to perform that analysis on Petitioner's behalf.

Institution should be denied based on these fatal flaws. Patent Owner is not requesting that the Director deny the Petition solely due to Petitioner's failure to strictly comply with procedural requirements. Gilgamesh was the master of its Petition and failed to substantively identify and support its grounds of unpatentability with the requisite particularity and specificity. The PTAB has been in business for over 13 years, and there should be no excuse for a Petition so

[1] Notably, the Petition does not note or address the impact, if any, of the presence of the extraneous compound to the right of the bracket.

lacking in information that it effectively ***shifts the burden*** of effort from the Petitioner to the Patent Owner and the Board. As the Director recently found, "as a matter of policy, it is not an efficient use of Office resources to institute and maintain a trial when a petition presents a multitude of unfocused grounds, leaving the work to be done by the Office." *Zhuhai CosMX Battery Co. Ltd. v. Ningde Amperex Tech. Ltd.*, IPR2025-00405, Paper 24 at 2 (PTAB Oct. 15, 2025) (vacating and denying institution); *see also Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (it is "of the utmost importance that petitioners . . . adhere to the requirement that the initial petition identify with particularity the evidence that supports the grounds for the challenge to each claim") (cleaned up).

Finally, referring this Petition to the Board would not only waste the Board's limited resources, but also those of Patent Owner. Enveric is a small, start-up pharmaceutical company that should not have to defend against a Petition that advances ***only ambiguous, unclear, and burdensome*** grounds of unpatentability. Patent Owner respectfully requests that the Director deny institution for this reason as well.

II. THE DIRECTOR SHOULD EXERCISE HIS DISCRETION TO DENY GILGAMESH'S PETITION

A. Petitioner's Failure to Provide Evidence from a POSITA Warrants Discretionary Denial

1. The Claims Recite Complex Technology, but Petitioner Provides No Expert Support

Gilgamesh's Petition presents no expert testimony with respect to the understanding of a POSITA generally, much less with respect to the disclosures of any of its asserted prior-art references. While expert testimony is not a technical requirement to show unpatentability, a general expectation for expert testimony does exist, and is especially strong for factual issues, such as anticipation. *See Creative Compounds, LLC v. Starmark Labs.*, 651 F.3d 1303, 1313 (Fed. Cir. 2011) (affirming summary judgment of no anticipation because, *inter alia*, patent challenger "failed to provide any testimony from one skilled in the art identifying each claim element and explaining how each claim element is disclosed in the prior art reference"). Here, Petitioner alleges that the prior art anticipates the chemical compounds recited in the claims but provides no evidence from a POSITA that the prior art even discloses the claimed chemical compounds. Pet. 14-53.

Petitioner also alleges unpatentability based on obviousness, lack of enablement, and indefiniteness. Pet., 10. But "the foundation for both the obviousness and claim construction determinations is the level of ordinary skill in the pertinent art." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1333 (Fed. Cir. 2005)

(cleaned up). Further, the Federal Circuit has held that "it is imperative when attempting to prove lack of enablement to show that ***one of ordinary skill in the art would be unable to make the claimed invention*** without undue experimentation." *John Hopkins Univ. v. CellPro, Inc.*, 152 F.3d 1342, 1360 (Fed. Cir. 1998).

Each of these grounds generally requires—or certainly at minimum, benefits from—evidence from a POSITA but Petitioner provides none. *See Alexsam, Inc. v. IDT Corp.*, 715 F.3d 1336, 1347 (Fed. Cir. 2013) ("Even though [Defendant] bore the burden of proving this fact by clear and convincing evidence, it did not introduce any expert testimony about whether a skilled artisan would have been motivated to combine the various references to achieve the claimed invention … expert testimony regarding matters beyond the comprehension of laypersons is sometimes essential, ***particularly in cases involving complex technology***.") (cleaned up); *Proveris Scientific Corp. v. Innovasystems, Inc.*, 536 F.3d 1256, 1267 (Fed. Cir. 2008) ("[The patent's] subject matter is sufficiently complex to fall beyond the grasp of an ordinary layperson. We thus are not prepared to say the district court abused its discretion in requiring [Defendant] to present expert testimony in order to establish invalidity.").

Here, the claims encompass a genus of halogenated psilocybin derivatives consisting of an indole-ethylamine base structure with specific substituted carbons.

These nuances of chemical structure and nomenclature need explanation from a POSITA. And yet, Petitioner offered no evidence from a POSITA.

Setting aside the presence or absence of a POSITA's testimony, the Petition is also inexplicably silent regarding the ***definition itself*** of a POSITA or the qualifications Petitioner believes a POSITA at the time of the invention would have had. Yet the Petition nevertheless purports to offer numerous arguments from this undefined POSITA's perspective, for example:

- "[A] [POSITA] would have understood the following claim terms to be construed as proposed below by Petitioner," (Pet., 10);
- "[T]he skilled artisan understands these terms in general," (*id*.);
- "It thus suggests to the skilled artisan that a N,N-dialkyl-dihalotryptamine is expected to have therapeutic properties," (*id*., 57);
- "Thus, the combination would suggest to the skilled artisan to convert the free amine of compound of Example 48 of WO'907 to a dialkyl group," (*id*.);
- "Thus, based on this teaching, the skilled artisan is motivated to replace one of the fluoro substituents," (*id*., 58);
- "Thus, the combination of US'010 in view of Example 48 of WO '907 would have suggested and motivated the skilled artisan to prepare compound XXI," (*id*., 61);

- "Accordingly, the skilled artisan would be motivated to prepare the homolog of the compound in Julia," (*id*., 63).

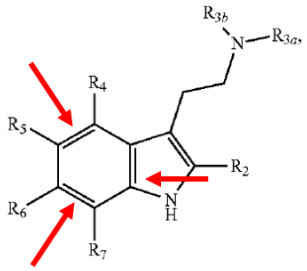
Without proper framing of the appropriate level of skill in the art or testimony directly from a POSITA, these arguments amount to mere ***attorney arguments*** that cannot provide the evidentiary basis to meet Petitioner's burden. *See* CTPG, 3; *Redline Detection, LLC v. Star Envirotech, Inc.*, 811 F.3d 435, 448 (Fed. Cir. 2015) (upholding Board's refusal to accept an expert declaration not filed with the petition and agreeing with the Board that "Petitioner should not expect a wait-and-see opportunity to supplement a petition") (cleaned up). Any attempt to file additional evidence should be excluded under 37 C.F.R. 42.123(b).

Indeed, the understanding of a POSITA is particularly important here, where chemical structures are claimed, and—as Petitioner itself even acknowledges—"chemistry is an unpredictable art." Pet., 65; *see also In re Fisher*, 427 F.2d 833, 839 (CCPA 1970) (contrasting predictable factors involving the mechanical or electrical arts with "cases involving unpredictable factors, such as most chemical reactions and physiological activity"). Without evidence from the viewpoint of a POSITA in this case, Gilgamesh's Petition is nothing more than a rudder on a captain-less, crewless ship.

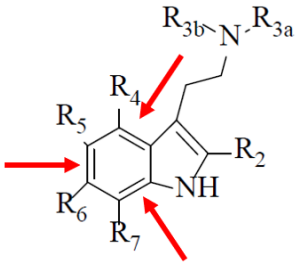
2. Without Expert Support, the Entire Petition is Improper Attorney Argument

Without evidence from a POSITA, Gilgamesh's Petition is based entirely on attorney argument. For example, the Petition shows a chemical structure different on its face from the structure in claim 1 of the '276 Patent. Shown below, while the Petition shows the double bonds on the interior of the six-carbon ring (right), claim 1 of the '276 Patent (left), copied directly from the patent, depicts the double bonds shifted to the opposite sides of the ring.

Claim 1 From '276 Patent



Claim 1 From Gilgamesh's Petition



Compare EX1001, cl. 1, *with* Pet., 17; *see also* Pet., 17-53, 56. Petitioner similarly redraws several of the prior art compounds to the same effect. *Compare, e.g.*, Pet., 25, *with* EX1007, 1:29-49.

Gilgamesh's Petition does not acknowledge these differences, let alone explain any potential impact of these differences on its anticipation analysis. And that is far from the largest leap of faith Petitioner asks the Board to make. Throughout both the anticipation and obviousness sections, the Petition purports to

translate chemical nomenclature found in the prior art into chemical structures, sometimes without even identifying with particularity the chemical named. This information could have made verification of Petitioner's chemical structures more feasible (though still unduly burdensome) for Patent Owner and the Board but Petitioner chose not to include it.

For example, for Kalir (EX1004), no pinpoint citation is provided in the Petition's claim charts, only compound numbers. *See* Pet., 19-20 (citing compounds 15, 20). But in Kalir, the only disclosure for the structure of compounds 15 and 20 is shown below (left). The Petition translates these compounds into structures (right), but without evidence from a POSITA and without clearly connecting the dots.

Prior Art (EX1004, 342)

TABLE I: EFFECT OF INDOLE DERIVATIVES ON SPONTANEOUS LOCOMOTION AND PTOSIS REVERSAL IN RESERPINIZED MICE

No.	Compd	Dose, mg./kg.[a]	Spontaneous locomotion[b]	Max % of ptosis reversal/ min
15	4-Fluoro-N,N-diethyltryptamine[k]	30	i	0
20	6-Fluoro-N,N-dimethyltryptamine[l]	17	i	50/25

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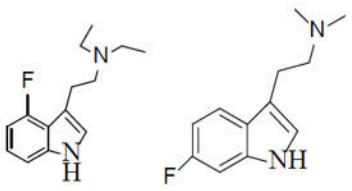


15 20

EX1004, 342; *see also* Pet. 20-21 (compounds 18, 19); *compare* EX1008, [0083],

[0087] *with* Pet., 27 (attorney-drawn structures).[2] This gap in the Petition cannot be cured at trial because it should have been included with the Petition. CTPG, 3.

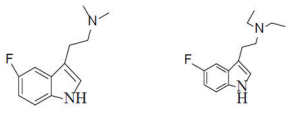
Worse still, for other art, no compound numbers are used, and without a pinpoint citation, Patent Owner and the Board are left to scour the entire reference for the purportedly anticipatory disclosure. Even where Petitioner purports to provide guidance, this often fails. For example, for Pelchowicz (EX1005), the Petition's claim charts label two compounds "(a)" and "(b)," but Pelchowicz itself ***does not*** identify compounds (only method steps) as "(a)" and "(b)." Pet., 22. Instead, Petitioner purports to identify "a" as "6-fluoro-N,N-dimethyltryptamine" and "b" as "N,N-diethyl-5-fluorotryptamine." Pet., 21. But compound "a" appears nowhere in Pelchowicz, and appears to be a typographical error based on the disclosure on page 5421, shown below. Again, Petitioner purports to translate the chemical jargon into chemical structures, again without showing its work:

Prior Art (EX1005, 5421)

5-Fluoro-NN-dimethyltryptamine (III; R = Me).—A solution of the glyoxylamide (II; R = Me) (7·0 g.) in tetrahydrofuran (150 ml.) was added dropwise to lithium aluminium hydride (8·5 g.) in ether (200 ml.). The mixture was refluxed with stirring for 1 hr., cautiously decomposed by successive addition of ethyl acetate and water, filtered, and concentrated. The residue was dissolved in ether, filtered, and treated with ethereal hydrogen chloride solution. The *hydrochloride* (2·8 g., 38%), crystallized from toluene–ethanol, had m. p. 175—176° (Found: C, 59·1; H, 6·9; F, 8·2. $C_{12}H_{16}ClFN_2$ requires C, 59·4; H, 6·6; F, 7·8). The picrate of the base melted at 180—181°.

NN-Diethyl-5-fluorotryptamine (III; R = Et).—The analogous treatment of the glyoxylamide (II; R = Et) (8·5 g.) in tetrahydrofuran (100 ml.) with lithium aluminium hydride (8·5 g.) in ether (200 ml.) gave the desired base (4·5 g., 59%) as a viscous oil, b. p. 160—165°/0·7 mm. In the crystallization of the *hydrochloride*, prepared as above, from toluene–ethanol, serious losses were sustained; the product had m. p. 192—193° (Found: C, 62·2; H, 7·6. $C_{14}H_{20}ClFN_2$ requires C, 62·1; H, 7·4%). The *picrate*, recrystallized from dilute ethanol, melted at 199—200° (Found: C, 51·9; H, 5·1. $C_{20}H_{22}FN_5O_7$ requires C, 51·8; H, 4·8%).

Petition, 22



(a) (b)

Pelchowicz et al.

[2] Because Gilgamesh failed to number exhibit pages, page numbers herein refer to article pages.

Without a pinpoint citation or expert help, however, the Board is left to play detective to "decode" Petitioner's intentions. *Netflix, Inc. v. DivX, LLC*, 84 F.4th 1371, 1377 (Fed. Cir. 2023).

Similarly, the burden caused by the lack of pinpoint citations is encapsulated in Petitioner's claim charts for U.S. Provisional Pat. App. 62/978,075 ("USSN '075," EX1009). Petitioner appears to pluck out twelve different compounds from this reference (*see* Pet., 29-37), out of a disclosure of ***over three hundred different*** chemical structures, with no guidance or direction as to where these compounds are purportedly found. And unlike searching for a chemical name, it is ***impossible*** to easily search a PDF to locate a chemical structure. Indeed, it took Patent Owner upwards of ten hours to use best efforts to parse the evidence Petitioner intended to rely upon, with no guarantee that it succeeded in the endeavor.

While "Board members, because of expertise, may more often find it easier to understand and soundly explain the teachings and suggestions of prior art without expert assistance," "the Board cannot 'simply reach conclusions based on its own understanding or experience—or on its assessment of what would be basic knowledge or common sense.'" *Fanduel, Inc. v. Interactive Games LLC*, 966 F.3d 1334, 1344 (Fed. Cir. 2020) (*quoting Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1079 (Fed. Cir. 2015); *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001)). What the Board "can find without an expert depends on the prior art involved in the

case." *Fanduel*, 805 F.3d at 1079. Regardless, in every case, "it remains the Board's essential function to make factual findings based on its view of the ***record***." *Id*. (emphasis added). Here, the record upon which the Board can make factual findings is ambiguous and incomplete, and warrants discretionary denial.

Petitioner made the calculated decision to submit a Petition without expert support. "[A]s the master of its own petition, [Gilgamesh] could have made its challenges more pointed and specific," and given the Board a clear and understandable record to draw from. *Intuitive Surgical, Inc. v. Ethicon LLC*, 25 F.4th 1035, 1041 (Fed. Cir. 2022). That Petitioner chose not to do so, particularly in a self-proclaimed "unpredictable" field, using prior art containing complex scientific jargon, renders review of Gilgamesh's Petition by the Board an inefficient use of the Board's resources. Pet., 65.

B. The Petition Does Not Meet the Particularity Requirement of §322(a)(3)

1. The Director May Exercise Discretionary Denial Based on Lack of Particularity

By statute, a Petition may be considered only if it "identifies, in writing and ***with particularity***, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim." 35 U.S.C. §322(a)(3) (emphasis added). The Federal Circuit has characterized the particularity requirements of §312(a)(3) (the equivalent IPR

statute) as "of the utmost importance." *Intelligent Bio-Sys.*, 821 F.3d at 1369. The Court explained that "[u]nlike district court litigation—where parties have greater freedom to revise and develop their arguments over time and in response to newly discovered material—the expedited nature of IPRs bring with it an obligation for petitioners to make their case in their petition to institute." *Id.* The Court added that holding petitioners to the strict particularity requirements is not unfair because "they are requirements of which petitioners are aware when they seek to institute" a post-grant proceeding. *Id.* Further, as the Director recently explained, "as a matter of policy, it is not an efficient use of Office resources to institute and maintain a trial when a petition presents a multitude of unfocused grounds, leaving the work to be done by the Office." *Zhuhai CosMX Battery*, Paper 24 at 2. Likewise, the Consolidated Trial Practice Guide states that a Petition should "focus on concise, well-organized, easy-to-follow arguments supported by readily identifiable evidence of record." CTPG, 39.

Consistent with §322(a)(3), Federal Circuit caselaw, the Director's guidance, and the Consolidated Trial Practice Guide, a petition that advances ambiguous, unclear, and burdensome grounds of unpatentability may be denied. *Adaptics Ltd. v. Perfect Co.*, IPR2018-01596, Paper 20 at 15-24 (PTAB Mar. 6, 2019) (informative). In *Adaptics*, for example, the Board exercised its discretion to deny institution under §312(a)(3) because the lack of particularity as to some asserted

grounds justified denial of the entire petition. *Id.* at 17-18, 24. The Director should do the same here.

2. The Petition's Lack of Particularity Warrants Discretionary Denial Here

At the outset, for its prior art-based grounds, Petitioner provides a "Statement of Precise Relief Requested" that fails to identify ***any*** piece of prior art. *See* Pet., 10. Instead, Petitioner only identifies its challenges generally as under §102, §103, or both. *Id.* Petitioner does not identify with particularity which individual claims each prior art reference allegedly anticipates—instead these grounds are left to be deciphered in the Argument section. Further, while the pieces of allegedly anticipatory prior art could be discerned in headings, Petitioner's obviousness grounds are never so-delineated, nor is any motivation to combine clearly elucidated. *See* Pet., 55-64.

Second, Petitioner failed to provide stamped page numbers for any of its exhibits and violated numerous other requirements. *See, e.g.*, 37 C.F.R. §§42.6(a)(2)(ii)-(iii), 42.63(d)(1)(i), and 42.63(d)(2)(i)-(ii).[3] These deficiencies are

[3] Additional unmet requirements in these statutes include not using 14-point font, not double spacing, and not including an exhibit label with petitioner's name in the lower right corner of the first page.

more than mere formatting problems; Petitioner's missing page numbers highlight a glaring and critical omission throughout its Petition—a ***lack of pinpoint citations*** to the evidentiary disclosures in the record. Compounding this issue, Petitioner did not use exhibit numbers after introducing a reference, making it even more difficult to decipher its grounds. Without exhibit numbers or pinpoint citations to its allegedly supporting evidence, Petitioner does not meet its burden of identifying its challenge "with particularity." 35 U.S.C. §322(a)(3). Far from elevating form over substance, these omissions infect all grounds by inviting Patent Owner and the Board to investigate and uncover Petitioner's evidence, as discussed above. But "[a] brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record." *DeSilva v. DiLeonardi*, 181 F.3d 865, 867 (7th Cir. 1999). The Director should reject this invitation.

Third, for anticipation, after providing a lengthy legal standards section, Petitioner marches through 12 different pieces of prior art, providing for each one a general description of the reference followed by tables purportedly acting as claim charts. As discussed above, rather than copying the structure from claim 1 of the '276 patent, Petitioner redrew it showing chemical bonds in different locations. Petitioner also drew structures not appearing on their face in the prior art. Presumably these structures purport to be renderings of the chemical nomenclature appearing in the prior art. But Gilgamesh's Petition does not say that. Nor does

Petitioner provide any sworn testimony from the person who drew these structures, as Petitioner offers no expert testimony. Thus, Petitioner essentially asks the Board to take its attorneys' claim charts at face value, with no underlying record evidence to attest to either the drawings' accuracy or the accuracy of the claim mapping. Petitioner's charts "leav[e] the work to be done by the Office" to figure out its arguments. *Zhuhai CosMX Battery*, Paper 24 at 2. But, just as with the grounds, "[j]udges are not like pigs, hunting for truffles buried in briefs." *U.S. v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (per curiam), *quoted with approval in Halliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1250 n.2 (Fed. Cir. 2008). Simply put, "it is the petitioner's burden to present a clear argument," and "the Board should … not have to decode a petition to locate additional arguments beyond the ones clearly made." *Netflix*, 84 F.4th at 1377.

Collectively, these deficiencies in Gilgamesh's Petition serve to improperly ***shift the burden*** of deciphering Petitioner's arguments onto Enveric and the Board, contrary to both the statutory and regulatory provisions governing post grant proceedings, as well as the best practices outlined in the Office Patent Trial Practice Guide. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) ("In an *inter partes* review, the burden of persuasion is on the petitioner to prove 'unpatentability by a preponderance of the evidence,' 35 U.S.C. § 316(e), and that burden never shifts to the patentee."). "Vague arguments

and generic citations to the record are fundamentally unfair to an opponent and do not provide sufficient notice to an opponent and creates inefficiencies for the Board." 77 Fed. Reg. 48,620. "[A]s the master of its own petition, [Gilgamesh] could have made its challenges more pointed and specific," but did not do so. *Intuitive Surgical*, 25 F.4th at 1041. Deciphering Gilgamesh's Petition would unduly burden the Board and would not be an efficient use of the Board's limited resources.

Gilgamesh's Petition is a striking example of a petition that failed to fulfill the particularity requirement with respect to both its grounds and its underlying support for those grounds, without any testimony from a POSITA. Neither the Patent Owner nor the Board should have to expend resources in an attempt to decipher the Petition. Likewise, Petitioner cannot provide new evidence now to support its fatally flawed petition. The Director should deny institution based on these fatal deficiencies in the Petition.

III. CONCLUSION

For at least the reasons discussed above, Patent Owner respectfully requests that the Director deny institution of the Petition.

Respectfully submitted,

Date: October 24, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§42.6(e), the undersigned certifies that on October 24, 2025, a complete and entire copy of this Patent Owner's Discretionary Denial Brief was provided via email to Petitioners by serving the correspondence email address of record as follows:

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